

S.I. No. 257 of 2007

European Communities (Circuses) Regulations 2007

I, Mary Coughlan, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Commission Regulation (EC) No. 1739/2005 of 21 October 2005¹, hereby make the following regulations:

Citation & commencement

1. These Regulations may be cited as the European Communities (Circuses) Regulations 2007.

Interpretation

2. (1) In these Regulations –

“authorised officer” means –

- (a) an authorised officer within the meaning of section 17A (inserted by the Diseases of Animals (Amendment) Act 2001 (No. 3 of 2001)) of the Diseases of Animals Act 1966 (No. 6 of 1966),
- (b) a member of the Garda Síochána,
- (c) an officer of Customs and Excise, or
- (d) a person appointed under Regulation 5.

“Commission Regulation” means Commission Regulation (EC) No. 1739/2005 of 21 October 2005;

“Minister” means Minister for Agriculture and Food;

“official veterinarian” means an authorised officer who is a registered veterinary practitioner within the meaning of the Veterinary Practice Act 2005 (No. 22 of 2005);

“circus” means a travelling exhibition or fair that includes one or more animals;

- (2) A word or expression that is used in these Regulations and is also used in the Commission Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Commission Regulation.

¹ OJ No. L279, 22.10.2005, p47.

Registration of Circuses

3.(1) A person shall not move or attempt to move a circus-

(a) from the State to another member state, or

(b) from another member state to the State,

unless the circus is registered for the purposes of Article 4 of the Commission Regulation and Articles 8, 9 and 10 of the Commission Regulation are complied with.

(2) The Minister may grant registration for the purposes of Article 4 of the Commission Regulation to a circus that is resident or situated within the State, attach conditions to registration, revoke registration or refuse an application.

(3) An application for registration under this Regulation shall be in a form and contain any particulars that the Minister may determine.

(4) The Minister shall not consider an application unless it is accompanied by the fee (if any) payable under Regulation 12.

(5) Other than in the case of paragraph (6), if the Minister proposes to revoke registration or to refuse an application, he or she shall —

(a) notify the person concerned in writing of the proposal and of the reasons for the proposal, and that he or she may make representations to the Minister in relation to the proposal within 14 days of the notification,

(b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and

(c) notify the person concerned of the decision and the reasons for the decision.

(6) If it is, in the opinion of the Minister -

(i) necessary to prevent the risk or spread of animal or human disease,

(ii) necessary to eradicate animal or human disease, or

(iii) necessary, incidental, supplementary or consequential for the purposes of giving effect to an act of the institutions of the European Communities, including the Commission Regulation, relating to animal health or welfare,

the Minister may revoke a registration in accordance with paragraph (7).

- (7) If the Minister withdraws an approval or authorisation in accordance with this paragraph, he or she shall —
- (a) notify the person concerned in writing of the decision and the reasons therefor, and that he or she may make representations to the Minister in relation to the decision within 14 days of the date of the notification,
 - (b) consider a representation made, and
 - (c) confirm, modify or annul the decision and notify the person concerned of the decision and the reasons for the decision.
- (8) A person to whom an registration is granted shall make such returns to the Minister as and when, and in such form as, the Minister may from time to time direct.

Possession etc of circus animal

4. (1) A person shall not move an animal into the State or from the State to another Member State unless-
- (a) he or she has in his or her possession a passport issued for the purposes of Article 7 of the Commission Regulation, and
 - (b) the animal is registered in accordance with Article 6 of the Commission Regulation.
- (2) A person shall not have in his or her possession or under his or her control an animal that has been moved in contravention of paragraph (1).

Appointment of authorised officers

- 5.(1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as may be specified in the instrument.
- (2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.
- (3) An appointment as an authorised officer ceases-
- (a) if it is terminated pursuant to paragraph (4),
 - (b) if it is for a fixed period, on the expiry of that period, or

- (c) if the person appointed is an officer of the Minister, on the person ceasing to be such an officer.
- (4) Nothing in paragraph (5) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

Functions of authorised officer

6.(1) If an authorised officer has reasonable cause to suspect that -

- (a) an animal to which the Commission Regulation applies is present or may be present on a premises, or
- (b) a document relating to an animal to which the Commission Regulation applies is or may be on a premises, and
- (c) an offence is being or has been committed under these Regulations,

he or she may enter a premises and, if he or she has reasonable cause to do so, the authorised officer may—

- (i) search the premises,
- (ii) stop a person, vehicle, vessel or container,
- (iii) board and search a vehicle, vessel or container,
- (iv) search a person, if the authorised officer considers it necessary,
- (v) examine an animal to which the Commission Regulation applies, a vehicle, vessel, container or other thing,
- (vi) take, without payment, samples, including samples of blood, urine, faeces, hair, saliva, tissue or other thing or any article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations tests or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as is necessary) an animal, vehicle or container,
- (viii) require the production of a document or thing relating to an animal, vehicle, vessel or container,

- (ix) retain any such document or thing (for so long as is necessary),
 - (x) give such directions to, or request such information of, such person regarding an animal vessel, premises, vehicle, aircraft or container as he or she considers necessary,
 - (xi) require the name and address of a person and the name and address of any other relevant person as he or she considers necessary,
 - (xii) require of the person the ownership, identity and origin of an animal , or
 - (xiii) mark or otherwise identify such animal or a sample taken under subparagraph (vi).
- (2) An authorised officer shall not enter, other than with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 7 other than if he or she has reasonable cause to suspect that, before a search warrant could be sought in relation to the dwelling, anything to which paragraph (1) relates is being or is likely to be destroyed or disposed.
- (3) An authorised officer may use reasonable force, if necessary, in the exercise of his or her powers under this Regulation.
- (4) An authorised officer when exercising any powers under this Regulation may be accompanied by other persons (including an employee of or person acting on behalf of the European Commission) and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of those powers.
- (5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under this Regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (6) Nothing in these Regulations operates to prejudice any power to search, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of Customs and Excise.
- (7) If a member of the Garda Síochána has reasonable cause to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

Search warrant

- 7.(1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting-

- (a) that there is on a premises, vehicle, vessel or aircraft an animal, animal by-product or product derived from an animal by-product,
- (b) that there is on a premises, vehicle, vessel or aircraft a document, record or other thing relating to an animal, animal by-product or product derived from an animal by-product, or
- (c) that there is evidence of a contravention of the Animal By-products Regulation or these Regulations therein or thereon,

the judge may issue a search warrant.

- (2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers as the named authorised officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.
- (3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Forgery

- 8. (1) A person shall not forge or utter knowing it to be forged a –
 - (a) register of animals referred to in Article 4(3)(b) of the Commission Regulation,
 - (b) venue register referred to in Article 4(3)(c) of the commission Regulation,
 - (c) passport or collective passport, or
 - (d) stamp or signature of an official veterinarian,
 or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as "a forged document").
- (2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered a-
 - (a) register of animals referred to in Article 4(3)(b) of the Commission Regulation,

(b) venue register referred to in Article 4(3)(c) of the commission Regulation,

(c) passport or collective passport, or

(d) stamp or signature of an official veterinarian,

or an extract therefrom (hereafter in this Regulation referred to as "an altered document").

- (3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Obstruction etc

9. A person shall not-

- (a) obstruct or impede an authorised officer in the exercise of his or her powers under Regulation 6,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 6,
- (c) in making an application for registration under Regulation 3 or in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 6 -
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular,
- (d) tamper or otherwise interfere with a sample taken under Regulation 6, or
- (e) aid or abet a contravention of an act of the institutions of the European Communities or these Regulations.

Production of documents

10. A person shall not, on a request being made in that behalf by an authorised officer, fail to produce-

- (a) a register of animals referred to in Article 4(3)(b) of the Commission Regulation,

- (b) a venue register referred to in Article 4(3)(c) of the Commission Regulation,
- (c) a passport or collective passport, or
- (d) any other document that the authorised officer may reasonably require.

Fixed payment notice

11.(1) If an officer of the Minister authorised by the Minister in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing on that person stating that –

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days on the date of the notice make to the registering authority a payment of €250 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If notice is given under paragraph (1) —

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

Fees

12. (1) The Minister, may charge a fee in respect of an application for registration, or for the performance of a function under these Regulations, such fee, not exceeding the cost, estimated by the Minister, of providing the service to which the fee relates.
- (2) If the Minister charges a fee in relation to an application for registration, under these Regulations, he or she shall not consider the application unless the fee accompanies the application.
- (3) A fee payable to the Minister pursuant to this Regulation shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.
- (4) The Public Offices Fees Act 1879 does not apply to a fee charged pursuant to this Regulation.

Offences etc

- 13.(1) A person who contravenes –

- (a) Article 3, 4(1), 8 and (10(1) of the Commission Regulation,
- (b) Regulation 3(1), (8), 4, 8, 9 or 10 of these Regulations,

commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment for a period not exceeding 6 months or to both.

- (2) An offence under these Regulations may be prosecuted by the Minister.
- (3) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.
- (4) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.
- (5) In proceedings for an offence, evidence of an act of the institutions of the European Community may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(6) Paragraph (5) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

GIVEN under my Official Seal,

January 2007

Mary Coughlan

Minister for Agriculture and Food

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation)

This order gives effect to Commission Regulation (EC) No. 1739/2005, which lays down animal health requirements for the movement of circus animals between Member States.