



STATUTORY INSTRUMENTS.

S.I. No. 589 of 2009

EUROPEAN COMMUNITIES (NOTIFICATION OF SMALL HIVE
BEETLE AND TROPILAEALAPS MITE) REGULATIONS 2009

(Prn. A9/1987)

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BEETLE AND TROPILAELOPS MITE) REGULATIONS 2009

I, BRENDAN SMITH, Minister for Agriculture, Fisheries 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 Council Directive 92/65/EEC of 13 July 1992¹ as amended by Commission Regulation (EC) No 1398/2003 of 5 August 2003² and Council Directive 82/894/EEC³ of 21 December 1982 as amended by Commission Decision 2004/216/EC⁴ of 1 March 2004 in so far as they refer to small hive beetle (*Aethina tumida*) and Tropilaelaps mite (*Tropilaelaps* spp.) affecting bees hereby make the following regulations—

Citation

1. These Regulations may be cited as the European Communities (Notification of Small Hive Beetle and Tropilaelaps Mite) Regulations 2009.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person appointed under Regulation 4,
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

“bees” means bees of the species *Apis mellifera* and *Bombus* spp.;

“Council Directives” means Council Directive 92/65/EEC of 13 July 1992 as amended by Commission Regulation (EC) No 1398/2003 of 5 August 2003 and Council Directive 82/894/EEC of 21 December 1982 as amended by Commission Decision 2004/216/EC of 1 March 2004;

“Minister” means the Minister for Agriculture, Fisheries and Food;

“premises” includes a building or other structure, land (including land under water) with or without buildings, an establishment, beehive, a vehicle (including a boat, ship, hovercraft, aircraft or offshore installation (within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of

¹ OJ L 268, 14.9.1992, p. 54

² OJ L 198, 6.8.2003, p. 3

³ OJ L 378, 31.12.1982, p. 58

⁴ OJ L 67, 5.3.2004, p. 27

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th January, 2010.*

1987)), railway wagon, container or other thing used in connection with, or ancillary to such a thing.

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

Notification

3. A person who has bees in his or her possession or under his or her control and any other person who, by reason of an examination, laboratory test result or otherwise, becomes aware or suspects or who should reasonably be aware that there is an infestation or a suspected infestation of small hive beetle (*Aethina tumida*) or Tropilaelaps mite (*Tropilaelaps* spp.) in bees shall immediately notify the Minister of the infestation or suspected infestation by contacting the Department of Agriculture, Fisheries and Food.

Appointment of authorised officer

4. (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 (2),
- (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, upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from re-appointing as an authorised officer a person to whom that paragraph relates.

(5) An officer of the Minister shall furnish an authorised officer appointed under this Regulation with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, an officer of Customs and Excise or a member of the Garda Síochána shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to the person.

Functions of authorised officer

5. (1) If an authorised officer has reasonable cause to suspect that—

- (a) bees have been present, are present or may be present on the premises,

(b) a document relating to bees, the Council Directives or these Regulations is or may be on the premises, or

(c) an offence is being or has been committed under these Regulations,

the authorised officer may enter a premises and he or she 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 bees, bee-products or any other thing to which the Council Directives or these Regulations relate,
- (vi) take, without payment, samples, including samples of bees, bee products or any other thing as he or she may reasonably require, and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as he or she considers necessary) bees, bee products or any other thing to which either the Council Directives or these Regulations relate,
- (viii) require the production of a document or thing relating to or any other thing to which either the Council Directives or these Regulations relate,
- (ix) retain, examine or copy a document or retain a thing (for so long as he or she considers necessary),
- (x) dispose of, or require the owner or person in charge of or in possession of bees or bee products to deal with or dispose of them (or any equipment, machinery, plant or container or any other thing used in connection with, or that may have been in contact with, the bees or bee products) in such manner as the authorised officer sees fit,
- (xi) give a direction to, or request information of, a person regarding the bees, bee products, a premises, or any equipment, machinery, plant or container or any other thing used in connection with, or that may have been in contact with, the bees or bee products as he or she considers necessary,
- (xii) require the name and address of the owner and the name and address of any other relevant person associated with the bees,

bee products or any other thing to which the Council Directives or these Regulations relate,

- (xiii) require of a person the ownership, identity and origin of the bees, bee products or any other thing to which either the Council Directives or these Regulations relate,
- (xiv) mark or otherwise identify such bees, bee products or any other thing to which either the Council Directives or these Regulations relate or a specimen taken under subparagraph (vi), or
- (xv) secure the premises, or part of it, for later inspection.

(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 6 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 of.

(3) An authorised officer may use reasonable force, if necessary, in the performance of his or her functions under this Regulation.

(4) An authorised officer when performing any functions 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 performance of those functions.

(5) An authorised officer is not liable in any proceedings for anything done in the purported performance of his or her functions 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) Without prejudice to the generality of paragraph (1) a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of bees or bee products as may be specified by the authorised officer.

(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

6. (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) evidence of, or relating to, the commission or intended commission of an offence under the Council Directives or these Regulations is to be found on a premises,
- (b) there are or were bees or bee products on a premises,

- (c) a document or other record or equipment related to a thing to which subparagraph (a) or (b) refers is or may be on the premises,

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 named in the warrant.

(3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may perform all or any of the functions conferred on an authorised officer under these Regulations.

Compliance Notice

7. (1) Without prejudice to the generality of Regulation 5(1), if an authorised officer is of the opinion that—

- (a) the Council Directives or these Regulations are not being or have not been complied with or there are reasons to believe that they will not be complied with, or
- (b) there is a danger to public or animal health,

he or she may, by a notice in writing (“compliance notice”) stating that opinion and served on the person who appears to be the owner, operator or person in charge of the premises, bees, bee products or any other thing to which either the Council Directives or these Regulations relate or other thing to which the notice relates—

- (i) seize and detain the bees, bee products or any other thing to which either the Council Directives or these Regulations relate, or
- (ii) require him or her to take such action as the authorised officer considers necessary.

(2) A compliance notice may—

- (a) require that the bees, bee products or any other thing to which either the Council Directives or these Regulations relate be disposed of or destroyed in a manner specified in the notice,
- (b) prohibit or regulate any operation on the premises to which the notice relates,
- (c) prohibit the transport or the further transport of the bees, bee products or any other thing to which either the Council Directives or these Regulations relate, either absolutely or unless such conditions as may be specified in the notice are complied with,

- (d) require a person to return the bees, bee products or any other thing to which either the Council Directives or these Regulations relate to the place of departure by a route which in the opinion of the authorised officer is the most direct or prudent,
- (e) require that such alterations be made to a premises or means of transport as may be specified in the notice,
- (f) require a person to secure in a manner specified by the authorised officer the bees, bee products or any other thing to which either the Council Directives or these Regulations relate, or
- (g) require a person to cleanse and disinfect a vehicle, premises, container or part thereof.

(3) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under paragraph (5).

(4) A requirement contained in a compliance notice shall specify a time limit within which it is to be complied with.

(5) A requirement contained in a compliance notice may be modified or withdrawn in a further notice and the earlier notice has effect subject to the modification or withdrawal.

(6) A compliance notice may require the person in possession or control of the bees, bee products or any other thing to which either the Council Directives or these Regulations relate, premises, means of transport or other thing to choose between two or more of the requirements specified in the notice.

Appeal against compliance notice

8. (1) A person affected by a compliance notice may, within 7 days of the service of the notice, apply to the Judge of the District Court having jurisdiction in the District Court District where a beehive is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person bringing the appeal ordinarily resides or carries on business on the grounds that the notice or any of the terms thereof are not justified having regard to the Council Directives or these Regulations (in this Regulation referred to as “an appeal”).

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court District.

(3) Notice of an appeal shall contain a statement of the grounds upon which it is alleged that the notice or any of the terms thereof are not justified and shall be served on the Minister at least 48 hours prior to the hearing of the appeal.

(4) A copy of the notice of appeal shall be lodged with the District Court Clerk at least 48 hours prior to the hearing of the appeal.

(5) On the hearing of an appeal a Judge of the District Court may confirm, modify, or annul a notice.

(6) A person, including a person on whom a compliance notice has been served, shall not, pending the determination of an appeal, deal with the bees, bee products or any other thing to which either the Council Directives or these Regulations relate, premises, means of transport or other thing to which the notice relates, other than in accordance with the terms of the compliance notice or compliance notice as modified.

Offences and final provisions

Forgery

9. (1) A person shall not forge or utter knowing it to be forged a certificate, commercial document, approval, authorisation, or any other document issued pursuant to the Council Directives or these Regulations or a record purporting to be kept and maintained under the Council Directives or these Regulations or a document purporting to be an extract from such a document (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 certificate, commercial document, approval, authorisation or any other document issued pursuant to the Council Directives or these Regulations or a record kept and maintained under the Council Directives or these Regulations or an extract from such a document (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

10. A person shall not—

- (a) obstruct or impede an authorised officer in the performance of his or her functions under Regulation 5,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 5,
- (c) in purporting to give information to an authorised officer for the performance of the officer’s functions under Regulation 5—
 - (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 5, or

- (e) aid or abet a contravention of an act of the institutions of the European Communities or these Regulations.

Offences

11. A person who—

- (a) contravenes the Council Directives or these Regulations,
- (b) aids or abets a contravention of the Council Directives or these Regulations,

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

Prosecutions

12. (1) A summary offence under these Regulations may be prosecuted by the Minister.

(2) 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.

(3) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (2) 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.

Evidence on certificate

13. (1) In proceedings for an offence consisting of a contravention of the Council Directives or these Regulations, a certificate purporting to be signed by a person employed at a laboratory named in the certificate stating the capacity in which that person is so employed and stating any one or more of the following, namely—

- (a) that the person received a sample submitted to the laboratory,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody a sample so submitted,
- (c) that the person gave to such other person as is specified in the certificate a sample so submitted, or
- (d) that the person carried out any laboratory examination for the purpose of detecting the presence, in a sample so submitted, of small hive beetle (*Aethina tumida*) or Tropilaelaps mite (*Tropilaelaps* spp.), or that the sample was positive for small hive beetle (*Aethina tumida*) or Tropilaelaps mite (*Tropilaelaps* spp.),

is, unless the contrary is proved, evidence of the matters stated in the certificate.

(2) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under paragraph (1) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(3) 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.

(4) Paragraph (3) 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).

Fixed payment notice

14. (1) If an officer of the Minister 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 from the date of the notice make to the Minister 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.

Revocations

15. The following are revoked-

- (a) Bees (Regulation of Import Order) 1980 (S.I. No. 161 of 1980)
- (b) European Communities (Notification of Varroasis in Bees) Regulations 1996 (S.I. No. 268 of 1996)
- (c) Diseases of Animals Act 1966 (Varroasis in Bees) Order 1998 (S.I. No. 200 of 1998).



GIVEN under my Official Seal,
22 December 2009.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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