

**S.I. No. 509 of 2004**

**European Communities (Avian Influenza) (Control on Imports of Avian Products from South Africa) Regulations 2004**

I, Joe Walsh, 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), and for the purpose of giving effect to Commission Decision No. 2004/594/EC of 10 August 2004<sup>1</sup>, hereby make the following regulations:-

**Citation**

1. These Regulations may be cited as the European Communities (Avian Influenza) (Control on Imports of Avian Products from South Africa) Regulations 2004.

**Interpretation**

2.(1) In these Regulations –

“avian product” means birds (other than poultry) including pet birds, live ratites and hatching eggs, fresh meat of ratites, meat products and meat preparations consisting of or containing meat derived from an aforementioned species;

“authorised officer” means –

(a) an authorised officer within the meaning of section 17A (inserted by section 2 of the Diseases of Animals (Amendment) Act 2001 (no. 3 of 2001)) of the Diseases of Animals Act 1966 (No. 6 of 1996),

(b) a member of the Garda Síochána, or

(c) an officer of Customs and Excise;

“Commission Decision” means Commission Decision No. 2004/594/EC of 10 August 2004;

“Minister” means the Minister for Agriculture and Food;

“premises” includes land with or without buildings;

“vehicle” includes a ship, hovercraft, aircraft and offshore installation (being an offshore installation within the meaning assigned to it by section 2 (1) of the Safety, Health and Welfare (Offshore Installations) Act, 1987).

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<sup>1</sup> O.J. No. L 265 of 12.8.2004, p. 9.

- (2) A word or expression that is used in these Regulations and that is also used in the Commission Decision has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Commission Decision.
- (3) In these Regulations, unless the contrary intention appears, a reference to a Regulation is to a reference in these Regulations, a reference to a Schedule is to a Schedule of these Regulations and a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs.

### **Restriction on imports**

- 3. (1) Subject to Regulation 8, a person, including the master or person in charge of a vessel or aircraft, shall not import an avian product from the Republic of South Africa or cause or permit another person to import an avian product from the Republic of South Africa.
- (2) A person, including the master or person in charge of a vessel or aircraft, shall not have in his or her possession or under his or her control an avian product that has been imported in contravention of paragraph (1).

### **Authorised Officers**

- 4.(1) Where an authorised officer has reasonable cause to suspect that -
  - (a) an avian product is being or may have been imported in contravention of Regulation 3,
  - (b) an avian product has been moved other than in accordance with a requirement, request or direction of an authorised officer under subparagraph (viii), (x), (xi), (xii) or (xiii),
  - (c) a person is refusing or has refused to comply with a requirement, request or direction of an authorised officer under subparagraph (viii), (x), (xi), (xii) or (xiii),
  - (d) any land or premises, vehicle, vessel, aircraft or container contains or has recently contained such an avian product,
  - (f) any offence is being or has been committed under these Regulations,
 such officer may -
  - (i) enter and search any land, vehicle, premises or container,

- (ii) stop any person, vehicle or container,
- (iii) board and search any vehicle or container,
- (iv) search a person, where the authorised officer considers it necessary,
- (v) examine such animal product, vehicle or container,
- (vi) take such specimens from an avian product as the authorised officer considers appropriate for the purposes of Article 3.2 of the Commission Decision or otherwise,
- (vii) seize and detain (for so long as is necessary) any such avian product, vehicle or container,
- (viii) require the production of any relevant document or thing relating to the avian product, vehicle or container,
- (ix) retain any such document or thing (for so long as is necessary),
- (x) dispose of, or require the owner or person in charge of or in possession of, an avian product to dispose of it in such manner as the authorised officer sees fit,
- (xi) give such directions to, or request such information of, such person regarding the avian product, fodder, litter, vessel, vehicle, aircraft or container as he or she considers necessary,
- (xii) require the name and address of a person and the name and address of any other relevant person including the person to whom the avian product is being delivered or who is causing it to be delivered,
- (xiii) require of the person the ownership, identity and origin of the avian product, fodder or litter, or
- (xiv) mark or otherwise identify such avian product or a specimen 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 5.

- (3) An authorised officer may use reasonable force, if necessary, in the exercise of his or her powers under this section.
- (4) An authorised officer when exercising any powers under this Regulation or Regulation 5 may be accompanied by other persons 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 shall not be liable in any proceedings for anything done in the purported exercise of his or her powers under this section if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it
- (6) Where 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**

5.(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 any land or in any premises, vehicle, vessel, aircraft or container an avian product that has been, may have been or may be imported in contravention of Regulation 3, or
- (b) that there is evidence of an offence under these regulations relating to an avian product therein or thereon,

the judge may issue a search warrant.

- (2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána, officers of Customs and Excise and other persons as the named 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 force) the land, premises or vehicle, vessel, aircraft or container named in the warrant.
- (3) Where any premises, land or vehicle, vessel, aircraft or container 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.

### **Obstruction**

6. A person shall not -

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under Regulation 4 or 5,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 4, or
- (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 4 -
  - (i) make a statement which 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 any material particular.

## **Offences**

- 7.(1) A person who, by act or omission, contravenes Regulation 3 or 6, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to a term of imprisonment not exceeding 6 months, or to both such fine and such imprisonment.
- (2) An offence under these Regulations may be prosecuted by the Minister
- (3) Where an offence under these Regulations has been 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 was committed, was 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, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body corporate.

## **Defences**

- 8.(1) In a prosecution for an offence under these Regulations in respect of which provision is made in the Commission Decision for a derogation to the relevant obligation imposed by the Commission Decision which would be capable of constituting a defence to the charge, it shall be for the person charged to establish any such defence and it shall be presumed, until the contrary is proved, that there is no such defence in the particular case.

- (2) In a prosecution for an offence under these Regulations, it shall be a defence for the person charged to prove that the avian product in respect of which the prosecution is brought was, at that time, either-
- (a) an avian product to which Article 3 (1) or (3) of the Commission Decision refers, or
  - (b) an avian product to which Article 3(2) of the Commission Decision refers and that the avian product was accompanied by a certificate that complies with that Article.

**GIVEN** under my Official Seal,  
13 August 2004

Joe Walsh  
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 Decision No. 2004/594/EC of 10 August 2004 concerning certain protective measures with regard to avian products imported from South Africa.

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