



STATUTORY INSTRUMENTS

S.I. No. 64 of 2009



EUROPEAN COMMUNITIES (CONTROL OF SALMONELLA IN
BROILERS) REGULATIONS 2009

(Prn. A9/0287)

EUROPEAN COMMUNITIES (CONTROL OF SALMONELLA IN BROILERS) 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) and for the purpose of giving full effect to Commission Regulation (EC) No. 646/2007 of 12 June 2007¹ as amended by Commission Regulation (EC) No. 584/2008 of 20 June 2008², and, so far as they concern broilers, Regulation (EC) No. 2160/2003 of the European Parliament and of the Council of 17 November 2003³ as amended by Commission Regulation (EC) No. 1003/2005 of 30 June 2005⁴, Council Regulation (EC) No. 1791/2006 of 20 November 2006⁵ and Commission Regulation (EC) No. 1237/2007 of 23 October 2007⁶, and Commission Regulation (EC) No. 1177/2006 of 1 August 2006⁷, hereby make the following regulations—

Citation

1. These Regulations may be cited as the European Communities (Control of salmonella in broilers) Regulations 2009.

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 person appointed under Regulation 9, or
- (c) a member of An Garda Síochána;

“EC Regulations” means Commission Regulation (EC) No. 646/2007 of 12 June 2007 as amended by Commission Regulation (EC) No. 584/2008 of 20 June 2008 and, so far as they concern broilers, Regulation (EC) No. 2160/2003 of the European Parliament and of the Council of 17 November 2003 as amended by Commission Regulation (EC) No. 1003/2005 of 30 June 2005, Council Regulation (EC) No. 1791/2006 of 20 November 2006 and Commission Regulation (EC) No. 1237/2007 of 23 October 2007, and Commission Regulation (EC) No. 1177/2006 of 1 August 2006;

¹O.J. No. L 151 of 13.6.2007, p.21

²O.J. No. L 162 of 21.6.2008, p.3

³O.J. No. L 325 of 12.12.2003, p.1

⁴O.J. No. L170 of 1.7.2005, p. 12

⁵O.J. No. L 363 of 20.12.2006, p.1

⁶O.J. No. L280 of 24.10.2007, p.5

⁷O.J. No. L212 of 2.8.2006, p.3

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th February, 2009.

“holder” in relation to a laboratory approval includes, if the context so requires or admits, a person employed by the holder;

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

“premises” includes land, buildings, structures, vehicles or container;

“Regulation 2160/2003” means Regulation (EC) No. 2160/2003 of the European Parliament and of the Council of 17 November 2003 as amended by Commission Regulation (EC) No. 1003/2005 of 30 June 2005, Council Regulation (EC) No. 1791/2006 of 20 November 2006 and Commission Regulation (EC) No. 1237/2007 of 23 October 2007.

(2) A word or expression that is used in the EC Regulations and that is also used in these Regulations has in these Regulations the same meaning as in the EC Regulations.

Obligations of food business operators

3. The owner or person in charge of broilers shall ensure that—

- (a) within three weeks before the birds are moved to the slaughterhouse, samples in accordance with the Annex to Commission Regulation (EC) No. 646/2007 of 12 June 2007, are taken from every flock of broilers at the holding on which the flock is held,
- (b) each sample is dispatched to an approved laboratory within 25 hours after collection in a manner that ensures the integrity of the sample,
- (c) each sample is identified in a manner that enables the laboratory to which it is sent to know—
 - (i) the name of the owner or person in charge of the laying flock and, if different, the address of the farm,
 - (ii) date on which the sample was taken,
 - (iii) description of sample taken,
 - (iv) identity of the flock and
 - (v) identity of the building or group of buildings where the sample was taken,
- (d) each sample is tested at an approved laboratory using an approved method, at the expense of the owner or person in charge of the flock, for the presence of salmonella,
- (e) a record of samples taken for the purposes of salmonella testing is kept which shall contain at least—
 - (i) the date on which the sample was taken,

- (ii) description of sample taken,
- (iii) identity of the building or group of buildings where the samples were taken and
- (iv) the result of analysis,
- (f) the record referred to in subparagraph (e) and the report of the result of the test provided by the approved laboratory are retained for a period of at least three years from date of taking of the sample and is produced to an authorised officer on request, and
- (g) the birds do not leave for the slaughterhouse until the results of the tests are known.

Laboratory approval

4. (1) A person shall not operate a laboratory for the purposes of these Regulations and the EC Regulations other than under and in accordance with an approval granted by the Minister (“laboratory approval”).

(2) An application for laboratory approval shall be made in a form, be accompanied by any material and contain any information that the Minister may require.

(3) The Minister shall not consider an application for laboratory approval unless the application contains all the material and particulars sought and is accompanied by the fee (if any) set in accordance with Regulation 5.

(4) The holder of a laboratory approval shall make such returns to the Minister as the Minister may require.

(5) The Minister may revoke or suspend a laboratory approval, attach conditions to an approval or refuse an application.

(6) If the Minister proposes to revoke or suspend a laboratory approval or refuse an application he or she shall—

- (a) notify the holder of a laboratory approval or applicant 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 any representations duly made before deciding whether to proceed with, modify or annul the proposal and
- (c) notify the holder of a laboratory approval or applicant of the decision and the reasons for the decision.

(7) If the Minister is of the opinion that it is necessary for the protection of human or animal health he or she may refuse an application or suspend or

revoke an approval without allowing the representations referred to in paragraph (6).

(8) If the Minister grants a laboratory approval he or she may specify a date on which that approval will expire.

(9) A laboratory approved under the European Communities (Control of salmonella in breeding flocks of domestic fowl) Regulations 2006 (S.I. No. 706 of 2006) or under the European Communities (Control of salmonella in laying flocks of domestic fowl) Regulations 2008 (S.I. No. 247 of 2008) is considered to be an approved laboratory under these Regulations.

Fees

5. (1) The Minister may from time to time set and charge fees in respect of an application for a laboratory approval.

(2) Moneys received under this Regulation shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(3) The Public Offices Fees Act 1878 (42 & 43 Vict. Cap 58) does not apply to a fee charged pursuant to this Regulation.

Obligations of approved laboratories

6. (1) The holder of a laboratory approval in respect of a laboratory to which a sample is submitted shall ensure that—

- (a) the sample is dealt with in the manner set out in Part 3 of the Annex to Commission Regulation (EC) No. 646/2007 of 12 June 2007 and tested for the presence of salmonella in accordance with a method approved by the Minister,
- (b) the result of the test is reported in writing as soon as practicable to the person who submitted the sample, and
- (c) if *Salmonella enteritidis* or *Salmonella typhimurium* is detected in a sample the Minister is immediately informed of that detection by means of an oral report followed by a written report within 24 hours.

(2) The holder of a laboratory approval shall—

- (a) apply quality control systems that conform to the current EN/ISO standard,
- (b) regularly participate in collaborative testing organised or coordinated by the national reference laboratory, and
- (c) comply with all conditions applicable to the laboratory as notified to the holder by the Minister at the time of approval or subsequently.

Control plans

7. (1) If *Salmonella enteritidis* or *Salmonella typhimurium* is detected in a broiler flock an authorised officer may serve a notice in writing (“direction”) and direct—

- (a) that a plan for the prevention, control and eradication of salmonella (“control plan”) is put in place for the flock within 30 days of service of the direction,
- (b) criteria with which the control plant must comply, and
- (c) that the control plan be submitted to the authorised officer within 30 days of service of the direction.

(2) Without prejudice to the generality of paragraph (1), an authorised officer may direct that a control plan contain such provisions and comply with such requirements as are specified in the direction, including provisions and requirements relating to-

- (a) the form of the plan,
- (b) the number and type of samples to be taken at the holding,
- (c) the testing of samples at an approved laboratory,
- (d) the frequency with which tests are to be conducted,
- (e) disinfection procedures to be adopted in relation to the holding, and
- (f) other measures to be taken by the person on whom the direction is served to control salmonella.

(3) A person on whom a direction is served shall comply with the direction.

(4) An authorised officer may approve a control plan submitted under this Regulation or refuse to approve a plan.

(5) An authorised officer may within a period of 60 days of the submission of the control plan require, by notice in writing, that the plan be modified in such manner as the officer directs.

(6) If an authorised officer requires that a control plan be modified, the owner or person in charge of the holding shall modify the plan accordingly within a period of 30 days of receipt of a notice under paragraph (5) and submit the plan as so modified to the officer.

(7) If an authorised officer does not, within a period of 60 days of receipt of a plan or a modified plan,—

- (a) approve,
- (b) refuse to approve, or

(c) require the modification of,
the plan concerned it shall stand approved by the officer.

Records

8. The owner or person in charge of a broiler flock shall keep, and retain for a period of at least two years, a record of the movement of birds onto and off the premises including—

- (a) the date of the movement,
- (b) the number of birds moved,
- (c) the identity of the building or group of buildings into which or from which the birds were moved,
- (d) name and address of the premises from which incoming birds were brought, and
- (e) name and address of the premises to which outgoing birds were sent.

Appointment of authorised officers

9. (1) The Minister may appoint such and so many persons as the Minister thinks fit to be authorised officers.

- (2) An appointment as an authorised officer ceases—
 - (a) if it is terminated by the Minister,
 - (b) if it is for a fixed period, on the expiry of that period, or
 - (c) if the person appointed ceases to be an officer of the Minister.
- (3) Nothing in paragraph (2) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.
- (4) An authorised officer appointed under this Regulation shall be furnished with a warrant of appointment as an authorised officer and when exercising any power conferred by these Regulations such officer shall, if requested by any person affected, produce the warrant to that person.

Powers of an authorised officer

10. (1) An authorised officer may, if the authorised officer has reasonable grounds for believing that a premises is an approved laboratory or subject to an application for approval, broilers are being kept on a premises or that a document or other thing relating to broilers may be present on a premises—

- (a) at any time enter and search such premises or any parts of any other premises or other land, vehicle or container which are material to the operation of such premises,

- (b) search a person, where the authorised officer considers it necessary,
- (c) there or at any other place examine any poultry or eggs or other thing found there,
- (d) inspect, take or take copies of or extracts from any books, documents or other records found there,
- (e) take, without payment, samples of any poultry, eggs, cadavers, faeces, blood, tissue or any other thing, substance or article as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (f) seize and detain (for so long as is necessary) any poultry, eggs, vehicle, container or other thing, substance or article,
- (g) give directions to or require any person there or the owner or person in charge of the premises or any person employed in connection therewith to give to him or her such information and to produce to him or her such books, certificates, documents, records or thing within the power of procurement of the person as the officer may reasonably require for the purposes of his or her functions under these Regulations,
- (h) retain a document or thing (for so long as is necessary),
- (i) dispose of the poultry, eggs or other thing or require the owner or person in charge of them to deal with or dispose of them in a manner that the authorised officer sees fit,
- (j) require of a person the ownership, identity and origin of any poultry, eggs or other thing,
- (k) mark or otherwise identify poultry, eggs or other thing or any sample taken under subparagraph (e).

(2) The person referred to in paragraph (1)(g) shall carry out all reasonable directions issued by an authorised officer.

(3) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 11 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.

(4) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(5) An authorised officer, when exercising a power under this Regulation 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 the power.

(6) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(7) 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 movement of poultry, eggs, cadavers or any material or thing as may be specified by the authorised officer.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

Search warrant

11. (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 of or intended commission of an offence under these Regulations or the EC Regulations is to be found on the premises,
- (b) there is or was poultry, eggs or other material or other thing used in connection with poultry or eggs on the premises,
- (c) a document or other record related to a thing to which subparagraph (a) 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 or other persons as the named authorised officer thinks necessary, at any time 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 or place named in the warrant.

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

Offences and penalties

12. (1) A person who—

- (a) contravenes Article 9 or Parts B or E of Annex II to Regulation 2160/2003,

- (b) contravenes Article 2 or 3 of Commission Regulation (EC) No. 1177/2006 of 1 August 2006,
- (c) contravenes Regulation 3, 4(1), 4(4), 6, 7, 8, or 10(2) of these Regulations,
- (d) tampers or otherwise interferes with any sample taken under these Regulations,
- (e) tampers or otherwise interferes with any poultry, poultrymeat or eggs so as to procure that any sample of it taken under these Regulations does not correctly represent the poultry, poultrymeat or eggs,
- (f) treats or allows treatment of any bird which causes any sample to be invalid,
- (g) forges, or utters knowing it to be forged, a record referred to in these Regulations,
- (h) fails to give assistance to, or obstructs, impedes or otherwise interferes with, an authorised officer in the performance of his or her functions or gives information to an authorised officer that he or she knows to be false or misleading in a material respect,
- (i) in applying for a laboratory approval wilfully makes a false or misleading statement,
- (j) fails to comply with a request of an authorised officer made under Regulation 10 (1)(g), (i) or (j) of these Regulations,

commits an offence and is liable on summary conviction to a fine not exceeding €5000 or to imprisonment for a period not exceeding 6 months or to both.

(2) If an offence under these Regulations has been committed by a body corporate and is proved to be so committed with the consent or connivance of, or be attributable to any neglect on the part of, a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate shall be found guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

(4) An offence under these Regulations may be prosecuted by the Minister.



GIVEN under my Official Seal,
17 February 2009

BRENDAN SMITH.
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

These Regulations give effect to European Communities legislation on the control of salmonella in broilers, require the testing of such flocks and provide for the approval of laboratories to conduct tests.

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