
STATUTORY INSTRUMENTS

1999 No. 1872

**The Feeding Stuffs (Establishments
and Intermediaries) Regulations 1999**

PART XI

ENFORCEMENT

Official checks and enforcement

97.—(1) Subject to paragraph (2), it shall be the duty of the competent body to enforce these Regulations and carry out official checks for that purpose.

(2) Nothing in these Regulations shall be taken as authorising any competent body in Scotland to institute proceedings for an offence.

Powers of authorised persons

98.—(1) An authorised person may exercise the powers specified in this regulation for the purposes of—

- (a) carrying out official checks, and
- (b) ascertaining whether an offence under regulation 107(a) or (b) has been or is being committed.

(2) An authorised person shall have the right at all reasonable times, and on producing, if requested to do so, some duly authenticated document showing his authority, to enter—

- (a) any premises on which he has reasonable cause to believe that a controlled product has been, or is being, manufactured or produced, or is being kept for the purpose of being put into circulation, incorporated in another product or used, and
- (b) any premises (not being premises appearing to be used only as a dwelling) on which he has reasonable cause to believe that there is any controlled product which the occupier of the premises has in his possession or under his control.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any such premises as are mentioned in paragraph (2), for any such purpose as is mentioned in paragraph (1), and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice may by warrant signed by him authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation shall continue in force for a period of one month.

(5) In the application of paragraph (3)—

- (a) to Scotland, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate, and
- (b) to Northern Ireland, the reference to a sworn information in writing includes a reference to a sworn complaint in writing.

(6) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, may take with him such other persons and such equipment as may appear to him to be necessary for the purposes mentioned in sub-paragraphs (a) and (b) of paragraph (1), and on leaving any unoccupied premises which he has entered by virtue of such a warrant, shall leave them as effectively secured against unauthorised entry as he found them.

(7) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to inspect—

- (a) any material appearing to him to be a controlled product,
- (b) any article appearing to him to be a container or package used or intended to be used to wrap, package or store any such product, or to be a label used or intended to be used in connection with any such product, or
- (c) any plant or equipment appearing to him to be used, or intended to be used, in connection with the manufacture or production of a controlled product, and any process of manufacture or production of such a product, and any means employed, at any stage in the process of manufacture or production, for testing the product after it has been subject to those processes.

(8) Subject to paragraph (9), an authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to take on those premises, and prepare, a sample of—

- (a) any material appearing to him to be a controlled product manufactured, produced, wrapped, packaged, stored or put into circulation, or intended to be put into circulation; or
- (b) any material appearing to him to be a controlled product used, or intended to be used, for the purpose of animal feeding,

in the like manner as that prescribed—

- (i) in the case of Great Britain, in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999(1), or
- (ii) in the case of Northern Ireland, in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999(2),

and paragraph 10 of Part II of Schedule 1 to the Regulations concerned shall have effect for the purposes of the certificate referred to in regulations 102 and 104(2).

(9) For the purposes of this Part of these Regulations, the provisions of regulation 3 and Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 or, as the case may be, of regulation 3 and Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999(2), shall have effect as if—

- (a) for all references to “feeding stuff” or to “feeding stuffs” there were substituted references to “controlled product” or “controlled products” respectively, and
- (b) in paragraph 1 of Part II of Schedule 1 to the Regulations concerned, the expression “, except where section 68(2)(b) of the Act applies” were omitted.

(1) [S.I. 1999/1663](#), amended by [S.I. 1999/1871](#).

(2) [S.R. 1999/296](#).

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(10) Where, for the purpose of taking a sample pursuant to paragraph (8), an authorised person takes some of it from each of one or more containers of the product, which are exposed for sale by retail, and none of which weighs more than six kilograms, the owner of the container or containers may require the authorised person to purchase the container or containers on behalf of the competent body for whom he acts.

(11) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right—

- (a) to require any person carrying on, or appearing to be carrying on, a business which consists of or includes the manufacture, production, wrapping, packaging, storage, putting into circulation, or use of a controlled product, or any person employed in connection with such a business, to produce any record (in whatever form it is held) relating to or arising out of the exercise in the course of that business of any such activity, and which is in his possession or under his control, and
- (b) to inspect and take copies of any record, or of any entry in any record, produced in pursuance of the preceding sub-paragraph.

(12) An authorised person exercising the power conferred by paragraph (11) in respect of a record held by means of a computer—

- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been, or which it appears is or has been, in use in connection with the record in question;
- (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been so used, or
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,to afford the authorised person such reasonable assistance as he may require for that purpose; and
- (c) may require the record, or an extract from the record, to be produced in a form in which it may be taken away.

(13) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to seize and detain any product which he has reasonable cause to believe to be a controlled product in relation to which, or by means of which, it appears that an offence under these Regulations is being or has been committed, and any record which he has reasonable cause to believe to be a record which may be required as evidence in proceedings under these Regulations.

Division of samples

99. Where, in accordance with these Regulations, an authorised person obtains a sample, and decides to have it analysed for the purpose of ascertaining whether there is or has been any contravention of any provision of these Regulations in connection with a controlled product, he shall divide the sample into three parts, of as near as may be equal size and shall—

- (a) cause each part to be marked, sealed and fastened in the like manner as that prescribed—
 - (i) in the case of Great Britain, in Part III of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations, 1999, or
 - (ii) in the case of Northern Ireland, in Part III of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999;
- (b) send one part for analysis to—

- (i) in Great Britain, the agricultural analyst for the area of the competent body which authorised the authorised person to carry out the official check in the course of which the sample was taken, and
- (ii) in Northern Ireland, an agricultural analyst in Northern Ireland;
- (c) send another part to the person subject to the official check; and
- (d) retain and preserve the remaining part as an officially sealed reference sample.

Supply of part of sample to manufacturer

100. If the person who manufactured any material of which an authorised person has taken a sample is not a person to whom part of the sample is required to be sent under regulation 99, that regulation shall have effect as if, for the reference to three parts, there were substituted a reference to four parts, and the authorised person shall send the fourth part to the manufacturer, unless he does not know the manufacturer's name, or any address of his in the United Kingdom, and is unable, after making reasonable enquiries, to ascertain the name or, as the case may be, any such address, before the expiration of fourteen days from the date when the sample was taken.

Statement to accompany sample

101. There shall be sent, with the part of the sample sent to the agricultural analyst pursuant to regulation 99, a statement signed by the authorised person that the sample was taken in the manner referred to in regulation 98(8).

Analysis by the Agricultural analyst

102. The agricultural analyst shall analyse the part of the sample sent to him under regulation 99, and send a certificate of the analysis, completed in the form set out in Schedule 2, and in accordance with the notes set out in that Schedule, to the authorised person, who shall send a copy to—

- (a) the person who was subjected to the official check concerned, and
- (b) any person to whom he has sent a part of the sample pursuant to regulation 100.

Alternative arrangements for carrying out analyses

103. If the agricultural analyst to whom a sample is sent for analysis under regulation 99 determines that an effective analysis of the sample cannot be made by him or under his direction, he shall send it to the agricultural analyst for another area or, in Northern Ireland, to another agricultural analyst in Northern Ireland, together with any documents received by him with the sample, and thereupon regulation 102 shall apply, as if the sample had originally been sent to that other agricultural analyst.

Further analysis of samples

104.—(1) Where a part of a sample sent to an agricultural analyst pursuant to regulation 99 has been analysed, and it is intended to institute proceedings, or proceedings have been commenced, against a person for an offence under regulation 107(a) or (b), and it is intended to adduce, on behalf of the prosecution, evidence of the result of the analysis of that part of the sample, the defendant, for the purpose of obtaining a second opinion, may request the authorised person to send the retained part of the sample for analysis to—

- (a) where the sample was taken in Great Britain, the Government Chemist, and
- (b) where the sample was taken in Northern Ireland, the Chief Agricultural Analyst.

(2) Where a defendant requests the authorised person to send the retained part of the sample to the Government Chemist or, as the case may be, the Chief Agricultural Analyst, pursuant to paragraph (1), the following procedure shall (subject to paragraph (3)), be followed—

(a) the authorised person shall—

(i) send the retained part of the sample for analysis to the Government Chemist or, as the case may be, the Chief Agricultural Analyst, and

(ii) supply the defendant with a copy of the Government Chemist's or, as the case may be, the Chief Agricultural Analyst's, certificate of analysis of that part of the sample; and

(b) the Government Chemist or, as the case may be, the Chief Agricultural Analyst, shall analyse the part of the sample sent to him under sub-paragraph (a) above and shall send to the authorised person a certificate of the analysis, completed in the form set out in Schedule 2, and in accordance with the notes set out in that Schedule.

(3) The authorised person may in any case give notice in writing to the defendant requesting payment of a fee specified in the notice in respect of performance of the functions specified in paragraph (2)(b) and, if the fee so specified exceeds neither—

(a) the cost of performing them, nor

(b) the appropriate fee for the performance of any similar function under section 78 of the Act, the authorised person may, in the absence of agreement by the defendant to pay the fee, refuse to comply with the request made under paragraph (1).

(4) In this regulation “defendant” includes a prospective defendant.

Default powers of the Minister of Agriculture, Fisheries and Food

105. For the purposes of this Part of these Regulations, if the Minister is of opinion that, in any area within Great Britain, these Regulations have been—

(a) insufficiently enforced or administered, or

(b) if applicable, enforced without sufficient regard to the requirements of Directive 95/53,

he may himself appoint one or more persons to exercise in that area the powers exercisable there by authorised persons; and any expenses certified by him as having been incurred by him under this regulation, in respect of that area, shall be repaid to him, on demand, by the competent body.

Methods of analysis

106.—(1) Subject to paragraph (2) below for the purpose of determining, by means of analysis of a part of a sample taken in the course of the carrying out of official checks, whether a substance—

(a) of a class or description listed (in the case of Great Britain) in column 1 of Annex I to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 or (in the case of Northern Ireland) in column 1 of Annex I to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999, or

(b) to which the method of analysis specified (in the case of Great Britain) in Annex II, or in Annex III, to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 relates, or (in the case of Northern Ireland) to which the method specified in Annex II, or in Annex III, to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999 relates,

is present or active therein, or what quantity or proportion of such a substance is present or active therein, the provisions specified in Part I of Schedule 2 to the Regulations concerned, under the

heading “GENERAL PROVISIONS” shall have effect, in the like manner as they have effect under the Regulations concerned in relation to feeding stuffs, and

- (i) in relation to a substance of a class or description listed (whether by itself or by reference to its activity) in column 1 of Annex I to Part II of Schedule 2 to the Regulations concerned, the relevant method of analysis set out in the Community provision in force specified in the corresponding entry in columns 2 and 3 of that Annex shall be used; and
- (ii) in relation to a substance to which the method specified in Annex II, or the method specified in Annex III, to Part II of Schedule 2 to the Regulations concerned relates, the method of analysis applicable to that substance shall be used,

and where more than one method is set out in columns 2 and 3 of Annex I to Part II of Schedule 2 to the Regulations concerned in relation to the same substance, the notes to that Annex shall have effect to specify which is the relevant method.

(2) After 31st October 1999, paragraph (1) above shall cease to apply to the following substances listed in column 1 of Annex I to Part II of Schedule 2 to the Regulations concerned—

- (a) menadione (vitamin K₃);
- (b) theobromine;
- (c) vitamin A; and
- (d) volatile mustard oil,

and shall cease to apply to starch insofar as it falls to be analysed by the pancreatic method as mentioned in the notes to that Annex.

(3) For the purpose of determining, by means of analysis as aforesaid, whether a substance other than one to which paragraph (1) applies is present or active in the part of a sample concerned, or what quantity or proportion of such a substance is present or active therein—

- (a) if there is an applicable standard of the kind specified in the first indent of Article 18.3 of Directive 95/33, analysis shall be carried out in accordance with that standard, and
- (b) where analysis cannot be so carried out, it shall be carried out in accordance with any scientifically valid method the application of which does not infringe any general principle of the Treaty establishing the European Community.

Offences

107. It shall be an offence for a person—

- (a) without reasonable excuse, to contravene any of regulations 40 to 96;
- (b) in connection with these Regulations to make a statement which he knows to be false in a material particular, or recklessly to make a statement which is false in a material particular;
- (c) intentionally to obstruct an authorised person in the exercise of any power conferred by regulation 98, or
- (d) without reasonable excuse to fail to comply with any requirement made of him, pursuant to regulation 98, by an authorised person.

Punishment of offences

108.—(1) A person contravening, without reasonable excuse, any of regulations 40, 42, 44, 46, 48, 50, 52, 53, 54, 55, 56, 57, 59, 61, 63, 65, 67, 69, 70, 71, 72, 73, 74, 76, 78, 80, 81, 82, 84, 86, 88, 90, 92, 94, 95, 96 or 107(b) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

(2) A person contravening, without reasonable excuse, any of regulations 41, 43, 45, 47, 49, 51, 58, 60, 62, 64, 66, 68, 75, 77, 79, 83, 85, 87, 89, 91 or 93 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person contravening regulation 107(c) or (d) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Time limit for prosecutions

109.—(1) Proceedings for an offence under regulation 107(b) or any of the regulations specified in regulation 108(2) may, subject to paragraph (2), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to his knowledge.

(2) No such proceedings shall be commenced by virtue of this regulation more than two years after the commission of the offence.

(3) For the purpose of this regulation, a certificate signed by or on behalf of the prosecutor, and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge, shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(5) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995(3) (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

Offences by Scottish partnerships

110. Where a Scottish partnership is guilty of an offence under these Regulations, in respect of an act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Defence

111. Where a person responsible for putting a controlled product into circulation is charged with an offence under these Regulations, in respect of a controlled product that has been manufactured or assembled to his order by another person, and which has been so manufactured or assembled so as not to comply with his order, it shall be a defence for him to prove—

- (a) that, in placing his order, a copy of the documents relating to the specifications for manufacture and assembly of the product were available, or had been provided, to that other person and that the person responsible for putting the product into circulation had instructed that other person to manufacture or assemble the product in accordance with those specifications,
- (b) that if that other person had complied with that instruction, no offence would have been committed, and
- (c) that the person responsible for putting the product into circulation did not know, and could not with the exercise of reasonable care have known, that that instruction had not been complied with.

Supplementary provisions relating to sampling and analysis, prosecutions, offences and defences

112.—(1) Subject to paragraph (2), for the purposes of this Part of these Regulations, sections 79(4) to (8), 80(1), 81, 82 and 110, of the Act shall have effect, as if these Regulations were made under section 74A(4) of the Act.

(2) For the purposes of paragraph (1)—

(a) in relation to Northern Ireland—

(i) section 79(4) to (6) of the Act shall have effect as if, for the references therein to the Government Chemist, there were substituted references to the Chief Agricultural Analyst, and

(ii) section 79(5) of the Act shall have effect as if the expression “(3)(b)” were omitted,

(b) section 82(1) of the Act shall have effect as if, for the words “any of the following provisions of this Act, namely, sections 68(1A), 4(b) and (c), 69(4)(c), 70(2), 71(2)(b), 73, 73A and 74A” there were substituted the words “the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999”, and

(c) section 110(1) of the Act shall have effect as if, for the words “this Act or any order or scheme made thereunder” there were substituted the words “the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999”.

Service of certificates, notices and parts of samples

113. Any certificate, notice or part of a sample, required to be served on a person under any provision of these Regulations, may be served—

(a) by delivering it to him;

(b) by leaving it at the usual or last known place of abode or business of that person, or, in a case where an address for service has been given by that person, at that address;

(c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last-known place of abode or business or, in a case where an address for service has been given by that person, at that address; or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of that body corporate at that office.