2004 No. 506

AGRICULTURE

The Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations (Northern Ireland) 2004

Made - - - - - 9th December 2004

Coming into operation 1st January 2005

The Department of Health, Social Services and Public Safety(**a**), being a Department designated(**b**) for the purposes of section 2(2) of the European Communities Act 1972(**c**) in relation to measures relating to feed produced for or fed to food-producing animals, in exercise of the powers conferred on it by the said section 2(2), and of all other powers enabling it in that behalf, after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(**d**) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as The Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations (Northern Ireland) 2004, and shall come into operation on 1st January 2005.

(2) The Interpretation Act (Northern Ireland) 1954(**e**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Interpretation

2. In these Regulations –

"the Act" means the Agriculture Act 1970(**f**);

"the Department" means the Department of Agriculture and Rural Development;

"inspector" means a person appointed by the Department under section 67(2) of the Act(**g**);

"Regulation 178/2002" means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

(2) Subject to paragraph (3), other expressions used in these Regulations and in Regulation 178/2002 have the same meaning in these Regulations as in Regulation 178/2002 and in these

(**a**) Formerly the Department of Health and Social Services; *see* S.I. 1999/283 (N.I. 1), Article 3
(**b**) S.I. 2003/2901
(**c**) 1972 c. 68
(**d**) O.J. No. L31, 1.2.2002, p. 1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L245, 29.9.2003, p. 4)
(**e**) 1954 c. 33 (N.I.)
(**f**) 1970 c. 40
(**g**) Section 67, in its application to Northern Ireland, is substituted by section 86(3) of the Agriculture Act 1970

Regulations any reference to a numbered Article is a reference to the Article so numbered in Regulation 178/2002.

(3) "Feed" or "feedingstuff" does not include any of the following feed additives –

(a) coccidiostats;

(b) histomonostats; and

(c) all other zootechnical additives except –

(i) digestibility enhancers;

(ii) gut flora stabilisers; and

(iii) substances incorporated with the intention of favourably affecting the environment,

or any premixture containing such additives.

Offences, penalties and enforcement

3.—(1) Any person who contravenes any of the specified provisions of Regulation (EC) No. 178/2002 set out in paragraph (2) shall be guilty of an offence and liable –

(a) in the case of paragraph (2)(a) –

(i) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum, or both; or

(ii) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine, or both;

(b) in the case of paragraph (2)(b), (c) and (d) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale, or both.

(2) The specified provisions referred to in paragraph (1) are –

(a) Article 15, paragraph 1 (prohibition on the placing on the market or feeding to any food-producing animal of unsafe feed);

(b) Article 16 (prohibition on misleading labelling, advertising or presentation of feed);

(c) Article 18, paragraphs 2 and 3 (requirements of traceability) in so far as it relates to feed business operators;

(d) Article 20 (responsibilities of feed business operators).

(3) The Department shall, within its area, enforce and execute the provisions of these Regulations and the provisions of Regulation 178/2002 specified in paragraph (2).

(4) The competent authority for the purposes of Articles 15 and 18 shall be the Department and for the purposes of Article 20 shall be the Department and the Food Standards Agency.

Application of various provisions of the Act

4.—(1) Subject to paragraph (3) the provisions of the Act specified in paragraph (2) shall apply for the purposes of these Regulations and Articles 15, 16, 18 and 20 of Regulation 178/2002 as if –

(a) any reference in them to feeding stuff were a reference to feed;

(b) any reference in them to the Act or any Part of it were a reference to these Regulations and to Articles 15, 16, 18 and 20 of Regulation 178/2002;

(c) any reference to samples taken in a prescribed manner were a reference to samples taken in a manner prescribed in Part II of Schedule 1 of the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999(**a**);

(2) The specified provisions referred to in paragraph (1) are –

(a) section 76 (inspector's power to enter premises and take samples), with the modification that paragraph (b) of subsection (2) shall be construed as if it gave the inspector power to take copies of any documentation relating to the feed;

(b) section 77 (division of samples and analysis by agricultural analyst);

(**a**) S.R. 1999 No. 296, amended by S.R. 2001 No. 209, S.R. 2002 No. 263, S.R. 2003 No. 287 and S.R. 2004 No. 345 and modified by S.R. 2001 No. 47

(c) section 78(2), (3), (4), (5), (6), (7), (8)(a) and 10 (further analysis by the Chief Agricultural Analyst);

(d) section 79(3), (4), (5), (6), (7), (8), (9) and (10) (supplementary provisions relating to samples and analysis);

(e) section 80 (institution of prosecutions);

(f) section 81 (offences due to fault of other person);

(g) section 82 (defence of mistake, accident, etc.);

(h) section 83 (exercise of powers by inspectors);

(i) section 110 (offences by bodies corporate).

(3) the provisions of paragraph (1)(b) shall not apply in the case of the provisions specified in paragraph (2) (c).

Application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations

5.—(1) The following provisions of the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999(**a**) shall apply for the purposes of these Regulations –

(a) regulation 2 (prescribed amount for the purposes of the definition of sampled portion);

(b) regulation 3 (manner of taking, preparing, marking, sealing and fastening samples);

(c) regulation 4 (methods of sending part of a sample);

(d) regulation 5 (application of methods of analysis);

(e) regulation 6 (form of certificate of analysis);

(f) regulation 7 (period within which analysis of the oil content of a feeding stuff must be carried out);

(g) Schedule 1 (manner of taking, preparing, marking, sealing and fastening of samples);

(h) Schedule 2 (methods of analysis);

(i) Schedule 3 (form of certificate of analysis).

Inspection, seizure and detention of suspected animal feed

6.—(1) An inspector may at all reasonable times inspect any material which –

(a) has been placed on the market for use as feed;

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing on the market or of preparation for placing on the market for use as feed; or

(c) is in the possession of, or has been deposited with or consigned to, any person for the purpose of feeding to any food-producing animal,

and paragraphs (2) to (7) shall apply where, on such an inspection, or upon analysis of samples taken, it appears to him that the material fails to comply with the feed safety requirements set out in Article 15.

(2) The inspector may either –

(a) give notice to the person in charge of the material that, until the notice is withdrawn, the material or any specified portion of it –

(i) is not to be used as feed; and

(ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(b) seize the material in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(**a**) S.R. 1999 No. 296, relevant amendments are S.R. 2002 No. 263, S.R. 2003 No. 287 and S.R. 2004 No. 345

(3) Where the inspector exercises the powers conferred by paragraph 2(a), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the prohibition set out in Article 15.1 has been complied with and –

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is not so satisfied shall proceed to have the matter dealt with by a justice of the peace under paragraph (5).

(4) Where the inspector exercises the powers conferred by paragraphs 2(b) or 3(b), he shall inform the person in charge of the material of his intention to have it dealt with by a justice of the peace and –

(a) any person who might be liable under the provisions of regulation 3 and of Article 15.1 to a prosecution in respect of the material shall, if he attends before the justice of the peace by whom the material falls to be dealt with, be entitled to be heard and to call witnesses; and

(b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under those provisions in relation to that material.

(5) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any material falling to be dealt with by him under this regulation fails to comply with the safety requirements set out in Article 15 then he shall condemn the material and order –

(a) the material to be destroyed or to be so disposed of as to prevent it from being used as food for human consumption, or for feed for food-producing animals; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the feed business operator.

(6) If a notice under paragraph 2(a) is withdrawn, or the justice of the peace by whom any material falls to be dealt with under this regulation refuses to condemn it, the Department shall compensate the owner of the material for any depreciation in its value resulting from the action taken by the inspector.

(7) Any disputed question as to the right or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

Notices

7. Any notice to be given under regulation 6 –

(a) must be signed by an inspector acting on behalf of the Department;

(b) if purporting to bear the signature (which includes a facsimile of a signature by whatever means reproduced) of a person who is expressed to be an inspector, shall be deemed, unless the contrary is proven, to have been duly issued by such an inspector;

(c) shall be served on the person in charge of the material.

Time Limit for prosecutions

8. No prosecution for an offence under these Regulations shall be begun after the expiry of –

(a) three years from the commission of the offence; or

(b) one year from its discovery by the prosecutor,

whichever is the earlier.

Amendments to the Act

9. The Act shall be amended in accordance with regulations 10 to 12.

10. In subsection (1) of section 66 (interpretation of Part IV), after the definition of "prescribed metric substitution", there shall be inserted the following definition –

" "Regulation (EC) No. 178/2002" means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food

law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;".

11. In section 73 (deleterious ingredients in feeding stuff) and also in section 73A (unwholesome or dangerous material in feeding stuff) there shall be added in each case after subsection (4) the following subsection –

"(5) Nothing in this section applies to any person to whom Article 15.1 of Regulation (EC) No. 178/2002 applies.".

12. In section 84 (regulations) there shall be added after subsection (2) the following subsection –

"(3) Subsection (1) shall not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002 applies.".

Amendment of the Food Standards Act 1999

13. In the Food Standards Act 1999(**a**), in section 31 (animal feedingstuffs) there shall be added, the following subsection –

"(3) The duty to consult set out in paragraph (a) of section 30 (6), in so far as it applies to an order made under this section, shall not apply in any case in respect of which the consultation requirement set out in Article 9 of Regulation EC No.178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, applies."

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 9th December 2004.

(L.S.) *Leslie Frew*

A senior officer of the Department of Health, Social Services and Public Safety

(**a**) 1999 c. 28

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations are occasioned by Regulation (EC) No. 178/2002 of the Council and European Parliament (O.J. No. L31, 1.2.2002, p. 1) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ("Regulation 178/2002"). The term "food law" includes law relating to feed for food-producing animals.

2. The Regulations make it an offence, with regard to animal feed other than certain zootechnical additives, to contravene or fail to comply with the provisions of Articles 15, 16, 18 and 20 of Regulation 178/2002. Article 15 contains a prohibition on the placing on the market, or the feeding to food-producing animals, of unsafe feed. Article 16 prohibits the presentation of feed in such a way as to mislead consumers. Article 18 requires feed business operators to have traceability systems in place in relation to input products and to products supplied by that business. Article 20 lays down the responsibilities and obligations of feed business operators, particularly with regard to feed that does not, or may not, satisfy feed safety requirements.

3. The Regulations make consequential amendments to the provisions of sections 73 and 73A of the Agriculture Act 1970 by disapplying them in so far as they may duplicate the provisions of Article 15 of Regulation 178/2002.

4. Pursuant to Article 4(2) and (3) of Regulation 178/2002, the Regulations also disapply the provisions of section 84(1) of the Agriculture Act 1970 and section 30(6)(a) of the Food Standards Act 1999 in so far as they may duplicate the provisions of Article 9 of Regulation 178/2002. Article 9 contains a requirement for public consultation during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.

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