STATUTORY RULES OF NORTHERN IRELAND

2009 No. 427

The Official Feed and Food Controls Regulations (Northern Ireland) 2009

PART 3

OFFICIAL CONTROLS ON FEED AND FOOD OF NON-ANIMAL ORIGIN FROM THIRD COUNTRIES

Interpretation of this Part

21. In this Part —

"authorised officer", in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under the Import Provisions;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"enforcement authority" means the feed authority or a district council;

"feed" does not include additives of a type mentioned in Article 6(1)(e) of or paragraph 4(d) of Annex I to Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition(**1**) as amended or any premixture consisting solely of a combination of such additives;

"outside Northern Ireland enforcement authority" means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except Northern Ireland;

"product" means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (official controls on feed and food of non–animal origin not included in the scope of Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries(**2**)) and includes those composite products and foodstuffs which are not required to be subject to veterinary checks as provided in Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC(**3**);

"the relevant territories" means the territories referred to in Annex I to Regulation 882/2004; and

"specified import provision" means any provision of Regulation 669/2009 that is specified in Column 1 of Schedule 6 and whose subject-matter is described in Column 2 of that Schedule.

(**1**) OJ No. L268, 18.10.2003, p.29, as last amended by Commission Regulation (EC) No.596/2009 (OJ No. L188,18.7.2009

(**2**) OJ No. L24, 30.1.98, p.9, as last amended by Council Directive 2006/104/EC adapting certain Directives in the field of agriculture (veterinary and phytosanitary legislation), by reason of the accession of Bulgaria and Romania (OJ No. L363, 20.12.2006, p.352)

(**3**) OJ No. L116, 4.5.2007, p.9

Feed enforcement responsibilities and competent authority status

22.—(1) It shall be the responsibility of the feed authority to execute and enforce the Import Provisions in relation to feed.

(2) The feed authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant feed law.

(3) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant feed law.

Food enforcement responsibilities and competent authority status

23.—(1) It shall be the responsibility of each district council to execute and enforce the Import Provisions in its district in relation to food.

(2) District Councils are designated as the competent authorities for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant food law.

(3) Where a district council is designated as a competent authority pursuant to paragraph (2) the designation shall extend to its district only.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant food law.

Functions of the Commissioners

24. The Commissioners shall carry out the functions given to customs services under Article 24 of Regulation 882/2004 and Article 10 of Regulation 669/2009, in each case in relation to feed and food.

Exchange of information

25.—(1) The Commissioners, the Agency and any enforcement authority may exchange information for the purposes of the Import Provisions, and may divulge information to the bodies defined as enforcement authorities in the provisions corresponding to Part 3 of these Regulations in England, Wales and Scotland for the purposes of the Import Provisions or the provisions corresponding to the Import Provisions in those jurisdictions.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners, the Agency or any enforcement authority to disclose information.

(3) A person, including a servant of the Crown, may not disclose any information received from the Commissioners under paragraph (1) if —

(a) the information relates to a person whose identity—

(i) is specified in the disclosure; or

(ii) can be deduced from the disclosure;

(b) the disclosure is for a purpose other than the purposes specified in paragraph (1); and

(c) the Commissioners have not given their prior consent to the disclosure.

Deferred execution and enforcement

26.—(1) Subject to paragraph (6), where —

(a) a product from a third country has entered Northern Ireland;

(b) customs examination of that product has been completed or has been deferred until it reaches its place of destination elsewhere in the United Kingdom;

(c) an authorised officer of the enforcement authority for the place of entry has on reasonable grounds issued an authorisation confirming that —

(i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in Northern Ireland, or

(ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and

(d) a person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in Northern Ireland, shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking shall —

(a) state the destination of the product; and

(b) confirm that —

(i) the container containing the product has been sealed and will not be opened until it has reached that destination,

(ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if it is in Northern Ireland or the outside Northern Ireland enforcement authority if the destination is not in Northern Ireland, and

(iii) the container will be available at that destination for examination under the Import Provisions or, as the case may be, legislation with respect to imported products in force elsewhere in the United Kingdom.

(3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), the authorised officer shall —

(a) (if the product's place of destination is within Northern Ireland) notify the enforcement authority for that place or (if the product's place of destination is in any other part of the United Kingdom) notify the outside Northern Ireland enforcement authority —

(i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions, and

(ii) if customs examination of the product has been deferred, of that fact; and

(b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).

(4) Where a product has been sent to a destination in Northern Ireland from another part of the United Kingdom, the Channel Islands or the Isle of Man and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in Northern Ireland.

(5) A person shall not breach an undertaking given under paragraph (1)(d).

(6) The deferred execution and enforcement provisions set out in this regulation are subject to any official controls that take place pursuant to Article 15(5) of Regulation 882/2004.

Prohibition on introduction of certain feed and food

27.—(1) The following are prohibited —

(a) the introduction into Northern Ireland from a third country of specified feed that fails to comply with feed safety requirements;

(b) the introduction into Northern Ireland from elsewhere in the relevant territories of specified feed that originates in a third country and fails to comply with feed safety requirements;

(c) the introduction into Northern Ireland from a third country of specified food that fails to comply with —

(i) food safety requirements, or

(ii) the requirements of Articles 3 to 6 of Regulation 852/2004; and

(d) the introduction into Northern Ireland from elsewhere in the relevant territories of specified food that originates in a third country and fails to comply with —

(i) food safety requirements, or

(ii) the requirements of Articles 3 to 6 of Regulation 852/2004.

(2) In this regulation —

(a) "specified feed" means feed that is a product; and

(b) "specified food" means food that is a product.

Checks on products

28.—(1) The person responsible for introducing any product into Northern Ireland shall permit an authorised officer of an enforcement authority to carry out checks in relation to the product pursuant to Article 16 of Regulation 882/2004.

(2) When an authorised officer is carrying out checks in relation to a product pursuant to Article 16 of Regulation 882/2004, the person introducing the product shall provide the facilities and assistance which the authorised officer reasonably requires to carry them out.

(3) When an authorised officer of an enforcement authority is carrying out an identity check or a physical check on a product in accordance with Article 16 of Regulation 882/2004 the authorised officer shall be entitled to require that the check takes place at a specified place.

Suspension of designation of points of entry

29.—(1) Where the Agency is satisfied that—

(a) the continued operation of a designated point of entry presents a serious risk to public or animal health; or

(b) at a designated point of entry, there has been a serious breach of the minimum requirements for designated points of entry laid down in Article 4 of Regulation 669/2009,

it may suspend the designation of the point of entry either in full or in part by service on the operator of the point of entry of a written notice to that effect.

(2) Upon service of a notice under paragraph (1), the point of entry shall cease to be a designated point of entry to the extent specified in that notice until it is again so designated in accordance with Article 17(1) of Regulation 882/2004.

Detention, destruction, special treatment, re–dispatch and other appropriate measures and costs

30.—(1) An enforcement authority shall have the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled.

(2) The enforcement authority shall be the competent authority for the purposes of Article 22 of Regulation 882/2004.

Notices pursuant to Articles 18 and 19 of Regulation 882/2004 (imports of feed and food from third countries)

31.—(1) If an authorised officer of an enforcement authority proposes to place a consignment of feed or food under official detention under Article 18 or 19(1) of Regulation 882/2004 that officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

(2) If an authorised officer of an enforcement authority proposes to take any of the measures referred to in Article 19(1)(a) or (b) of Regulation 882/2004 in respect of feed or food that officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it after having heard that feed or food business operator as provided in Article 19.

(3) If an authorised officer of an enforcement authority proposes to take any action referred to in Article 19(2) of Regulation 882/2004 in respect of feed or food that officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

Right of appeal in respect of notices served under regulation 31

32.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 31 may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1) shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(**4**).

(3) The period within which an appeal under paragraph (1) may be brought shall be one month from and including the date on which the notice was served on the person desiring to appeal.

(4) Where on an appeal under paragraph (1) a court of summary jurisdiction determines that the decision of the authorised officer of the enforcement authority is incorrect, the authority shall give effect to the determination of the court.

Serious risk to animal or public health

33.—(1) Where the Department of Agriculture and Rural Development or the Agency learns or has reasonable grounds to suspect that any food or feed that has been or may be introduced into Northern Ireland from a third country is likely to constitute a serious risk to animal or public health, they each have the power to issue a written declaration suspending or imposing conditions on the introduction into Northern Ireland of any product from the whole or any part of that third country.

(2) Such a declaration shall be published in such manner as the person who issued it thinks fit and shall specify the product and the third country or part thereof concerned.

(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof shall specify those conditions.

(**4**) 1981 N.I. 26

(4) Where a declaration is in force suspending the introduction of any product, a person shall not introduce that product into Northern Ireland if it originates in the third country or part thereof specified in the declaration.

(5) Where a declaration is in force imposing conditions on the introduction of any product, a person shall not introduce that product into Northern Ireland if it originates in the third country or part thereof specified in the declaration unless the product complies with conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

Costs and fees

34.—(1) The costs incurred by the enforcement authority for which the feed or food business operator or its representative is liable under Article 22 of Regulation 882/2004 shall be payable by the feed or food business operator or its representative on the written demand of the enforcement authority.

(2) The fees required to be collected by a competent authority under Article 14 of Regulation 669/2009 shall be payable by the feed or food business operator subject to the increased level of official controls provided for in that Regulation or its representative on the written demand of the competent authority.

Procurement by authorised officers of samples with regard to food

35. Authorised officers of a district council may, for the purposes of the execution and enforcement by that district council of the Import Provisions —

(a) purchase a sample of any food, or any substance capable of being used in the preparation of food;

(b) take a sample of any food, or any such substance, which —

(i) appears to them to be intended for placing on the market or to have been placed on the market, for human consumption, or

(ii) is found by them on or in any premises which they are authorised to enter by or under regulation 37;

(c) take a sample from any food source, or a sample of any contact material, which is found by them on or in any such premises; and

(d) take a sample of any article or substance which is found by them on or in any such premises and which they have reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

Analysis etc. of samples

36.—(1) Authorised officers of a district council who have procured a sample under regulation 35 shall —

(a) if they consider that the sample should be analysed, submit it to be analysed by a public analyst;

(b) if they consider that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it —

(a) to be analysed by the public analyst for the area in which the purchase was made; or

(b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the district in question is vacant, the sample shall be submitted to the public analyst for some other district.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner determines that they are for any reason unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by them to such other food analyst or examiner as they may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to them under this regulation, but may, except where —

(a) they are the public analyst for the district in question; and

(b) the sample is submitted to them for analysis by an authorised officer of a district council,

demand in advance the payment of such reasonable fee as they may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by them, but the analysis or examination may be made by any person acting under their direction.

(8) In any proceedings under the Import Provisions, the production by one of the parties —

(a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or

(b) of a document supplied to that party by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub–paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) Any reference in this regulation to a public analyst for a given district shall, where two or more public analysts have been appointed for that district, be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991(**5**) shall apply in relation to a sample procured by an authorised officer of a district council under regulation 35 as if it were a sample procured by an authorised officer under Article 29 of the Order.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991.

Powers of entry of authorised officers of a district council

37.—(1) Authorised officers of a district council shall, on producing, if so required, some duly authenticated document showing their authority, have a right at all reasonable hours —

(a) to enter any premises within the district for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Import Provisions in relation to food;

(b) to enter any premises, whether within or outside the district, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that district; and

(**5**) S.R. 1991 No. 198, to which there are amendments not relevant to these Regulations

(c) to enter any premises for the purpose of the performance by the authority of its functions under the Import Provisions,

but admission to any premises used only as a private dwelling–house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) If a lay magistrate, on sworn complaint in writing, is satisfied that there is reasonable ground for entry onto any premises 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 is temporarily absent,

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

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

(4) Authorised officers entering any premises by virtue of this regulation, or of a warrant issued under it, may take with them such other persons as they consider necessary, and on leaving any unoccupied premises which they have entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they found them.

(5) Authorised officers entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form —

(a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and

(b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford them such assistance as they may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) may —

(a) seize and detain any records which that officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions; and

(b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(7) If a person (A) who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any other person any information obtained by A on the premises with regard to any trade secret, A shall, unless the disclosure was made in the performance of a duty, be guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the Department of Agriculture and Rural Development under the Diseases of Animals (Northern Ireland) Order 1981, to enter any premises —

(a) on which an animal or bird affected with any disease to which that Order applies is kept; and

(b) which is situated in a place declared under that Order to be infected with such a disease.

Obstruction etc. of officers (imports)

38.—(1) Any person who —

(a) intentionally obstructs any person acting in the execution of the Import Provisions; or

(b) without reasonable cause, fails to give to any person acting in the execution of the Import Provisions any assistance or information which that person may reasonably require of them for the performance of their functions under the Import Provisions,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

(a) furnishes information which that person knows to be false or misleading in a material particular; or

(b) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Offences and penalties

39.—(1) Any person who —

(a) contravenes or fails to comply with any of the specified import provisions;

(b) contravenes paragraph (3) of regulation 25, paragraph (5) of regulation 26 or paragraph (4) or (5) of regulation 33;

(c) contravenes any of the prohibitions in paragraph (1) of regulation 27;

(d) to the extent that contravention of regulation 28 does not constitute an offence under regulation 38, contravenes regulation 28; or

(e) fails to comply with a notice served upon that person under the Import Provisions,

shall be guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under this Part shall be liable —

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

(3) A person guilty of an offence under regulation 38 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Time limit for prosecutions (imports)

40. A prosecution for an offence under this Part which is punishable under regulation 39(2) shall not be begun after the expiry of —

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

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

whichever is the earlier.