

2007 No. 133

AGRICULTURE

**The Official Controls (Animals, Feed and Food) Regulations
(Northern Ireland) 2007**

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Coming into operation - *2nd April 2007*

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The Department of Agriculture and Rural Development being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community, medicinal products and measures in the veterinary and phytosanitary fields for the protection of public health in exercise of the powers conferred on it by section 2(2) of the European Communities Act 1972 makes the following Regulations.

PART I GENERAL

Citation and commencement

1. These Regulations may be cited as the Official Controls (Animals, Feed and Food) Regulations (Northern Ireland) 2007, shall come into operation on 2nd April 2007.

Interpretation

2.—(1) In these Regulations—

“the 2006 Regulations” means the Official Feed and Food Controls Regulations (Northern Ireland) 2006(c);

“the Department” means the Department of Agriculture and Rural Development;

“audit” means, except in regulation 6, an audit of a competent authority carried out for the purposes of Article 4.6 of Regulation 882/2004 in relation to one or more pieces of relevant legislation; and

“auditor” means a person carrying out such an audit;

“inspector” means a person appointed to be an inspector for the purposes of these Regulations by the Department and includes a veterinary inspector, and in relation to any piece of relevant legislation means a person appointed as an inspector by the Department to act in Northern Ireland under that relevant legislation;

“premises” means premises or other property, place or means of transport;

“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(d), as amended by Commission Regulation (EC) No. 776/2006 amending Annex VII as regards Community reference laboratories(e) and as read with—

(a) Commission Decision 2006/677 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules(f);

(a) S.I. 1972/1811 in relation to the common agricultural policy and medicinal products, and S.I. 1999/2027 in relation to veterinary and phytosanitary measures for the protection of public health

(b) 1972, c. 68

(c) S.R. 2006 No.2

(d) O.J. No. L165, 30.4.2004, p.1; see the corrected text as set out in the corrigendum to the Regulation published in O.J. No. L 191, 28.5.2004, p.1

(e) O.J. No. L136, 24.5.2006, p.3

(f) O.J. No. L278, 10.10.2006, p.15

- (b) Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(a);
- (c) Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004, and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(b); and
- (d) 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 as last amended by Regulation (EC) No. 575/2006 of the European Parliament and of the Council;

“relevant legislation” means feed law and food law to which Regulation 882/2004 applies and animal health and welfare rules, except—

- (a) “relevant feed law” and “relevant food law” as defined in the 2006 Regulations; and
- (b) the Veterinary Medicines Regulations 2006(c) in so far as they regulate zootechnical additives and medicated feedingstuffs.

(2) In the definition of “relevant legislation” in paragraph (1)—

- (a) “medicated feedingstuffs” has the meaning given in Article 1.6 of Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products(d) as amended by Directive 2004/28/EC of the European Parliament and of the Council amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products(e); and
- (b) “zootechnical additives” means feed additives in the categories mentioned in Article 6.1(d) and (e) of Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition(f) with the exception of those belonging to the functional group listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation.

(3) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in Regulation 882/2004.

(4) Unless the context otherwise requires, references in these Regulations to an “Article” or “Title” are to an Article or Title, respectively, of Regulation 882/2004.

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

(a) O.J. No. L338, 22.12.2005, p.27
 (b) O.J. No. L338, 22.12.2005, p.83
 (c) S.I. 2006/2407
 (d) O.J. No. L311, 28.11.2001, p.1
 (e) O.J. No. L136, 30.4.2004, p.58
 (f) O.J. No. L268, 18.10.2003, p.29
 (g) 1954 c.33 (N.I.)

PART II

DESIGNATION OF COMPETENT AUTHORITIES AND THE EXCHANGE OF INFORMATION AMONGST THEM

Designation of the Department as competent authority

3. The Department is designated the competent authority for the purposes of Article 4.1 in relation to relevant legislation.

Exchange of information

4. The competent authority designated under these Regulations may disclose information to other competent authorities in the United Kingdom and other member States for the purposes of Regulation 882/2004.

PART III

AUDITS AND COMMUNITY CONTROLS

Powers of auditors

5.—(1) An auditor may exercise the powers in this regulation if he is authorised by the competent authority designated under these Regulations to carry out an audit of its activities.

(2) For the purposes of carrying out an audit, an auditor may enter premises to which an inspector has a power of entry under relevant legislation (“audit premises”) as if the auditor were an inspector meeting the criteria for gaining such entry under that relevant legislation.

(3) An auditor exercising his power of entry may bring with him any person whose assistance he reasonably requires.

(4) An auditor may request such information from any person at any audit premises as he reasonably requires for purposes of the audit, and may inspect such records as he reasonably requires for those purposes.

(5) An auditor may make or require copies of such records.

(6) When exercising the powers conferred by this regulation an auditor shall upon request produce evidence of his authorisation under these Regulations.

Community controls

6. In so far as he does not already have powers to do so, for the purposes of facilitating audits to be carried out by Commission experts pursuant to Article 45, an inspector may enter any premises to which he has a power of entry under relevant legislation, and—

- (a) bring with him any such experts; and
- (b) show them such records as he inspects.

PART IV

ASSISTANCE AND CO-OPERATION UNDER TITLE IV AND RECOVERY OF EXPENSES

Facilitating assistance and co-operation under Title IV

7.—(1) For the purposes of assisting a competent authority of another member State as provided for under Article 36.3, or enabling the competent authority designated under these Regulations to

do so, an inspector exercising his powers under relevant legislation to enter premises or to inspect records may—

- (a) bring with him authorised officers of a competent authority of another member State;
- (b) show to them such records as he inspects; and
- (c) make for them or require copies to be made for them of such records as he has powers to make or require under the relevant legislation.

(2) For the purposes of facilitating a visit by an inspection team sent by the Commission as provided for in Article 40.3(a), an inspector may bring with him representatives of the Commission when exercising his powers under relevant legislation to enter premises or to inspect records.

Recovery of expenses

8.—(1) Expenses charged to a feed or food business by the competent authority pursuant to Article 40.4 shall be paid by that business on the written demand of the competent authority.

(2) Expenses charged by the competent authority to an operator pursuant to Article 28 shall be paid by that operator on the written demand of the competent authority.

(3) In this regulation “competent authority” means the competent authority designated under regulation 3

PART V

ENFORCEMENT AND PENALTIES

Interpretation and application of Part V

9. In this Part—

- (a) “premises” excludes any premises or part of premises used exclusively as a dwelling;
- (b) “a relevant auditor” means an auditor exercising his powers under regulation 5;

Enforcement

10. Enforcement of these Regulations shall be the responsibility of the competent authority which authorises the exercise of powers under these Regulations.

Powers of inspectors

11.—(1) An inspector may—

- (a) at any reasonable hour enter premises;
- (b) make any enquiries, observe any activity or process, and take photographs; and
- (c) inspect any article or records of any class which appear to the inspector to be relevant for the purposes of his investigation, and may make or require copies of such records or remove such records as he reasonably requires.

(2) An inspector shall—

- (a) produce evidence of his authorisation when requested to do so;
- (b) as soon as he reasonably can, provide to the person appearing to him to be responsible for records he removes under paragraph (1)(c) a written receipt identifying those records; and
- (c) as soon as he reasonably can after deciding that they are no longer required, return such records, apart from those used as evidence in court proceedings.

Offences and penalties

12.—(1) A person is guilty of an offence if without reasonable excuse he obstructs, causes or permits to be obstructed—

- (a) a relevant auditor;
- (b) an inspector;
- (c) any person who accompanies a relevant auditor under regulation 5(3) or an inspector under regulation 6 or 7.

(2) For the purposes of paragraph (1), to obstruct includes—

- (a) failure to—
 - (i) produce records;
 - (ii) provide copies; or
 - (iii) provide reasonable facilities for copying records,

as required under these Regulations; and—

- (b) failure by any person to provide information in his possession when requested to do so by a relevant auditor or an inspector.

(3) A person is guilty of an offence if without reasonable excuse he supplies to a relevant auditor or an inspector information which, in any material particular, is false or misleading.

(4) A person guilty of an offence under this regulation is 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 limits for prosecution

13. A prosecution for an offence under this Part may begin no later than 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.

Amendment to the 2006 Regulations

14.—(1) The 2006 Regulations are amended in accordance with this regulation.

(2) In regulation 2(1), in the paragraph defining Community legislation, after “Directive 2004/41”, add “Regulation 999/2001”.

(3) In Schedule 1, after the definition of “Directive 2004/41”, insert—

““Regulation 999/2001” means Regulation (EC) 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies^(a) as defined (as “the Community TSE Regulation”)in The Transmissible Spongiform Encephalopathies Regulations (Northern Ireland) 2006^(b)and as amended by Commission Regulation (EC) 1041/2006 amending Annex III to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards monitoring of transmissible spongiform encephalopathies in ovine animals^(c)”.

(4) In paragraph (a) of Schedule 3—

- (a) after sub-paragraph (vi) delete “and”;
- (b) at the end of paragraph (vii) add—

(a) O.J. No. L147, 31.5.2001, p.1

(b) S.R. 2006 No.202

(c) O.J. No. L187, 8.7.2006, p.10

“; and

- (viii) the matters regulated under Schedule 2 to The Transmissible Spongiform Encephalopathies Regulations (Northern Ireland) 2006 in so far as that Schedule applies in relation to animals slaughtered for human consumption together with the matters covered under point 2 of Part II of Chapter A of Annex III to Regulation 999/2001 in so far as that point applies in relation to animals slaughtered for human consumption.”.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 5th
March 2007



E. Redmond

A senior officer of the Department of Agriculture and Rural Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply and enforce Regulation (EC) No. 882/2004 (OJ No. L191, 28.05.2004, p. 1) (“Regulation 882/2004”) in Northern Ireland in relation to animal health and welfare rules, and feed and food law excluded from the Official Feed and Food Controls Regulations (Northern Ireland) 2006 (“the 2006 Regulations”), which also apply and enforce Regulation 882/2004.

These Regulations provide for the designation of the Department as the competent authority for the purposes of Article 4.1 of Regulation 882/2004 (regulation 3).

The designation relates to:

- (a) animal health and welfare rules;
- (b) feed and food law which concerns controls on animals;
- (c) feed law not listed in Schedule 3 to the 2006 Regulations; and
- (d) feed and food law concerning controls on food or feed excluded from the designations in the 2006 Regulations, namely:
 - (i) organic foods, including imported organic food products;
 - (ii) protected name food products and specific character food products;
 - (iii) veterinary medicines residues;
 - (iv) pesticides residues;
 - (v) animal by-products (in relation to feed);
 - (vi) the import from third countries of, and intra-Community trade in, products of animal origin; and
 - (vii) beef labelling.

They also relate to the prevention, control and eradication of TSEs except at slaughterhouses, cutting plants and butcher shops.

The designations do not include medicated feedingstuffs and zootechnical additives, which are covered in paragraph 4 of Schedule 5 to the Veterinary Medicines Regulations 2006, S.I. 2006/2407.

These Regulations provide expressly for the exchange of information between the competent authority in Northern Ireland and competent authorities elsewhere in the United Kingdom, and in the European Union (regulation 4).

They create independent powers for a competent authority’s auditors to conduct audits required under Article 4.6 of Regulation 882/2004 (regulation 5).

The Regulations also supplement existing powers of inspectors so that they may bring Commission experts with them for purposes of the Commission’s own audits (regulation 6). There are provisions to facilitate assistance and co-operation between member States required under Title IV (Articles 34 to 40) of Regulation 882/2004 (regulations 6 and 7), in particular to enable officials of the Commission and other member States to attend with an inspector who investigates suspected breaches under the relevant legislation. Regulation 8 provides for the payment on written demand of expenses charged to a feed or food business operator under Article 40.4 of Regulation 882/2004.

Part V provides for the enforcement of the Regulations, including powers of inspectors for this purpose (regulation 11). It is an offence under regulation 12 to obstruct an auditor or an inspector who brings with him representatives from the Commission or other member States, or any persons accompanying an inspector or auditor. It is also an offence under regulation 12 to provide misleading or false information to, or to fail to provide information requested by, an inspector or auditor. The penalty on summary conviction for the offences is a fine at level 5 of the standard

scale (currently £5,000) or three months' imprisonment, or both (regulation 12(4)). Time limits for prosecution are specified in regulation 13.

Regulation 14 amends the definition of "relevant food law" in the 2006 Regulations by removing from that definition the regulation of TSEs except at slaughterhouses, cutting plants and butcher shops.