
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 5

The Animal Feed (Hygiene, Sampling etc. and Enforcement) Regulations (Northern Ireland) 2016

PART 5

Enforcement powers and related provisions

Feed business improvement notices

22.—(1) If an authorised officer has reasonable grounds for believing that a feed business operator is failing to comply with specified feed law, the officer may by a notice served on that person (in these Regulations referred to as a “feed business improvement notice”)—

- (a) state the officer’s grounds for believing that the feed business operator is failing to comply with specified feed law;
- (b) specify the matters which constitute the feed business operator’s failure to comply;
- (c) specify the measures which, in the officer’s opinion, the feed business operator must take in order to secure compliance; and
- (d) require the feed business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) A feed business improvement notice must state the right to appeal under regulation 23 and the appropriate time limit for bringing any such appeal.

(3) Any person who fails to comply with a feed business improvement notice commits an offence.

Right of appeal against feed business improvement notices

23.—(1) Any person who is aggrieved by a decision of an authorised officer to serve a feed business improvement notice may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal to a Magistrates Court under paragraph (1) shall be by way of notice under Part VII of the Magistrates’ Courts (Northern Ireland) Order 1981.

(3) The period within which an appeal under paragraph (1) may be brought is -

- (a) one month from the date on which notice of the decision was served on the person desiring to appeal; or
- (b) if it is shorter, the period specified in the notice pursuant to regulation 22(1)(d),

and a notice under Part VII deemed for the purposes of this paragraph to be the bringing of the appeal.

Further provisions relating to appeals

24.—(1) On an appeal against a feed business improvement notice the court may cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(2) Where any period specified in a feed business improvement notice pursuant to regulation 22(1)(d) would otherwise include any day on which an appeal against that notice is pending, that day is to be excluded from that period.

(3) An appeal is to be regarded as pending for the purposes of paragraph (2) until it is finally disposed of, is withdrawn or is struck out for want of prosecution.

Feed business prohibition orders

25.—(1) If—

- (a) a feed business operator is convicted of an offence under specified feed law; and
- (b) the court by or before which the operator is so convicted is satisfied that the health risk condition is fulfilled with respect to the feed business concerned,

the court must by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any feed business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely —

- (a) the use for the purposes of the business of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; or
- (c) the state or condition of any premises or equipment used for the purposes of the business;

and health means the health of an animal or, through the consumption of the products of such animal, human health.

(3) The appropriate prohibition is —

- (a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within paragraph (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other feed business of the same class or description; and
- (c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any feed business.

(4) If —

- (a) a feed business operator is convicted of an offence under specified feed law; and
- (b) the court by or before which the operator is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by an order, impose a prohibition on the feed business operator participating in the management of any feed business, or any feed business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (in these Regulations referred to as a “feed business prohibition order”), DARD must—

- (a) serve a copy of the order on the relevant feed business operator; and

- (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the feed business as the authority considers appropriate,
- and any person who knowingly contravenes such an order commits an offence.
- (6) A feed business prohibition order ceases to have effect —
 - (a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the feed business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the feed business; and
 - (b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.
 - (7) DARD must issue a certificate under paragraph (6)(a) within three days of its being satisfied as mentioned in that paragraph; and on an application by the feed business operator for such a certificate, the authority must —
 - (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied; and
 - (b) if it determines that it is not so satisfied, give notice to the feed business operator of the reasons for that determination.
 - (8) The court shall give a direction under paragraph (6)(b) if, on an application by the feed business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the feed business operator since the making of the order; but no such application shall be entertained if it is made —
 - (a) within six months of the making of the feed business prohibition order; or
 - (b) within three months of the making by the feed business operator of a previous application for such a direction.
 - (9) Where a court of summary jurisdiction makes an order under regulation 26(2) with respect to any feed business, paragraph (1) shall apply as if the feed business operator had been convicted by the court of an offence under specified feed law.
 - (10) Where the commission of an offence by a feed business operator leads to the conviction of another person pursuant to regulation 32(1), paragraph (4) shall apply in relation to that other person as it applies in relation to the feed business operator and any reference in paragraph (5) or (8) to the feed business operator is to be construed accordingly.

Feed business emergency prohibition notices and orders

- 26.—**(1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any feed business the officer may, by a notice served on the relevant feed business operator (in these Regulations referred to as a “feed business emergency prohibition notice”), impose the appropriate prohibition.
- (2) If a court of summary jurisdiction is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any feed business, the court must, by an order (in these Regulations referred to as a “feed business emergency prohibition order”), impose the appropriate prohibition.
- (3) Such an officer may not apply for a feed business emergency prohibition order unless, at least one day before the date of the application, the officer has served notice on the relevant feed business operator of the intention to apply for the order.

(4) Regulation 25(2) and (3) apply for the purposes of this regulation as they apply for the purposes of that regulation, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of such injury.

(5) As soon as practicable after the service of a feed business emergency prohibition notice, an authorised officer must affix a copy of the notice in a conspicuous position on such premises used for the purposes of the feed business as the officer considers appropriate; and any person who knowingly contravenes such a notice commits an offence.

(6) As soon as practicable after the making of a feed business emergency prohibition order, an authorised officer must —

- (a) serve a copy of the order on the relevant feed business operator; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of the feed business as the officer considers appropriate,

and any person who knowingly contravenes such an order commits an offence.

(7) A feed business emergency prohibition notice ceases to have effect —

- (a) if no application for a feed business emergency prohibition order is made within the period of three days beginning with the service of the notice, at the end of that period; or
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) A feed business emergency prohibition notice or a feed business emergency prohibition order cease to have effect on the issue by DARD of a certificate to the effect that it is satisfied that the feed business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the feed business.

(9) DARD must issue a certificate under paragraph (8) within three days of being satisfied as mentioned in that paragraph; and on an application by the feed business operator for such a certificate, the authority must —

- (a) determine as soon as is reasonably practicable and in any event within 14 days whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the feed business operator of the reasons for that determination.

(10) Where a feed business emergency prohibition notice is served on a feed business operator, DARD must compensate the operator in respect of any loss suffered by reason of complying with the notice unless —

- (a) an application for a feed business emergency prohibition order is made within the period of three days beginning with the service of the notice; and
- (b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the feed business at the time when the notice was served,

and any disputed question as to the right to or the amount of any compensation payable under this paragraph is to be determined by arbitration.

Powers of entry and inspection

27.—(1) For the purposes of—

- (a) executing and enforcing specified feed law; or

- (b) carrying out investigations, in accordance with Article 4.2 of Directive [2002/32/EC](#) of the European Parliament and of the Council on undesirable substances in animal feed⁽¹⁾ to determine the source of specified undesirable substances,

an authorised officer may at all reasonable times, and on producing, if requested to do so, some duly authenticated documentation showing their identity, their authority and the extent of their powers, enter premises mentioned in paragraph (2).

(2) The premises (not being premises used wholly as a dwelling) are —

- (a) any premises on which the officer has reasonable cause to believe that feed has been, or is being, manufactured or produced, or is being kept for the purpose of being placed on the market, incorporated in another product or used; or
- (b) any premises on which the officer has reasonable cause to believe that there is any feed of which the occupier of the premises has possession or control.

(3) If a lay magistrate, on sworn complaint in writing, is satisfied that there is reasonable ground for entry into any such premises as are mentioned in paragraph (2), 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 lay magistrate may by signed warrant 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) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons and take such equipment as may appear to the officer to be necessary, and on leaving any unoccupied premises entered by virtue of such a warrant, must leave them as effectively secured against unauthorised entry as the officer found them.

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, has the right to inspect —

- (a) any material appearing to be feed;
- (b) any article appearing to be a container or package used or intended to be used to store, wrap or package any feed, or to be a label or advertisement used or intended to be used in connection with feed; or
- (c) any vehicle, plant or equipment appearing to be used, or intended to be used, in connection with the manufacture, production, storage, transport or use of feed, and any process of manufacture, production, storage, transport or use of feed.

(7) Subject to paragraph (9), an authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, has the right to take on those premises, in the prescribed manner, a sample of any material appearing to be a feed manufactured, produced, placed on the market or intended to be placed on the market or to be material used, or intended to be used, as feed.

(8) Without prejudice to the authorised officer's powers and duties as to the taking of samples in the prescribed manner, an authorised officer may take a sample in a manner other than that prescribed of any material which has been sold for use as feed or which the officer has reasonable cause to believe to be intended for sale as such.

(1) OJ No. L140, 30.5.2002, p.10. This instrument was last amended by Commission Regulation (EU) No. 1275/2013 (OJ No. L328, 7.12.2013, p.86). The threshold levels referred to in Article 4.2 and set out in Annex II were last amended by Commission Regulation (EU) No. 277/2012 (OJ No. L91, 29.3.2012, p.1)

(9) Where, for the purpose of taking a sample pursuant to paragraph (7) or (8), an authorised officer takes some of it from each of one or more containers, 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 officer to purchase the container or containers on behalf of DARD.

(10) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, has the right —

- (a) to require any person carrying on, or appearing to be carrying on, a feed business, 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 of which that person has possession or 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.

(11) An authorised officer exercising the power conferred by paragraph (10) in respect of a record held by means of a computer —

- (a) is 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 officer such reasonable assistance as the officer 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.

(12) Where (in the case of a person carrying on, or appearing to carry on, a business which consists of or includes the manufacture of a compound feed) —

- (a) a requirement is made under paragraph (10)(a) in relation to any feed which is, or appears to be, intended for a particular nutritional purpose; and
- (b) at the time the requirement is made, the record in respect of which it is made has been published and is available in accessible form for public use,

the person of whom the requirement is made shall be deemed to comply with it if, at the time it is made, that person supplies the authorised officer making it with correct and adequate details of the publication concerned, and of where a copy of it may be obtained.

(13) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, has the right to seize and detain any record which the officer has reasonable cause to believe to be a record which may be required as evidence in proceedings under specified feed law.

(14) In this regulation —

- (a) “compound feed” has the meaning given in Article 3(2)(h) of Regulation 767/2009; and
- (b) “feed which is, or appears to be, intended for a particular nutritional purpose” is to be construed in accordance with the definitions of “feed intended for particular nutritional purposes” in Article 3(2)(o) of that Regulation.

(15) Nothing in this regulation authorises any person, except with the permission of DARD under the Diseases of Animals (Northern Ireland) Order(2), to enter any premises —

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Powers of detention and seizure

28.—(1) Where an authorised officer has inspected or sampled any material under these Regulations, paragraphs (2) to (8) apply where, on such an inspection, or upon analysis of samples taken, it appears to the officer that the material fails to comply with the requirements of specified feed law.

(2) The authorised officer 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 lay magistrate,

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) commits an offence.

(3) An authorised officer who exercises the powers conferred by paragraph (2)(a) must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the officer is satisfied that the material complies with the requirements mentioned in paragraph (1) and —

- (a) if so satisfied, forthwith withdraw the notice;
- (b) if not so satisfied, proceed to have the matter dealt with by a lay magistrate under paragraph (5).

(4) Where the authorised officer exercises the powers conferred by paragraph (2)(b) or takes action under paragraph (3)(b), the officer must inform the person in charge of the material of the intention to have it dealt with by a lay magistrate and —

- (a) any person who might be liable under the provisions of specified feed law to a prosecution in respect of the material shall, if that person attends before the lay magistrate by whom the material falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that lay magistrate 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) Subject to paragraph (8), if it appears to a lay magistrate, on the basis of such evidence as the lay magistrate considers appropriate in the circumstances, that any material falling to be dealt with by a lay magistrate under this regulation fails to comply with the requirements of specified feed law then the lay magistrate must 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; 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 lay magistrate by whom any material falls to be dealt with under this regulation refuses to condemn it, DARD must compensate the owner of the material for any depreciation in its value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right or the amount of any compensation payable under paragraph (6) is to be determined by a single arbitrator appointed, failing agreement between the

parties, by the Department of Health, Social Services and Public Safety and the provisions of the Arbitration Act 1996 apply.

(8) In the case of material referred to in Article 15.1 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed⁽³⁾ which is the subject of an authorisation granted under that Regulation and has been produced in accordance with any conditions relating to that authorisation but does not bear the appropriate labelling as required by Article 25, the lay magistrate may order —

- (a) that the material be labelled properly as soon as reasonably practicable and at the expense of the feed business operator; and
- (b) the release of the material into the custody of the operator.

Offences relating to the exercise of powers

29.—(1) Any person who wilfully obstructs an authorised officer in the exercise of the officer's powers under these Regulations or fails to comply with any requirement lawfully made in the exercise of such powers commits an offence.

(2) Any person not being an authorised officer who purports to act as such under these Regulations commits an offence.

(3) Any person who discloses to any other person —

- (a) any information in relation to any manufacturing process or trade secret which has been obtained on premises entered by virtue of these Regulations, or
- (b) any other information obtained in pursuance of these Regulations,

commits an offence unless the disclosure was made in and for the purpose of the performance of functions under these Regulations.

(4) Paragraph (3) does not apply to prevent an authorised officer who has taken a sample under these Regulations from disclosing —

- (a) to the manufacturer or to the last seller of the material, information as to the place where and the person from whom the sample was taken and the results of any analysis of that sample;
- (b) to any person who had that material on their premises, information as to the results of any analysis of that sample; or
- (c) any information which it is necessary to disclose in order to prevent the occurrence of a serious risk to human or animal health or to the environment.

Liability for expenditure

30.—(1) Subject to paragraph (2) any sums due to DARD by virtue of Article 54(5) (action in the case of non-compliance) of Regulation 882/2004 must be paid by the feed business operator to the authority on demand.

(2) This regulation does not apply in relation to Article 54(2)(g), (measures referred to in Article 19 on consignments from third countries), of Regulation 882/2004.

Penalties for offences

31.—(1) Anyone guilty of an offence under regulation 5, as read with Table 1 of Schedule 2, or regulation 22(3), 25(5), 26(5) or (6) or 28(2) is liable—

(3) OJ No.L268, 18.10.2003, p.1

(a) on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment to a term of imprisonment not exceeding 2 years or to a fine or both.

(2) Anyone guilty of an offence under regulation 5, as read with Table 2 of Schedule 2, or regulation 19, 29(1) or (2) is liable on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale, or both.

(3) Anyone guilty of an offence under regulation 29(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defences

32.—(1) Where the commission by any person of an offence under specified feed law is due to the act or default of some other person, that other person commits the offence and may be accused and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under specified feed law it shall, subject to paragraph (3), be a defence to prove that —

(a) the commission of the offence was due to a mistake, or to reliance on information supplied to the accused, or to the act or default of another person, or to an accident or some other cause beyond the control of the accused; and

(b) the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused or any person under their control.

(3) If in any case the defence provided by paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person accused shall not, without leave of the court, be entitled to rely on that defence unless —

(a) at least seven clear days before the hearing; and

(b) where the accused has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,

the accused has served on the prosecutor a notice giving any information the accused may have to identify or assist in identifying that other person.

(4) In any proceedings in which it alleged that a material has failed to comply with the requirements of specified feed law it is a defence for the person accused to prove that the material in respect of which the offence was alleged to have been committed —

(a) was feed to which Article 25 of Regulation 183/2005 applies; and

(b) could lawfully be exported in accordance with the requirements of Article 12 (food and feed exported from the EU) 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⁽⁴⁾.

(4) OJ No. L31,1.2.2002, p.1 as last amended by Regulation (EC) No.569/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468 with regard to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14)

Institution of and time limit for prosecutions

33.—(1) Without prejudice to any enactment relating to the place where proceedings may be taken, proceedings for an offence under specified feed law may be taken in the place where the person accused resides or carries on business.

(2) No prosecution for an offence under these Regulations or Part 2 of the Animal Feed (Composition, Marketing and Use Regulations (Northern Ireland) 2016⁽⁵⁾) may 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.

Notices

34. Any notice to be served by DARD under regulation 8, 9, 10, 22, 26, or 28—

(a) must be in writing and signed by an authorised officer acting on behalf of DARD;

(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 authorised officer, shall be deemed, unless the contrary is proven, to have been duly issued by such an authorised officer.