



Agriculture Act 1970

1970 CHAPTER 40

PART IV

FERTILISERS AND FEEDING STUFFS

Sampling and analysis

78 Further analysis by Government Chemist.

- (1) Where a sample of any material has been taken pursuant to the request of a purchaser under section 75 of this Act, any of the following persons, that is to say, the purchaser, the person who sold the material to him and any other person against whom a cause of action may lie in respect of the sale of that material, shall be entitled to require the inspector—
 - (a) to send the part retained by the inspector under section 77(1)(c) of this Act (hereafter in this section referred to as “the remaining part”) for analysis to the Government Chemist;
 - (b) to supply the person making the request with a copy of the Government Chemist’s certificate of analysis of that remaining part, whether that part was sent to the Government Chemist for analysis in pursuance of the request of that person or otherwise.
- (2) Where a sample of any material has been taken by an inspector in the prescribed manner and it is intended to institute proceedings against any person for an offence under this Part of this Act and to adduce on behalf of the prosecution evidence of the result of an analysis of the sample—
 - (a) the prosecutor, if a person other than the inspector, shall be entitled to require the inspector—
 - (i) to send the remaining part of the sample for analysis to the Government Chemist;
 - (ii) to supply the prosecutor with a copy of the Government Chemist’s certificate of analysis of that remaining part, whether that part was

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- sent to the Government Chemist for analysis in pursuance of the request of the prosecutor or otherwise;
- (b) the inspector, if he is the prosecutor, shall be entitled himself so to send that remaining part.
- (3) Where a prosecutor avails himself of his rights under subsection (2) of this section he shall cause to be served with the summons a copy of the agricultural analyst's certificate of analysis and a copy of the Government Chemist's certificate of analysis; and where a prosecutor does not avail himself of his rights under that subsection he shall, not less than fourteen days before the service of the summons, cause to be served on the person charged a copy of the agricultural analyst's certificate of analysis and a notice of intended prosecution, and if, within the period of fourteen days beginning with the service of the notice, that person sends the prosecutor a written request to that effect accompanied by the amount of the fee payable by the prosecutor for the purpose under subsection (8) of this section (which shall be refunded to that person by the prosecutor if the prosecution is not brought) the prosecutor shall exercise his rights under subsection (2) of this section and the proceedings shall not be instituted until he has sent that person a copy of the Government Chemist's certificate of analysis.
- (4) Where proceedings are brought against any person for an offence under this Part of this Act and evidence is given or sought to be given of the result of an analysis of a sample of any material taken by an inspector in the prescribed manner but it appears that the sample has not been analysed by the Government Chemist, the court may, of its own motion or on the application of either party, order the remaining part of the sample to be sent for analysis to the Government Chemist.
- (5) Where under this section a part of a sample is sent for analysis to the Government Chemist there shall be sent with it—
- (a) a copy of any document which was sent with the part of the sample sent to the agricultural analyst; and
- (b) if the part is sent to the Government Chemist under subsection (2) or (4) of this section, a statement of the particulars on which the proceedings or intended proceedings are based.
- (6) The Government Chemist shall analyse in such manner, if any, as may be prescribed any part of a sample sent to him under this section but, where the part is accompanied by a statement such as is mentioned in subsection (5)(b) of this section, the analysis shall be made only with respect to the particulars in the statement unless the person or court requesting or ordering the analysis requires it to extend also to other matters.
- (7) A certificate of any analysis under this section shall be sent by the Government Chemist—
- (a) if the material analysed was sent to him in pursuance of subsection (1) or (2) of this section, to the inspector;
- (b) if it was sent to him in pursuance of an order of the court under subsection (4) of this section, to the court.
- (8) A request for an analysis under subsection (1) or (2) of this section shall be of no effect unless accompanied by the appropriate fee; and the appropriate fee for any analysis ordered by the court under subsection (4) of this section shall be paid by such party to the proceedings as the court may direct.
- (9) In the application of this section to Scotland—

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- (a) for any reference to the court there shall be substituted a reference to the sheriff;
- (b) in subsection (2), in paragraph (a) the words “if a person other than the inspector” and paragraph (b) shall be omitted;
- (c) in subsection (3), for any reference to the summons there shall be substituted a reference to the complaint;
- (d) for subsection (8) there shall be substituted the following subsection—

“(8) A request for an analysis—

- (a) under subsection (1) of this section; or
- (b) under subsection (2) thereof where the request is made at the instance of a person charged with an offence who has received a notice of intended prosecution,

shall be of no effect unless accompanied by the appropriate fee; and the appropriate fee for any analysis ordered by the sheriff under subsection (4) of this section shall be paid by such party to the proceedings as the sheriff may direct.”

- (10) In subsection (8) of this section “the appropriate fee” means such fee as may be fixed by ^[F1]the Secretary of State] with the approval of the Treasury, and different fees may be fixed for different materials and for different analyses of the same material.

Subordinate Legislation Made

- P1** S. 78: for previous exercises of power see Index to Government Orders
- P2** S. 78(2)(4)(6): s. 74A (with ss. 66(1), 67(5), 75(1), 76(1), 77, 78(2)(4)(6), 79(1)(2)(9) and 84) power exercised by [S.I.1991/973](#)
- P3** S. 78: S. 74A (with ss. 66(1), 75(1), 76(1), 77, 78(2), (4) and (6), 79(1), (2) and (9), 84 and 86(1), (2), (3) and (9)) power exercised by [S.R. 1991/540](#)

Textual Amendments

- F1** Words substituted by virtue of [S.I. 1970/1537](#), [arts. 2\(2\)](#), [7\(4\)](#)

Modifications etc. (not altering text)

- C1** S. 78 modified (W.) (11.10.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) \(Wales\) Regulations 2010](#) (S.I. 2010/2287), regs. 1, **19**
- C2** S. 78 modified (N.I.) (11.10.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) Regulations \(Northern Ireland\) 2010](#) (S.R. 2010/323), regs. 1, **18**
- C3** S. 78 modified (E.) (11.10.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) \(England\) Regulations 2010](#) (S.I. 2010/2280), regs. 1, **19**
- C4** S. 78 modified (S.) (15.11.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) \(Scotland\) Regulations 2010](#) (S.S.I. 2010/354), regs. 1, **19**
- C5** S. 78(2)-(8) applied (with modifications) (E.) (4.10.2004) by [Genetically Modified Animal Feed \(England\) Regulations 2004](#) (S.I. 2004/2334), regs. 1(b), **6(2)(c)**
- C6** S. 78(2)-(8) applied (with modifications) (N.I.) (8.10.2004) by [The Genetically Modified Animal Feed Regulations \(Northern Ireland\) 2004](#) (S.R. 2004/386), regs. 1, **6** (as amended (11.10.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) Regulations \(Northern Ireland\) 2010](#) (S.R. 2010/323), regs. 1, **21(2)**)
- C7** S. 78(2)-(10) applied (with modifications) (S.) (15.11.2004) by [Genetically Modified Animal Feed \(Scotland\) Regulations 2004](#) (S.S.I. 2004/433), regs. 1(1), **6(1)(a)(ii)**

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- C8** S. 78(2)-(8) applied (with modifications) (W.) (17.12.2004) by The Genetically Modified Animal Feed (Wales) Regulations 2004 (S.I. 2004/3221), regs. 1(b), **6(2)(c)**
- C9** S. 78(2)-(10) applied (with modifications) (E.W.S.) (1.1.2005) by Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations 2004 (S.I. 2004/3254), regs. 1, **4(2)(d)**
- C10** S. 78(2)-(7) applied (with modifications) (N.I.) (1.1.2005) by The Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations (Northern Ireland) 2004 (S.R. 2004/506), regs. 1(1), **4(1)**, 4(2)
- C11** S. 78(2) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C12** S. 78(2)-(8)(10) applied (with modifications) (S.) (6.5.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Scotland) Regulations 2005 (S.S.I. 2005/246), regs. 1(1), **5**
- C13** S. 78(2)-(8) applied (with modifications) (W.) (13.5.2005) by The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Wales) Regulations 2005 (S.I. 2005/1323), regs. 1(1), **5(1)**, 5(2)(c)
- C14** S. 78(3) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C15** S. 78(4) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C16** S. 78(5) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C17** S. 78(6) modified (8.9.1999) by S.I. 1999/2325, **regs. 7(1)(2)**, 11 (as amended: (E.) (20.3.2001) by S.I. 2001/541, **reg. 5(a)**; (S.) (6.4.2001) by S.S.I. 2001/104, **reg. 7(c)**; (W.) (1.8.2001) by S.I. 2001/2253, **reg. 7(c)**)
- C18** S. 78(6) modified by S.I. 1999/2325, **reg. 11A** (as inserted: (E.) (20.3.2001) by S.I. 2001/541, **reg. 8**; (S.) (6.4.2001) by S.S.I. 2001/104, **reg. 5(b)**; (W.) (1.8.2001) by S.I. 2001/2253, **reg. 8**)
- C19** S. 78(6) modified by S.I. 1999/2325, regs. 11-11B (as substituted (E.) (9.6.2003) by Feeding Stuffs (Sampling and Analysis), the Feeding Stuffs (Enforcement) and the Feeding Stuffs (Establishments and Intermediaries) (Amendment) (England) Regulations 2003 (S.I. 2003/1296), regs. 1, **12** and as amended (E.) (1.8.2003) by Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (England) Regulations 2003 (S.I. 2003/1503), regs. 1(2), **18**; (8.12.2003) by Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (England) (No.2) Regulations 2003 (S.I. 2003/2912), regs. 1, **9**; (1.6.2004) by Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (England) Regulations 2004 (S.I. 2004/1301), regs. 1, **9**)
- C20** S. 78(6) modified by S.I. 1999/2325, regs. 11-11B (as substituted (S.) (26.6.2003) by The Feeding Stuffs (Miscellaneous Amendments) (Scotland) Regulations 2003 (S.S.I. 2003/277), regs. 1(1), **13**)
- C21** S. 78(6) modified by S.I. 1999/2325, regs. 11-11B (as substituted (W.) (14.7.2003) by Feeding Stuffs (Sampling and Analysis), the Feeding Stuffs (Enforcement) and the Feeding Stuffs (Establishments and Intermediaries) (Amendment) (Wales) Regulations 2003 (S.I. 2003/1677), regs. 1, **12** and as amended (W.) (1.8.2003) by The Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (Wales) Regulations 2003 (S.I. 2003/1850), regs. 1(2), **18**; (3.12.2003) by Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (Wales) (No.2) Regulations 2003 (S.I. 2003/3119), regs. 1(2), **9**; (9.7.2004) by The Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (Wales) Regulations 2004 (S.I. 2004/1749), regs. 1, **9**; (24.11.2004) by The Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (Wales) (No. 2) Regulations 2004 (S.I. 2004/3091), regs. 1, **5(5)**)
- C22** S. 78(6) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C23** S. 78(6) transfer of functions (15.2.2006) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304), art. 1(1), **Sch.** (with art. 5)
- C24** S. 78(7) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**

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- C25** S. 78(8) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C26** S. 78(10) applied (with modifications) (E.) (4.10.2004) by Genetically Modified Animal Feed (England) Regulations 2004 (S.I. 2004/2334), regs. 1(b), **6(2)(c)**
- C27** S. 78(10) applied (with modifications) (N.I.) (8.10.2004) by The Genetically Modified Animal Feed Regulations (Northern Ireland) 2004 (S.R. 2004/386), regs. 1, **6** (as amended (11.10.2010) by The Feed (Sampling and Analysis and Specified Undesirable Substances) Regulations (Northern Ireland) 2010 (S.R. 2010/323), regs. 1, **21(2)**)
- C28** S. 78(10) applied (with modifications) (W.) (17.12.2004) by The Genetically Modified Animal Feed (Wales) Regulations 2004 (S.I. 2004/3221), regs. 1(b), **6(2)(c)**
- C29** S. 78(10) applied (with modifications) (N.I.) (1.1.2005) by The Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations (Northern Ireland) 2004 (S.R. 2004/506), regs. 1(1), **4(1)**, 4(2)
- C30** S. 78(10) applied (with modifications) (E.) (30.4.2005) by Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (S.I. 2005/1265), regs. 1(1), **5**
- C31** S. 78(10) applied (with modifications) (W.) (13.5.2005) by The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Wales) Regulations 2005 (S.I. 2005/1323), regs. 1(1), **5(1)**, 5(2)(c)
- C32** S. 78(10) transfer of functions (15.2.2006) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304), art. 1(1), **Sch.** (with art. 5)
- C33** S. 78(10) functions modified (W.) (24.5.2018) by The Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644), arts. 1(1), **12**

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