
STATUTORY INSTRUMENTS

1998 No. 1049

**The Feeding Stuffs (Establishments
and Intermediaries) Regulations 1998**

PART X

ENFORCEMENT

Official checks and enforcement

82.—(1) Subject to paragraph (2), it shall be the duty of the competent body to enforce these Regulations and carry out official checks for that purpose.

(2) Nothing in these Regulations shall be taken as authorising any competent body in Scotland to institute proceedings for an offence.

Powers of authorised persons

83.—(1) An authorised person may at all reasonable times, and on producing, if requested to do so, some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of—

- (a) carrying out official checks, and
- (b) ascertaining whether an offence under regulation 91(a) has been or is being committed.

(2) An authorised person shall have the right to enter—

- (a) any premises on which he has reasonable cause to believe that a controlled product has been manufactured or produced, or is being kept for the purpose of being put into circulation, incorporated in another product or used, and
- (b) any premises (not being premises used only as a dwelling) on which he has reasonable cause to believe that there is any controlled product which the occupier of the premises has in his possession.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any such premises as are mentioned in paragraph (2), 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 temporarily absent,

the justice may by warrant signed by him 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) In the application of paragraph (3) to Scotland, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

(6) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, may take with him such other persons and such equipment as may appear to him to be necessary for the purposes mentioned in sub-paragraphs (a) and (b) of paragraph (1), and on leaving any unoccupied premises which he has entered by virtue of such a warrant, shall leave them as effectively secured against unauthorised entry as he found them.

(7) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to inspect—

- (a) any substance or article appearing to him to be a controlled product,
- (b) any article appearing to him to be a container or package used or intended to be used to wrap, package or store any such product, or to be a label used or intended to be used in connection with any such product, or
- (c) any plant or equipment appearing to him to be used, or intended to be used, in connection with the manufacture or production of a controlled product, and any process of manufacture or production of such a product, and any means employed, at any stage in the process of manufacture or production, for testing the product after it has been subject to those processes.

(8) Subject to paragraph (9), an authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to take a sample of—

- (a) any substance or article appearing to him to be used, or intended to be used, in the manufacture or production of any controlled product;
- (b) any product appearing to him to be a controlled product manufactured, wrapped, packaged, stored or put into circulation, or intended to be put into circulation; or
- (c) any product appearing to him to be a controlled product used, or intended to be used, for the purpose of animal feeding, in the like manner as that laid down—
 - (i) in the case of Great Britain, in paragraphs 1 to 4, 6, 7, 9 and 10 of Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1982(1) as read with Part I of that Schedule, or
 - (ii) in the case of Northern Ireland, in paragraphs 1 to 4, 6, 7, 9 and 10 of Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1982(2) as read with Part I of that Schedule.

(9) The provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1982 or, as the case may be, the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1982(2) referred to in paragraph (8), shall have effect, for the purposes of that paragraph, as if—

- (a) for all references in those provisions to “a feeding stuff” or to “feeding stuffs” there were substituted references to “a controlled product” or “controlled products” respectively, and
- (b) in paragraph 1 of those provisions, the expression “, except where section 68(2)(b) of the Act applies” were omitted.

(10) Where, for the purpose of taking a sample pursuant to paragraph (8), an authorised person takes some of it from each of one or more containers of the substance or, as the case may be, the article or product, 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 authorised person to purchase the container or containers on behalf of the competent body for whom he acts.

(1) S.I.1982/1144, to which there are amendments not relevant to these Regulations.

(2) S.R. 1982/338, to which there are amendments not relevant to these Regulations.

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(11) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right—

- (a) to require any person carrying on, or appearing to be carrying on, a business which consists of or includes the manufacture, production, wrapping, packaging, storage, putting into circulation, or use of a controlled product, 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 which is in his possession or under his 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.

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

- (a) shall be 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 person such reasonable assistance as he 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.

(13) An authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to seize and detain any product which he has reasonable cause to believe to be a controlled product in relation to which, or by means of which, it appears that an offence under these Regulations is being or has been committed, and any record which he has reasonable cause to believe to be a record which may be required as evidence in proceedings under these Regulations.

Division of samples

84. Where, in accordance with these Regulations, an authorised person obtains a sample, and decides to have it analysed for the purpose of ascertaining whether there is or has been any contravention of any provision of these Regulations in connection with a controlled product, he shall divide the sample into three parts, of as near as may be equal size and shall—

- (a) cause each part to be marked, sealed and fastened up in the like manner as that laid down—
 - (i) in the case of Great Britain, in Part V of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1982, as read with Part I of that Schedule, or
 - (ii) in the case of Northern Ireland, in Part V of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1982, as read with Part I of that Schedule;
- (b) send one part for analysis to—
 - (i) in Great Britain, the agricultural analyst for the area of the competent body which authorised the authorised person to carry out the official check in the course of which the sample was taken, and
 - (ii) in Northern Ireland, an agricultural analyst in Northern Ireland;
- (c) send another part to the person subject to the official check; and

- (d) retain and preserve the remaining part as an officially sealed reference sample.

Supply of part of sample to manufacturer

85. If the person who manufactured a substance or, as the case may be, article or product, of which an authorised person has taken a sample, is not a person to whom part of the sample is required to be sent under regulation 84, that regulation shall have effect as if, for the reference to three parts, there were substituted a reference to four parts, and the authorised person shall send the fourth part to the manufacturer, unless he does not know the manufacturer's name, or any address of his in the United Kingdom, and is unable, after making reasonable enquiries, to ascertain the name or, as the case may be, any such address, before the expiration of fourteen days from the date when the sample was taken.

Statement to accompany sample

86. There shall be sent with the part of the sample sent to the agricultural analyst pursuant to regulation 84, a statement signed by the authorised person that the sample was taken in the manner referred to in regulation 83(8).

Analysis by the Agricultural Analyst

87. The agricultural analyst shall analyse the part of the sample sent to him under regulation 84, and send a certificate of the analysis, completed in the form set out in Schedule 2, and in accordance with the notes set out in that Schedule, to the authorised person, who shall send a copy to—

- (a) the person who was subjected to the official check concerned, and
- (b) any person to whom he has sent a part of the sample pursuant to regulation 85.

Alternative arrangements for carrying out analyses

88. If the agricultural analyst to whom a sample is sent for analysis under regulation 84 determines that an effective analysis of the sample cannot be made by him or under his direction, he shall send it to the agricultural analyst for another area or, in Northern Ireland, to another agricultural analyst in Northern Ireland, together with any documents received by him with the sample, and thereupon regulation 87 shall apply, as if the sample had originally been sent to that other agricultural analyst.

Further analysis of samples

89.—(1) Where a part of a sample sent to an agricultural analyst pursuant to regulation 84 has been analysed, and it is intended to institute proceedings, or proceedings have been commenced, against a person for an offence under regulation 91(a), and it is intended to adduce, on behalf of the prosecution, evidence of the result of the analysis of that part of the sample, the defendant, for the purpose of obtaining a second opinion, may request the authorised person to send the retained part of the sample for analysis to—

- (a) where the sample was taken in Great Britain, the Government Chemist, and
- (b) where the sample was taken in Northern Ireland, the Chief Agricultural Analyst.

(2) Where a defendant requests the authorised person to send the retained part of the sample to the Government Chemist or, as the case may be, the Chief Agricultural Analyst, pursuant to paragraph (1), the following procedure shall (subject to paragraph (3)), be followed—

- (a) the authorised person shall—

- (i) send the retained part of the sample for analysis to the Government Chemist or, as the case may be, the Chief Agricultural Analyst, and
 - (ii) supply the defendant with a copy of the Government Chemist's or, as the case may be, the Chief Agricultural Analyst's, certificate of analysis of that part of the sample; and
- (b) the Government Chemist or, as the case may be, the Chief Agricultural Analyst, shall analyse the part of the sample sent to him under sub-paragraph (a) above and shall send a certificate of the analysis, completed in the form set out in Schedule 2, and in accordance with the notes set out in that Schedule, to the authorised person.
- (3) The authorised person may in any case give notice in writing to the defendant requesting payment of a fee specified in the notice in respect of performance of the functions specified in paragraph (2)(b) and, if the fee so specified exceeds neither—
- (a) the cost of performing them, nor
 - (b) the appropriate fee for the performance of any similar function under section 78 of the Agriculture Act 1970,

the authorised person may, in the absence of agreement by the defendant to pay the fee, refuse to comply with the request under paragraph (1).

- (4) In this regulation “defendant” includes a prospective defendant.

Methods of analysis

90. For the purpose of analysing a part of a sample taken in the course of the carrying out of official checks, any scientifically valid method of analysis shall be used by the agricultural analyst concerned or, as the case may be, by the Government Chemist or the Chief Agricultural Analyst.

Offences

- 91.** It shall be an offence for a person—
- (a) without reasonable excuse, to contravene any of the regulations 33 to 81;
 - (b) intentionally to obstruct an authorised person in the exercise of any power conferred by regulation 83, or
 - (c) without reasonable excuse to fail to comply with any requirement made of him, pursuant to regulation 83, by an authorised person.

Punishment of offences

92.—(1) A person contravening, without reasonable excuse, any of regulations 33, 35, 37, 39, 41, 43, 45, 46, 47, 48, 50, 52, 54, 56, 58, 60, 61, 62, 63, 65, 67, 69, 70, 72, 74, 76, 78 or 80 shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.

(2) A person contravening, without reasonable excuse, any of regulations 34, 36, 38, 40, 42, 44, 49, 51, 53, 55, 57, 59, 64, 66, 68, 71, 73, 75, 77, 79 or 81 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person contravening regulation 91(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A person contravening, without reasonable excuse, regulation 91(c) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Time limit for prosecutions

93.—(1) Proceedings for an offence under any of the regulations specified in regulation 92(2) may, subject to paragraph (2), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to his knowledge.

(2) No such proceedings shall be commenced by virtue of this regulation more than two years after the commission of the offence.

(3) For the purpose of this regulation, a certificate signed by or on behalf of the prosecutor, and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge, shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(5) In relation to proceedings in Scotland, subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995(3) (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

Offences by Scottish partnerships

94. Where a Scottish partnership is guilty of an offence under these Regulations, in respect of an act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Defence

95. Where a person responsible for putting a controlled product into circulation is charged with an offence under these Regulations, in respect of a controlled product that has been manufactured or assembled to his order by another person, and which has been so manufactured or assembled so as not to comply with his order, it shall be a defence for him to prove—

- (a) that, in placing his order, a copy of the documents relating to the specifications for manufacture and assembly of the product were available, or had been provided, to that other person and that the person responsible for putting the product into circulation had instructed that other person to manufacture or assemble the product in accordance with those specifications,
- (b) that if that other person had complied with that instruction, no offence would have been committed, and
- (c) that the person responsible for putting the product into circulation did not know, and could not with the exercise of reasonable care have known, that that instruction had not been complied with.

Supplementary provisions relating to sampling and analysis, prosecutions, offences and defences

96.—(1) Subject to paragraph (2), for the purposes of this Part of these Regulations, sections 79(4) to (8), 80(1), 81, 82 and 110, of the Act shall have effect, as if these Regulations were made under section 74A(4) of the Act.

(2) For the purposes of paragraph (1)—

- (a) in relation to Northern Ireland—

- (i) section 79(4) to (6) of the Act shall have effect as if, for the references therein to the Government Chemist, there were substituted references to the Chief Agricultural Analyst, and
- (ii) section 79(5) of the Act shall have effect as if the expression “(3)(b)” were omitted,
- (b) section 82(1) of the Act shall have effect as if, for the words “any of the following provisions of this Act, namely, sections 68(1A), 4(b) and (c), 69(4)(c), 70(2), 71(2)(b), 73, 73A and 74A” there were substituted the words “the Feeding Stuffs (Establishments and Intermediaries) Regulations 1998”, and
- (c) section 110(1) of the Act shall have effect as if, for the words “this Act or any order or scheme made thereunder” there were substituted the words “the Feeding Stuffs (Establishments and Intermediaries) Regulations 1998”.

Service of certificates, notices and parts of samples

97. Any certificate, notice or part of a sample, required to be served on a person under any provision of these Regulations, may be served—

- (a) by delivering it to him;
- (b) by leaving it at the usual or last known place of abode or business of that person, or, in a case where an address for service has been given by that person, at that address;
- (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last-known place of abode or business or, in a case where an address for service has been given by that person, at that address; or
- (d) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of that body corporate at that office.