
STATUTORY INSTRUMENTS

2004 No. 3254

AGRICULTURE

**The Feeding Stuffs (Safety Requirements for Feed
for Food–Producing Animals) Regulations 2004**

Made - - - - *9th December 2004*
Laid before Parliament *10th December 2004*
Coming into force - - *1st January 2005*

The Secretary of State, being a Minister designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to measures relating to feed produced for or fed to food-producing animals, in exercise of the powers conferred by the said section 2(2), after consultation as required by Article 9 of Regulation (EC) No.178/2002 of the European Parliament and of the Council(3) 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, makes the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the Feeding Stuffs (Safety Requirements for Feed for Food–Producing Animals) Regulations 2004; they extend to Great Britain and come into force on 1st January 2005.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Agriculture Act 1970(4);

“enforcement authority” means the body having the duty to enforce under Part IV of the Act pursuant to section 67(1), (1A) or (2) as the case may be;

“inspector” means a person appointed by an enforcement authority under section 67(3) of the Act;

(1) S.I.2003/2901. These Regulations extend to Scotland pursuant to section 57(1) of the Scotland Act 1998 (1998 c. 46), and apply in relation to Wales pursuant to paragraph 5 in Part II of Schedule 3 to the Government of Wales Act 1998 (1998 c. 38).
(2) 1972 c. 68.
(3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).
(4) 1970 c. 40.

“Regulation 178/2002” means 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.

(2) Subject to paragraph (3), other expressions used in these Regulations and in Regulation 178/2002 have the same meaning in these Regulations as in Regulation 178/2002 and in these Regulations any reference to a numbered Article is a reference to the Article so numbered in Regulation 178/2002.

(3) “Feed” or “feedingstuff” does not include any of the following feed additives —

- (a) coccidiostats;
- (b) histomonostats; and
- (c) all other zootechnical additives except —
 - (i) digestibility enhancers;
 - (ii) gut flora stabilisers; and
 - (iii) substances incorporated with the intention of favourably affecting the environment,

or any premixture containing such additives.

Offences, penalties and enforcement

3.—(1) Any person who contravenes or fails to comply with any of the specified provisions of Regulation 178/2002 set out in paragraph (2) shall be guilty of an offence and liable —

- (a) in the case of paragraph (2)(a) —
 - (i) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum, or both; or
 - (ii) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine, or both;
- (b) in the case of paragraph (2)(b), (c) and (d) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.

(2) The specified provisions referred to in paragraph (1) are —

- (a) Article 15, paragraph 1 (prohibition on the placing on the market or feeding to any food-producing animal of unsafe feed);
- (b) Article 16 (prohibition on misleading labelling, advertising or presentation of feed);
- (c) Article 18, paragraphs 2 and 3 (requirements of traceability) in so far as it relates to feed business operators;
- (d) Article 20 (responsibilities of feed business operators).

(3) Each enforcement authority shall, within its area, enforce and execute the provisions of these Regulations and the provisions of Regulation 178/2002 specified in paragraph (2).

(4) The competent authority for the purposes of Articles 15 and 18 shall be the enforcement authority and for the purposes of Article 20 shall be the enforcement authority and the Food Standards Agency.

Application of various provisions of the Act

4.—(1) Subject to paragraph (3), the provisions of the Act specified in paragraph (2) shall apply for the purposes of these Regulations and Articles 15, 16, 18 and 20 of Regulation 178/2002 as if —

- (a) any reference in them to feeding stuff were a reference to feed;

- (b) any reference in them to the Act or any Part of it were a reference to these Regulations and to Articles 15, 16, 18 and 20 of Regulation 178/2002;
 - (c) any reference to samples taken in a prescribed manner were a reference to samples taken in a manner prescribed in Part II of Schedule 1 of the Feeding Stuffs (Sampling and Analysis) Regulations 1999⁽⁵⁾.
- (2) The specified provisions referred to in paragraph (1) are —
- (a) section 67(4) (area of inspector's authority) and (8) (Minister's power to appoint inspectors);
 - (b) section 76 (inspector's power to enter premises and take samples), with the modification that paragraph (b) of subsection (2) shall be construed as if it gave the inspector power to take copies of any documentation relating to the feed;
 - (c) section 77 (division of samples and analysis by agricultural analyst);
 - (d) section 78(2), (3), (4), (5), (6), (7), (8), (9) and (10) (further analysis by the Government Chemist);
 - (e) section 79(3), (4), (5), (6), (7), (8), (9) and (10) (supplementary provisions relating to samples and analysis);
 - (f) section 80 (institution of prosecutions);
 - (g) section 81 (offences due to fault of other person);
 - (h) section 82 (defence of mistake, accident, etc.);
 - (i) section 83 (exercise of powers by inspectors);
 - (j) section 110 (offences by bodies corporate).
- (3) the provisions of paragraph (1)(b) shall not apply in the case of the provisions specified in paragraph (2)(c).

Application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations

5.—(1) The following provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999⁽⁶⁾ shall apply for the purposes of these Regulations as they apply in relation to sampling and analysis under those Regulations —

- (a) regulation 2 (prescribed amount for the purposes of a sampled portion);
- (b) regulation 3 (manner of taking and sealing samples);
- (c) regulation 4 (method of sending samples);
- (d) regulation 5 (qualifications of agricultural analyst);
- (e) regulation 6 (methods of analysis);
- (f) regulation 7 (certificate to be used for results of analysis);
- (g) regulation 8 (time limit for analysis of oil content of feed);
- (h) Schedule 1 (detailed rules for sampling);
- (i) Schedule 2 (methods of analysis);
- (j) Schedule 3 (standard form of certificate to be used for results of analysis).

(5) S.I. 1999/1663, amended by S.I. 1999/1871, and in relation to England by S.I. 2000/2481, S.I. 2001/541, S.I. 2002/892, S.I. 2003/1296, S.I. 2003/1503, S.I. 2003/2912, S.I. 2004/1301, S.I. 2004/2146 and S.I. 2004/2688, in relation to Scotland by S.S.I.2000/453, S.S.I.2001/104, S.S.I. 2002/285 and S.S.I. 2003/277, and in relation to Wales by S.I. 2001/343, S.I.2001/2253, S.I. 2002/1797, S.I. 2003/1677, S.I.2003/1850, S.I. 2003/3119.

(6) S.I. 1999/1663; relevant amendments are, in relation to England S.I. 2002/892, S.I. 2003/1296 and S.I. 2004/2146, in relation to Scotland S.S.I. 2002/285 and S.S.I.2003/277 and in relation to Wales S.I. 2002/1797, S.I. 2003/1677 and S.I. 2004/2734.

Inspection, seizure and detention of suspected animal feed

6.—(1) An inspector may at all reasonable times inspect any material which —

- (a) has been placed on the market for use as feed;
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing on the market or of preparation for placing on the market for use as feed; or
- (c) is in the possession of, or has been deposited with or consigned to, any person for the purpose of feeding to any food-producing animal,

and paragraphs (2) to (8) shall apply where, on such an inspection, or upon analysis of samples taken, it appears to him that the material fails to comply with the feed safety requirements set out in Article 15.

(2) The inspector 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 justice of the peace,

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where the inspector exercises the powers conferred by paragraph 2(a), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the material complies with the feed safety requirements set out in Article 15 and —

- (a) if he is so satisfied, shall forthwith withdraw the notice;
- (b) if he is not so satisfied shall proceed to have the matter dealt with by a justice of the peace under paragraph (5).

(4) Where the inspector exercises the powers conferred by paragraph 2(b) or takes action under paragraph 3(b), he shall inform the person in charge of the material of his intention to have it dealt with by a justice of the peace and —

- (a) any person who might be liable under the provisions regulation 3 and of Article 15.1 to a prosecution in respect of the material shall, if he attends before the justice of the peace by whom the material falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace 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) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any material falling to be dealt with by him under this regulation fails to comply with the feed safety requirements set out in Article 15 then he shall 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 for food-producing animals; 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 justice of the peace by whom any material falls to be dealt with under this regulation refuses to condemn it, the enforcement authority shall

compensate the owner of the material for any depreciation in its value resulting from the action taken by the inspector.

(7) Any disputed question as to the right or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

(8) In the application of this regulation to Scotland —

- (a) any reference to a justice of the peace includes a reference to the sheriff and to a magistrate;
- (b) paragraph 4(b) shall not apply;
- (c) any reference in paragraph (7) to determination by arbitration shall be construed as a reference to determination by a single arbiter appointed, failing agreement between the parties, by the sheriff.

7.—(1) Any notice to be given under regulation 6 —

- (a) must be signed by an inspector acting on behalf of the enforcement authority;
- (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 inspector, shall be deemed, unless the contrary is proven, to have been duly issued by such an inspector;
- (c) subject to paragraph (2), shall be given to the person in charge of the material by either —
 - (i) delivering it to that person;
 - (ii) by leaving it, or sending it in a prepaid letter addressed to him at his office;
 - (iii) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office;
 - (iv) in the case of any other person by leaving it or sending it in a prepaid letter addressed to him at his usual or last known residence.

(2) Where it is not practicable after reasonable enquiry to ascertain the name and address of the person on whom the notice should be served, or where the premises in which feed are kept are unoccupied, the notice may be addressed to the “owner” or “occupier” of the premises in which the feed is situated, and delivered to some person on those premises, or if there is no person on the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

Time Limit for prosecutions

8. No prosecution for an offence under these Regulations shall 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.

Amendments to the Act

9. The Act shall be amended in accordance with regulations 10 to 12.

10. In subsection (1) of section 66 (interpretation of Part IV), after the definition of “prescribed metric substitution”, there shall be inserted the following definition —

““Regulation (EC) No. 178/2002” means 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.”.

11. In section 73 (deleterious ingredients in feeding stuff) and also in section 73A (unwholesome or dangerous material in feeding stuff) there shall be added in each case after subsection (4) the following subsection —

“(5) Nothing in this section applies to any person to whom Article 15.1 of Regulation (EC) No. 178/2002 applies.”.

12. In section 84 (regulations) there shall be added after subsection (2) the following subsection —

“(3) Subsection (1) shall not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.”.

Amendment of the Food Standards Act 1999

13. In the Food Standards Act 1999(7), in section 30 (animal feedingstuffs) there shall be added, after subsection (8), the following subsection —

“(9) Subsection (6)(a) shall not apply in any case in which consultation is required by Article 9 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.”.

Signed by authority of the Secretary of State for Health

9th December 2004

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations are occasioned by Regulation (EC) No. 178/2002 of the Council and European Parliament (OJ No. L31, 1.2.2002, p.1) 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 (“Regulation 178/2002”). The term “food law” includes law relating to feed for food-producing animals.

2. The Regulations make it an offence, with regard to animal feed other than certain zootechnical additives, to contravene or fail to comply with the provisions of Articles 15, 16, 18 and 20 of Regulation 178/2002. (Regulation 178/2002 is also applicable to those zootechnical additives, but in respect of those substances will be given effect by Regulations relating to veterinary medicines). Article 15 contains a prohibition on the placing on the market, or the feeding to food-producing animals, of unsafe feed. Article 16 prohibits the advertising, labelling or presentation of feed in such a way as to mislead. Article 18 requires feed business operators to have traceability systems in place in relation to input products and to products supplied by that business. Article 20 lays down the responsibilities and obligations of feed business operators in connection with product withdrawal, passing on of relevant information and collaboration with the authorities, with regard to feed that does not, or may not, satisfy feed safety requirements.

3. The Regulations make amendments to the provisions of sections 73 and 73A of the Agriculture Act 1970 by disapplying them in so far as they may duplicate the provisions of Article 15 of Regulation 178/2002.

4. Pursuant to Article 4(2) and (3) of Regulation 178/2002, the Regulations also disapply the provisions of section 84(1) of the Agriculture Act 1970 and section 30(6)(a) of the Food Standards Act 1999 in so far as they may duplicate the provisions of Article 9 of Regulation 178/2002. Article 9 contains a requirement for public consultation during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.

5. A regulatory impact assessment of the effect that this instrument will have on the costs of business has not been prepared because no significant compliance costs were identified.