
WELSH STATUTORY INSTRUMENTS

2005 No. 3368

The Feed (Hygiene and Enforcement) (Wales) Regulations 2005

PART 4

Administration and Enforcement Generally

Enforcement

16. It is the duty of each feed authority within its area to execute and enforce the provisions of these Regulations and of Regulation 178/2002 and Regulation 183/2005.

Feed business improvement notices

17.—(1) If an authorised officer has reasonable grounds for believing that a feed business operator is failing to comply with specified feed law, that 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) Any person who fails to comply with a feed business improvement notice is guilty of an offence.

(3) A feed business improvement notice must state the right to appeal under regulation 18 and the appropriate time limit for bringing any such appeal.

Right of appeal against feed business improvement notices

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

(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint for an order, and the Magistrates' Courts Act 1980(1) will apply to the proceedings.

(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 17(1)(d),

and the making of a complaint for an order is deemed for the purposes of this paragraph to be the bringing of the appeal.

Appeals to Crown Court

19. A person who is aggrieved by—

- (a) the decision of a magistrates' court to dismiss an appeal to it under regulation 13(1) or 18(1); or
- (b) any decision of such a court to make a feed business prohibition order or a feed business emergency prohibition order,

may appeal to the Crown Court.

Actions resulting from appeals

20.—(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 17(1)(d) would otherwise include any day on which an appeal against that notice is pending, that day will be excluded from that period.

(3) Any appeal must 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

21.—(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; and
- (c) the state or condition of any premises or equipment used for the purposes of the business;

and for the purposes of this paragraph “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 sub-paragraph (a) of paragraph (2), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within sub-paragraph (b) of that paragraph, 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 sub-paragraph (c) of that paragraph, 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”), the enforcement authority 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 they consider appropriate,

and any person who knowingly contravenes such an order is guilty of an offence.

(6) A feed business prohibition order will cease 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) The enforcement authority must issue a certificate under sub-paragraph (a) of paragraph (6) within three days of its being satisfied as mentioned in that sub-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 must give a direction under sub-paragraph (b) of paragraph (6) 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 may 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 magistrates' court makes an order under regulation 22(2) with respect to any feed business, paragraph (1) will 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 35(1), paragraph (4) will 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 must be construed accordingly.

Feed business emergency prohibition notices and orders

22.—(1) If an authorised officer of an enforcement authority 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 magistrates' court 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 his or her intention to apply for the order.

(4) Paragraphs (2) and (3) of regulation 21 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 injury.

(5) As soon as practicable after the service of a feed business emergency prohibition notice, an authorised officer of an enforcement authority 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 will be guilty of an offence.

(6) As soon as practicable after the making of a feed business emergency prohibition order, an authorised officer of an enforcement authority 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 is guilty of an offence.

(7) A feed business emergency prohibition notice will cease 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 will cease to have effect 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.

(9) The enforcement authority 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, the enforcement authority must compensate the operator in respect of any loss suffered by reason of the operator 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 determinable by arbitration.

Penalties for offences in relation to improvement notices, prohibition orders etc

- 23.** Anyone guilty of an offence under regulation 17(2), 21(5) or 22(5) or (6) is liable—
- (a) on summary conviction to a term of imprisonment not exceeding three months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment to a term of imprisonment not exceeding two years or a fine or both.

Powers of entry for authorised officers

24.—(1) For the purposes of executing and enforcing specified feed law an authorised officer may at all reasonable times, and on producing, if requested to do so, some duly authenticated document showing his or her authority, enter—

- (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 (not being premises used only as a dwelling) on which the officer has reasonable cause to believe that there is any feed which the occupier of the premises has in his or her possession or under his or her control.

(2) 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 (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 or her authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation will continue in force for a period of one month.

(4) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may take with him or her such other persons and such equipment as may appear to the officer to be necessary, and on leaving any unoccupied premises which he or she has entered by virtue of such a warrant, must leave them as effectively secured against unauthorised entry as that in which they were found.

(5) 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 the officer to be feed;
- (b) any article appearing to the officer 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 the officer 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.

(6) Subject to paragraph (8), 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 the officer 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.

(7) Without prejudice to his or her 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.

(8) Where, for the purpose of taking a sample pursuant to paragraph (6) or (7), 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 authorised officer to purchase the container or containers on behalf of the authority for whom the officer acts.

(9) 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 which is in his or her possession or under his or her 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.

(10) An authorised officer exercising the power conferred by paragraph (9) 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 he or she 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.

(11) 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 feeding stuff)—

- (a) a requirement is made under paragraph (9)(a) in relation to any feeding stuff 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 will 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.

(12) 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.

(13) In this regulation—

“compound feeding stuff” (“*bwyd anifeiliaid cyfansawdd*”) has the meaning given in regulation 2(1) of the Feeding Stuffs (Wales) Regulations 2005;

“feeding stuff which is intended for a particular nutritional purpose” (“*bwyd anifeiliaid a fwriedir at ddiben maethol penodol*”) is construed in accordance with the definitions of “feeding stuff intended for a particular nutritional purpose” (“*bwyd anifeiliaid a fwriedir at ddiben maethol penodol*”) and “particular nutritional purpose” (“*diben maethol penodol*”) in regulation 2(1) of the Feeding Stuffs (Wales) Regulations 2005;

(14) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(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.

Inspection, seizure and detention of suspect feed

25.—(1) Where an authorised officer has inspected or sampled any material under regulation 24, paragraphs (2) to (7) will 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 justice of the peace,

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

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

- (a) if he or she is so satisfied, forthwith withdraw the notice;
- (b) if he or she is not so satisfied, proceed to have the matter dealt with by a justice of the peace 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 officer’s intention to have it dealt with by a justice of the peace and—

- (a) any person who might be liable under the provisions of specified feed law to a prosecution in respect of the material will, if that person 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 or she considers appropriate in the circumstances, that any material falling to be dealt with by him or her under this regulation fails to comply with the requirements of specified feed law then he or she 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 justice of the peace by whom any material falls to be dealt with under this regulation refuses to condemn it, the enforcement authority 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 determinable by arbitration.

(8) Anyone found guilty of an offence under paragraph (2) is liable—

- (a) on summary conviction to a term of imprisonment not exceeding three months or a fine not exceeding the statutory maximum or both; or
- (b) on conviction on indictment to a term of imprisonment not exceeding two years or a fine or both.

Service of Notices

26.—(1) Any notice to be given under regulation 9, 10, 11, 17, 22 or 25—

- (a) must be signed by an authorised officer 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 authorised officer, will be deemed, unless the contrary is proven, to have been duly issued by such an authorised officer;
- (c) subject to paragraph (2), must be given to the feed business operator or to the person mentioned in regulation 25(2)(a) by—
 - (i) delivering it to that person; or
 - (ii) by leaving it, or sending it in a prepaid letter addressed to that person at his or her office; or
 - (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 the secretary or clerk, as the case may be, at that office; or
 - (iv) in the case of any other person by leaving it or sending it in a prepaid letter addressed to that person at his or her 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 business is carried on are unoccupied, the notice may be addressed to the “owner” or “occupier” of the premises in which the feed business is carried on, 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.

Offences relating to the exercise of powers by authorised officers

27.—(1) Any person who wilfully obstructs an authorised officer in the exercise of his or her powers under these Regulations or fails to comply with any requirement lawfully made by the officer in the exercise of such powers is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to a term of imprisonment not exceeding three months or to both.

(2) Any person not being an authorised officer who purports to act as such under these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or to a term of imprisonment not exceeding three months or to both.

(3) Subject to paragraph (4), if any person discloses to any other person—

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

that person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale unless the disclosure was made in and for the purpose of the performance by that person or any other person of functions under these Regulations.

(4) Paragraph (3) does not apply to prevent an authorised officer who has taken a sample under regulation 24 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;
- (b) to that manufacturer or last seller or to any person who had that material on his or her 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

28.—(1) Subject to paragraph (2) any sums due to the enforcement authority 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 enforcement 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.

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

29.—(1) The following provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 apply, subject to the modifications specified in paragraph (2), 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 analysts);
- (e) regulation 6 (application of methods of analysis);
- (f) regulation 7 (form of certificate of analysis);
- (g) regulation 8 (time limit for analysis of oil content);
- (h) Schedule 1 (detailed rules for sampling);
- (i) Schedule 2 (methods of analysis);
- (j) Schedule 3 (form of certificate of analysis).

(2) The Feeding Stuffs (Sampling and Analysis) Regulations 1999 as they apply in relation to Wales are read as if in those Regulations—

- (a) any reference to “feeding stuffs” were a reference to “feed”;
- (b) any reference to “inspector” were a reference to “authorised officer”;

- (c) for the expression “analysed pursuant to the Act” there were substituted “analysed for the purposes of carrying out official controls and the enforcement of specified feed law as that term is defined in the Feed (Hygiene and Enforcement) (Wales) Regulations 2005”;
- (d) in regulation 4, for the expression “in pursuance of subsection (1)(b) or (2) of section 77 of the Act” there were substituted “under regulation 30(1)(b) and (c) of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005”;
- (e) in regulation 7, for the expression “pursuant to section 77(4) of the Act” there were substituted “under regulation 30(4) of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005”;
- (f) in Schedule 1, in paragraph 5(1) of Part II for the expression “in accordance with section 76(7) of the Act as that section is modified by regulation 10 of the Feeding Stuffs (Enforcement) Regulations 1999” there were substituted “under regulation 24(6) of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005”;
- (g) in Schedule 3—
 - (i) in Part I after the expression “Part IV of the Agriculture Act 1970” there were inserted “or of the Feed (Hygiene and Enforcement) (Wales) Regulations 2005”;
 - (ii) in Part II in note (1) after the expression “the Agriculture Act 1970” there were added “or the Feed (Hygiene and Enforcement) (Wales) Regulations 2005”.

Procedure relating to samples for analysis

30.—(1) Where in accordance with regulation 24(6) an authorised officer obtains a sample and decides to have it analysed for the purpose of ascertaining whether there is or has been any contravention of specified feed law, the officer must divide the sample into three parts of as near as may be equal size and—

- (a) cause each part to be marked sealed and fastened in the prescribed manner;
- (b) send one part for analysis—
 - (i) to the agricultural analyst for the area of the enforcement authority from which the authorised officer derives his or her authority;
 - (ii) where the purpose of the analysis is to determine the levels of dioxins or dioxin-like PCBs in the sample, to a point 4 compliant laboratory;
- (c) send another part to the person who owns the material sampled or to that person’s agent;
- (d) retain and preserve the remaining part as an officially sealed reference sample.

(2) If the person who manufactured any material sampled under these Regulations is not a person to whom part of the sample should be sent under paragraph (1), that paragraph will have effect as if for the reference to three parts there were substituted a reference to four parts, and the authorised officer must within 14 days of the date of sampling send the fourth part to the manufacturer, unless the officer does not know and is unable to ascertain after making reasonable enquiries the identity of the manufacturer or the manufacturer’s address in the United Kingdom.

(3) The part of the sample sent to the agricultural analyst or, as the case may be, to the point 4 compliant laboratory must be accompanied by a statement signed by the authorised officer confirming that the sample was taken in the manner prescribed by Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999.

(4) The agricultural analyst or, as the case may be, the point 4 compliant laboratory must analyse the part of the sample sent to him or her under paragraph (1), and send a certificate of analysis to the authorised officer, who must send a copy to—

- (a) the owner of the material sampled or the owner’s agent, and

(b) if a part of the sample was sent under paragraph (2), to the person to whom that part was sent.

(5) If the agricultural analyst to whom the sample was sent under paragraph (1)(b)(i) determines that an effective analysis of the sample cannot be performed by the analyst or under his or her direction the analyst must send it to the agricultural analyst for another area, together with any documents received by him or her with the sample, and paragraph (4) will then apply as if the sample had originally been sent to that other analyst.

Secondary sampling by the Government Chemist

31.—(1) Where a part of a sample sent under regulation 30(1)(b) has been analysed and—

(a) proceedings are intended to be or have been commenced against a person for an offence under specified feed law; and

(b) the prosecution intends to adduce evidence of the result of that part of the sample, paragraphs (2) to (6) will apply.

(2) The authorised officer—

(a) may of his or her own volition;

(b) must if requested by the prosecutor (if a person other than the authorised officer); or

(c) must (subject to paragraph (5)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) the Government Chemist must analyse in the prescribed manner the part of the sample sent to him or her under paragraph (2) and send to the authorised officer a certificate of the analysis which must be—

(a) completed in the form set out in Part I of Schedule 3 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 and in accordance with the notes set out in Part II of Schedule 3 to those Regulations; and

(b) signed by the Government Chemist or by a person authorised by the Government Chemist to sign.

(4) The authorised officer must immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate of analysis

(5) Where a request is made under paragraph (2)(c), the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice in respect of the functions mentioned in paragraph (3), and if the specified fee does not exceed either—

(a) the cost of performing those functions; or

(b) the appropriate fee for the performance of any similar function under section 78 of the Act, the authorised officer may in the absence of agreement by the defendant to pay the fee refuse to comply with the request made under paragraph (2)(c).

(6) In this regulation—

(a) “defendant” (“*diffynnydd*”) includes a prospective defendant; and

(b) “the appropriate fee” (“*y ffi biodol*”) means such fee as may be fixed in accordance with the provisions of section 78(10) of the Act.

Additional provisions relating to sampling and analysis

32.—(1) Any person who—

- (a) tampers with any material so as to procure that any sample of it taken or submitted for analysis under these Regulations does not correctly represent the material; or
- (b) tampers or interferes with any sample taken or submitted for analysis under these Regulations,

is guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale or imprisonment for a term not exceeding three months or both.

(2) Any analysis required to be made under regulation 30(4) or 31(3) may be performed by any person acting under the direction of the agricultural analyst, the analyst at the point 4 compliant laboratory or the Government Chemist as the case may be.

(3) A certificate of analysis by an agricultural analyst, an analyst at a point 4 compliant laboratory or the Government Chemist will in any legal proceedings be received as evidence of the facts stated in the certificate if the party against whom it is to be given in evidence—

- (a) has been served with a copy of it not less than 21 days before the hearing; and
- (b) has not, before the seventh day preceding the hearing, served on the other party a notice requiring the attendance of the person who made the analysis.

(4) Any document purporting to be a certificate of analysis for the purposes of paragraph (3) will be deemed to be such a certificate unless the contrary is proved.

Assembly's default powers and area of authorised officer's powers

33.—(1) If the Assembly considers that these Regulations, or Regulation 178/2002 or Regulation 183/2005 have been insufficiently enforced in the area of any enforcement authority the Assembly may appoint one or more persons to exercise in that area the powers exercisable by authorised officers appointed by the authority, and any expenses certified by the Assembly as having been incurred by the Assembly under this regulation in respect of that area must be repaid to the Assembly on demand by the authority in question.

(2) An authorised officer may not exercise his or her powers under these Regulations in respect of any premises outside the area for which the officer is appointed except with the consent of the enforcement authority for the area in which those premises are situated.

Protection of authorised officers acting in good faith

34.—(1) An authorised officer is not personally liable in respect of any act done by him or her—

- (a) in the execution or purported execution of these Regulations; and
- (b) within the scope of his or her employment,

if the officer did that act in the honest belief that his or her duty under these Regulations required or entitled the officer to do it.

(2) Nothing in paragraph (1) may be construed as relieving any enforcement authority of any liability in respect of the acts of their officers.

(3) Where an action has been brought against an authorised officer in respect of an act done by him or her—

- (a) in the execution or purported execution of these Regulations; but
- (b) outside the scope of the officer's employment,

the authority may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if it is satisfied that the officer honestly believed that the act complained of was within the scope of his or her employment.

(4) An agricultural analyst is to be treated for the purposes of this regulation as being an authorised officer, whether or not his or her appointment is a whole-time one.

Defences of fault of another person, mistake etc and export

35.—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of 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 these Regulations it will, subject to paragraph (3), be a defence to prove—

- (a) that 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 accused's control; and
- (b) that 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 the accused's 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 will 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 his or her first such appearance,

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

(4) In any proceedings in which it is alleged that a material has contravened or 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 of Regulation 178/2002.

Offences by corporate bodies or Scottish partnerships

36.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he or she as well as the body corporate will be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1) “director” in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

(3) Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership will be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Institution of and time limit for prosecutions

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

(2) No prosecution for an offence under these Regulations 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.

Revocations

38. The Regulations or parts thereof listed in Schedule 2 to these Regulations are revoked.