
WELSH STATUTORY INSTRUMENTS

2016 No. 387

**The Animal Feed (Hygiene, Sampling etc. and
Enforcement) (Wales) Regulations 2016**

PART 3

Sampling and analysis

Appointment and qualifications of agricultural analysts

14.—(1) Subject to paragraph (2), an enforcement authority must appoint one or more agricultural analysts in connection with its duty under regulation 21 (duty to enforce).

(2) An agricultural analyst already appointed by an enforcement authority under section 67(3) (b) of the Act is deemed to be appointed for the purposes of paragraph (1).

(3) An agricultural analyst appointed under paragraph (1) must have the qualifications and attested experience specified in paragraph (4).

(4) The prescribed qualifications for an analyst for the purposes of section 67(5) of the Act in so far as it relates to feeding stuffs and the required qualifications for a person analysing feed for the purposes of these Regulations are that—

(a) the analyst must—

(i) be a Chartered Chemist or possess a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry, and

(ii) be a Fellow or Member of the Royal Society of Chemistry; and

(b) the analyst's practical experience of the examination of feed must be attested by another analyst lawfully appointed under section 67(3) of the Act or these Regulations.

Procedure relating to samples for analysis

15.—(1) Where 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 to the agricultural analyst for the area of the enforcement authority from which the authorised officer derives his or her authority;

(c) send another part to the person on whose premises the material was sampled or to that person's agent; and

(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 has effect as if for the reference to three parts there were substituted a reference to four parts, and the authorised officer must within fourteen 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 or the address in the United Kingdom of the manufacturer.

(3) The part of the sample sent to the agricultural analyst must be accompanied by a statement signed by the authorised officer confirming that the sample was taken in the prescribed manner.

(4) The agricultural analyst must analyse the part of the sample sent under paragraph (1)(b), and send a certificate of analysis to the authorised officer, who must send a copy to—

- (a) the person on whose premises the material was sampled or that person'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) Any analysis required to be made under paragraph (4) may be performed by any person acting under the direction of the agricultural analyst.

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

Secondary analysis by the Government Chemist

16.—(1) Where a part of a sample sent under regulation 15(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 the analysis of that part of the sample,

paragraphs (2) to (6) 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 (6)) if requested by the defendant,

send the retained part of the sample to be analysed by the Government Chemist.

(3) The Government Chemist must analyse in the prescribed manner the part of the sample sent under paragraph (2) and send to the authorised officer a certificate of the analysis which must be signed by the Government Chemist or by a person authorised by the Government Chemist to sign.

(4) An analysis required to be made under paragraph (3) may be performed by a person acting under the direction of the Government Chemist.

(5) 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.

(6) 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).

(7) In this regulation—

“defendant” (“*diffynnydd*”) includes a prospective defendant; and
“the appropriate fee” (“*y ffi briodol*”) means such fee as may be fixed in accordance with the provisions of section 78(10) of the Act.

Methods of sending a final sample

17. A final sample required to be sent to a person pursuant to—
- (a) paragraph 8 of Annex I to Regulation 152/2009;
 - (b) section 77(1) or (2) or section 78(1)(a), (2) or (4) of the Act; or
 - (c) regulation 15(1), (2) or (6) or 16(2),

may be sent by any appropriate method that maintains the integrity of the sample prior to analysis, or delivered by hand.

Form and status of certificate of analysis

- 18.—(1) The certificate of analysis of any feed to be sent pursuant to—
- (a) section 77(4) of the Act; or
 - (b) regulation 15(4) or 16(3),

must be in the form set out in Schedule 4 and must be completed in accordance with the notes to that Schedule and with paragraphs 4 and 5 of Part C of Annex II to Regulation 152/2009.

(2) A certificate of analysis by an agricultural analyst or the Government Chemist is to be received, in any proceedings, 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 twenty-one 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.

(3) Any document purporting to be a certificate of analysis for the purposes of paragraph (2) is to be deemed to be such a certificate unless the contrary is proved.

Analysis other than in the course of official controls

- 19.—(1) Where a sample of feed is to be analysed pursuant to—
- (a) section 75(1) of the Act (sample analysed at the request of the purchaser); or
 - (b) section 78(1) of the Act (further analysis by Government Chemist) in so far as that subsection does not relate to official controls,

the method of analysis must be the appropriate one, if any, set out in Regulation 152/2009.

(2) In cases where there is no appropriate method of analysis in Regulation 152/2009, the analysis must be carried out in the manner referred to in Article 11(1)(a) or, as appropriate, (b) of Regulation (EC) No 882/2004 as read with Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC(1).

(1) OJ No L 194, 25.7.2009, p 11. This instrument was last amended by Commission Implementing Regulation (EU) No 2016/24 (OJ No L 8, 13.1.2016, p 1).

Offence of tampering with a sample

20. A 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,

commits an offence.