



Agriculture Act 1970

1970 CHAPTER 40

PART IV

FERTILISERS AND FEEDING STUFFS

Sampling and analysis

75 Purchaser's right to have sample taken and analysed.

- (1) Subject to the provisions of this section, the purchaser of any material which was sold to him for use as a fertiliser or feeding stuff and in respect of which a warranty was given, or is treated by virtue of this Part of this Act as having been given, by the seller shall be entitled to have a sample of the material taken in the prescribed manner by an inspector and analysed by the agricultural analyst for the inspector's area.
- (2) A purchaser of any material who requests a sample of it to be taken under this section shall, if so required by the inspector—
 - (a) tell him the name and address of the seller; and
 - (b) furnish him with, or with a copy of, any statutory statement or document containing or giving rise to the warranty relating to the material and, in the case of a warranty which by virtue of section 70(1) or 71(4) of this Act is implied by reason of the material being marked as mentioned in paragraph (b) of the said section 70(1) or subsection (1)(a)(ii) of the said section 71, of the matters stated by the mark in question.
- (3) No sample of any material shall be taken under this section—
 - (a) where the warranty is contained in or arises from a statutory statement or document, after the expiration of six months from the delivery of the material to the purchaser or the receipt by him of the statutory statement or document, whichever is the later;
 - (b) in any other case, after the expiration of six months from the delivery of the material to the purchaser.

Status: Point in time view as at 24/11/2004.

Changes to legislation: There are currently no known outstanding effects for the Agriculture Act 1970, Cross Heading: Sampling and analysis. (See end of Document for details)

- (4) Any request for a sample to be taken and analysed under this section shall be accompanied by such fee as may be fixed by the enforcement authority whose inspector is to take the sample; and different fees may be fixed for different materials and for different analyses of the same material.

Subordinate Legislation Made

- P1** S. 75 for previous exercises of power see Index to Government Orders
- P2** S. 75(1): 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. 75(1): 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](#)

76 Inspector's power to enter premises and take samples.

- (1) An inspector may at all reasonable times enter—
- (a) any premises on which he has reasonable cause to believe that there is any fertiliser or feeding stuff which is kept there for the purpose of being sold in the course of trade and is ready for sale;
 - (b) any premises (not being premises used only as a dwelling) on which he has reasonable cause to believe that there is any fertiliser or feeding stuff which the occupier of the premises has purchased;
- and the inspector may take a sample in the prescribed manner on those premises of any material on the premises (including any material in a vehicle) which he has reasonable cause to believe to be such a fertiliser or feeding stuff as aforesaid.
- (2) An inspector may require a person who has purchased any fertiliser or feeding stuff—
- (a) to tell him the name and address of the seller; and
 - (b) to produce, and allow him to take copies of—
 - (i) any statutory statement received from the seller;
 - (ii) where the fertiliser or feeding stuff was described or marked as mentioned in section 70(1) or 71(1) of this Act, the document or mark in question;
- and any person who without reasonable excuse fails to comply with such a requirement shall be liable on summary conviction to a fine not exceeding [^{F1}level 3 on the standard scale].
- (3) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary.
- (4) Without prejudice to his powers and duties as to the taking of samples in the prescribed manner, an inspector may for the purposes of this Part of this Act take a sample in a manner other than that prescribed of any material which has been sold for use as a fertiliser or feeding stuff or which he has reasonable cause to believe to be intended for sale as such.
- (5) Where for the purpose of taking a sample of any material an inspector takes some of it from each of one or more parcels of the material which are exposed for sale by retail and none of which weighs more than fourteen pounds or the prescribed metric substitution the owner of the parcel or parcels may require the inspector to purchase the parcel or parcels on behalf of the authority for whom he acts.

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Changes to legislation: There are currently no known outstanding effects for the Agriculture Act 1970, Cross Heading: Sampling and analysis. (See end of Document for details)

Subordinate Legislation Made

- P4** S. 76: for previous exercises of power see Index to Government Orders
- P5** S. 76(1): 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](#)
- P6** S. 76(1): 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 (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#), (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F](#), 289G and (N.I.) [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

Modifications etc. (not altering text)

- C1** S. 76 modified (8.9.1999) by [S.I. 1999/2325](#), [regs. 7\(1\)\(2\), 10](#) (as amended: (E.) (29.10.2000) by [S.I. 2000/2481](#), [reg. 29\(d\)](#); (W.) (1.3.2001) by [S.I. 2001/343](#), [reg. 27\(d\)](#); (E.) (20.3.3001) by [S.I. 2001/541](#), [reg. 7\(b\)](#); (W.) (1.8.2001) by [S.I. 2001/2253](#), [reg. 7\(b\)](#); (E.) (3.11.2001) by [S.I. 2001/3389](#), [reg. 23\(c\)](#); (W.) (3.11.2001) by [S.I. 2001/3461](#), [reg. 17\(c\)](#); (S.) (1.7.2002) by [S.S.I. 2002/285](#), [reg. 13\(c\)](#))
- C2** Pt. IV amendment to earlier affecting provision [SI 1999/2325 reg. 7 \(W.\) \(1.5.2003\)](#) by [The Feeding Stuffs \(Amendment\) \(Wales\) Regulations 2003 \(S.I. 2003/989\)](#), [regs. 1\(1\), 7](#)
- C3** S. 76: amendment to earlier affecting provision [S.I. 1999/2325, reg. 10 \(W.\) \(1.5.2003\)](#) by [The Feeding Stuffs \(Amendment\) \(Wales\) Regulations 2003 \(S.I. 2003/989\)](#), [regs. 1\(1\), 7](#)
- C4** Pt. IV modified by [SI 1999/1663 reg. 6A \(as inserted \(E.\) \(9.6.2003\)](#) 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, 6](#))
- C5** S. 76: amendment to earlier affecting provision [S.I. 1999/2325, reg. 10 \(E.\) \(9.6.2003\)](#) 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, 11](#)
- C6** Pt. IV amendment to earlier affecting provision [SI 1999/2325, regs. 7, 8 \(E.\) \(9.6.2003\)](#) 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, 9, 10](#)
- C7** Pt. IV modified by [S.I. 1999/1663 reg. 6A \(as inserted \(S.\) \(26.6.2003\)](#) by [The Feeding Stuffs \(Miscellaneous Amendments\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/277\)](#), [regs. 1\(1\), 6](#))
- C8** S. 76: amendment to earlier affecting provision [S.I. 1999/2325 reg. 10 \(S.\) \(26.6.2003\)](#) by [The Feeding Stuffs \(Miscellaneous Amendments\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/277\)](#), [regs. 1\(1\), 12](#)
- C9** Pt. IV amendment to earlier affecting provision [S.I. 1999/2325, regs. 7, 8 \(S.\) \(26.6.2003\)](#) by [The Feeding Stuffs \(Miscellaneous Amendments\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/277\)](#), [regs. 1\(1\), 9, 10](#)
- C10** Pt. IV modified by [SI 1999/1663 reg. 6A \(as inserted \(W.\) \(14.7.2003\)](#) 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, 6](#))
- C11** S. 76: amendment to earlier affecting provision [S.I. 1999/2325, reg. 10 \(W.\) \(14.7.2003\)](#) 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, 11](#)
- C12** Pt. IV amendment to earlier affecting provision [S.I. 1999/2325, regs. 7, 8 \(W.\) \(14.7.2003\)](#) 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, 9, 10](#)

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- C13** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (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), **20**
- C14** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (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), **17**
- C15** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (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), **20**
- C16** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (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), **17**
- C17** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (W.) (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), **8**
- C18** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (W.) (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), **11**
- C19** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (E.) (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, **11**
- C20** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (E.) (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, **8**
- C21** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (E.) (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, **11**
- C22** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (E.) (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, **8**
- C23** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (W.) (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, **8**
- C24** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (W.) (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, **11**
- C25** S. 76 applied (with modifications) (E.) (4.10.2004) by Genetically Modified Animal Feed (England) Regulations 2004 (S.I. 2004/2334), regs. 1(b), **6(2)(a)**
- C26** S. 76 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**
- C27** S. 76 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)(b)**
- C28** Pt. IV amendment to earlier affecting provision SI 1999/2325 reg. 7 (W.) (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(2)**
- C29** S. 76: amendment to earlier affecting provision S.I. 1999/2325, reg. 10 (W.) (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(4)**
- C30** S. 76(5) modified: (N.I.) by S.R. 1978/240, **reg. 7(b)** (which S.R. was revoked (N.I.) by S.R. 1992/270, **reg. 24**); (N.I.) by S.R. 1982/338, **reg. 8(c)** (which S.R. was revoked (2.8.1999) (N.I.) by 1999/296, reg. 9); (E.W.S.) by S.I. 1982/1144, **reg. 9(c)** (which S.I. was revoked (E.W.S.) (6.7.1999) by S.I. 1999/1663, **reg. 10**); (N.I.) by S.R. 1990/286, **reg. 12(c)** (which S.R. was revoked (N.I.) (18.5.1992) by S.R. 1992/187, **reg. 9** (with reg. 1(2))); (E.W.S.) by S.I. 1990/887, reg. 12(c) (which

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S.I. was revoked (E.W.S.) (1.11.1991) by 1991/2197, reg. 13 (with reg. 1(2)); (N.I.) (17.2.1992) by S.R. 1991/540, reg. 7; (E.W.S.) (20.5.1991) by S.I. 1991/973, reg. 8(b) (which S.I. was revoked (E.W.S.) (21.6.1996) by S.I. 1996/1342, reg. 9; (E.W.S.) (1.11.1991) by S.I. 1991/2197, reg. 12; (N.I.) (18.5.1992) by S.R. 1992/187, reg. 12(c) (with reg. 1(2)) (which modification was continued (N.I.) (2.8.1999) by S.R. 1999/296, reg. 8(c)); (E.W.S.) (21.6.1996) by S.I. 1996/1342, reg. 8(b) (which modification was continued (E.W.S.) (6.7.1999) by S.I. 1999/1663, reg. 9(c)

77 Division of samples and analysis by agricultural analyst.

- (1) Where a sample has been taken by an inspector in the prescribed manner, then, subject to subsection (2) of this section, he shall divide it into three parts of as near as may be equal size and cause each part to be marked, sealed and fastened up in the prescribed manner; and the inspector—
 - (a) shall send one part to the agricultural analyst for the inspector's area;
 - (b) shall send another part—
 - (i) where the sample was taken pursuant to the request of a purchaser under section 75 of this Act, to the seller or his agent;
 - (ii) in any other case, if the person on whose premises the sample was taken purchased the material in question for use and not for resale, to the seller or his agent and otherwise to the person on whose premises the sample was taken; and
 - (c) subject to section 78 of this Act, shall retain the remaining part for nine months.
- (2) If the person who manufactured any material of which an inspector has taken a sample in the prescribed manner is not a person to whom a part of the sample is required to be sent under subsection (1) of this section, that subsection shall have effect as if for the reference to three parts there were substituted a reference to four parts, and the inspector shall send the fourth part to the manufacturer unless he does not know the manufacturer's name, or any address of the manufacturer in the United Kingdom, and is unable after making reasonable inquiries to ascertain that name, or, as the case may be, any such address before the expiration of fourteen days from the date when the sample was taken.
- (3) There shall be sent with the part of a sample sent to the agricultural analyst—
 - (a) a statement signed by the inspector that the sample was taken in the prescribed manner;
 - (b) a copy of any statutory statement relating to the material sampled, a copy of any matters with which that material had been marked pursuant to this Part of this Act and, where the material sampled was described or marked as mentioned in section 70(1) or 71(1) of this Act, a copy of the document or the matters stated by the mark in question.
- (4) The agricultural analyst shall analyse the part of a sample which is sent to him under subsection (1)(a) of this section in such manner, if any, as may be prescribed and send a certificate of analysis in the prescribed form to the inspector who shall send a copy of it—
 - (a) where the sample was taken pursuant to the request of a purchaser under section 75 of this Act, to the purchaser and to the seller or his agent;
 - (b) in any other case, to the person to whom a part of the sample has been sent under subsection (1)(b)(ii) of this section;

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and, in either case, to any person to whom he has sent a part of the sample under subsection (2) of this section.

- (5) If the agricultural analyst to whom a sample is sent for analysis determines that for any reason 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 together with any documents received by him with the sample; and thereupon the foregoing provisions of this section shall apply as if that other analyst were the agricultural analyst for the inspector's area and the sample had originally been sent to him.

Subordinate Legislation Made

- P7** S. 77: 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](#)
- P8** S. 77: for previous exercises of power see Index to Government Orders
- P9** S. 77: 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](#)

Modifications etc. (not altering text)

- C31** S. 77 applied (with modifications) (E.) (4.10.2004) by [Genetically Modified Animal Feed \(England\) Regulations 2004 \(S.I. 2004/2334\)](#), regs. 1(b), **6(2)(b)**
- C32** S. 77 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**
- C33** S. 77 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)(i)**
- C34** S. 77(1)(b)(2) modified (21.6.1996) by [S.I. 1996/1342](#), **reg. 4**
- C35** S. 77(4) modified (8.9.1999) by [S.I. 1999/2325](#), **regs. 7(1)(2), 11** (as amended: (E.) (20.3.3001) 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)**)
- C36** S. 77(4) modified by [S.I. 1999/2325](#), **reg. 11A** (as inserted: (E.) (20.3.3001) 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**)
- C37** S. 77(4) modified by [SI 1999/2325](#) reg. 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**)
- C38** S. 77(4) modified by [SI 1999/2325](#) reg. 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**)
- C39** S. 77(4) modified by [SI 1999/2325](#) reg. 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**)
- C40** S. 77(4) amendment to earlier affecting provision [SI 1999/2325](#) reg. 11-11B (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**
- C41** S. 77(4) amendment to earlier affecting provision [SI 1999/2325](#) reg. 11-11B (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**
- C42** S. 77(4) amendment to earlier affecting provision [SI 1999/2325](#) reg. 11-11B (W.) (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**
- C43** S. 77(4) amendment to earlier affecting provision [SI 1999/2325](#) reg. 11-11B (E.) (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**

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- C44** S. 77(4) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (E.) (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**
- C45** S. 77(4) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (W.) (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**
- C46** S. 77(4) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (W.) (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)**

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 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

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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—
- (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)

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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 [^{F2}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

- P10** S. 78: for previous exercises of power see Index to Government Orders
- P11** 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](#)
- P12** 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

- F2** Words substituted by virtue of [S.I. 1970/1537](#), [arts. 2\(2\), 7\(4\)](#)

Modifications etc. (not altering text)

- C47** 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\(2\)\(c\)](#)
- C48** 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\(2\)](#))
- C49** 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\(1\)\(a\)\(ii\)](#)
- C50** S. 78(6) modified (8.9.1999) by [S.I. 1999/2325](#), [regs. 7\(1\)\(2\), 11](#) (as amended: (E.) (20.3.3001) 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\(c\)](#))
- C51** 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](#))
- C52** 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](#))
- C53** 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](#))
- C54** 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

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- 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)**
- C55** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (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**
- C56** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (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**
- C57** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (W.) (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**
- C58** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (E.) (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**
- C59** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (E.) (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**
- C60** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (W.) (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**
- C61** S. 78(6) amendment to earlier affecting provision SI 1999/2325 reg. 11-11B (W.) (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)**
- C62** 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)**
- C63** 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)**)

79 Supplementary provisions relating to samples and analysis.

- (1) The regulations with respect to the taking of samples under this Part of this Act may include provision requiring an inspector who proposes to take such a sample, in such circumstances as may be specified in the regulations, to satisfy himself as to such matters affecting the state of the material to be sampled as may be so specified.
- (2) Regulations may make provision with respect to the handling and storage of the parts into which samples are divided and with respect to the period within which analyses are to be carried out.
- (3) Where the method of analysis for determining any fact as to the nature, substance or quality of any material is prescribed, any statement of that fact—
 - (a) in a statutory statement or in, or denoted by, a mark applied to any material in pursuance of this Part of this Act; or
 - (b) in any document or in, or denoted by, any mark, being a document or mark which is not a statutory statement but which gives rise to a warranty by virtue of this Part of this Act,
 shall be taken to be a statement of that fact as determined by analysis in accordance with the method prescribed.
- (4) Any analysis required to be made by an agricultural analyst or the Government Chemist may be made by any person acting under his directions.

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- (5) A certificate of analysis by an analyst appointed under section 67(3)(b) of this Act shall be signed by that analyst or another analyst so appointed for the same area, and a certificate of analysis by the Government Chemist shall be signed by him or a person authorised by him to sign the certificate.
- (6) A certificate of analysis by an agricultural analyst or the Government Chemist shall, in any legal proceedings, be received as evidence of the facts stated therein if the party against whom it is to be given in evidence has been served with a copy of it not less than twenty-one days before the hearing and 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.
- (7) In any legal proceedings in Scotland, a certificate of analysis received in evidence by virtue of subsection (6) of this section, or, where the attendance of the person who made the analysis is required under that subsection, the evidence of that person, shall be sufficient evidence of the facts stated in the certificate.
- (8) Any document purporting to be a certificate of the kind mentioned in the foregoing provisions of this section shall be deemed to be such a certificate unless the contrary is proved.
- (9) Any part of a sample, notice, certificate or other document required to be sent to or served on any person under this section or section 77 or 78 of this Act shall be sent or served in such manner, if any, as may be prescribed.
- (10) Any person who—
- (a) tampers with any material so as to procure that any sample of it taken or submitted for analysis under this Part of this Act does not correctly represent the material; or
 - (b) tampers or interferes with any sample taken or submitted for analysis under this Part of this Act,

shall be liable on summary conviction to a fine not exceeding [^{F3}level 5 on the standard scale] or, on a second or subsequent conviction under this subsection, to a fine not exceeding [^{F3}level 5 on the standard scale] or imprisonment for a term not exceeding three months or both.

Subordinate Legislation Made

P13 S. 79: for previous exercises of power see Index to Government Orders

P14 S. 79(1)(2)(9): 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](#)

P15 S. 79: 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

F3 Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#), (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289E–289G](#) and (N.I.) [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

Modifications etc. (not altering text)

C64 S. 79(4)-(8) applied (with modifications) (2.8.1999) by [S.I. 1999/1872](#), [reg. 112\(1\)\(2\)](#)

C65 S. 79(4)-(6) modified (6.5.1998) (N.I.) by [S.I. 1998/1049](#), [reg. 96\(2\)\(a\)\(i\)](#)

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- C66** S. 79(4)-(6) applied (with modifications) (E.) (4.10.2004) by [Genetically Modified Animal Feed \(England\) Regulations 2004 \(S.I. 2004/2334\)](#), regs. 1(b), **6(2)(d)**
- C67** S. 79(4)-(6) 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**
- C68** S. 79(4)-(8) 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)(iii)**
- C69** S. 79(5) modified (6.5.1998) (N.I.) by [S.I. 1998/1049](#), **reg. 96(2)(a)(ii)**
- C70** S. 79(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)(d)**
- C71** S. 79(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**
- C72** S. 79(10): in relation to liability on first and subsequent convictions, [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **s. 35** applies (E.W.) and [S.I. 1984/703 \(N.I. 3\)](#) art. 9 applies (N.I.)
- C73** S. 79(10): [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **s. 289E** (in relation to liability on first and subsequent convictions), applies (S.)
- C74** S. 79(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)(d)**
- C75** S. 79(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**
- C76** S. 79(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)(iii)**

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