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European Communities (Animal Nutrition Inspections) Regulations, 2000

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European Communities (Animal Nutrition Inspections) Regulations, 2000

I, Joe Walsh, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive 95/53/EC of 25 October 1995¹, Commission Directive 98/68/EC of 10 September 1998² and Council Directive 99/20/EC of 20 March 1999³, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Animal Nutrition Inspections) Regulations, 2000.

Interpretation.

2. (1) In these Regulations –

"authorised officer" means an officer of the Minister or the Minister for Finance appointed in writing under regulation 13(1) by the Minister or the Revenue Commissioners, as the case may be, to be an authorised officer for the purposes of these Regulations;

"Directives" means Council Directive 95/53/EC of 25 October 1995 and Commission Directive 98/68/EC of 10 September 1998;

"functions" includes powers and duties;

"Minister" means the Minister for Agriculture, Food and Rural Development;

- (2) A word or expression used in these Regulations that is also used in the Directives shall, unless the context otherwise requires, have the same meaning in these Regulations as it has in the Directives.

Application of Regulations.

3. (1) These Regulations apply to official inspections in the field of animal nutrition, but without prejudice to any more specific provisions in legislation concerning customs, veterinary checks, animal health and public health.

- (2) These Regulations extend to products intended for export to Member States or other countries as well as to imported products and products produced or intended for consumption or use within the State.

¹ O.J. No 265, 8.11.1995, p. 17

² O.J. No 261, 24.9.1998, p. 32

³ O.J. No 80, 25.3.1999, p. 20

(3) Where in the Directives there is a discretion or choice (including as to what may be appropriate or necessary in particular circumstances) and no indication as to who may exercise the discretion or make the choice, the discretion shall be exercised, or choice may be made, by the Minister.

Manner of inspection.

4. (1) Inspections shall be carried out as provided in Article 4 of Council Directive 95/53/EC of 25 October, 1995, and in accordance with European Community rules in the field of animal nutrition.

(2) An authorised officer shall carry out random physical checks to ensure the conformity of products with European Community legislation in the field of animal nutrition before the products are marketed.

Notice of intention to import product.

5. (1) A person shall not import into the State directly from a country that is not a Member State or from another Member State a product to which these Regulations apply, unless the person has given to the Minister, in a form approved by the Minister, not less than 5 working days notice of the person's intention to import the product.

(2) A person who has given notice under subparagraph (1) shall advise the Minister of any change of circumstances relating to the importation or proposed importation of the product immediately the person becomes aware of it.

Documentary and random identity checks

6. A product imported from a country that is not a Member State shall be subjected by an authorised officer to a documentary check of each batch and to random identity checks in order to verify their nature, origin and geographical destination so as to determine the customs procedure applicable to them.

Directions relating to imported product

7. (1) Where a product from a country that is not a Member State is found on inspection not to comply with the requirements of Community rules, the Minister shall –

- (a) prohibit its entry into or marketing in the State, or
- (b) order its re-dispatch out of the Community Territory,

and immediately inform the Commission and other Member States that it has rejected the product and indicating the infringements found.

(2) In addition to or substitution for ordering a product to be re-dispatched under paragraph (1)(b), the Minister may, under Article 8 of Council Directive 95/53/EC of 25 October, 1995, authorise a product to be treated or dealt with in a

manner referred to in paragraph 2 of that Article subject to such conditions, if any, as laid down by the Minister.

Compliance with directions relating to imported product

8. An importer of a product ordered under regulation 7 to be re-dispatched out of Community territory or authorised under Article 8 of Council Directive 95/53/EC of 25 October, 1995, to be treated or dealt with in a manner referred to in paragraph 2 of that Article shall comply with the order or authorisation (including any conditions under which the operation is to be carried out) and shall be liable for any expenses incurred in so doing.

Commercial documents to refer to checks carried out.

9. (1) Where a product is not marketed in the State and any check under regulation 6 or physical check of the product has been carried out by the competent authority, the competent authority shall provide a person concerned with a document (which shall be, where a standard document is adopted in accordance with paragraph 2 of Article 9 of Council Directive 95/53/EC of 25 October 1995, that standard document) indicating the type of check carried out and its outcome.

(2) A person shall not use a commercial document in connection with a product to which paragraph (1) applies unless the document contains a reference to any document relating to the checks carried out on that product pursuant to Article 9 of Council Directive 95/53/EC of 25 October, 1995, or as referred to in paragraph (1) of this of this regulation.

Checks during transportation of product

10. Where the Minister has information leading the Minister to suspect an infringement of any law in the field of animal nutrition, checks may also be carried out during the transportation of the product.

Compliance with directions relating to trade within the Community

11. (1) In the circumstances referred to in article 13 of Council Directive 95/53/EC of 25 October, 1995, the Minister may formally require a consignor, consignee or other person referred to in that Article to carry out an operation there referred to, and may lay down conditions under which it shall be carried out.

(2) A person formally required under paragraph (1) to carry out an operation shall comply with the requirement (including any conditions under which the operation is to be carried out) and shall be liable for any expenses incurred in so doing.

Confidentiality.

12. A person shall not, without the written consent of the person from whom it was obtained, knowingly communicate any information obtained in the course of an investigation or check for the purposes of these Regulations or the Directives, except

in the course of and as necessary for the purposes of the administration of these Regulations or the Directives.

Appointment of authorised officers.

13. (1) The Minister or the Revenue Commissioners may, in writing, appoint as authorised officers such number of officers of the Minister or the Minister for Finance, as the case may be, as they think necessary for the purposes of these Regulations.

(2) In addition to any other function an authorised officer may perform under these Regulations, an authorised officer shall perform such functions of the Minister under these Regulations or the Directives as are specified by the Minister or Revenue Commissioners, as the case may be, at the time of the authorised officer's appointment.

(3) An authorised officer shall be furnished with a warrant of his or her appointment.

Powers of authorised officers.

14. (1) An authorised officer, on production of his or her warrant of appointment, if so required by a person affected, may, for the purposes of these Regulations –

(a) subject to paragraph (2), at all reasonable times, enter and search any premises or place (including land or a building where agricultural production is carried on) where the authorised officer reasonably suspects any product or thing subject to these Regulations is being manufactured, used, collected, stored, sold, packaged, transported, imported or exported,

(b) there or at any other place, carry out such examinations tests, checks and inspections of the premises or place and any equipment, machinery, plant, product or thing found thereat as the authorised officer reasonably considers necessary or expedient for the purposes of his or her functions under these Regulations,

(c) take, without payment, such samples of any product or substance at the premises or place as the officer may reasonably require for the purposes of those functions and carry out or have carried out on the samples such analysis, examination, checks and inspections as the authorised officer thinks fit to ensure that the requirements imposed by the Directives are met,

(d) require any person at the premises or place, or the owner or person in charge thereof and any person employed in connection therewith, to give the authorised officer such assistance and to produce to him or her such books, documents and other records within the power or procurement of the person as the officer may reasonably require for the purpose of performing such functions,

(e) examine and take copies of, or extracts from, any such records (including, in the case of information in non-legible form, a copy of or extract from such information in permanent legible form),

(f) seize or detain any product or thing to which these Regulations apply which the authorised officer reasonably believes has been manufactured or imported or intended for use on the premises, or to be intended for export or use in contravention of these Regulations, or which has been directed to be treated or dealt with in a specified way but has not been so treated or dealt with.

(2) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant from the District Court under paragraph (3) authorising such entry.

(3) If a judge of the District Court is satisfied by information on oath by an authorised officer that there is reasonable cause for suspecting that –

(a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found in any premises,

(b) there is or was any product or thing the subject of these Regulations in any premises or place, or

(c) a document directly or indirectly connected with any product or thing the subject of these Regulations is in the possession or control of a person in any premises or place,

the judge may issue a search warrant.

(4) A search warrant issued under paragraph (3) shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána or officers of customs and Excise as the named officer thinks necessary, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the premises or place named in the warrant.

(5) Where premises or a place are entered under a search warrant issued under paragraph (3), all or any of the powers set out in this Regulation or referred to in regulation 13 may be exercised by the authorised officer who so entered.

(6) A person who –

(a) obstructs or otherwise interferes with an authorised officer in the performance of the officer's functions under these Regulations,

(b) without lawful excuse, refuses or fails when requested by the authorised officer to assist the authorised officer in the performance of the officer's functions under these Regulations, or

- (c) in purported compliance with a requirement under paragraph (1)(d), gives information to an authorised officer that the person knows to be false or misleading in a material respect,

shall be guilty of an offence.

Sampling and analysis

15. (1) The official laboratories responsible for carrying out analyses for the purposes of these Regulations and the Directives shall be the State Laboratory or any other laboratory nominated by the Minister.

(2) A person requiring a second opinion in relation to an analysis may send an officially sealed reference sample for analysis to a laboratory accredited under European Standard EN 45001 (ISO IEC guide 25 as amended) for the particular type of analysis to be undertaken, and a certificate purporting to be from such a laboratory stating that the sample was received by the laboratory with its seals intact shall be evidence of that fact, unless the contrary is proved.

Failure to comply with requirements.

16. A person who –

(a) imports into or markets in the State a product prohibited under paragraph 1 of Article 8 of Council Directive 95/53/EC of 25 October 1995 from entry or being marketed,

(a) refuses or fails to comply with an order referred to in paragraph 1, or authorisation referred to in paragraph 2, of Article 8 of Council Directive 95/53/EC of 25 October 1995 (as required by regulation 8) or with a requirement under Article 13 of that Directives (as required by regulation 11), or

(b) being otherwise required by or under these Regulations to do or refrain from doing some thing, refuses or fails to comply with the requirement,

shall be guilty of an offence.

Punishment for offences and offences by bodies corporate.

17. (1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,500.

(2) An offence under these Regulations may be prosecuted by the Minister.

(3) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person

who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

L.S.

GIVEN under my Official Seal,
This 13th day of January, 2000.

Joe Walsh
Minister for Agriculture, Food
and Rural Development

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to Council Directive 95/53/EC, Commission Directive 98/68/EC and Council Directive 99/20/EC. They lay down conditions and arrangements for official inspections in the field of animal nutrition.

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