

**S.I. No 238 of 2003**

**European Communities (Animal Nutrition Inspections) Regulations 2003**

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## **European Communities (Animal Nutrition Inspections) Regulations 2003**

I, Joe Walsh, Minister for Agriculture and Food, 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 1995<sup>1</sup>, Commission Directive 98/68/EC of 10 September 1998<sup>2</sup>, Council Directive 1999/20/EC of 22 March 1999<sup>3</sup>, Directive 2000/77/EC of the European Parliament and of the Council of 14 December 2000<sup>4</sup> and Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001<sup>5</sup> hereby make the following regulations:

### **Citation**

1. These Regulations may be cited as the European Communities (Animal Nutrition Inspections) Regulations 2003.

### **Interpretation**

2. (1) In these Regulations –

"authorised officer" means a person appointed under Regulation 14(1) by the Minister or an officer appointed by the Revenue Commissioners as a Customs Officer;

"Commission" means the Commission of the European Communities;

"Community territory" means the territory of the European Communities;

"Directive" means Council Directive 95/53/EC of 25 October 1995 as amended by Commission Directive 98/68/EC of 10 September 1998, Council Directive 1999/20/EC of 22 March 1999, Directive 2000/77/EC of the European Parliament and of the Council of 14 December 2000 and Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001;

"functions" includes powers and duties;

"inspections" means actions set out in Regulation 4(2) to check compliance with:

- Council Directive 70/524/EEC of 23 November 1970<sup>6</sup>,
- Council Directive 1999/29/EC of 22 April 1999<sup>7</sup>,

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<sup>1</sup> O.J. No 265, 8.11.1995, p. 17.

<sup>2</sup> O.J. No 261, 24.9.1998, p. 32.

<sup>3</sup> O.J. No 80, 25.3.1999, p. 20.

<sup>4</sup> O.J. No. L333, 29.12.200, p. 81.

<sup>5</sup> O.J. No. L234, 1.9.2001, p. 55.

<sup>6</sup> O.J. No. L270, 14.12.1970, p. 1.

- Council Directive 96/25/EC of 29 April 1996<sup>8</sup>,
  - Council Directive 79/373/EEC of 2 April 1979<sup>9</sup>,
  - Council Directive 82/471/EEC of 30 June 1982<sup>10</sup>, and
  - Council Directive 93/74/EEC of 13 September 1993<sup>11</sup>;
- and cognate words shall be construed accordingly;

“land” includes buildings;

“marketing” includes handling, storage, transportation, distribution for sale or supply whether for reward or otherwise and any act ancillary to sale or supply, and cognate words shall be construed accordingly;

“Member State” means a Member State of the European Communities;

"Minister" means the Minister for Agriculture and Food;

“product” means animal feeds and any substances used in animal nutrition;

“production” means system by which an animal feed is produced; and

“use” means feeding to animals.

(2) In these Regulations-

(a) a reference to a Regulation, is to a Regulation of, these Regulations, unless it is indicated that reference to some other Regulation is intended, and

(b) a reference to a paragraph or a subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in the Directive and is also used in these Regulations has, in these Regulations, the same meaning as it has in the Directive.

### **Application of Regulations**

3. These Regulations apply to inspections of products without prejudice to any other legislation.

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<sup>7</sup> O.J. No. L115, 4.5.1999, p. 32.

<sup>8</sup> O.J. No. L125, 23.5.1996, p.23.

<sup>9</sup> O.J. No. L86, 6.4.1979, p. 30.

<sup>10</sup> O.J. No. L 213, 21.7.1982, p. 8.

<sup>11</sup> O.J. No. L237, 22.9.1993, p.23.

## **Manner of inspection**

4. (1) Inspections may take place at any stage of –
  - (a) production, manufacture or marketing,
  - (b) importation,
  - (c) exportation,
  - (d) transit through the State, or
  - (e) use.
- (2) An inspection shall be conducted and may comprise of inspection of documents accompanying the product or any information provided on the product, visual inspection of the product or physical examination of product including the taking of samples which may be subjected to laboratory analysis.

## **Sampling and analysis**

5. (1) Where a sample is taken, it shall be taken and dealt with in accordance with the Annex to Commission Directive 76/371/EEC<sup>12</sup>,
- (2) In proceedings for an offence under these Regulations, the result of any test examination or analysis of, or report on a sample shall not be adduced unless before the proceedings were instituted one of the final samples was left with or transmitted to the defendant.
- (3) The official laboratories responsible for carrying out analyses shall be the State Laboratory or any other laboratory nominated by the Minister.
- (4) A person requiring a second opinion in relation to an analysis may send an officially sealed final sample for analysis to a laboratory accredited under European Standard EN 45001 for the particular type of analysis to be undertaken.
- (5) 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.

## **Notice of intention to import product**

6. (1) A person who is importing a product, whether directly or otherwise, shall give notice to the Minister, in a form approved by the Minister, at least 5 working days prior to the importation of the product.

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<sup>12</sup> O.J. No. L102, p.1, 15.4.76.

- (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 within 24 hours of becoming aware of the change and at least 24 hours before the product enters the State.

### **Directions relating to imported product**

7. (1) Subject to paragraph (2), where a product to which Regulation 6 applies does not comply with a provision listed in the definition of inspections, 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 he has rejected the product and indicate the infringements found.
- (2) Where a product, to which Regulation 6 applies, does not comply with a provision listed in the definition of inspections, the Minister may authorise entry of a product where the product –
- (a) is brought into compliance in a manner approved by the Minister,
  - (b) is decontaminated in a manner approved by the Minister.
  - (c) processed in a manner approved by the Minister,
  - (d) used, with the agreement of the Minister, for another purpose, or
  - (e) destroyed in accordance with the Minister's instructions.

### **Compliance with directions relating to imported product**

8. An importer of a product to which Regulation 6 applies shall comply with the instructions of the Minister and shall be liable for any expenses incurred in complying with the said instructions.

### **Commercial documents to refer to inspections carried out**

9. (1) Subject to paragraph (2), where an inspection of a product, that originated in a country which is not a member of the European Communities, is carried out under these Regulations, the Minister shall provide a document in accordance with Article 9 of the Directive indicating the action taken during the inspection and the outcome of the inspection.
- (2) Commercial documentation in respect of the product issued under paragraph (1) shall record a reference to the document issued in a clear and legible manner.

### **Checks during transportation of product**

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

### **Compliance with directions relating to trade within the Community**

11. (1) Subject to paragraph (2), where an inspection is completed while the product is in transit or has reached its destination and non-compliance with the provisions listed in the definition of inspection is established, the Minister may direct that the product is treated in accordance with Regulation 7(2) or direct that the product is returned to the country of origin and the Minister shall inform the competent authority of that country of the details of the consignment.
  - (2) A person receiving a direction under paragraph (1) shall comply with the direction within the specified time and shall be liable for any expenses in so doing.

### **Information system for hazards from feedingstuffs**

- 12 (1) Where a person, who manufactures, imports into Community territory or markets products, is aware that a product-
  - (a) poses serious risk to human health, animal health or to the environment, or
  - (b) exceeds the maximum levels set out in the Section A of Annex II to Directive 1999/29/EC

he or she shall notify the Minister immediately.

- (2) Where a product referred to in paragraph (1), is consumed, the provisions of Article 10.1 and 10.2 of Directive 96/23/EC<sup>13</sup> shall apply as if the product consumed was an unauthorised substance.

### **Confidentiality**

13. 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 inspection save where legally obliged to do so.

### **Appointment of authorised officers**

14. (1) The Minister may appoint in writing such and so many persons as he or she thinks necessary to be authorised officers.

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<sup>13</sup> O.J. No. L125, 23.5.1996, p.10.

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

(b) When exercising a power conferred on him or her under these Regulations an authorised officer shall, if requested by any person affected, produce the warrant to that person for inspection.

### **Powers of authorised officers**

15. (1) Subject to paragraph (2), an authorised officer may, for the purposes of ensuring that these Regulations are being complied with –

(a) at all reasonable times, enter any premises or a place where he or she has reason to believe there is a product and inspect the premises or place,

(b) require any person in charge of the premises or place or connected with any equipment or other device at that premises or place to produce to him or her any books, documents or records and in the case of such information in a non-legible form to reproduce it in permanent legible form relating to the product and to give to him or her such information as he or she may reasonably require in relation to the product,

(c) inspect and take copies of, or take extracts from, any such books, documents or records including in the case of information in a non-legible form a copy of or extract from such information in permanent legible form in whatever form kept,

(d) there or at any other place carry out such examinations, inspections or tests of the product, equipment or other device found on the premises or at the place as the officer considers appropriate and, if the officer so thinks fit, remove or have removed from there any product, equipment or other device and retain it for a reasonable period to facilitate such examination, testing or inspection,

(e) examine any procedure connected with the manufacture, installation or maintenance of the product,

(f) take, without payment, such samples of the product or of any other substance as the officer may reasonably require and carry out or have carried out on such samples there or elsewhere such checks and inspections as he or she considers necessary,

(g) seize and detain the product,

(h) secure for later inspection the premises or place or part of it,

(i) if accompanied by -

(i) a member of the Garda Síochána in uniform, or

(ii) an officer of the Revenue Commissioners in uniform authorised by them to exercise powers conferred by the Customs Acts or the statutes which relate to the duties of excise,

stop any vehicle which the authorised officer reasonably suspects to contain any product to which Regulations apply.

- (2) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (5) authorising such entry.
- (3) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer by this Regulation.
- (4) A member of the Garda Síochána not in uniform, when exercising any such power, shall, if so requested by any person affected, produce evidence in writing that he or she is such a member or officer.
- (5) If a judge of the District Court is satisfied, on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is a product on any premises or at any place, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers or by a member or members of the Garda Síochána at any time or times within one month from the date of issue of the warrant, on production of the warrant requested, to enter those premises or part of it or that place, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Regulation.

### **Failure to comply with requirements**

16. A person who –

- (a) obstructs or otherwise interferes with an authorised officer in the performance of his or her duties,
- (b) without lawful excuse, refuses or fails when requested by the authorised officer to assist him or her in the performance of the officer's duties,
- (c) gives information to an authorised officer that the person knows to be false or misleading in a material respect, or
- (d) fails to comply with the provisions of these Regulations

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 €3,000 or up to six months imprisonment.
- (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 proven 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 purported 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 was guilty of the offence.

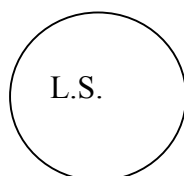
### **Savers**

18. (1) An authorised officer appointed under the European Communities (Animal Nutrition Inspections) Regulations 2000 (S.I. No. 4 of 2000) and holding office immediately before the commencement of these Regulations shall continue in office as appointed under these Regulations.
- (2) Any proceedings being taken under the Regulations revoked in Regulation 19 shall continue as if prosecuted under these Regulations.

### **Revocations**

19. The following Statutory Instruments are revoked:

- (a) The European Communities (Animal Nutrition Inspections) Regulations 2000 (S.I. No. 4 of 2000), and
- (b) The European Communities (Animal Nutrition Inspections)(Amendment) Regulations 2001 (S.I. No. 655 of 2001).



GIVEN under my Official Seal,  
9<sup>th</sup> June 2003

Joe Walsh

Minister for Agriculture and Food

## **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 as amended. They lay down conditions and arrangements for official inspections in the field of animal nutrition.

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