

Statutory Rule 2002 No. 226

Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) Regulations (Northern Ireland) 2002

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STATUTORY RULES OF NORTHERN IRELAND

2002 No. 226

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Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) Regulations (Northern Ireland) 2002

Made

25th June 2002

Coming into operation

28th June 2002

The Department of Health, Social Services and Public Safety, being a Department designated[1] for the purposes of section 2(2) of the European Communities Act 1972[2] in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by the said section 2(2) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) Regulations (Northern Ireland) 2002 and shall come into operation on 28th June 2002.

Interpretation

2. - (1) In these Regulations -

"the Commission Decision" means Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China[3], as amended by Commission Decision 2002/441/EC[4];

"the Department" means the Department of Agriculture and Rural Development;

"free circulation" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

"the Order" means the Food Safety (Northern Ireland) Order 1991 and, subject to paragraph (2), any expression used both in these Regulations and in the Order has the meaning it bears in the Order;

"relevant product of animal origin" means a product of animal origin falling within either of the following descriptions -

(a) products of animal origin originating in, or consigned from, China, and intended for human consumption, or animal feed use, except for any such product which is of a kind to which the derogation contained in Article 2.2 of the Commission Decision (which is concerned with casings, certain fishery products and gelatine) applies; and

(b) products which contain any product falling within the description given in paragraph (a).

(2) Any expression used both in these Regulations and in the Commission Decision has the same meaning in these Regulations as it bears in that Decision.

(3) The Interpretation Act (Northern Ireland) 1954[5] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Prohibition of importation and offence

3. - (1) Subject to paragraph (2), no person shall import any relevant product of animal origin.

(2) Paragraph (1) shall not be taken to prohibit the bringing into Northern Ireland from another member State of any relevant product of animal origin which is in free circulation in that member State.

(3) Any person who knowingly contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the

standard scale or imprisonment for a term not exceeding three months.

Enforcement

4. - (1) These Regulations shall be enforced and executed by the Department or any district council, or by the Department and any district council acting jointly.

(2) For the purposes of the exercise of the duty referred to in paragraph (1) -

(a) the Department or a district council shall exercise that duty in accordance with Article 4 of the Commission Decision (which is concerned with the levying of charges in respect of expenditure incurred in connection with the application of the Commission Decision);

(b) an authorised officer of the Department or of a district council shall -

(i) comply with Article 3.1 of the Commission Decision (which is concerned with the sampling and analysis of consignments of certain fishery products and of casings), and

(ii) have the same powers of entry as are bestowed on an authorised officer by Article 33 of the Order for purposes connected with the Order or Regulations or orders under the Order, and shall also have, in relation to any business producing material for animal feed use, the same power as an authorised officer has under that Article in relation to a food business.

(3) A person on whom a charge is levied under paragraph (2)(a) shall pay it to the Department or the district council on demand.

(4) Each district council shall give such assistance and information to the Department and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Order

5. - (1) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order shall be construed as a reference to these Regulations -

(a) Article 19 (offences due to fault of another person);

(b) Article 34 (obstruction, etc., of officers); and

(c) Article 36 (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by sub-paragraph (b).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows

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" 8. - (1) An authorised officer of the Department or of a district council may at all reasonable times inspect any relevant product of animal origin which -

(a) has been sold or is offered or exposed for sale; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Paragraphs (3) to (8) shall apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer of the Department or of a district council that any relevant product of animal origin has been imported in contravention of regulation 3(1) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) Regulations (Northern Ireland) 2002.

(3) The authorised officer may either -

(a) give notice to the person in charge of the product that, until the notice is withdrawn, the product or any specified portion of it -

(i) is not to be used for human consumption or, as the case may be, put to animal food use, 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 product and remove it 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) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by paragraph (3)(a), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the product has not been imported in contravention of regulation 3(1) of the aforesaid Regulations and -

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is not so satisfied, shall seize the product and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer exercises the powers conferred by paragraph (3)(b) or (4)(b), he shall inform the person in charge of the product of his intention to have it dealt with by a justice of the peace and -

(a) any person who under regulation 3(3) of the aforesaid Regulations might be liable to a prosecution in respect of the product shall, if he attends before the justice of the peace by whom the product 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 proceeded against for an offence consisting of a contravention of regulation 3(1) of the aforesaid Regulations in relation to that product.

(6) If it appears to a justice of the peace, on the basis of such evidence as he

considers appropriate in the circumstances, that any product failing to be dealt with by him under this Article has been imported in contravention of regulation 3(1) of the aforesaid Regulations, he shall condemn the product and order -

(a) the product to be destroyed or to be so disposed of as to prevent it from being used for human consumption or, as the case may be, put to animal feed use; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be charged to the consignor, consignee or agent of the product under Article 4 of the Commission Decision.

(7) If a notice under paragraph (3)(a) is withdrawn, or the justice of the peace by whom any product fails to be dealt with under this Article refuses to condemn it, the Department or the district council shall compensate the owner of the product for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Department of Health, Social Services and Public Safety; and the provisions of the Arbitration Act 1996[6] shall apply accordingly."

(3) The expressions "relevant product of animal origin", "for human consumption" and "animal feed use", which are used in Article 8 of the Order so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

(4) Articles 2(4) and 3 of the Order (extended meaning of "sale" etc.) shall apply in relation to Article 8 of the Order so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

(5) Article 29 of the Order (procurement of samples) shall apply for the purposes of these Regulations with the modifications that -

(a) for paragraph (b)(ii) there shall be substituted the following provision -

" (ii) is found by him on or in any premises which he is authorised to enter in pursuance of regulation 4(2)(b)(ii) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) Regulations (Northern Ireland) 2002;"

(b) paragraph (c) shall be omitted; and

(c) for "any of the provisions of this Order or of regulations or orders made under it" in paragraph (d) there shall be substituted "the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) Regulations (Northern Ireland) 2002".

(6) An authorised officer of the Department or of a district council who has procured a sample under Article 29 of the Order as applied for the purposes of these Regulations by paragraph (5), shall, if he considers that the sample should be analysed, submit it for analysis at a laboratory having facilities which are adequate for

the purpose of enabling the chemical tests required by Article 3.1 of the Commission Decision to be carried out there.

(7) A sample submitted pursuant to paragraph (6) shall be analysed as soon as practicable by an analyst at the laboratory to which it is submitted.

(8) An analyst who analyses a sample in accordance with paragraph (7) may demand in advance the payment of such reasonable fee as he may require.

(9) An analyst who has analysed a sample in accordance with paragraph (7) shall give to the person by whom it was submitted a certificate specifying the result of the analysis.

(10) A certificate given by an analyst under paragraph (9) shall be signed by him, but the analysis may be made by any person acting under his direction.

(11) In any proceedings under these Regulations, the production by one of the parties of -

(a) a document purporting to be a certificate given by an analyst under paragraph (9); or

(b) a document supplied by him to the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within subparagraph (a), the other party requires that the analyst shall be called as a witness.

(12) Where a sample procured under Article 29 of the Order as applied for the purposes of these Regulations by paragraph (5) has been analysed in accordance with paragraph (7), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the Department or the district council.

Revocation of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) Regulations (Northern Ireland) 2002

6. The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) Regulations (Northern Ireland) 2002[7] are hereby revoked.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on

25th June 2002.

L.S.

Don Hill

A Senior Officer of the Department of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and re-enact with changes the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) Regulations (Northern Ireland) 2002. The revocation is effected by regulation 6.

The Regulations implement Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China (O.J. No. L30 31.1.2002, p. 50) as amended by Commission Decision 2002/441/EC (O.J. No. L151, 11.6.2002, p. 16).

The Regulations define "relevant product of animal origin" (*regulation 2*); prohibit (with exceptions which are specified in that definition) their importation (*regulation 3*); specify the enforcement authorities (*regulation 4*); and apply with modifications, for the purposes of the Regulations, certain provisions of the Food Safety (Northern Ireland) Order 1991 (*regulation 5*).

The principal changes effected by the Regulations are that -

- (a) the exceptions referred to above are modified as regards the types of products to which, and the circumstances in which, they apply; and**
- (b) a specific obligation is imposed on the consignor or consignee of any product subject to the Regulations, or his agent, to reimburse the relevant enforcement authority on demand in relation to the costs it incurs in relation to that product in complying with Commission Decision 2002/69/EC as amended.**

Notes:

[1] S.I. 2000/2812back

[2] 1972 c. 68back

[3] O.J. No. L30, 31.1.2002, p. 50back

[4] O.J. No. L151, 11.6.2002, p. 16back

[5] 1954 c. 33 (N.I.)back

[6] 1996 c. 23back

[7] S.R. 2002 No. 33back

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