

Statutory Instruments

S.I. No. 88 of 1999

**European Communities (Approval and Registration of Establishments and
Intermediaries operating in the Animal Feed Sector) Regulations, 1999**

S.I. No. 88 of 1999**EUROPEAN COMMUNITIES (APPROVAL AND REGISTRATION OF ESTABLISHMENTS AND INTERMEDIARIES OPERATING IN THE ANIMAL FEED SECTOR) REGULATIONS, 1999**

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), for the purpose of giving effect to Council Directive No. 95/69/EC of 22 December 1995⁽¹⁾, as amended by Council Directive 98/92/EC of 14 December 1998⁽²⁾, and Commission Directive No. 98/51/EC of 9 July 1998⁽³⁾, and Council Decision 98/728/EC of 14 December 1998⁽⁴⁾ hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Approval and Registration of Establishments and Intermediaries operating in the Animal Feed Sector) Regulations, 1999.

2. (1) In these Regulations -
 “Annex” except in Regulations 8 and 12, means an Annex to the Council Directive;

"approval" means an approval granted by the Minister under these Regulations for the purposes of the Council Directive and cognate words shall be construed accordingly;

“authorised officer” means a person appointed as an authorised officer under Regulations 18;

“the Commission Directive” means Commission Directive 98/51/EC of 9 July 1998⁽³⁾;

“the Council Directive” means Council Directive 95/69/EC of 22 December 1995⁽¹⁾, as amended by Council Directive 98/92/EC of 14 December 1998⁽²⁾;

“establishment”¹ means any unit producing or manufacturing additives, premixtures prepared from additives, compound feedingstuffs or products covered by Directive 82/471/EEC and referred to in Chapter I.1(a) of the Annex;

“intermediary” means any person other than the manufacturer or the person producing for the exclusive requirements of his holding, compound feedingstuffs, who holds additives, premixtures prepared from additives, or one of the products covered by Directive 82/471/EEC

⁽¹⁾ OJ No. L332, 30.12.95, p.15

⁽²⁾ OJ No. L346, 22.12.98, p.49

⁽³⁾ OJ No. L208, 24.7.98, p.43

⁽⁴⁾ OJ No L346, 22.12.98, p.51

and referred to in Chapter I.1(a) of the Annex at an intermediate stage between production and use;

“the Minister” means the Minister for Agriculture and Food;

“putting into circulation” means holding products for the purposes of sale, including offering for sale, or for the purposes of any other form of transfer, whether or not free of charge, to third parties, and the sale and other forms of transfer themselves;

"registration" means registration by the Minister under these Regulations for the purposes of the Council Directive and cognate words shall be construed accordingly;

“third country” means a country which is not a Member State of the European Communities.

(2) A word or expression which is used in these Regulations and which is also used in the Council or Commission Directive, has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) Reference in these Regulations to premixtures shall, unless the context otherwise requires, be construed as a reference to mineral mixtures,

(4) (a) A reference in these Regulations to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulations is intended.

(b) A reference in these Regulations to a paragraph or subparagraph is 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. The Minister shall be the competent authority for the purposes of the Council and Commission Directive.

4. (1) The Minister shall grant approval to an establishment, wishing to exercise one or more of the following activities, to exercise the activity, under the conditions laid down in respect of the activity, namely -

(a) manufacturing additives or products covered by Directive 82/471/EEC and referred to in Chapter I.1(a) of the Annex with a view to putting them into circulation, where the minimum conditions laid down in Chapter I.1(b) of the Annex are met,

(b) manufacturing premixtures prepared from additives referred to in Chapter I.2(a) of the Annex, with a view to putting them into circulation, where the minimum conditions laid down in Chapter I.2(b) of the Annex are met,

(c) manufacturing compound feedingstuffs containing premixtures prepared from additives referred to in Chapter I.3(a) of the Annex, with

a view to putting them into circulation, where the minimum conditions laid down in Chapter I.3(b) of the Annex are met,

- (d) manufacturing compound feedingstuffs, with a view to putting them into circulation, from raw materials referred to in Article 3a(2) of Directive 74/63/EEC which contain high levels of undesirable substances or products, where the minimum conditions laid down in Chapter I.4 of the Annex are met,
- (e) producing, for the exclusive requirements of its holding, compound feedingstuffs containing premixtures which include additives referred to in Chapter I.3(a) of the Annex, where the minimum conditions laid down in Chapter I.3(b) of the Annex, with the exception of the requirements set out in point 7 are met, by the establishment.

(2) A person shall not exercise any activity referred to in paragraph (1) unless he holds an approval under that paragraph.

(3) A person who contravenes paragraph (2) shall be guilty of an offence.

5. (1) Where additives or products covered by Directive 82/47/EEC or premixtures of additives referred to in Chapters I.1(a) and I.2(a) of the Annex, respectively, are put into circulation, the Minister shall grant approval to intermediaries of the additives, products or premixtures.

(2) The provisions laid down in point 7 of Chapter I.1 8(b) or Chapter I.2(b) of the Annex shall apply, as appropriate, to intermediaries which wrap, package, store or put into circulation additives, premixtures of additives or products covered by Directive 82/471/EEC.

(3) A person shall not, as an intermediary, hold any additives, products or premixtures referred to in paragraph (1) unless he is the holder of an approval granted under that paragraph.

(4) A person who contravenes paragraph (3) shall be guilty of an offence.

6. (1) The Minister shall withdraw an approval where the approved establishment or intermediary ceases its activities or fails to comply with a condition applicable to its activities.

(2) The Minister shall amend an approval where the approved establishment or intermediary has demonstrated to him or her its ability to engage in activities which are additional to those for which it was first granted approval or which replace them.

7. (1) To obtain approval, an application for approval, in such form as may be specified by the Minister, shall be submitted to the Minister by the establishment or intermediary concerned.

(2) A person applying for approval shall furnish the Minister with such information as the Minister may reasonably require to ensure that these Regulations will be complied with and to decide whether or not to grant the approval.

(3) A person who in making an application for approval wilfully makes a false or misleading statement shall be guilty of an offence.

(4) The Minister shall not -

(a) withdraw an approval, or

(b) refuse an application for approval,

without -

(i) notifying the holder of, or applicant for, the approval of his intention to withdraw the approval or refuse the application, as the case may be,

(ii) specifying his reasons for the intended withdrawal or refusals of the approval, and

(iii) affording the holder of, or applicant for, the approval the opportunity of making representations or having representations made on his behalf to the Minister in relation to the proposed revocation or refusal, as the case may be, within 14 days of the receipt by that person of the notification referred to in subparagraph (i) and having had regard to any such representations.

(5) The holder of an approval shall inform the Minister if significant changes are made in the operation or organisation of the activities to which the approval relates.

(6) A person who contravenes an approval or a condition of an approval or fails to comply with paragraph (5) shall be guilty of an offence.

8. The Minister shall cause to be established a register of approved establishments and intermediaries drawn up in accordance with the model laid down in Chapter I.1 of the Annex to the Commission Directive.

9. (1) The Minister shall register an establishment wishing to exercise one or more of the following activities in accordance with the conditions laid down in respect of the activity, namely -

(a) manufacturing additives for which a maximum level is set in a Commission Directive issued pursuant to Article 3 of Council Directive 70/524/EEC of 23 November 1970⁵, and which are not

⁵ OJ No L 270, 14.12.70, p 1

included in Chapter I.1(a) of the Annex, with a view to putting them into circulation, where the minimum conditions laid down in Chapter II(c) of the Annex are met,

- (b) manufacturing premixtures containing additives referred to in Chapter II(a) of the Annex, with a view to putting them into circulation, where the minimum conditions laid down in Chapter II(c) of the Annex are met,
- (c) manufacturing compound feedingstuffs containing premixtures of additives referred to in Chapter II(b) of the Annex or additives referred to in Chapter II(a) of the Annex with a view to putting them into circulation, where the minimum conditions laid down in Chapter II(c) of the Annex are met,
- (d) manufacturing, for the exclusive requirements of its holding, compound feedingstuffs containing premixtures of additives referred to in Chapter II(b) of the Annex or containing additives referred to in Chapter II(a) of the Annex, where the minimum conditions laid down in Chapter II(c) of the Annex are met.

(2) An approved establishment exercising an activity referred to in subparagraph (a), (b), (c), (e) of Regulation 4 shall be regarded as satisfying *de facto* the corresponding conditions laid down in subparagraph (a), (b), (c) or (d), as the case may be, of paragraph (1).

(3) A person shall not exercise any of the activities referred to in paragraph (1) unless he is registered under that paragraph.

(4) A person who contravenes paragraph (3) shall be guilty of an offence.

10. (1) Where additives for which a prescribed maximum level is set, other than those referred to in Chapter I.1(a) of the Annex, or premixtures of additives referred to in Chapter II(a) of the Annex, are put into circulation, any intermediary who holds those additives or premixtures shall be registered by the Minister.

(2) The provisions laid down in point 7 of Chapter II(c) of the Annex shall apply, as appropriate, to intermediaries which wrap, package, store or put into circulation additives or premixtures of additives.

(3) Intermediaries approved in accordance with Regulation 5 shall be regarded as meeting *de facto* the conditions laid down in paragraph (1).

(4) A person shall not, as an intermediary, hold any additive or premixture referred to in paragraph (1) unless he is registered under that paragraph.

(5) A person who contravenes paragraph (4) shall be guilty of an offence.

11. (1) The Minister shall withdraw the registration from a registered establishment or intermediary where the establishment or intermediary ceases its activities or fails to comply with any condition applicable to its activities.

(2) The Minister shall amend the registration of an approved establishment or intermediary where the establishment or intermediary declares to him or her that it is engaged in activities which are additional to those for which it was first registered or which replace these.

12. The Minister shall establish a list of registered establishments and intermediaries in accordance with the model laid down in Chapter 1.2 of the Annex to the Commission Directive.

13. (1) In order to be registered under Regulation 9 or 10, a declaration in such form as may be specified by the Minister shall be submitted to the Minister by the establishment or intermediary concerned.

(2) A person who in making a declaration under paragraph (1) makes a false or misleading statement shall be guilty of an offence.

14. (1) The Minister may authorise the import from third countries of products referred to in Articles 3 and 4 of the Commission Directive from establishments which have a representative established within the Community.

(2) A representative referred to in paragraph (1) who intends to import into the State any product referred to in Article 3 or 4 of the Commission Directive shall submit a declaration to the Minister in which the representative undertakes -

(a) to ensure that the establishment he represents fulfils the conditions laid down in Article 3(2) second indent or Article 4(2) second indent of the Commission Directive, as applicable,

(b) to keep a register of products referred to in Articles 3 and 4 of the Commission Directive, as applicable, that the establishment he represents has put into circulation within the Community, according to the Annex.

(3) A representative referred to in paragraph (1) who, immediately before the making of these Regulations, was in activity, may continue their activities on condition that they submit the declaration referred to in paragraph (2) before 1 May 1999.

(4) A person shall not import from any third country any product referred to in Article 3 or 4 of the Commission Directive unless he is so authorised under paragraph (1).

(5) A person who contravenes paragraph (4) shall be guilty of an offence.

15. (1) There shall be charged by the Minister in respect of an approval a fee in accordance with the Council Decision 98/728/EC of 14 December 1998⁴.

(2) A fee charged under this Regulation shall be payable by the owner or person in charge of the establishment or by the intermediary to which the approval relates and the Minister may refuse to grant or may withdraw an approval until such fee has been paid.

(3) Fees under this Regulation payable to the Minister shall be collected and taken in such manner as the Minister for Finance directs and shall be paid into or disposed of for the benefit of the Exchequer in accordance with the direction of that Minister.

(4) A fee payable under this Regulation may be recovered by the Minister or other competent authority, as the case may be, as a simple contract debt in any court of competent jurisdiction.

Powers of Authorised Officers.

16. (1) The Minister may appoint in writing such and so many persons as the Minister thinks fit to be authorised officers for the purposes of all or any of the provisions of these Regulations, the Council Directive and Commission Directive.

(2) Every authorised officer shall be furnished with a warrant of his appointment as an authorised officer stating that he is acting under these Regulations.

(3) An authorised officer, on production of the officer's authorisation, if so required by any person affected, may, for the purposes of these Regulations, the Council Directive and Commission Directive -

- (a) subject to paragraph (5), at all reasonable times, enter and search any premises or place where the officer reasonably suspects that any product or any thing the subject of these Regulations is being manufactured, used, collected, stored, sold, packaged, transported, imported or exported or any establishment or premises of an intermediary in respect of which an application for an approval or a declaration for the purposes of registration under these Regulations has been made to the Minister,
- (b) there or at any other place, carry out such examinations, tests, checks and inspections of the premises or place and any equipment, machinery or plant thereat and any product or thing found thereat as the 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 substance, at the premises or place as he or she may reasonably require for the purposes of such functions and carry out or have carried out on the samples such

⁴ OJ No L346, 22.12.98, p.51

examination checks and inspections to ensure that the requirements imposed by these Regulations 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 him such information and to produce to him or her such books, documents and other records within the power or procurement of the person as he may reasonably require for the purposes of 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 he reasonably believes has been manufactured or imported or intended for use on the premises, or to be intended for export in contravention of these Regulations.

(4) An authorised officer, where the officer has reason to believe that any vehicle, railway wagon, vessel or aircraft contains any product or thing the subject of these Regulations, may, on production of the officer's authorisation, if so required by any person affected -

- (a) if accompanied by a member of the Garda Síochána in uniform, stop the vehicle, or
 - (b) board the railway wagon, vessel or aircraft,
- and
- (c) inspect the vehicle, railway wagon, vessel or aircraft, and
 - (d) require any person in charge of such to give to the officer such information and documents as the officer may in the circumstances reasonably require.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant from the District Court under paragraph (6) authorising such entry.

(6) 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

- (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,

such judge may issue a search warrant.

(7) A search warrant issued under paragraph (6) 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 named in the warrant.

(8) Where a premises is entered under a search warrant issued under paragraph (6) all or any of the powers set out in paragraph (3) may be exercised by the authorised officer who so enters.

(9) A person who obstructs or otherwise interferes with an authorised officer in the performance of the officer's functions under these Regulations or who, in purported compliance with a requirement under subparagraph (3)(d), gives information to an authorised officer that he or she knows to be false or misleading in a material respect shall be guilty of an offence.

(10) A person who, with intent to deceive -

- (a) tampers with any product or thing the subject of these Regulations so that a sample of it taken under these Regulations does not accurately represent the aforementioned product, or thing or
- (b) tampers or interferes with any sample taken under these Regulations, shall be guilty of an offence.

(11) Where an authorised officer finds or comes into possession of any product or thing the subject of these Regulations or any product or thing which the officer reasonably believes to be evidence of the commission of an offence under these Regulations, the officer may seize it and detain it for use in evidence in a prosecution for an offence under these Regulations for such period from the date of the seizure as may be reasonable or, if proceedings are commenced in which the product or thing the subject of these Regulations is required for use in evidence, until the conclusion of the proceedings.

(12) An authorised officer may by notice in writing given to the owner or the person who appears to be in charge or control of any product or thing the subject of these Regulations which has been seized and detained in accordance with these Regulations -

- (a) require anything specified in the notice to be done by the person to whom the notice is directed before the product or thing the subject of these Regulations is released by an authorised officer, or
- (b) either -

- (i) require the disposal of the product or thing the subject of these Regulations by the person to whom the notice is directed, upon its release by the authorised officer, in the manner specified in the notice and at the expense of the owner, or
- (ii) indicate the authorised officer's intention to dispose of the product or thing the subject of these Regulations in a specified manner and at the expense of the owner,

the manner of disposal in either case being such as to prevent the product or thing the subject of these Regulations being put into circulation, or used in contravention of these Regulations, and where a notice under this paragraph requires a specified thing to be done, an authorised officer may retain control of the product or thing the subject of these Regulations to which the notice relates until the requirements of the notice have been complied with.

(13) Where a notice is given under paragraph (12) a person shall not, without the consent of the authorised officer by whom the notice was directed, move, dispose of, interfere with or otherwise deal with the product or thing the subject of these Regulations other than in compliance with the requirements of the notice.

(14) Any person who is aggrieved by a notice under this Regulation may, not later than 21 days after the date of the notice, or such further period (if any) as the District Court may allow, appeal against the notice to the District Court.

(15) Notice of an appeal under paragraph (14) shall be given to the Minister by the person bringing the appeal at least 7 days prior to the hearing of the appeal.

- (16) (a) Where an appeal is brought under paragraph (14), the District Court shall make such order as it considers just (including an order directing that the product or thing the subject of these Regulations be disposed of, at the expense of the owner, in such manner as it may specify).
- (b) The cost of disposal by an authorised officer under this Regulation or pursuant to an order of the District Court under this Regulation shall be recoverable by the Minister by whom it is incurred as a simple contract debt in any court of competent jurisdiction from the person who was the owner of the product or thing the subject of these Regulations at the time of its seizure and detention under these Regulations.

17. (1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding 1,904.60 EURO.

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

(3) Where an offence is committed under these Regulations 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 was guilty of the first-mentioned offence.

GIVEN under my Official Seal,
this 7th day of April, 1999.

L.S.

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 95/69/EC as amended by Council Directive 98/92/EC, and Commission Directive 98/51/EC, and Commission Decision 98/728/EC. They lay down the conditions and arrangements for approving and registering certain establishments and intermediaries in the animal feed sector.

Pn. 7072

Published by the Stationary Office, Dublin

Price £2 (2.54 EURO)

Postage £0.48 (0.61 EURO)