

S.I. No 390 of 1999

European Communities (Putting into Circulation of Feed Materials) Regulations, 1999

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 further effect to Council Directive No. 96/25/EC of 29 April 1996¹ as amended, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Putting into Circulation of Feed Materials) Regulations, 1999.

2. (1) In these Regulations -

“authorised officer” means -

- (a) a person appointed by the Minister under Regulation 8 to be an authorised officer for the purposes of these Regulations, or
- (b) a member of the Garda Síochána;

“the Council Directive” means Council Directive No. 96/25/EC of 29 April, 1996;

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

“the Minister” means the Minister for Agriculture, Food and Rural Development;

“put into circulation” means -

- (a) import,
- (b) export,
- (c) sell,
- (d) invite the making by a person of an offer to purchase,
- (e) distribute free of charge,
- (f) supply for any of those purposes,

and cognate words shall be construed accordingly;

“the Regulations of 1999” means the European Communities (Marketing of Compound Feedingstuffs) Regulations, 1999;

“State Chemist” means the head of the State Laboratory;

“third country” means a country other than a Member State.

¹ O.J. No. L 125 of 23. 5. 96, p. 35

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

(3) A reference in these Regulations to a regulation is a reference to a regulation of these Regulations unless it is indicated that a reference to some other regulation is intended.

(4) A reference in these Regulations to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended.

3. These Regulations shall apply to all feed materials other than feed materials that are intended for export to a third country and that bear a mark indicating that they are intended for such export.

4. (1) A person shall not put into circulation a feed material other than a feed material that -

(a) is sound, genuine and of merchantable quality, and

(b) does not present a danger to animal or human health.

(2) A person shall not affix a mark or label to a feed material that is likely to deceive other persons as to the nature or identity thereof.

(3) A person shall not put into circulation a feed material in such a manner as is likely to deceive other persons as to its nature or identity.

5. A person shall not put into circulation a feed material where there has been a failure in respect of such feed material to comply with Part A of the Annex to the Council Directive.

6. (1) Subject to paragraphs 1 and 3 of Article 6 of the Council Directive, a person shall not put into circulation a feed material unless the particulars specified in paragraph 1 of Article 5 of the Council Directive are set out in visible, legible and indelible form on the packaging or container thereof or on a label attached thereto, or on a document accompanying the feed material, or in the case of a quantity of feed materials of not more than 10 kilograms in weight intended for the final user, in a notice displayed in a conspicuous position at the point of sale.

(2) Subject to Article 5.2 of the Council Directive a person may, when putting into circulation a feed material, provide information in addition to that required under paragraph (1), whether it is on the packaging, container or label or in the accompanying document or notice referred to in that paragraph or in such other manner as he or she considers appropriate.

(3) Where a batch of feed materials is divided during circulation the number of the batch from which it originated shall be included among the particulars required under paragraph (1).

(4) A feed material to which paragraph (5) relates shall not be put into circulation other than for the purpose of sale or supply to an establishment to which an approval has been granted under Regulation 4 of the European Communities (Approval and Registration of Establishments and Intermediaries operating in the Animal Feed Sector) Regulations, 1999 (S.I. No. 88 of 1999).

(5) A feed material containing an undesirable substance or product within the meaning of the European Communities (Feedingstuffs) (Tolerances of Undesirable Substances and Products) Regulations, 1998 (S.I. No. 283 of 1998), shall, instead of being labelled with the words specified in paragraph 1(a) of the said Article 5 be labelled “feed material intended for approved establishment manufacturing compound feed”.

(6) Where any of the particulars in respect of a feed material that is in circulation, set out in accordance with paragraph (1), ceases to be correct, the person for the time being in possession of that feed material shall, before further putting it into circulation, alter those particulars accordingly.

(7) Where feed materials are put into circulation for the purposes of export to a Member State other than the State -

- (a) particulars to which paragraph (1) applies,
- (b) information to which paragraph (2) applies, and
- (c) the words specified in paragraph (3),

shall be in the language of that Member State.

7. (1) A person shall not put into circulation a feed material to which Part B of the Annex to the Council Directive applies under a name other than that specified therein in respect of such feed material or (where such a feed material is intended for export to a Member State other than the State) under the version of such name in the language of that Member State.

(2) A person shall not put into circulation a feed material (other than one to which the said Part B applies) under a name specified in that Part or in such manner as is likely to mislead another person as to its true nature or identity.

8. (1) The Minister may appoint one or more persons to be an authorised officer or authorised officers for the purposes of these Regulations.

(2) A person appointed under paragraph (1) shall, on his or her appointment, be furnished by the Minister, with a certificate of his or her appointment, and when exercising a power conferred by these Regulations shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(3) An authorised officer may, for the purposes of these Regulations and of the Council Directive -

- (a) at all reasonable times enter, subject to paragraph (4), any premises at which he or she has reasonable grounds for believing that any feed material is being subjected to any process or being stored, or any premises that are occupied in whole or in part by an undertaking engaged in the processing or putting into circulation of feed materials,
- (b) at such premises inspect and take copies of, any books, records, other documents or extracts therefrom which he or she finds in the course of his or her inspection,
- (c) carry out or have carried out such examinations, tests, inspections and checks of the premises, of any feed material being used in the manufacture of compound feedingstuffs or being subjected to any process or being stored at the premises, or of any equipment, machinery or plant at the premises as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations or the Council Directive,
- (d) require any person at the premises or the owner or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records in that person's power or procurement as he or she may reasonably require for the purposes of his or her functions under these Regulations or the Council Directive,
- (e) take samples of feed materials at the premises for the purposes of analysis and examination,
- (f) direct that such feed materials found at the premises as he or she, upon reasonable grounds, believes contravene a provision of these Regulations or the Council Directive not be put into circulation, or moved from the premises without his or her consent, or
- (g) take possession of and remove from the premises for examination and analysis compound feedingstuffs or feed materials found there and detain them for such time as he or she considers reasonable for the purposes of his or her functions under these Regulations or the Council Directive.

(4) An authorised officer shall not enter a dwelling, other than -

- (a) with the consent of the occupier, or
- (b) in accordance with a warrant issued under paragraph (5).

(5) On the application of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that a feed material is being subjected to any process or stored in any dwelling or that a dwelling is occupied in whole or in part by an undertaking engaged in the processing or putting into circulation of feed materials, issue a warrant authorising a named authorised officer accompanied by such other

authorised officers as may be necessary, at any time or times, within one month of the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (b), (c), (d), (e), (f) and (g) of paragraph (3).

(6) In this Regulation “premises” means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport feed materials.

9. (1) The Minister may, on the application of a person who has purchased a feed material for use in farming operations carried on by him or her, cause an authorised officer to take a sample of such feed material for the purpose of having it analysed as to its nature and content.

(2) An application under this Regulation shall -

- (a) be in writing,
- (b) be made not later than 60 days after the feedingstuff has been delivered to the applicant, and
- (c) be accompanied by such fee, not exceeding the expense likely to be incurred in taking and analysing the sample concerned, as may from time to time be determined by the Minister.

(3) An authorised officer may refuse to take a sample of a feed material, in respect of which an application under this Regulation has been made, where -

- (a) he or she is not satisfied -
 - (i) that the applicant purchased the feed material to which the application relates,
 - (ii) that the applicant intends to use the feed material in the manufacture of compound feedingstuffs, or
 - (iii) that the feed material presented for sampling by the applicant is not broadly representative of the feed material delivered to the applicant, or
- (b) the applicant fails or refuses to provide the authorised officer with such information relating to the feed material as he or she may reasonably require.

(4) The Public Offices Fees Act, 1879, shall not apply to fees under this Regulation.

(5) Subject to paragraph (6), all fees paid under this Regulation shall be paid into, or be disposed of for the benefit of, the Exchequer.

(6) The Minister may, where he or she considers it appropriate, refund a fee or part thereof paid in relation to an application under this Regulation.

10. (1) An authorised officer who takes a sample of a feed material under Regulation 8(3), or a sample of a feed material in respect of which an application under Regulation 9 has been made, shall -

- (a) in respect of such sample, comply with the Annex to Commission Directive No. 76/371/EEC of 1 March 1976² establishing Community methods of sampling for the official control of feedingstuffs, and
- (b) forward a final sample thereof (within the meaning of the said Annex) to -
 - (i) the State Chemist, and
 - (ii) the person who put the feed material concerned into circulation for the first time.

(2) As soon as practicable after he or she has received a final sample forwarded under paragraph (1) the State Chemist shall carry out an analysis of the sample and determine its nature and content.

11. (1) Where the Minister is of the opinion that a person has put into circulation or intends to put into circulation a feed material that does not comply with a provision of these Regulations or the Council Directive he or she may, by direction in writing given to that person -

- (a) require him to take all reasonable steps to withdraw such feed material from the market, or
- (b) prohibit him from putting such feed material into circulation.

(2) Where the Minister proposes to give a direction under paragraph (1) he shall, by notice in writing -

- (a) so inform the person to whom he or she proposes to give the direction, and
- (b) invite him or her to make representations to the Minister concerning such proposal, within 21 days of service of the notice,

and the Minister shall, in making a decision as to the giving of any such direction take into consideration any such representations.

(3) The Minister may, as he thinks fit, withdraw a direction given by him or her under paragraph (1).

12. (1) In proceedings for an offence consisting of a contravention of these Regulations, a certificate purporting to be signed by the State Chemist, or a person authorised by him or her in writing to perform the functions of the State Chemist under these Regulations, stating any one or more of the following, namely -

² O.J. No. L 102 of 15.4.1976, p. 1

- (a) that he or she received a final sample submitted to the State Chemist under Regulation 10(1)(b),
- (b) that, for such period as is specified in the certificate, he or she had in his or her custody the final sample so submitted,
- (c) that he or she gave to such other person as is specified in the certificate the final sample so submitted, or
- (d) that on analysis thereof by him or her the sample was found to be composed of such substances as are specified in the certificate,

shall, unless the contrary is proved, be evidence of the matters stated in the certificate.

(2) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under this Regulation be given, and the court may for the purpose of receiving oral evidence adjourn the proceedings to a later date.

13. (1) A direction or other document under these Regulations shall, subject to paragraph (2), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways:

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address,
- (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the direction or other document relates to land, by delivering it to some person over 16 years of age resident or employed on the land or by affixing it in a conspicuous position on or near the land.

(2) Where a direction or other document under these Regulations is to be served on or given to a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words the owner or, as the case may require, the occupier.

(3) It shall not be lawful for a person at any time during the period of 12 months after a direction or other document is affixed under paragraph (d) of paragraph (1) to remove, damage or deface the notice, direction or other document without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

14. (1) Any person who -

- (a) contravenes Regulation 4, 5, 6, or 7 of these Regulations,
- (b) fails or refuses to comply with -
 - (i) a direction of the Minister under Regulation 11,
 - (ii) a requirement of an authorised officer under Regulation 8(3)(d), or
 - (iii) a prohibition of an authorised officer under Regulation 8(3)(f), or
- (c) obstructs or interferes with an authorised officer in the course of exercising a power conferred on him or her by these Regulations or impedes the exercise by the officer of such power or fails or refuses to comply with a request made by, or to answer a question asked by, the officer pursuant to these Regulations, or in purported compliance with such request or in answer to such question gives information to the officer that he knows to be false or misleading in any material respect,

shall be guilty of an offence.

(2) Any person who has in his or her possession a feed material for the purpose of putting it into circulation in contravention of a provision of these Regulations shall be guilty of an offence.

(3) Any person who forges, or utters knowing it to be forged, a direction, certificate or other document purporting to be issued, granted or given under these Regulations (hereafter in this Regulation referred to as “a forged document”), shall be guilty of an offence.

(4) Any person who alters with intent to defraud or deceive, or who utters knowing it to be so altered, a direction, certificate or other document issued, granted or given under these Regulations (hereafter in this Regulation referred to as “an altered document”), shall be guilty of an offence.

(5) Any person who, without lawful authority, has in his or her possession a forged document or an altered document shall be guilty of an offence.

(6) Any person who, with intent to defraud or deceive -

- (a) tampers with any thing so as to procure that any sample taken pursuant to these Regulations does not correctly represent the substance sampled, or
- (b) tampers or interferes with any sample taken under these Regulations, shall be guilty of an offence.

(7) In proceedings for an offence under paragraph (1)(a) of these Regulations the onus of proving that the feed material in relation to which the offence is alleged to have been committed was put into circulation for the purpose of export to a third country shall be on the defendant.

(8) A person guilty of an offence under this Regulation shall be liable on summary conviction to a fine not exceeding £1,500, or imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(9) Proceedings for an offence under this Regulation may be brought and prosecuted by the Minister.

(10) Where an offence under this Regulation is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any 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.

GIVEN under my Official Seal,
this 26th day of November, 1999

L.S.

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, which cover the putting into circulation of feed materials consolidate existing legislation and implement the following Regulations: -

Council Directive 96/25/EC of 29 April 1996¹,
Commission Directive 98/67/EC of 7 September 1998²
Commission Directive 99/61/EC of 18 June 1999³.

¹ O.J. No L125/35, 23.5.1996

² O.J. No L261/10, 24.9.1998

³ O.J. No L162/67, 26.6.1999

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