

S.I. No. 317 of 2003

European Communities (Undesirable Substances in Feedingstuffs) 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), for the purposes of giving effect to Council Directive No. 1999/29/EC of 22 April 1999¹ (as amended by Directive No. 2001/46/EC of the European Parliament and the Council of 23 July 2001² and Council Directive No. 2001/102/EC of 27 November 2001³) and Directive No. 2002/32/EC of the European Parliament and of the Council of 7 May 2002⁴ as amended by Commission Directive No. 2003/57/EC of 17 June 2003⁵, hereby make the following regulations-

Citation and commencement

- 1.(1) These Regulations may be cited as the European Communities (Undesirable Substances in Feedingstuffs) Regulations 2003.
- (2) Subject to paragraph (3), these Regulations, other than Regulation 3, come into operation on 1 August 2003.
- (3) These Regulations, in so far as they relate to entries at (c) and (j) of point 27 to Annex I of the Directive, come into operation on 1 March 2004.

Interpretation

- 2.(1) In these Regulations-

“authorised officer” means-

- (a) an authorised officer under the European Communities (Animal Nutrition Inspections) Regulations 2003 (S.I. No. 238 of 2003),
- (b) a person appointed under Regulation 6,
- (c) a member of the Garda Síochána, or
- (d) an officer of Customs and Excise.

“Directive” means Directive No. 2002/32/EC of the European Parliament and of the Council of 7 May 2002 as amended by Commission Directive No. 2003/57/EC of 17 June 2003;

¹ O.J. No. L 115 of 4.5.1999, p.15.

² O.J. No. L 234 of 1.9.2001, p. 55.

³ O.J. No. L 6 of 10.1.2002, p.45.

⁴ O.J. No. L 140 of 30.5.2002, p. 45.

⁵ O.J. No. L 151 of 19.6.2003, p. 38.

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

“Minister” means the Minister for Agriculture and Food;

“premises” includes land with or without buildings and, where the context so requires or admits, includes a vehicle, vessel, aircraft or container;

“product” means a product intended for animal feed, that is, an additive, feedingstuff, premixture and all other products intended for use or used in animal feed;

“third country” means a country other than a member state.

- (2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.
- (3) In these Regulations, unless the contrary intention appears, a reference to a Regulation is to a Regulation of these Regulations and a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference appears.

Temporary Amendment

- 3.(1) The European Communities (Feedingstuffs) (Tolerances of Undesirable Substances and Products) Regulations 1998 (S.I. No. 283 of 1998) are amended, after Regulation 20, by inserting-

“21. For the avoidance of doubt, these Regulations (as amended by the European Communities (Feedingstuffs) (Tolerances of Undesirable Substances) (Amendment) Regulations 2000 (S.I. No. 36 of 2000) and the European Communities (Feedingstuffs) (Tolerances of Undesirable Substances) (Amendment) Regulations 2002 (S.I. No. 363 of 2002)) are to be construed and have effect as if reference in the First Schedule of these Regulations, *in lieu* of the matter therein, was reference to the matter in the Annex to Directive No. 1999/29/EC of 22 April 1999 (as amended by Directive No. 2001/46/EC of the European Parliament and the Council of 23 July 2001 and Council Directive No. 2001/102/EC of 27 November 2001).”.

- (2) This Regulation is revoked from 1 August 2003.

Regulation of products

- 4.(1) A person shall not import, export, put into circulation, manufacture, incorporate in a feedingstuff, feed to an animal or have in his or her possession or under his or her control a product unless-
- (a) it is sound, genuine and of a merchantable quality, and
 - (b) if the product is mentioned in Annex I to the Directive, the level of an undesirable substance in a product mentioned in column (2) of Annex I to the Directive opposite the mention of the undesirable substance in column (1) of the said Annex does not exceed the level specified in column (3) of the said Annex opposite the mention of the product in the said column (2).
- (2) A person shall not, for dilution purposes, mix a product that does not comply with paragraph (1) with another product or a further quantity of the same product.
- (3) Paragraph (1) applies to a complementary feedingstuff taking into account the proportion of the complementary product prescribed for use in a daily ration.
- (4) Annex I to the Directive is construed and has effect as if each maximum level referred to in footnotes (1), (3) and (4) is prescribed.
- (5) A person shall not have in his or her possession or under his or her control, sell or supply an animal to which a product has been fed in contravention of paragraph (1).

Records

- 5.(1) A person who imports, exports, puts into circulation, manufactures or incorporates a product in a feedingstuff, shall maintain a record of each transaction relating to a product or a feedingstuff, maintain the record for a period not less than 8 years and make it available on request to an authorised officer.
- (2) The Minister may, by notice in writing, prescribe the form and manner in which a record maintained under paragraph (1) is to be maintained and, if he or she does so, a person shall comply with the notice.

Authorised officers

- 6.(1) The Minister may appoint such and so many of his or her officers or other persons as the Minister thinks fit to be authorised officers for the purposes of some or all of the provisions of these Regulations.

- (2) A warrant of appointment as an authorised officer shall be issued to a person appointed under this Regulation and when exercising any function conferred on the person as an authorised officer he or she shall, if requested by a person affected, produce the warrant to that person.
- (3) The Minister may at any time terminate an appointment as an authorised officer, whether or not the appointment was for a fixed period.
- (4) An appointment as an authorised officer shall cease—
 - (a) where the Minister terminates it pursuant to paragraph (3),
 - (b) where it is for a fixed period, on the expiry of that period, or
 - (c) where the person appointed is an officer of the Minister, upon his or her ceasing to be such an officer.
- (5) Nothing in paragraph (4) shall be construed so as to prevent the Minister from reappointing a person as an authorised officer.

Powers of authorised officers

- 7.(1) An authorised officer or a person employed by or acting on the authority of the Commission of the European Communities accompanied by an authorised officer, if the authorised officer has reasonable cause to suspect that -
 - (a) a product is present or may be present on a premises,
 - (b) a product is or has been manufactured, incorporated in feedingstuff, processed, stored or otherwise dealt with on the premises,
 - (c) a document relating to a product or other thing is or may be on a premises, or
 - (d) any offence is being or has been committed under these Regulations,

may enter any premises and the authorised officer may—

- (i) search the premises,
- (ii) stop any person, vehicle, vessel or container,
- (iii) board and search any vehicle, aircraft, vessel or container,
- (iv) search a person, where the authorised officer considers it necessary,

- (v) examine a feedingstuff, by-product, vehicle, aircraft, vessel, container or other thing that may consist of or contain a product,
 - (vi) take, without payment, samples, including samples from an animal, of a product, feedingstuff, other thing or any article or substance as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations, tests or inspections as he or she considers necessary or expedient,
 - (vii) seize and detain (for so long as is necessary) any animal, product, feedingstuff, vehicle or container,
 - (viii) require the production of a relevant document or thing relating to an animal, product, feedingstuff process, or premises,
 - (ix) retain any such document or thing (for so long as is necessary),
 - (x) dispose of, or require the owner or person in charge of or in possession of, an animal, product or feedingstuff to dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, a product) in such manner as the authorised officer sees fit,
 - (xi) give such directions to, or request such information of, such person regarding the animal product, feedingstuff, vessel, vehicle, aircraft or container as the authorised officer considers necessary,
 - (xii) require the name and address of a person and the name and address of any other relevant person including the person to whom the animal, product is being delivered or who is causing it to be delivered ,
 - (xiii) require of a person the ownership, identity and origin of an animal, product or feedingstuff, or
 - (xiv) mark or otherwise identify an animal, product, feedingstuff or a sample taken under subparagraph (vi).
- (2) An authorised officer shall not enter, other than with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 8 other than if he or she has reasonable cause to suspect that, before a search warrant could be sought in relation to the dwelling, anything to which paragraph (1) relates is being or is likely to be destroyed or disposed.

- (3) An authorised officer may use reasonable force, if necessary, in the exercise of his or her powers under this Regulation.
- (4) An authorised officer when exercising any powers under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of those powers.
- (5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under this Regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (6) Where a member of the Garda Síochána has reasonable cause to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

Search warrant

8.(1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting -

(a) that there is in or on any premises-

- (i) a product,
- (ii) a feedingstuff, or
- (iii) an animal,

that has been, may have been or may be imported, exported, put into circulation, manufactured, incorporated in a feedingstuff, fed or held in possession in contravention of Regulation 4, or

(b) that there is evidence of an offence under these regulations relating to a product therein or thereon,

the judge may issue a search warrant.

- (2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána, officers of Customs and Excise and other persons 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 land, premises or vehicle, vessel, aircraft or container named in the warrant.
- (3) Where any premises, land, vehicle, vessel, aircraft or container is entered pursuant to a warrant issued under this Regulation, an authorised officer so

entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Product Control Notice

9.(1) Where an authorised officer is of the opinion that -

- (a) these Regulations are not being or have not been complied with or there are reasons to believe that they will not be complied with, or
- (b) there is a danger to public or animal health

he or she may, by a notice in writing (“product control notice”) stating that opinion and served on the person who appears to be the owner, operator or person in charge of the premises, animal, product, feedingstuff or other thing to which the notice relates –

- (i) seize and detain the animal, product, feedingstuff, premises, or other thing, or
- (ii) require him or her to take such action as the authorised officer considers necessary.

(2) A product control notice may-

- (a) require that an animal, product, feedingstuff or other thing be disposed of or destroyed in a manner specified in the notice,
- (b) prohibit or regulate any operation or processing on the premises to which the notice relates,
- (c) prohibit the transport or, as the case may be, the further transport of an animal, product, feedingstuff or other thing either absolutely or unless such conditions as may be specified in the notice are complied with,
- (d) require a person to return an animal, product, feedingstuff or other thing to the place of departure by a route which in the opinion of the authorised officer is the most direct or prudent,
- (e) require that such alterations be made to a premises or means of transport as may be specified in the notice, or
- (f) require a person to cleanse and disinfect a vehicle, premises, container or part thereof.

(3) A person shall comply with a product control notice or a requirement of a product control notice unless and until the notice is annulled under paragraph (8).

- (4) A requirement contained in a product control notice may specify a time limit within which it is to be complied with.
- (5) A requirement specified in a product control notice (in this paragraph referred to as "the earlier notice") may be modified or withdrawn in a further notice and the earlier notice shall have effect subject to the modification or withdrawal.
- (6) A product control notice may require the person in possession of or control of an animal, product, feedingstuff, premises, means of transport or other thing to choose between two or more of the requirements specified in the notice.
- (7)
 - (a) A person affected by a product control notice may, within 7 days of the service of the notice, apply to the Judge of the District Court having jurisdiction in the District Court District where an animal, product, feedingstuff, premises, means of transport or other thing is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person bringing the appeal ordinarily resides or carries on business on the grounds that the notice or any of the terms thereof are not justified having regard to these Regulations (in this Regulation referred to as "an appeal").
 - (b) An appeal may be heard at any sitting of the District Court within the appropriate District Court District.
 - (c) Notice of an appeal shall contain a statement of the grounds upon which it is alleged that the product control notice or any of the terms thereof are not justified and shall be served on the Minister at least 48 hours prior to the hearing of the appeal.
 - (d) A copy of the notice of appeal shall be lodged with the District Court Clerk at least 48 hours prior to the hearing of the appeal.
- (8) On the hearing of an appeal a Judge of the District Court may confirm, modify, or annul a notice.
- (9) A person, including a person on whom a product control notice has been served, shall not -
 - (a) pending the determination of an appeal, deal with an animal, product, feedingstuff, premises, means of transport or other thing to which the notice relates, other than in accordance with the terms of the notice, or
 - (b) after such appeal, deal with an animal, product, feedingstuff, premises, means of transport or other thing concerned other than in accordance with the product control notice or notice as modified.
- (10)
 - (a) Where-

- (i) the person in control of an animal, product, feedingstuff, premises, means of transport or other thing fails to comply with the terms of a notice under this Regulation within the time specified therein,
 - (ii) an authorised officer has reasonable grounds for believing that the terms of a product control notice will not be complied with,
 - (iii) a product control notice has been confirmed with or without modification under paragraph (8) and the notice has not been complied with,
 - (iv) an authorised officer has reasonable grounds for believing that the terms of a product control notice which has been confirmed with or without modification under paragraph (8) will not be complied with, or
 - (v) pending the determination of an appeal, an authorised officer has reasonable grounds for believing that directions given pursuant to paragraph (9) have not been or will not be complied with, an authorised officer may at any time seize the animal, product, feedingstuff, premises, means of transport or other thing concerned.
 - (b) Where an animal, product, feedingstuff, premises, means of transport or other thing is seized in accordance with subparagraph (a), an authorised officer may-
 - (i) sell, destroy or dispose of the animal, product, feedingstuff or other thing or cause it to be sold, destroyed or be disposed of, or
 - (ii) take such other measures in relation to the animal, product, feedingstuff, premises, means of transport or other thing as the authorised officer considers appropriate in the circumstances of the case.
 - (c) Any profits arising out of the sale, destruction or disposal of an animal, product, feedingstuff or other thing in accordance with subparagraph (b) shall be paid to the owner thereof less any expenses incurred in connection with the seizure, sale, destruction or disposal.
- (11) The costs of a measure taken under this Regulation is recoverable by the Minister –
- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the animal, product, feedingstuff, premises, means of transport or other thing at the time the measure was carried out, or

- (b) by deducting the costs from any sum due by the Minister to a person on whom a product control notice has been served.

Forgery

- 10.(1) A person shall not forge or utter knowing it to be forged a, product control notice or a record purporting to be kept and maintained under these Regulations or a document purporting to be an extract therefrom (hereinafter in this Regulation referred to as “a forged document”).
- (2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered a product control notice or a record kept and maintained under these Regulations or an extract therefrom (hereafter in this Regulation referred to as “an altered document”).
- (3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Service

- 11.(1) A notice under Regulation 5(2) or a product control notice 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 where 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 where an address for service has been furnished, at that address, or
 - (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the welfare notice relates to a premises, by delivering it to some person over 16 years of age resident or employed on the premises or by affixing it in a conspicuous position on or near the premises.
- (2) Where a notice under Regulation 5(2) or a product control notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner or as the case may require, the occupier.
- (3) A person shall not at any time within 6 months after a notice under Regulation 5(2) or a product control notice is affixed to a premises remove, damage or deface the notice without lawful authority.

- (4) For the purposes of this Regulation, a company within the meaning of the Companies Acts 1963 to 1990, is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Obstruction

12. A person shall not –

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under Regulation 7 or 8,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 7,
- (c) adulterate or interfere with a product or feedingstuff,
- (d) tamper with or interfere with a sample, or
- (e) in purporting to give information required by an authorised officer under Regulation 7 –
 - (i) make a statement which he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose any material particular.

Offences

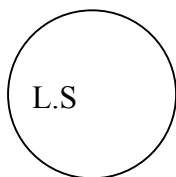
- 13.(1) A person who contravenes Regulation 4, 5, 9, 10, 11 (3) or 12 is guilty of an offence and is liable on conviction to a fine not exceeding €3,000 or a term of imprisonment not exceeding 6 months or to both.
- (2) An offence under these Regulations may be prosecuted by the Minister.
- (3) Where an offence under these Regulations has been committed by a body corporate and it 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 who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person 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 guilty of the first-mentioned offence.

- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body corporate.

Revocations

14. The following are revoked-

- (a) the European Communities (Feedingstuffs) (Tolerances of Undesirable Substances) Regulations 1998 (S.I. No. 283 of 1998),
- (b) the European Communities (Feedingstuffs) (Tolerances of Undesirable Substances) (Amendment) Regulations 2000 (S.I. No. 36 of 2000), and
- (c) the European Communities (Feedingstuffs) (Tolerances of Undesirable Substances) (Amendment) Regulations 2000 (S.I. No. 363 of 2000).



GIVEN under my Official Seal,
8th July 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 the provisions of Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 (as amended) which lays down control measures to be applied on undesirable substances in feedingstuffs.

Prn. 627

Published by the Stationary Office, Dublin

Price €2.54