

2003 No. 287

AGRICULTURE

**Feeding Stuffs (Sampling and Analysis) and Feeding
Stuffs (Enforcement) (Amendment) Regulations
(Northern Ireland) 2003**

Made - - - - - *3rd June 2003*

Coming into operation *14th July 2003*

The Department of Health, Social Services and Public Safety in exercise of the powers conferred by sections 66(1), 75(1), 76(1), 77(4), 78(6), 79(1) and (2), 84 and 86 of the Agriculture Act 1970(a) (as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) Regulations (Northern Ireland) 2000(b)), after consultation as required by section 84(1) of that Act and by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c), and being a Department designated(d) for the purposes of section 2(2) of the European Communities Act 1972(e) 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) (in so far as these Regulations cannot be made under the powers in the Agriculture Act 1970 specified above), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Feeding Stuffs (Sampling and Analysis) and Feeding Stuffs (Enforcement) (Amendment) Regulations (Northern Ireland) 2003 and shall come into operation on 14th July 2003.

(2) The Interpretation Act (Northern Ireland) 1954(f) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999

2. The Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999(g) shall be amended in accordance with regulations 3 to 7.

(a) 1970 c. 40; sections 68(1A) and 74A were inserted by the Agriculture Act 1970 Amendment Regulations 1982 (S.I. 1982/980) and the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6 respectively
(b) S.R. 2000 No. 78
(c) O.J. No. L31, 1.2.2002, p. 1. Under Article 3 of the EC Regulation “food law” extends to feed produced for, or fed to, food producing animals
(d) S.I. 2000/2812
(e) 1972 c. 68. The enabling powers conferred by section 2(2) were extended by virtue of section 1 of the European Economic Area Act 1993 (c. 51)
(f) 1954 c. 33 (N.I.)
(g) S.R. 1999 No. 296, as amended by S.R. 2001 No. 209, S.R. 2002 No. 263 and modified by S.R. 2001 No. 47

3. In regulation 1 (citation, commencement and interpretation), for paragraph (2) there shall be substituted the following paragraph –

“(2) In these Regulations –

“the Act” means the Agriculture Act 1970;

“the sampling Directive” means First Commission Directive 76/371/EEC establishing the methods of sampling for the official control of feeding stuffs(a); and

“Directive 2002/70/EC” means Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs(b).”.

4. For regulation 3 (manner of taking, preparing, marking, sealing and fastening of samples) there shall be substituted the following regulation –

“Manner of taking, preparing, marking, sealing and fastening samples

3. The manner in which samples of –

(a) feeding stuffs; and

(b) feed materials to be sampled pursuant to Directive 2002/70/EC,

are to be taken, prepared, marked, sealed and fastened shall be as prescribed in Schedule 1.”.

5. In regulation 5 (application of methods of analysis) –

(a) for paragraph (1) there shall be substituted the following paragraph –

“(1) Subject to paragraphs (1A) and (2), to determine whether a substance of a kind listed in column 1 of Annex I to Part II of Schedule 2, or to which the method of analysis specified in Annex II or, as the case may be, III to that Part relates, is present or active in a sample of –

(a) a feeding stuff to be analysed pursuant to the Act;

(b) (in the case of the substances vitamin A and vitamin E) a premixture to be analysed pursuant to Commission Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feeding stuffs(c); or

(c) (in the case of dioxins and dioxin-like PCBs) a feed material to be analysed pursuant to Directive 2002/70/EC,

and, if it is, what quantity or preparation of such substance is present or active in such a sample –

(d) the provisions specified in Part I of Schedule 2 under the heading “GENERAL PROVISIONS” shall apply;

(e) in relation to a substance of a class or description listed (whether by itself or by reference to its activity) in column 1 of Annex I to Part II of that Schedule, the relevant method of analysis set out in the Community provision listed in the corresponding entry in column 2 of that Annex shall be used; and

(f) in relation to a substance to which the method of analysis specified in Annex II or as the case may be III to Part II of that Schedule relates, that method shall be used.”; and

(b) immediately after paragraph (1) there shall be inserted the following paragraph –

“(1A) Where more than one method of analysis is provided for in any of the Community provisions listed in column 2 of Annex I to Part II of Schedule 2 in relation to the same substance, the notes to that Annex shall have effect to specify which is the relevant method.”.

(a) O.J. No. L162, 15.4.76, p. 1

(b) O.J. No. L209, 6.8.2002, p. 15

(c) O.J. No. L174, 13.7.2000, p. 32

6. Immediately after regulation 5 there shall be inserted the following regulation –

“Modification of the Agriculture Act 1970 and of these Regulations as regards analysis of samples of feeding stuffs and feed materials to determine levels of dioxins and dioxin-like PCBs

5A. For the purpose of determining whether dioxins or dioxin-like PCBs are present or active in a sample of a feeding stuff to be analysed pursuant to the Act or of a feed material to be analysed pursuant to Directive 2002/70/EC and, if they are, what quantity or proportion of dioxins or dioxin-like PCBs are present or active in such a sample –

- (a) Part IV of the Act shall have effect as if –
 - (i) in section 66(1), immediately after the definition of “pet animal” there were inserted the following definition –

“ “point 4 compliant laboratory” means a laboratory which complies with the fourth and fifth indents of point 4 of Annex II to Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs;”,
 - (ii) in section 77(1)(a), for “the agricultural analyst for the inspector’s area” there were substituted “a point 4 compliant laboratory”,
 - (iii) in each of sections 77(3) and 78(5), for “the agricultural analyst” there were substituted “a point 4 compliant laboratory”,
 - (iv) in section 77(4), for “The agricultural analyst shall analyse the part of a sample which is sent to him” there were substituted “A point 4 compliant laboratory shall analyse the part of a sample which is sent to it”,
 - (v) section 77(5) were omitted,
 - (vi) in section 78(3), for “agricultural analyst’s”, in both places where it appears, there were substituted “point 4 compliant laboratory’s”,
 - (vii) for section 79(4) and (5) there were substituted the following subsections –

“(4) Any analysis required to be made by a point 4 compliant laboratory or the chief agricultural analyst may be made by any person acting under the directions of an analyst at that laboratory or, as the case may be, of the chief agricultural analyst.

(5) A certificate of analysis by an analyst at a point 4 compliant laboratory shall be signed by that analyst and a certificate of analysis by the chief agricultural analyst shall be signed by him or a person authorised by him to sign the certificate.”, and
 - (viii) in section 79(6), for “an agricultural analyst” there were substituted “an analyst at a point 4 compliant laboratory”;
- (b) Part I of Schedule 3 shall have effect as if in the certificate set out there, for “agricultural analyst in Northern Ireland” there were substituted “analyst at the ^(1A)”; and
- (c) Part II of Schedule 3 shall have effect as if there were inserted between note (1) and note (2) the following note –

“(1A) Insert the name of the laboratory.”.

7. In Schedule 2 (methods of analysis), in Annex I to Part II, immediately after the entries for “Carbonates” there shall be inserted in columns 1 to 3 respectively the following entries –

“Dioxins and dioxin-like PCBs	Point 2 of Annex I to Directive 2002/70/EC and points 1 and 2, the second paragraph of point 3, the first three indents of point 4 and points 5 to 8 of Annex II to that Directive.	O.J. No. L209, 6.8.2002, p. 15”.
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Amendment of the Feeding Stuffs (Enforcement) Regulations 1999

8. The Feeding Stuffs (Enforcement) Regulations 1999(a) shall be amended in accordance with regulations 9 to 13.

9. For paragraph (1) of regulation 7 (modification of the Agriculture Act 1970 for certain purposes) there shall be substituted the following paragraph –

“(1) For the purpose specified in paragraph (2), the Act shall have effect subject to the modifications set out in regulations 8, 10, 12 and 13.”.

10. For regulation 8 (modification of references in Part IV of the Agriculture Act 1970 to samples taken in the prescribed manner) there shall be substituted the following regulation –

“Modification of references in Part IV of the Agriculture Act 1970 to samples taken in the prescribed manner

8. References in Part IV of the Act to samples taken in the prescribed manner shall be taken to refer –

- (a) in the case of feeding stuffs, to samples taken in the manner prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999; and
- (b) in the case of products other than feeding stuffs, to samples taken in the manner prescribed in section 76(8) of the Act.”.

11. In regulation 10 (modification of section 76 of the Agriculture Act 1970) –

- (a) “(as specified in regulation 7)” shall be omitted;
- (b) for the modified version of subsection (8) of section 76 of the Agriculture Act 1970 which is set out in that regulation there shall be substituted the following subsection —

“(8) Subject to subsections (9), (10) and (12) of this section, an inspector entering premises by virtue of this section, or of a warrant issued under it, shall have the right to take on those premises a sample of any material appearing to him to be a controlled product other than relevant material as described in subsection (7) of this section, in the like manner as that prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999.”;

- (c) immediately after the modified version of section (8) of section 76 of that Act as so set out there shall be inserted the following subsection –

“(8A) For the purposes of this Part of this Act a sample taken in accordance with subsection (8) of this section shall be deemed to be taken in the prescribed manner.”; and

- (d) in the modified version of subsection (9) of section 76 of that Act as so set out for “subsection (8)” there shall be inserted “subsections (8) and (10)”.

12. For regulations 11 and 11A (modification of sections 77(4) and 78(6) of the Agriculture Act 1970) there shall be substituted the following regulations –

“Analysis for the purposes of sections 77(4) and 78(6) of the Agriculture Act 1970

11. For the purpose of the enforcement and administration of the Feeding Stuffs Regulations (Northern Ireland) 2001(b), analysis in relation to a sample of a product which falls to be inspected pursuant to Directive 95/53 but is not –

- (a) a feeding stuff;
- (b) a premixture to which Part A or Part B of Commission Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feeding stuffs applies; or

(a) S.I. 1999/2325, as amended by S.I. 2001/541, S.I. 2001/3389, S.R. 2001 No. 209 and S.R. 2003 No. 219

(b) S.R. 2001 No. 47, as amended by S.R. 2001 Nos. 209 and 428 and S.R. 2002 No. 263

(c) a feed material to which Annex II to Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs applies, shall be treated as carried out in the prescribed manner for the purposes of sections 77(4) and 78(6) of the Act if —

- (d) where there is an applicable standard of the kind referred to in the first indent of Article 18.3 of Directive 95/53, analysis is carried out in accordance with that standard; and
- (e) where there is no such standard, analysis is carried out in accordance with any scientifically valid method the application of which does not contravene any general principle of the Treaty establishing the European Community.

11A. For the purpose of the enforcement and administration of the Feeding Stuffs Regulations (Northern Ireland) 2001, analysis in relation to a sample of a premixture to which Part A or Part B of Commission Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feeding stuffs applies shall be treated as carried out in the prescribed manner for the purposes of sections 77(4) and 78(6) of the Act if it is carried out in accordance with whichever of those Parts is applicable in the case concerned.

11B. For the purpose of the enforcement and administration of the Feeding Stuffs Regulations (Northern Ireland) 2001, analysis in relation to a sample of a feed material to which Annex II to Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs applies shall be treated as carried out in the prescribed manner for the purposes of sections 77(4) and 78(6) of the Act if it is carried out in accordance with the requirements specified in that Annex.”.

13. In each of regulations 12 (modification of section 83 of the Agriculture Act 1970) and 13 (modification of section 86 of the Agriculture Act 1970), “(as specified in regulation 7)” shall be omitted.

Amendment of the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999

14. In the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999(a), for paragraph (1) of regulation 106 (methods of analysis) there shall be substituted the following paragraph —

“(1) Subject to paragraph (2), for the purpose of determining, by means of analysis of a part of a sample taken in the course of the carrying out of official checks, whether a substance —

- (a) of a class or description listed in column 1 of Annex I to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999; or
- (b) to which the method of analysis specified in Annex II or, as the case may be, III to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999 relates,

is present or active in it, or what quantity or proportion of such a substance is present or active in it, the provisions specified in Part I of Schedule 2 to those Regulations, under the heading “GENERAL PROVISIONS”, shall have effect, in the like manner as they have effect under those Regulations in relation to feeding stuffs, and —

- (c) in relation to a substance of a class or description listed (whether by itself or by reference to its activity) in column 1 of Annex I to Part II of Schedule 2 to those Regulations, the relevant method of analysis set out in the Community provision specified in the corresponding entry in column 2 of that Annex shall be used; and
- (d) in relation to a substance to which the method of analysis specified in Annex II or, as the case may be, III to Part II of Schedule 2 to those Regulations relates, the method of analysis applicable to that substance shall be used,

(a) S.I. 1999/1872, as amended by S.R. 2000 No. 78, S.R. 2001 Nos. 47 and 209 and S.R. 2002 No. 263

and where more than one Community provision is specified in column 2 of Annex I to Part II of Schedule 2 to those Regulations in relation to the same substance, the notes to that Annex shall have effect to specify which is the relevant method.”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 3rd June 2003.

(L.S.)

W. B. Smith

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, which amend the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999 (as already amended), the Feeding Stuffs (Enforcement) Regulations 1999 (as already amended), and the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (as already amended), implement Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs (O.J. No. L209, 6.8.2002, p. 15).

These Regulations –

- (a) amend the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999 (“the 1999 Regulations”) by –
 - (i) inserting into regulation 1(2) a definition of “Directive 2002/70/EC” (*regulation 3*),
 - (ii) substituting a revised regulation 3, which makes the requirements as regards the prescribed manner of taking and handling samples, which previously applied only to samples of feeding stuffs, applicable also to feed materials to be sampled pursuant to Directive 2002/70/EC and removes the reference to paragraph 10 of Part II of Schedule 1 to the 1999 Regulations (*regulation 4*),
 - (iii) amending regulation 5 so that it now includes provisions which, when read with provisions added by the Regulations to Schedule 2 to the 1999 Regulations, specify the method of analysis to be used to determine whether dioxins and dioxin-like PCBs are present or active in a sample of a feeding stuff or a feed material to be analysed pursuant to Directive 2002/70/EC (and if it is in what quantity or proportion) and extend to that determination the application of specified provisions in Part I of Schedule 2 to the 1999 Regulations (*regulations 5 and 7*), and
 - (iv) modifying Part IV of the Agriculture Act 1970 (1970 c. 40 - “the 1970 Act”) so as to provide that, in order to determine whether dioxins and dioxin-like PCBs are present or active in a sample of a feeding stuff or a feed material to be analysed pursuant to Directive 2002/70/EC (and if they are in what quantity or proportion) the sample is to be submitted to and analysed by a laboratory which satisfies specified requirements of that Directive, and making consequential amendments to Parts I and II of Schedule 3 to the 1999 Regulations (*regulation 6*);
- (b) amend the Feeding Stuffs (Enforcement) Regulations 1999 by –
 - (i) modifying regulation 7 so as to disapply it in relation to regulations 11 and 11A and ensure that it does not become applicable in relation to the new regulation 11B (*regulation 9*);
 - (ii) making consequential amendments to those Regulations (*regulations 10, 11(a) and (b) and 13*);
 - (iii) providing that samples taken in accordance with section 76 of the 1970 Act (as modified for the purposes of those Regulations) are to be deemed to be taken in the prescribed manner for the purposes of Part IV of that Act (*regulation 11(c)*);
 - (iv) further modifying section 76(9) of the 1970 Act as modified for the purposes of those Regulations by inserting into it a reference to section 76(10) as so modified (*regulation 11(d)*);
 - (v) substituting revised regulations 11 and 11A (which are concerned with analysis for the purposes of sections 77(4) and 78(6) of the 1970 Act), the former being amended to include reference to feed materials to which Annex II to Commission Directive 2002/70/EC applies and the latter being re-enacted with drafting improvements (*regulation 12*), and
 - (vi) inserting a new regulation, 11B, which specifies the circumstances in which, for the purposes of enforcing the Feeding Stuffs Regulations (Northern Ireland) 2001, analysis in relation to samples of feed materials to which Annex II to Directive

2002/70/EC applies is to be treated as carried out in the prescribed manner for the purposes of sections 74(4) and 78(6) of the 1970 Act (*regulation 12*); and
(vii) make consequential amendments to the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (*regulation 14*).

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