STATUTORY RULES OF NORTHERN IRELAND

2010 No. 323

AGRICULTURE

The Feed (Sampling and Analysis and Specified Undesirable Substances) Regulations (Northern Ireland) 2010

Made - - - -	*17th September 2010*
Coming into operation	*11th October 2010*

The Department of Health, Social Services and Public Safety(**1**) makes the following Regulations in exercise of the powers conferred on it by sections 66(1), 74A, 79(9) and 84 of the Agriculture Act 1970(**2**), as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) Regulations (Northern Ireland) 2000(**3**).

In so far as these Regulations cannot be made under the powers contained in the Agriculture Act 1970, the Department of Health, Social Services and Public Safety makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**4**).

The Department of Health, Social Services and Public Safety has been designated for the purposes of section 2(2) in relation to measures in the veterinary and phytosanitary fields for the protection of public health(**5**), the common agricultural policy of the European Community(**6**) and measures relating to feed produced for or fed to food-producing animals(**7**).

There has been consultation during the preparation of these Regulations in accordance with the requirements of section 84(1) of the Agriculture Act 1970 or, as appropriate, of 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(**8**).

(**1**) Formerly the Department of Health and Social Services; See S.I. 1999/283 (N.I. 1), Article 3
(**2**) 1970 c.40; sections 66(1) and 84 are modified in their application to Northern Ireland by section 86 of the Act and were amended by S.R. 2004 No. 506; section 74A was inserted by paragraph 6 of Schedule 4 to the European Communities Act 1972 (c. 68)
(**3**) S.R. 2000 No. 78
(**4**) 1972 c. 68
(**5**) S.I. 1999/2027
(**6**) S.I. 2000/2812
(**7**) S.I. 2003/2901
(**8**) OJNo. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468 with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14)

PART 1

General and introductory

Citation and commencement

1. These Regulations may be cited as the Feed (Sampling and Analysis and Specified Undesirable Substances) Regulations (Northern Ireland) 2010 and come into operation on 11th October 2010.

Interpretation

2.—(1) In these Regulations —

"the Act" means the Agriculture Act 1970;

"Regulation 152/2009" means Commission Regulation (EC) No.152/2009 laying down the methods of sampling and analysis for the official control of feed(**9**);

"the Feed Hygiene Regulations" means the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005(**10**);

"the GM Feed Regulations" means the Genetically Modified Animal Feed Regulations (Northern Ireland) 2004(**11**);

"analyst" means an agricultural analyst or deputy agricultural analyst.

(2) Any expression used in these Regulations and Regulation 152/2009 has the meaning in these Regulations that it bears in Regulation 152/2009.

(3) Any reference to a numbered section is a reference to the section so numbered in the Act as modified by these Regulations.

(4) The Interpretation Act (Northern Ireland) 1954(**12**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Prescribed metric substitution

3. For the purposes of its application to feeding stuffs, the Act shall be read as if —

(a) in section 68(2)(b) the words "to sales in quantities of not more than 25 kilograms" were substituted for the words "to sales of small quantities (that is to say, sales in quantities of not more than fifty six pounds or the prescribed metric substitution)"; and

(b) in section 76(5) the words "six kilograms" were substituted for the words "fourteen pounds or the prescribed metric substitution".

PART 2

Miscellaneous requirements relating to sampling and analysis

Methods of sending a final sample

4. Any final sample required to be sent to any person pursuant to —

(a) paragraph 8 of Annex I to Regulation 152/2009;

(**9**) OJ No. L54, 26.2.2009, p.1
(**10**) S.R. 2005 No. 546, to which there are amendments not relevant to these Regulations
(**11**) S.R. 2004 No. 386, to which there are amendments not relevant to these Regulations
(**12**) 1954 c.33 (N.I.)

(b) section 77(1) or (2);

(c) section 78(1)(a), (2) or (4);

(d) regulation 30(1), (2) or (5) or 31(2) of the Feed Hygiene Regulations; or

(e) regulation 6(2)(b) or (c) of the GM Feed Regulations,

may be sent by any appropriate method or delivered by hand.

Analysis other than in the course of official controls

5.—(1) Where a sample of feed is to be analysed pursuant to —

(a) section 75(1) (sample analysed at the request of the purchaser); or

(b) section 78(1) (further analysis by Chief Agricultural Analyst) in so far as that subsection does not relate to official controls,

the method of analysis shall be the appropriate one set out in Regulation 152/2009.

(2) In cases where there is no appropriate method of analysis in Regulation 152/2009, the analysis shall be carried out in the manner referred to in Article 11(1)(a) or as appropriate (b) of Regulation (EC) No.882/2004 of the European Parliament and of the Council on official controls performed to ensure verification of compliance with feed and food law, animal health and animal welfare rules(**13**)as read with Commission Regulation (EC) No. 669/2009 implementing Regulation (EC) No.882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC(**14**).

Form of certificate of analysis

6. The certificate of analysis of any feed to be sent pursuant to —

(a) section 77(4);

(b) regulation 30(4) or 31(3) of the Feed Hygiene Regulations; or

(c) regulation 6(2)(b) of the GM Feed Regulations,

must be in the form set out in Schedule 1 and must be completed in accordance with the notes to that Schedule.

PART 3

Amendment and modification of other legislation with regard to sampling and analysis

Amendment or modification of the Act

7. The Act is amended or as the case may be modified in accordance with regulations 8 to 19.

8. In section 66(1) (interpretation of Part IV), insert at the appropriate place the following definitions —

""“final sample” has the meaning that it bears in Annex I to Regulation 152/2009;";

(**13**) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.29). This Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14)

(**14**) OJ No. L194, 25.7.2009, p.11

""Regulation 152/2009" means Commission Regulation (EC) No. 152/2009 laying down the methods of sampling and analysis for the official control of feed;".

9. Section 68 (duty of seller to give statutory statement) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) in subsection (4)(b) "final sample" were substituted for "sampled portion"; and

(b) in subsection (5) —

(i) "final sample" were substituted for "sample taken from the portion in question", and

(ii) "in accordance with Regulation 152/2009" were substituted for "in the prescribed manner".

10. Section 69 (marking of material prepared for sale) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) in subsection (4)(c) "final sample" were substituted for "sampled portion"; and

(b) in subsection (5) "final sample in question" were substituted for "sample taken from the portion in question".

11. Section 70 (use of names or expressions with prescribed meanings) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) in subsection (2) "final sample" were substituted for "sampled portion"; and

(b) in subsection (4) —

(i) "final sample" were substituted for "sampled portion", and

(ii) "that sample" were substituted for "the sample taken from that portion".

12. Section 71 (particulars to be given of certain attributes if claimed to be present) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) in subsection (2)(b) "final sample" were substituted for "sampled portion"; and

(b) in subsection (3) —

(i) "final sample" were substituted for "sampled portion", and

(ii) "that sample" were substituted for "the sample taken from that portion".

13. In section 73 (deleterious ingredients in feeding stuff) —

(a) in subsection (1) —

(i) for "sampled portion" substitute "final sample", and

(ii) omit "the sample taken from"; and

(b) in subsections (2)(a) and (b), (2A) and (3)(b) in each case for "sampled portion" substitute "final sample".

14. In section 73A —

(a) in subsection (1) —

(i) for "sampled portion" substitute "final sample", and

(ii) omit "the sample taken from"; and

(b) in subsections (2)(a) and (b) and (3) in each case for "sampled portion" substitute "final sample".

15. Section 75 (purchaser's right to have sample taken and analysed) in so far as it applies in relation to feeding stuffs shall apply as if in subsection (1) "in accordance with Regulation 152/2009" were substituted for "in the prescribed manner".

16. Section 76 (inspector's power to enter premises and take samples) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) in subsection (1) "in accordance with Regulation 152/2009" were substituted for "in the prescribed manner"; and

(b) for subsection (4) the following were substituted —

"(4) Without prejudice to any other power or duty as to the taking of samples, an inspector may for the purposes of this Part of this Act take a sample of any material which has been sold for use as a feeding stuff or which he has reasonable cause to believe to be intended for sale as such.".

17. Section 77 (division of samples and analysis by agricultural analyst) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) for subsection (1) the following were substituted —

"(1) Where an inspector has taken a sample and prepared and packaged final samples in accordance with Regulation 152/2009 the inspector, in addition to sending a final sample to an agricultural analyst in Northern Ireland in accordance with the requirements of paragraph 8 of Annex I to that Regulation —

(a) shall send one final sample —

(i) where the sample was taken pursuant to the request of a purchaser under section 75 of this Act, to the seller or his agent;

(ii) in any other case, to the person on whose premises the sample was taken, or, if the person on whose premises the sample was taken purchased the material in question for use and not for resale, to the seller or his agent; and

(b) subject to section 78 of this Act, shall retain at least one final sample for nine months.";

(b) for subsection (2) the following were substituted —

"(2) If the person who manufactured any material of which an inspector has taken a sample as mentioned in subsection (1) is not a person to whom a final sample is required to be sent under that subsection, the inspector shall send a final sample to the manufacturer unless the inspector does not know and is unable after making reasonable inquiries to ascertain before the expiration of fourteen days from the date when the sample was taken —

(a) the manufacturer's name, or

(b) any address of the manufacturer in the United Kingdom.";

(c) in subsection (3) —

(i) "final sample" were substituted for "part of a sample", and

(ii) "in accordance with Regulation 152/2009" were substituted for "in the prescribed manner"; and

(d) in subsection (4) —

(i) "final sample" were substituted in each case for "part of a sample" or "part of the sample" as the case may be,

(ii) "in such manner, if any, as may be prescribed" were omitted,

(iii) "subsection (1)" were substituted for "subsection (1)(a)", and

(iv) in paragraph (b) "subsection (1)(a)(ii)" were substituted for "subsection (1)(b)(ii)".