STATUTORY RULES OF NORTHERN IRELAND

2005 No. 574

AGRICULTURE
FOOD

The Official Feed and Food Controls Regulations (Northern Ireland) 2005

Made - - - - 19th December 2005

Coming into operation 1st January 2006

The Department of Health, Social Services and Public Safety(**1**) makes regulation 41(2) of the following Regulations in exercise of the powers conferred on it by Articles 15(1), 16(2) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**).

In accordance with Article 47(3A) of the Food Safety (Northern Ireland) Order 1991, the Department of Health, Social Services and Public Safety has had regard to relevant advice given by the Food Standards Agency before making regulation 41(2) of the following Regulations.

The Department of Health, Social Services and Public Safety makes the following Regulations (apart from regulation 41(2)) in exercise of the powers conferred on it by section 2(2) of the European Communities Act 1972(**3**) and of all other powers enabling it in that behalf.

The Department of Health, Social Services and Public Safety, has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals(**4**), the common agricultural policy of the European Community(**5**) and measures in the veterinary and phytosanitary fields for the protection of public health(**6**).

As required 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(**7**) as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the

(**1**) Formerly the Department of Health and Social Services: *see* S.I. 1999/283 (N.I. 1) Article 3(6)
(**2**) S.I. 1991/762 (N.I.7) as amended by S.I.1996 /1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28, paragraph 2 of Article 2 (regarding the definition of "food") was substituted by S.R. 2004 No. 482
(**3**) 1972 c. 68
(**4**) S.I. 2003/2901
(**5**) S.I. 1972/1811, amended by S.I. 2002/794
(**6**) S.I. 1999/2027
(**7**) O.J. No. L31, 1.2.2002, p. 1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L245, 29.9.2003, p. 4)

European Food Safety Authority and laying down procedures in matters of food safety(**8**) there has been open and transparent public consultation during the preparation of the following Regulations.

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Official Feed and Food Controls Regulations (Northern Ireland) 2005 and shall come into operation on 1st January 2006.

Interpretation

2.—(1) In these Regulations—

"the Agency" means the Food Standards Agency;

"authorised officer"—

(a) in relation to a competent authority, means any person (whether or not an officer of the authority) who is authorised by them in writing for the purposes or regulation 14; and

(b) in relation to a relevant enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under regulation 17;

"competent authority" means the authority which, by virtue of regulation 3, is designated for the purposes of any of the provisions of Regulation 882/2004;

"Directive 2004/41", "Regulation 178/2002", "Regulation 852/2004", "Regulation 853/2004", "Regulation 882/2004" and "Regulation 1688/2005" have the meanings respectively given to them in Schedule 1;

"the Department" means the Department of Health, Social Services and Public Safety;

"feed authority" means the authority identified in section 86(3) of the Agriculture Act 1970(**9**) as having a duty to enforce that Act;

"the Imports Provisions" means Part 3 of these Regulations and Articles 15 to 24 of Regulation 882/2004;

"the Official Control Regulations" means these Regulations and Regulation 882/2004;

"the Order" means the Food Safety (Northern Ireland) Order 1991(**10**);

"premises" includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

"primary production" has the meaning it bears in Regulation 852/2004;

"relevant enforcement authority" means a body which, by virtue of regulation 17, is made responsible for executing and enforcing any provision of Part 2 of these Regulations;

"relevant feed law" has the meaning given to it in Schedule 2; and

(**8**) O.J. No. L245, 29.9.2003, p. 4
(**9**) 1970 c. 40
(**10**) S.I. 1991/762 (N.I.7) as amended by S.I.1996 /1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28, paragraph 2 of Article 2 (regarding the definition of "food") was substituted by S.R. 2004 No. 482

"relevant food law" has the meaning given to it in Schedule 3.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Order has the meaning it bears in the Order.

(3) Unless the contrary intention appears, any expression used both in these Regulations and in Regulation 178/2002 or Regulation 882/2004 has the meaning it bears in Regulation 178/2002 or Regulation 882/2004, as the case may be.

(4) The Interpretation Act (Northern Ireland) 1954(**11**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

PART 2

MAIN PROVISIONS

Competent authorities

3.—(1) Subject to paragraph (4), any body specified in Column 1 of Schedule 4 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant feed law.

(2) Subject to paragraphs (3) to (5), any body specified in Column 1 of Schedule 5 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant food law.

(3) Where the district council is designated as a competent authority pursuant to paragraph (2) the designation shall extend to its district only.

(4) Where the Agency is designated as a competent authority pursuant to paragraph (1) or (2) for the purposes of Article 31(1) of Regulation 882/2004, the designation shall extend only to the operations in respect of which the Agency executes and enforces the Food Hygiene Regulations (Northern Ireland) 2005(**12**) by virtue of regulation 5(1)(a) of those Regulations.

(5) Where the Agency is designated as a competent authority pursuant to paragraph (2) for the purposes of Article 31(2) of Regulation 882/2004, the designation shall extend, as regards Article 31(2)(a) to (e), only to those operations in respect of which the Agency executes and enforces the Food Hygiene Regulations (Northern Ireland) 2005 by virtue of regulation 5(2) of those Regulations.

Exchanging and providing information

4.—(1) For the purposes of enabling competent authorities, other OFFC authorities and member States to fulfil the obligations placed upon them by Regulation 882/2004 competent authorities may exchange among themselves or provide to other OFFC authorities any information received by them in the execution and enforcement of relevant feed law or relevant food law.

(2) For the purpose of executing or enforcing relevant feed law or relevant food law, competent authorities may exchange among themselves any information received by them in the execution and enforcement of relevant feed law or relevant food law.

(3) Competent authorities may share information received by them in the execution and enforcement of relevant feed law or relevant food law with the bodies which execute and enforce

(**11**) 1954 c. 33 (N.I.)
(**12**) S.R. 2005 No. 356

relevant feed law or relevant food law in England, Wales and Scotland for the purposes of facilitating the execution and enforcement of relevant feed law or relevant food law in those countries.

(4) Paragraphs (1), (2) and (3) are without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

(5) For the purposes of this regulation, "other OFFC authorities" means authorities designated in the United Kingdom as competent authorities for the purposes of Regulation 882/2004 other than the competent authorities designated under these Regulations.

Obtaining information

5.—(1) For the purpose of enabling competent authorities and member States to fulfil the obligations placed on them by Regulation 882/2004 and for the purpose of executing and enforcing relevant feed law or relevant food law, a competent authority may require a control body—

(a) to provide the competent authority with any information which it has reasonable cause to believe the control body is able to give; and

(b) to make available to the competent authority for inspection by it any records which it has reasonable cause to believe are held by the control body or are otherwise within its control (and, if they are kept in computerised form, to make them available in a legible form).

(2) The competent authority may copy any records made available to it under paragraph (1)(b).

(3) A person who—

(a) fails without reasonable excuse to comply with any requirement imposed under paragraph (1); or

(b) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(4) For the purposes of paragraph (1), the term "control body" includes any member, officer or employee of a control body.

Power to issue codes of recommended practice

6.—(1) For the guidance of district councils, the Department may issue codes of recommended practice as regards—

(a) functions conferred upon district councils in their capacity as competent authorities by or under Regulation 882/2004; or

(b) the execution and enforcement of Part 3 of the Import Provisions,

and any such code shall be laid before the Assembly after being issued.

(2) The Agency may, after consulting the Department, give a district council a direction requiring it to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on them as competent authorities by or under Regulation 882/2004 and in their execution and enforcement of the Import Provisions, each district council—

(a) shall have regard to any relevant provision of any such code; and

(b) shall comply with any direction which is given under this regulation and requires it to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by mandatory order.

(5) The Agency shall consult the Department before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Department shall have regard to any relevant advice given by the Agency.

Monitoring of enforcement action

7.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing relevant audit legislation.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant audit legislation.

(3) Each annual report of the Agency shall contain a report on its activities during the year in enforcing any relevant audit legislation for which it is the enforcement authority and its performance in respect of—

(a) any standards under paragraph (2) that apply to those activities; and

(b) any objectives relating to those activities that are specified in the statement of objectives and practices under section 22 of the Food Standards Act 1999(**13**).

(4) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant audit legislation and such a report may include guidance as to action which the Agency considers would improve that performance.

(5) The Agency may direct an authority to which such a report has been made—

(a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report; and

(b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.

(6) Section 19 of the Food Standards Act 1999 shall apply in relation to information obtained through monitoring under this regulation as if it were information obtained through monitoring under section 12 of that Act.

Power to request information relating to enforcement action

8.—(1) For the purpose of carrying out its function under regulation 7 in relation to any enforcement authority the Agency may require a person mentioned in paragraph (2)—

(a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give; or

(b) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within his control (and, if they are kept in computerised form, to make them available in a legible form).

(2) A requirement under paragraph (1) may be imposed on—

(a) the enforcement authority or any member, officer or employee of the authority; or

(b) a person subject to any duty under relevant audit legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) The Agency may copy any records made available to it in pursuance of a requirement under paragraph (1)(b).

(**13**) 1999 c. 28