



STATUTORY INSTRUMENTS

S.I. No. 389 of 2008

EUROPEAN COMMUNITIES (FEEDINGSTUFFS INTENDED FOR
PARTICULAR NUTRITIONAL PURPOSES) REGULATIONS, 2008

(Prn. A8/1534)

EUROPEAN COMMUNITIES (FEEDINGSTUFFS INTENDED FOR PARTICULAR NUTRITIONAL PURPOSES) REGULATIONS, 2008

INDEX

1. Citation
2. Interpretation
3. Marketing and Labelling
4. Keeping of Records
5. Appointment of Authorised Officers
6. Functions of Authorised Officers
7. Search Warrant
8. Compliance Notice
9. Appeal against compliance notice
10. Forgery
11. Service
12. Contravention
13. Evidence on certificate
14. Fixed payment notice
15. Revocations

S.I. No. 389 of 2008

EUROPEAN COMMUNITIES (FEEDINGSTUFFS INTENDED FOR PARTICULAR NUTRITIONAL PURPOSES) REGULATIONS, 2008

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purposes of giving effect to Council Directive 93/74/EEC of 13 September 1993¹ as amended by Council Directive 1999/29/EC of 22 April 1999²; Directive 2000/16/EC of the European Parliament and the Council of 10 April 2000³; Commission Directive 2008/38/EC of 5 March 2008⁴ as amended by Commission Directive 2008/82/EC of 30 July 2008⁵, hereby make the following regulations—

Citation

1. These Regulations may be cited as the European Communities (Feedingstuffs Intended for Particular Nutritional Purposes) Regulations, 2008

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person who immediately before the making of these Regulations was an authorised officer within the meaning of the European Communities (Feedingstuffs Intended for Particular Nutritional Purposes) Regulations, 1996 (S.I. No. 59 of 1996),
- (b) a person appointed under Regulation 5,
- (c) a member of an Garda Síochána, or
- (d) an officer of Customs and Excise;

“Commission Directive” means Commission Directive 2008/38/EC of 5 March 2008 as amended by Commission Directive 2008/82/EC of 30 July 2008;

“Council Directive” means Council Directive 93/74/EEC of 13 September 1993 as amended by Council Directive 1999/29/EC of 22 April 1999 and Directive 2000/16/EC of the European Parliament and the Council of 10 April 2000;

“Minister” means Minister for Agriculture, Fisheries and Food;

¹O.J. No. L237, 22.09.1993, p. 23

²O.J. No. L115, 04.05.1999, p. 32

³O.J. No. L105, 03.05.2003, p.36

⁴O.J. No. L62, 06.03.2008, p. 9

⁵O.J. No. L202, 31.07.2008, p. 48

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 3rd October, 2008.*

“premises” includes a building or other structure (whether temporary or permanent), land (including land under water) with or without buildings, a dwelling, a vehicle (including a boat, ship, hovercraft, aircraft or offshore installation (being an offshore installation within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987)), railway wagon, container or other thing used in connection with, or ancillary to, such a thing;

“record” includes a memorandum, book, plan, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Act 1988) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing.

(2) A word or expression that is used in these Regulations and is also used in the Council and Commission Directives has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council and Commission Directives.

Marketing and Labelling

3. (1) A person shall not have in his or her possession or under his or her control, manufacture or place on the market, a feedingstuff intended for particular nutritional purposes (hereinafter referred to as ‘feedingstuff’) unless—

- (a) it fulfils the conditions referred to in Article 3 of the Council Directive,
- (b) it is labelled in accordance with the provisions laid down in Article 5 of the Council Directive,
- (c) it fulfils the provisions laid down in Part A of Annex 1 of the Commission Directive,
- (d) its intended use is included in Part B of Annex 1 to the Commission Directive, and
- (e) it fulfils the provisions laid down in Part B of Annex 1 to the Commission Directive.

(2) A person who has in his or her possession or under his or her control, manufactures or places on the market a feedingstuff, shall furnish the Minister with data and information as required by the Minister, establishing that the feedingstuff complies with these Regulations, the Council Directive and the Commission Directive.

Keeping of Records

4. A person who has in his or her possession or under his or her control, manufactures or places on the market, a feedingstuff to which these Regulations apply shall—

- (a) keep a record that will enable an authorised officer to ascertain each ingredient and the quantity thereof used in each batch of feedingstuffs manufactured by him or her,
- (b) produce at the request of an authorised officer any books, documents or records relating to such business, that are in his or her possession or under his or her control,
- (c) permit an authorised officer to inspect and take extracts from such books, documents or records and give to the officer any information, which he or she may reasonably require in relation to any entries therein,
- (d) afford to an authorised officer reasonable facilities for inspecting the stock of feedingstuff, which is for the time being on any premises on which he or she carries on such a business,
- (e) give to an authorised officer any information he or she may reasonably require in relation to transactions made by such person including in particular information, which he may reasonably require regarding any feedingstuff, which is specified by him or her, and
- (f) comply with directions as may be issued by the Minister from time to time regarding the form of records to be kept.

Appointment of Authorised Officers

5. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases—

- (a) if it is terminated pursuant to paragraph (2),
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(4) A warrant of appointment as an authorised officer shall be issued to every person appointed under this Regulation by the Minister and when exercising a function conferred on the person as an authorised officer such person shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to that person.

(5) Nothing in paragraph (3) prevents the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

Functions of Authorised Officers

6. (1) If an authorised officer has reasonable cause to suspect that—

- (a) a feedingstuff is present or may be present on a premises,
- (b) a feedingstuff, is being or has been processed, stored or otherwise dealt with on a premises,
- (c) a feedingstuff has been or may have been fed to an animal on the premises,
- (d) a premises has been used for a purpose specified in these Regulations, the Council Directive or the Commission Directive or is ancillary to a premises used for a purpose so specified, or
- (e) an offence under these Regulations is being or has been committed on the premises,

he or she may enter the premises and the authorised officer may—

- (i) examine or inspect a feedingstuff,
- (ii) examine or inspect an animal to which a feedingstuff may have been fed,
- (iii) take, without payment, samples, as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (iv) carry out or cause to be carried out measurements, examinations, tests, or inspections of the premises or any part thereof and any equipment, plant, machinery or other article, substance or liquid as he or she considers necessary or expedient,
- (v) search the premises,
- (vi) require a person (who shall comply with the requirement) to give his or her name and address and information or produce any book, certificate, document or other record as the authorised officer considers necessary or expedient,
- (vii) examine and take copies of, or extracts from, a thing referred to in subparagraph (vi)
- (viii) seize and detain a thing referred to in this Regulation or other thing that he or she has reasonable cause to suspect may be evidence of a contravention of the European Regulation of an offence under these Regulations,
- (ix) seize and detain a feedingstuff or other thing,

- (x) seize and detain an animal to which subparagraph (ii) refers or the meat or other product of the animal,
- (xi) require the production of any document or thing relating to a feedingstuff or animal to which paragraph (ii) refers or the meat or other product of the animal,
- (xii) retain any such document or thing (for so long as is necessary),
- (xiii) give directions to, or require information of, a person regarding a premises, feedingstuff, meat or other product of an animal as he or she considers necessary,
- (xiv) require of a person the ownership, identity and origin of a feedingstuff, animal, meat or other product of the animal, or
- (xv) mark or otherwise identify the feedingstuff, animal, meat or other product of the animal or a sample taken under subparagraph (iii).

(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 7 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 of.

(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 (including an employee of or person acting on behalf of the European Commission) 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 shall not be 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) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of a feed additive, feedingstuff containing a feed additive, animal, meat or other product of the animal as may be specified by the authorised officer.

(7) Where an authorised officer is satisfied that a feedingstuff which is placed on the market, or which he believes will be placed on the market, does not comply with any one or more of the requirements of these Regulations, he may require the person, who appears to him to have for the time being possession or control of a feedingstuff, take such steps as are necessary to ensure that it

does not continue to be placed on the market until such authorised officer is satisfied that the requirement is complied with.

(8) If 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

7. (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 on a premises a feedingstuff, an animal to which a feedingstuff has been or may have been fed or the meat or other product of such animal, or
- (b) there is evidence of an offence under these Regulations 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 and officers of Customs and Excise 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 premises named in the warrant.

(3) If a premises 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.

Compliance Notice

8. (1) Without prejudice to the generality of Regulation 6(1), if 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 (“compliance notice”) stating that opinion and serve on the person who appears to be the owner, operator or person in charge of the premises, a feedingstuff, or other thing to which these Regulations relate or other thing to which the notice relates—

- (i) seize and detain a feedingstuff or other thing to which these Regulations relates, premises, vessel, vehicle, container or other thing, or
- (ii) require him or her to take such action as the authorised officer considers necessary.

(2) A compliance notice may—

- (a) require that a feedingstuff or other thing to which these Regulations relate 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 the further transport of a feedingstuff or other thing to which these Regulations relate, either absolutely or unless such conditions as may be specified in the notice are complied with,
- (d) require a person to return a feedingstuff or other thing to which these Regulations relate 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,
- (f) require a person to secure in a manner specified by the authorised officer (if any) a feedingstuff or other thing, or
- (g) require a person to cleanse and disinfect a vehicle, premises, vessel, container or part thereof.

(3) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under Regulation 9(5) or until the notice has been withdrawn by an authorised officer.

(4) A requirement contained in a compliance notice may specify a time limit within which it is to be complied with.

(5) A requirement specified in a compliance notice may be modified or withdrawn in a further notice and the earlier notice has effect subject to the modification or withdrawal.

(6) A compliance notice may require the person in control of a feedingstuff, to which these Regulations relate, premises, means of transport or other thing to choose between two or more of the requirements specified in the notice.

Appeal against compliance notice

9. (1) A person affected by a compliance 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 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”).

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court District.

(3) Notice of an appeal shall contain a statement of the grounds upon which it is alleged that the 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.

(4) 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.

(5) On the hearing of an appeal a Judge of the District Court may confirm, modify, or annul a notice.

(6) A person, including a person on whom a compliance notice has been served, shall not—

- (a) pending the determination of an appeal, deal with a feedingstuff or other thing to which these Regulations relate, 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 the appeal, deal with a feedingstuff or other thing to which these Regulations relate, premises, means of transport or other thing concerned other than in accordance with the compliance notice or compliance notice as modified.

Offences and final provisions

Forgery

10. (1) A person shall not forge or utter knowing it to be forged a certificate, commercial document, an approval, authorisation, registration document or licence issued pursuant to these Regulations, another act of the institutions of the European Community cited in these Regulations or a record purporting to be kept and maintained under these Regulations another act of the institutions of the European Community cited in these Regulations or a document purporting to be an extract from such a document (hereafter in this Regulation referred to as “a forged document”).

(2) A person shall not alter, or utter knowing it to be so altered a certificate, commercial document, an approval, authorisation, registration document or licence granted under these Regulations, another act of the institutions of the European Community cited in or a record kept and maintained under these Regulations, another act of the institutions of the European Community cited in these Regulations or an extract from such a document (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 direction under Regulations 4 or 6, a compliance notice or a requirement of an authorised officer (if in written form) shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on a person—

- (a) by giving it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, 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, where an address for service has been furnished, at that address,
- (d) by electronic communication,
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the animal health and welfare notice relates to a premises, by delivering a copy to the premises or by affixing a copy in a conspicuous position on or near the premises, or
- (f) if the Minister or an authorised officer considers that the immediate giving of the notice, direction or requirement of an authorised officer (if in written form) is required, by sending a copy, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) If a direction under Regulations 4 or 6 or a compliance notice is to be served on a person who is the owner or keeper of a thing to which the notice relates or a transporter and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words "the occupant".

(3) A person shall not, at any time within 6 months after a direction under Regulations 4 or 6 or a compliance notice is affixed under paragraph (1)(e), 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 is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Contravention

12. (1) A person who—

- (a) contravenes Regulation 3 or 4,

- (b) obstructs or impedes an authorised officer in the exercise of any of his or her functions under Regulation 6,
- (c) fails, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 6,
- (d) aids or abets a contravention of these Regulations, the Council Directive, the Commission Directive or another act of the institutions of the European Communities cited in these Regulations or the preamble to these Regulations, is guilty of an offence and is liable—
 - (i) on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or to both, or
 - (ii) on conviction on indictment to a fine not exceeding €250,000 or to a term of imprisonment not exceeding 3 years or to both.

(2) A summary offence under these Regulations may be prosecuted by the Minister.

(3) If an offence under these Regulations is 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 is committed, is 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, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(4) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.

Evidence on certificate

13. (1) In proceedings for an offence consisting of a contravention of these Regulations, a certificate purporting to be signed by a person employed at a laboratory named in the certificate stating the capacity in which that person is so employed and stating any one or more of the following, namely—

- (a) that the person received a sample submitted to the laboratory,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody a sample so submitted,
- (c) that the person gave to such other person as is specified in the certificate a sample so submitted, or
- (d) that the person carried out any laboratory examination for the purpose of detecting the presence and/or quantity, in a sample so submitted, of a substance or that the sample was positive for a prohibited

substance is, unless the contrary is proved, 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 paragraph (1) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(3) In proceedings for an offence, evidence of an act of the institutions of the European Community may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(4) Paragraph (3) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Fixed payment notice

14. (1) If an officer of the Minister has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may, during the period of 28 days from the date of the notice, make to the Minister a payment of €250 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If notice is given under paragraph (1)—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister, at the address specified in the notice, the payment specified in the notice accompanied by the notice,
- (b) the Minister, may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

Revocations

15. The following are revoked:

- (a) the European Communities (Feedingstuffs Intended for Particular Nutritional Purposes) Regulations, 1996 (S.I. No. 59 of 1996);
- (b) the European Communities (Feedingstuffs Intended for Particular Nutritional Purposes) (Amendment) Regulations, 2002 (S.I. No. 364 of 2002); and
- (c) the European Communities (Feedingstuffs Intended for Particular Nutritional Purposes) (Amendment) Regulations, 2008 (S.I. No. 222 of 2008).



GIVEN under my Official Seal,
18 September 2008

BRENDAN SMITH
Minister for Agriculture, Fisheries and Food

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations revoke the European Communities (Feedingstuffs Intended for Particular Nutritional Purposes) Regulations, 1996 (S.I. No. 59 of 1996) so as to give effect to Commission Directive 2008/38/EC and Commission Directive 2008/82/EC. These feedingstuffs are essentially dietetic feedingstuffs intended for animals whose process of assimilation, absorption or metabolism could be temporarily or irreversibly impaired.

The Regulations sets out requirements concerning the composition and marketing of the products concerned. Special requirements are also set out regarding the labelling of the products so as to distinguish them from both ordinary feedingstuffs and medicated feedingstuffs.

The Regulations also contain a positive list of the intended uses of animal feedingstuffs for particular nutritional purposes indicating the precise use, essential nutritional characteristics, compulsory or optional declarations.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834/37 nó 1890 213434; Fax: 01 - 6476843 nó 094 - 9378964)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,
(Tel: 01 - 6476834/37 or 1890 213434; Fax: 01 - 6476843 or 094 - 9378964)
or through any bookseller.

€3.81

