

Proposed Feed Law Enforcement

Practice Guidance (Great Britain)

PREFACE

This Practice Guidance is issued by the Food Standards Agency (the Agency) to assist feed authorities with the discharge of their statutory duty to enforce relevant feed law. It is non-statutory, complements the statutory Feed Law Enforcement Code of Practice in Great Britain (Code of Practice), and provides general advice on approach to enforcement or on the law where its intention might be unclear.

Feed authorities should be aware that law relating to feed is not necessarily made under the Agriculture Act 1970. Law that applies to feed is also contained in and/or made under, the Animal Health Act 1981, the European Communities Act 1972, the Consumer Protection Act 1987, and the Trade Descriptions Act 1968.

Feed authority officers authorised under Part IV of the Agriculture Act 1970 to carry out duties under that Act and Regulations made under it are not automatically authorised to deal with feed law under other legislation. Separate authorisation in respect of other legislation is also required e.g. legislation made under the European Communities Act 1972, including the Feed (Hygiene and Enforcement) Regulations 2005¹ and the Official Feed and Food Controls Regulations 2007² (OFFC Regulations 2007), under which officers may be generally or specially authorised.

References to chapters, paragraphs and annexes are to the relevant parts of this document unless stated otherwise.

The guidance contained in this document is given in good faith, and accords with the Agency's understanding of relevant legal requirements. It should not, however, be taken as an authoritative statement or interpretation of the law as only the Courts have that power. Any examples given are illustrative and not comprehensive.

Feed authorities are strongly advised to consult their own legal departments when considering formal enforcement action.

¹ The Feed (Hygiene and Enforcement) (England) Regulations 2005 SI No. 3280
The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 SI No. 608
The Feed (Hygiene and Enforcement) (Wales) Regulations 2005 SI No. 3368 (W.265)

² The Official Feed and Food Controls (England) Regulations. SI 2007 No. 3185
The Official Feed and Food Controls (Scotland) Regulations. SI 2007 No. 522
The Official Feed and Food Controls (Wales) Regulations. SI 2007 No. 3294 (W.290)

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SECTION 1: ADMINISTRATION

CHAPTER 1.1: INTER-AUTHORITY MATTERS

In a feed establishment undertaking more than one activity, one of which involves the use, handling or incorporation of veterinary medicine/specified products, both local authorities and the Animal Medicines Inspectorate (AMI) will have responsibility for official controls at that establishment. Since the Veterinary Medicines Directorate (VMD) took control of AMI a memorandum of understanding (MoU) has been drafted between LACORS and VMD setting out agreed procedures to be followed in these circumstances. This MoU replaces that referred to in the Code of Practice and a copy of the LACORS/VMD MoU can be found at Annex 5.

CHAPTER 1.2 QUALIFICATIONS AND EXPERIENCE

1.2.1: Introduction

This Chapter deals with the qualifications and experience of authorised officers.

1.2.2: Pooling Expertise

Feed authorities should consider identifying a pool of authorised officers within their local or regional liaison group, whose experience and qualifications encompass the range of feed law enforcement activities.

Feed authorities that lack officers with suitable qualifications and experience to inspect such activities may then seek assistance from such officers.

1.2.3 Qualifications

The Trading Standards Institute has confirmed that a Certificate of Competence in Agriculture can be obtained using the Trading Standards Qualifications Framework. This involves obtaining passes in the Legal Systems and Agriculture Service Delivery papers of the Framework together with completion of a portfolio of evidence on the Agriculture Service Delivery module. This would satisfy the qualification requirements set out in Chapter

1.2.9 of the Code of Practice. Officers would still need to gain the experience/competencies detailed in Chapters 1.2.9 and 1.2.10 of the Code of Practice. This qualification is open to all local authority employees including those working in environmental health departments.

1.2.4 Training

The Code of Practice (Chapter 1.2.4) requires a minimum of 10 hours ongoing training each year by officers authorised to undertake feed law enforcement based on those areas identified in Chapter 1 of Annex II of OFFC Regulation 882/2004. However, there are many areas of official control activity which will be applicable to the enforcement of a range of legislation. Where officers have undertaken training which is applicable to other areas of their work (e.g. food) but is also relevant to feed law enforcement this will also count toward the 10 hours ongoing training per year required in the Code of Practice. Areas of training which would be relevant to feed law enforcement and other areas of official control work include:

- legal proceedings and implications of official controls;
- evaluation and the application of HACCP procedures; and
- management systems such as quality assurance programmes

CHAPTER 1.3: CONFLICTS OF INTEREST

All relevant information on the registration of feed business establishments is contained in the Code of Practice.

CHAPTER 1.4: FEED BUSINESS ESTABLISHMENT RECORDS

1.4.1: Introduction

This Chapter contains information about the Data Protection Act 1998 and the Freedom of Information Act 2000 as they relate to feed business records.

1.4.2: Data Protection / Freedom of Information

Feed authorities should ensure that their data protection registration encompasses all their reasons for holding data, including its supply to other agencies for the purposes of ensuring public health and the effective enforcement of feed law.

Feed authorities must adhere to the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000 in relation to any data and information they hold.

If feed authorities have any doubts about the release of data or information they should seek legal advice and/or contact the Information Commissioner's Office whose website can be found at www.ico.gov.uk.

CHAPTER 1.5 REGISTRATION OF FEED BUSINESS ESTABLISHMENTS

1.5.1 Introduction

This Chapter deals with the exemption of certain activities from the requirements of Regulation (EC) 183/2005³ (Feed Hygiene Regulation 183/2005). It also gives guidance on when feed business operators need to notify feed authorities of significant changes in the activities' of a feed establishment in accordance with Article 9.2(b) of Feed Hygiene Regulation 183/2005.

1.5.2 Activities which are exempt from the requirements of Feed Hygiene Regulation 183/2005

Article 2 a) of Feed Hygiene Regulation 183/2005 lists a number of activities that are outside the scope of the Regulation. These include:

- 'the feeding of food-producing animals kept for private domestic consumption or for the activities mentioned in Article 1 (2)(c) of

Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs⁴ (Article 2 (b)); and

- 'the direct supply of small quantities of primary production of feed at local level by the producer to local farms for use on those farms' (Article 2 (d)).

Article 1 (2)(c) of EC Regulation 852/2004 refers to:

'the direct supply, by the producer, of small quantities of primary products to the final consumer or to local retail establishments directly supplying the final consumer'

Feed Hygiene Regulation 183/2005 does not specify what is meant by 'small quantities' or 'local'.

With regard to the term 'small quantities of primary production/small quantities of primary products' an amount of 20 tonnes per annum should apply.

For 'local' a distance of within 50 kilometres (30 miles) of the establishment supplying products is advised. This distance is the same as that advised in the Food Standards Agency's Guidance on the Requirements of Food Hygiene Legislation (See annex H on page 69)⁵.

Businesses that can make use of these exemptions from the requirements of Feed Hygiene Regulation 183/2005 may however, be involved in other activities, e.g. use of feed on livestock farms, which are not exempt and do require such businesses to be registered/approved.

1.5.3 Situations where feed business operators are required to notify competent authorities of a change in activity of a feed business establishment

³ www.food.gov.uk/multimedia/pdfs/regulationec1832005.pdf

⁴ www.food.gov.uk/multimedia/pdfs/hiojregulation.pdf

⁵ www.food.gov.uk/multimedia/pdfs/fsaguidefoodhygleg.pdf

Generally, a change of activity at feed business establishment will not need to be notified to a competent authority by the feed business operator. Circumstances where a significant change in activity will be required to be notified by the feed business operator to a competent authority include:

- a change from a registrable activity to an approval activity;
- when an approval or registration activity is no longer undertaken (the Regulation requires the competent authorities to revoke the approval or registration of an activity when it no longer carries out such activities). However, it would not be necessary for a business to notify a change when it ceased to carry out an registrable activity but continued to carry out other registrable activities;
- a change from an activity of one of marketing/storage/transport to manufacture (manufacture is considered to be a higher risk activity in the Code of Practice); and
- Mixing feeds, on farms, with additives and premixtures' (activity R10). Farmers carrying out this activity must apply the principles of HACCP and comply with the requirements of Annex II of the Feed Hygiene Regulation 183/2005. It is suggested that when a farm decides to newly adopt this activity it should be notified.

CHAPTER 1.6: FEED INCIDENTS AND HAZARDS

1.6.1 Introduction

This Chapter deals with feed incidents and hazards that are identified by feed authorities. This chapter also gives guidance on the handling of feed related complaints.

1.6.2 Information Received Locally Which May Indicate a Wider Problem

Feed authorities are responsible for investigating and dealing with feed that fails to comply with feed safety requirements in their areas. Feed authorities may identify potential problems in a number of ways such as:

- Following chemical analysis of samples submitted to an Agricultural Analyst;
- As a result of complaints from members of the public, either directly or through a third party, for example, other LAs, etc;
- Through notifications from a manufacturing company, trade association, wholesaler, retailer, importer or caterer;
- Information from enforcement agencies in other countries;
- As a result of a notification from a Government Agency e.g. Food Standards Agency, Animal Health or DEFRA of one or more cases of animal illness,

The illustrations above are not intended to be comprehensive.

Following consultation with the Agriculture Analyst, where it is appropriate to do so, samples of relevant feeds or feed materials or additives and appropriate samples from any animals affected should be obtained where possible and sent for analysis.

1.6.3 Guidance on Feed Complaints

1.6.3.1 Notification of Feed Complaints

As a general rule anybody who may be prosecuted as a result of a consumer complaint should be notified that the complaint has been made as soon as reasonably practicable.

The feed authority should normally notify anybody who has an interest as soon as preliminary investigations indicate that a complaint may be well founded. Other potential defendants should be notified as they emerge.

Notification may be by any means, but should be confirmed in writing as soon as reasonably practicable. The written notification should include the date and nature of the complaint.

There may be exceptional circumstances in which notification could impede an investigation. In such circumstances notification should take place once it would no longer prejudice further investigations.

1.6.4 Involvement of Other Feed Authorities

If an investigation of a complaint brings to light a problem or potential problem outside the area of the enforcing feed Authority, the other feed authorities affected should be informed as soon as possible and, if appropriate, in accordance with the Home Authority Principle.

1.6.5 Scientific Investigation of Feed Complaint Samples

The authorised officer will need to consider whether feed that is the subject of a complaint needs to undergo any scientific investigation. If the authorised officer is in any doubt, advice should be sought from the Agricultural Analyst and/or the Food Standards Agency who will be able to advise on the form of scientific investigation which may be appropriate, particularly where a combination of analysis and examination is required.

If the authorised officer considers that a feed complaint sample should be analysed, it should be sent to the Agricultural Analyst. If any other investigation is necessary, the feed should be sent to a suitably qualified expert who is able to give evidence in the event of a prosecution.

The subject of a complaint or other interested party may ask for a feed complaint sample to be made available to help with an internal investigation. The feed authority should try to comply with any reasonable request provided

that it does not compromise the proper storage, analysis, examination or evidential value of the sample.

SECTION 2: COMMUNICATION

CHAPTER 2.1: DISCLOSURE OF INFORMATION

Relevant information on disclosure of information is contained in the Code of Practice. Chapter 1.4 of this Guidance is also relevant.

CHAPTER 2.2: FEED ALERTS

All relevant information on Agency communications and guidance is contained in the Code of Practice.

CHAPTER 2.3: AGENCY COMMUNICATIONS AND GUIDANCE

All relevant information on Agency communications and guidance is contained in the Code of Practice.

CHAPTER 2.4: INFORMATION TO BE SUPPLIED TO THE AGENCY

All relevant material on information to be supplied to the Agency is contained in the Code of Practice.

CHAPTER 2.5: LIAISON WITH OTHER MEMBER STATES

2.5.1: Introduction

This Chapter deals with the administration of and the approach to the European liaison arrangements that are to be operated by the Agency. Detailed provisions on administrative assistance and co-operation with other Member States are set out in Articles 34 to 38 of the OFFC Regulation 882/2004.

2.5.2: The Role of the Agency

The Agency is responsible for ensuring that official controls in relation to most aspects of animal feed law in the UK are carried out in accordance with the OFFC Regulation 882/2004.

The Agency is the designated liaison body for the purposes of Article 35 of the OFFC Regulation 882/2004 and, as such, is responsible for assisting and co-ordinating communication between competent authorities and the transmission and reception of requests for assistance. However, this does not preclude direct contacts, exchange of information or co-operation between the staff of feed authorities in different Member States.

In respect of requests for assistance from other Member States, the Agency is responsible for ensuring that all the necessary information concerning compliance, or otherwise, with UK feed law is provided without delay, except for information which cannot be released without breaching legal obligations or because it is the subject of legal proceedings.

The Agency will deal with matters falling under categories A and B (see Chapter 2.5 of the Code of Practice).

2.5.3: Documentation

In accordance with Article 36(2) of OFFC Regulation 882/2004, feed authorities must ensure that documents are forwarded without undue delay. Article 36(2) permits documents to be transmitted in their original form, or for copies to be provided.

2.5.4: Disclosure of Information

Article 7 of OFFC Regulation 882/2004 sets out the general requirements in respect of transparency and confidentiality. Article 34 stipulates that Articles 35 – 40 of that Regulation, which deal with administrative assistance and co-operation between Member States “shall not prejudice national rules applicable to the release of documents which are the object of, or are related

to, court proceedings, or rules aimed at the protection of natural or legal persons' commercial interests”.

Feed authorities should therefore ensure that any release of information is compatible with national legislation including that relating to Data Protection and Freedom of Information (see also Chapter 1.4).

2.5.5: Use of Information in Criminal Proceedings

Information can only be used in criminal proceedings with the prior consent of the sending Member State. Where a Member State is party to an international agreement or convention on mutual assistance, the procedures laid down in such instruments must be followed.

EU Member States are parties to The European Convention on Mutual Assistance in Criminal Matters⁶. This Convention requires that requests for information to be used as evidence in criminal proceedings be transmitted through the relevant authority.

The relevant authority in the UK is the “United Kingdom Central Authority”, which is part of the Judicial Co-operation Unit of the Home Office. The Central Authority liaises with the judicial authorities in Scotland. All requests via the Central Authority must be notified to the Agency so that it can fulfil its role as the UK single liaison body.

The UK Central Authority address is:

Home Office

UK Central Authority

5th Floor, Fry Building,

Marsham Street,

London, SW1P 4DF.

⁶ Council Act of 29 May 2000 establishing, in accordance with Article 34 of the Treaty on European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Official Journal C197, 12 .07.2000). Further information on mutual legal assistance under this convention can be found at www.police.homeoffice.gov.uk/operational-policing/mutual-legal-assistance/Assistance-from-UK/?version=2

Feed authorities should ensure that any information known, at the time of the request, to be required for use in criminal proceedings is obtained from the Member State by means of a letter of request under Section 3 of the Criminal Justice (International Co-operation) Act 1990.

Feed authorities are not “designated prosecuting authorities” for the purposes of the above-mentioned Act and letters of request must therefore be sought from a Justice of the Peace, a Judge or Sherriff.

Where feed authorities wish to use information that has already been supplied by another Member State, a letter of request should similarly be sought from a Justice of the Peace, a Judge or Sherriff.

The request must formally seek the consent of the Home Authority (or equivalent) in the Member State concerned to use the information in the proceedings.

2.5.6: Non-compliance with Legislation

When, during the exchange of information, it is apparent that a feed business operator has not complied with EU rules or national legislation, the Member State where the alleged non-compliance has taken place is required to report to the other Member State on action taken and steps to prevent a recurrence. Either Member State can then decide whether the report should also be copied to the European Commission. Feed authorities should copy all reports to the Agency. The Agency will decide whether the Commission should be notified.

2.5.7: Form – Notification of Incident to the Food Standards Agency



Notification of Incident to the Food Standards Agency Exchange of Information: Routine Feed Matters

Please complete all parts of this form in capital letters or type

Directed to
(Member State)

Info Only*

FA Ref:

Action Requested*

Agency
Ref:

* (please tick as appropriate)

Name and Address of Feed Authority:

Contact Officer:

Tel:

E-mail:

Fax:

Full product description (to include product name or brand name, health / identification marks):

Nature of complaint/request:

Date of Notification:

Photo: Yes **No**

Name and Address of Manufacturer, Packer, Retailer, Wholesaler (where appropriate):

Details of Investigation by Feed Authority: Please include details of who has been contacted i.e. importer; any appropriate UK Home Authority and include details of measures or actions taken and outcome of enquiry.

Action to be requested of the Agency: Please specify comprehensively the nature of the information requested.

Is the information intended to be used for prosecution?

Yes: **No:** **Maybe:** (Please tick as appropriate)

If “maybe” please be aware of time delays due to the need to reconfirm information for prosecution purposes. In relation to offences under UK Feed legislation please detail any time bars.

Signed..... Date sent:

Please return this form when completed to Animal Feed Unit, Enforcement Team, Food Standards Agency, Room 415b, Aviation House, 125 Kingsway, London WC2B 6NH.

SECTION 3: GENERAL ENFORCEMENT

CHAPTER 3.1: APPROACH TO ENFORCEMENT

3.1.1 Police and Criminal Evidence Act 1984 (PACE): Code of Practice B

PACE Codes of Practice including PACE Code of Practice B can be found on the Home Office Police website at the following address:

<http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-codes.html>

In Scotland the Crown Office Guidance for Specialist Reporting Agencies can be found at:

<http://www.copfs.gov.uk>

CHAPTER 3.2 FEED BUSINESS IMPROVEMENT NOTICES

3.2.1: Introduction

This Chapter deals with the use of feed business improvement notices under Regulation 17 of the Feed (Hygiene and Enforcement) Regulations.

3.2.2: The Enforcement Approach

The primary objective of enforcement action should always be to achieve compliance in the most effective and which is as unobtrusive to the operation of feed businesses as possible.

The practices of giving advice, and communicating by letter about enforcement issues, are well-established approaches to enforcement that are understood by feed businesses. Such procedures are therefore encouraged whenever they are likely to secure compliance with the requirements of feed law within a time that is reasonable in the circumstances.

Conversely, the service of a feed business improvement notice or improvement notice does not preclude parallel action such as prosecution for matters that are

the subject of the notice. Such a course of action may be particularly appropriate where conditions are serious or deteriorating.

3.2.3: Service of Notices

The Feed (Hygiene and Enforcement) Regulations require a feed business improvement notice to be served on a feed business operator. Improvement notices should normally be served either by delivery to the feed business operator in person, or at their usual or last known residence by a postal or courier service that includes proof of posting or despatch and, ideally, proof of delivery.

It is not always possible to identify the feed business operator and regulation 26(2) of the Feed (Hygiene and Enforcement) Regulations allows a feed business improvement notice to be addressed to the “owner” or “occupier” and delivered to some one on the premises if the feed business operator cannot be identified.

In cases mentioned in the paragraph immediately above, a feed business improvement notice should ensure, wherever possible, that the person who is responsible for taking action also receives a copy.

3.2.4: Drafting of Notices

It should be clear from the feed business improvement notice exactly what the recipient is required to do, and why; it should therefore be clearly drafted and easily understood.

As failure to comply with the requirements of a feed business improvement notice within the specified period is an offence, an officer who has decided to serve a notice should consider whether a single notice with a single time limit is appropriate. Failure to comply with one or more items of such a notice would be a failure to comply with the whole notice and constitute a single offence.

The alternative of serving multiple notices, each with a different time limit, may be more appropriate where multiple contraventions are concerned. Separate notices with separate time limits may also be easier to handle if there is an

appeal. An appeal against a single notice concerning multiple contraventions would result in the suspension of the whole notice until the appeal had been dealt with.

In respect of feed business improvement notices requiring structural work to be carried out, the officer should normally discuss the detail of any such work with the feed business operator, or with a person acting on the operator's behalf who is in a position to authorise the work, before a notice is issued. However, the issue of a notice should not be unduly delayed if agreement cannot be reached or a responsible person cannot be contacted.

3.2.5: Time Limits

A feed business improvement notice should clearly state the time limit by which the measures required by the notice must be completed. The Feed (Hygiene and Enforcement) Regulations specify a minimum period of 14 days.

An appeal may be lodged against the time limit, so it must be realistic, justifiable, and have regard to the extent and complexity of the measures required.

The time limit should normally be discussed and agreed with the feed business operator / feed business proprietor or with a person acting on the operator's / proprietor's behalf who is in a position to agree a time limit, before a notice is issued. The officer may, however, set a time limit without such agreement if agreement cannot be reached or a responsible person cannot be contacted.

The following factors should be taken into consideration in setting a time limit:

- The risk to animal and/or public health;
- The nature of the problem;
- The availability of solutions.

3.2.6: Extension of Time Limits

Although feed business improvement notices are to be complied with by the stipulated time limit, feed authorities should give due regard to any genuine difficulties that may occur in achieving compliance by that deadline.

There is no specific provision in the regulations to extend the time limit for compliance with a notice, but it may be unreasonable not to allow an extension if the feed business operator has a genuine reason for needing more time.

The operator should be advised when the notice is served that any request for an extension of time should be made in writing before the notice expires.

If the officer considers that the request is reasonable, they should make a note of the reasons for their decision on the relevant establishment file. The existing notice should then be withdrawn and a new notice issued reflecting the new time limit by which compliance must be achieved.

However, the officer should never issue such a notice automatically. When considering a request for an extension of the time limit, the officer should always consider whether the facts at that time justify such an extension, taking into account:

- The risk to animal / public health associated with the fault if an extension was granted;
- The reason for the request;
- The remedy involved;
- The past record of co-operation of the operator;
- Any temporary action which the operator proposes to take to remedy the defect.

3.2.7: Works of Equivalent Effect

The feed authority should respond in writing to any request from an operator to vary the work, and any agreed alternative measures should be confirmed in writing.

Disputes should be considered by the feed authority's lead officer for feed enforcement, or by the head of service or another senior manager.

Feed authorities should ensure that they have procedures to consider such matters, so that it is clear to the operator / proprietor that there is a proper review.

3.2.8: Compliance

The officer who served the feed business improvement notice should liaise with the feed business and monitor the work being undertaken and encourage the feed business operator to notify the officer when the work has been completed. Another authorised officer should monitor the work if the officer who served the notice is unable to do so.

The work should be checked as soon as practicable after notification has been received that it has been completed and the officer should confirm in writing that the works have been satisfactorily completed.

3.2.9: Appeals

It should be clear to the recipient of a feed business improvement notice that there is a right of appeal against the notice.

The notice should therefore include details of the right of appeal and the recipient provided with the name and address of the relevant local Court.

The feed business operator should also be asked to notify the officer if an appeal is lodged.

3.2.10: Other Discussion with the Feed Authority

Although a feed business operator/feed business proprietor has a right of appeal against a feed business improvement notice, the feed authority should

be prepared to discuss a notice and its requirements informally with the operator if they wish to do so.

The feed authority should similarly be prepared to discuss the requirements of any letter or other enforcement action.

If an operator indicates that the requirements of a notice are inconsistent with the interpretation or practice of other feed authorities, the feed authority should have regard to the views of the “home authority” as defined in the LACORS Home Authority Principle.

Feed authorities should have internal arrangements to consider such requests for further discussion and consider how they make these arrangements known to operators/proprietors.

Any disputes that arise should be referred to the lead officer for feed law, or an appropriate senior manager nominated by the lead feed officer.

CHAPTER: 3.3 PROHIBITION PROCEDURES

3.3.1: Introduction

This Chapter deals first with the use of feed business prohibition procedures and detention notice procedures under Regulations 21, 22 and 25 respectively of the Feed (Hygiene and Enforcement) Regulations and the associated voluntary closure procedures.

3.3.2: The Feed Hygiene and Enforcement Regulations

3.3.2.1 Regulation 21 – Feed business Prohibition Procedures

A Justice of the Peace and a Sherriff in Scotland may make a feed business prohibition order under Regulation 21 of the Feed (Hygiene and Enforcement) Regulations to:

- Prohibit the use of a process or treatment for the purposes of the business if the health risk condition is fulfilled;

- Prohibit the use of the premises or equipment for the purposes of the feed business or any similar feed business if the construction of the premises or use of any equipment fulfils the health risk condition;
- Prohibit the use of the premises or equipment for the purposes of any feed business if the state or condition thereof fulfils the health risk condition.

Before the court can make a feed business prohibition order, the feed authority must first successfully prosecute the feed business operator for an offence of breaching specified feed law, as that term is defined in Schedule 1 of the Feed (Hygiene and Enforcement) Regulations, or a court must have already made an order under regulation 22(2).

The Court will make an order if it considers that the premises, equipment, treatment and/or process fulfil the health risk condition as per Regulation 21(2).

The Court may also make an order prohibiting a feed business operator from managing any feed business, or a particular type of feed business.

3.3.2.1: Regulation 22 – Feed Business Emergency Prohibition Procedures

An authorised officer may serve an feed business emergency prohibition notice under Regulation 22 of the Feed (Hygiene and Enforcement) Regulations if the health risk condition is fulfilled in respect of a feed business and there is an imminent risk of injury to animal or human health. The effect of the notice is to immediately close the premises, or prevent the use of equipment, or the use of a process or treatment. Unlike Regulation 21, these powers cannot be used to prevent a person from managing a feed business.

The authorised officer must apply to a Magistrates Court or Sherriff's Court in Scotland for a feed business emergency prohibition order within three days of a feed business emergency prohibition notice being served, the day of service of the notice being day 1.

The operator must have at least one complete day's notice of the intention to make the application.

3.3.3: “Health Risk Condition”/“(Imminent) Risk of Injury to Health”

Regulations 21 and 22 of the Feed (Hygiene and Enforcement) Regulations can only be used if the “health risk condition” is fulfilled. In respect of Regulation 21, there must be a risk of injury to animal or human health and in respect of Regulation 22 there must be an imminent risk of injury to animal or human health. In this context injury to human health means injury caused by consumption of animal products (see regulation 2(2)).

In respect of Regulation 22 of the Feed (Hygiene and Enforcement) Regulations, the word “imminent” qualifies the word “risk”. There must always be an imminent risk of injury to animal or human health before a feed business emergency prohibition notice can be served. It is the risk of injury that must be imminent. The injury itself may occur sometime in the future, but it is essential to show that it could occur for the action to succeed. Not every animal or person exposed to the risk of injury will actually suffer the injury. It is the exposure to the risk of injury that enables action to be taken.

3.3.4: Feed Hygiene and Enforcement Regulations

In relation to feed hygiene, the health risk condition under the Feed (Hygiene and Enforcement) Regulations may exist if, for example, conditions in premises, or a defective process or treatment, carries a risk of causing feed borne infection or contamination of feed.

3.3.5: Criteria for Action

3.3.5.1 Feed Business Prohibition Procedures

The criteria for action depend on the conditions in Regulation 21(2) of the Feed (Hygiene and Enforcement) Regulations being met, i.e. that either the construction or condition of the premises, or any equipment or the use of any process or treatment involves a risk of injury to health.

An authorised officer should use professional judgement to decide whether premises, process, treatment or piece of equipment or its use involves a risk of injury to human or animal health.

The general criminal law principle is that the onus of proof rests with the party who requests the Court to make an order. The persuasive burden generally remains with the prosecution throughout. A similar rule applies in civil proceedings.

3.3.5.2 Feed Business Emergency Prohibition Procedures

In the case of Regulation 22(2) of the Feed (Hygiene and Enforcement) Regulations the feed authority makes the application and hence it bears the onus of proof and the persuasive burden. The criteria for making an order are set out in Regulation 21(2) and 22(4) and Regulation 22(1) and 22(4) of the Feed (Hygiene and Enforcement) Regulations which will require relevant evidence in their support.

An authorised officer should use professional judgement to decide whether premises, process, treatment or piece of equipment or its use involves an imminent risk of injury to health.

Further guidance can be found in Paragraph 3.3.9.

3.3.6: Seeking Additional Advice

Authorised officers should seek expert advice if a process or treatment is producing feed that appears to contain chemicals or other substances that may pose an imminent risk of injury to animal or public health, or where the process or treatment in question itself requires other specialist knowledge or expertise.

An authorised officer exercising a right of entry under Regulation 24 of the Feed (Hygiene and Enforcement) Regulations may be accompanied by anybody else who is necessary, including experts.

It is, however, the authorised officer who must be satisfied that the health risk condition is fulfilled with respect to the feed business.

3.3.5: Deferring Immediate Action

There may be circumstances where immediate closure may be unnecessary, even though there would normally be an imminent risk to health.

The condition of retail feed premises, for example, that would normally pose an imminent risk, would not necessarily warrant immediate closure if the condition was only discovered at the end of trading hours.

In such a case, the authorised officer might decide not to impose an emergency prohibition if, for example, the feed business operator undertook to get a team of contract cleaners to improve the position during the night.

The risk in such circumstances might be minimal, as the premises would not be open to the public. The authorised officer would be free to decide on the following morning whether the imminent risk still existed or had been removed.

3.3.6: Serving the Notice or Order

A feed business emergency prohibition order, or a feed business prohibition order – both of which are made by the Courts – need not necessarily be served by the authorised officer who initiated the action. It should, however, be served by an officer who is competent to explain the purpose of the order or deal with obstruction.

If a feed business prohibition order or a feed business emergency prohibition order cannot be handed to the feed business operator in person, a copy of the document should be handed to whoever would be responsible for complying with immediate closure or prohibition action, e.g. the manager.

The authorised officer should ensure that the operator is aware of the matters that constitute an imminent risk. Although this is included in the model feed business emergency prohibition notice in the Code of Practice and the model feed business emergency prohibition notice, the operator may not understand what steps need to be taken to remove the imminent risk and further explanation may be necessary.

3.3.7: Methods of Serving the Notice or Order

The authorised officer may, if necessary, consult with the Justices' Clerk or the procurator fiscal to see if it would be possible to serve an order before the operator leaves the Court, if the operator is present.

The service of the notice or order on a number of partners may present difficulties, particularly where a partner is not in the United Kingdom at the time. As soon as the notice or order is properly served on any one of the partners it takes effect.

If it is not possible to serve the document by hand then the authorised officer should serve the document by a postal or courier service that includes proof of posting or despatch and, ideally, proof of delivery.

The document may be faxed to the operator for information in advance of its formal service, but a hard copy must follow for it to be properly served.

It may be useful to record the time of service, even when the postal service is used.

Immediately the document has been legally served by one of the methods mentioned in regulation 26 of the Feed (Hygiene and Enforcement) Regulations the relevant prohibition becomes effective under the order and any related emergency prohibition notice ceases to have effect.

3.3.8: Evidence Required

The authorised officer should collect sufficient evidence to produce to the Court in order to substantiate any proceedings.

It is important that contemporaneous notes, including sketches and photographs, are taken during an inspection as they may need to be used in evidence to a Court. Samples of insects, dirt or other contaminants may also be useful.

Although authorised officers do not need to be accompanied by a witness, there may be occasions when visual reports are of particular relevance and there would be benefits in matters being witnessed.

If a note of an inspection is compiled by officers at the end of, or during a visit, they should satisfy themselves as soon as practicable afterwards that it is accurate, so they may rely on it in Court.

3.3.11: Feed Business Prohibition Orders

During an inspection of premises prior to a Court hearing for enforcement proceedings in connection with a breach of specified feed law the authorised officer may discover that the matter(s) giving rise to the prosecution has either not been dealt with or has been addressed but has recurred.

If the feed business operator is convicted, the Court's attention may be brought to the provisions of Regulation 21(1) of the Feed (Hygiene and Enforcement) Regulations in order that the Court may consider making a prohibition order on the premises, process or equipment, thus ensuring that the risk of injury to health is removed.

3.3.12: Prohibition of a Person

When the feed business operator has been convicted of an offence, the authorised officer may feel that it is appropriate to ask the Court to consider making an order in relation to that operator.

Circumstances where such action may be appropriate include repeated offences such as failure to clean, failure to maintain equipment, blatant disregard for animal or human health risks, or putting health at risk by knowingly using unsafe feed.

3.3.13: Application to the Court

Some feed authorities have authorised officers under Section 223 of the Local Government Act 1972 to represent the feed authority in proceedings before the Magistrates' Court, or in Scotland the Sherriff's Court.

Where such an arrangement does not exist, the feed authority should try to agree procedures. The feed authority should discuss a detailed programme of formal action with its litigation solicitor and with the clerk of the local Magistrates' Court, or in Scotland the Sherriff's Court and should clarify details of local Court practice to try and resolve potential difficulties of obtaining Court time at short notice. This could be initiated by informal contact with the Magistrates' Clerk's Office or in Scotland the Sherriff's Court to ensure that, if at all possible, applications for feed business emergency prohibition orders are expedited.

3.3.14: Action to be taken prior to the Hearing

The authorised officer should organise monitoring of the premises between the service of the notice and the Court hearing. The officer who served the notice need not necessarily carry out the monitoring.

The premises should be re-inspected shortly before the hearing (preferably the day before or on the day of the hearing itself) by the officer who served the notice.

If this is not possible, an authorised officer with relevant experience should carry out the re-inspection. This should also be the case if any contravention was found during the monitoring.

The purpose of the re-inspection is to gather evidence as to the current condition of the premises or equipment for the Court hearing. If appropriate, more evidence may be gathered.

The authorised officer should note any changes that have taken place since the notice was served. For example, the circumstances which led to the service of the notice may have worsened, or other circumstances not present originally may now also pose a risk to health.

If the authorised officer is considering bringing the attention of the Court to Regulation 21(1) of the Feed (Hygiene and Enforcement) Regulations feed business prohibition order or prohibition order against a feed business operator

is to be considered, it is important that suitable evidence is gathered to produce to the Court.

It is important that the authorised officers brief their legal advisers fully on the public health aspect of the case in hand, including the public health basis for the legal requirements which have been breached, so that they can, in turn, impress upon the Court the seriousness of the charges.

3.3.15: Information to be given to the Court

Information that the Court may require includes:

- The state of the premises or equipment, both at the time of the offence and at the time the premises were re-inspected prior to the hearing;
- Evidence that feed business operator had been involved in the commission of offences elsewhere, which tended to show weaknesses in management (the authorised officer may have to investigate to ascertain whether the operator has been involved in convictions at previous feed premises and what these convictions were for).

It is usual practice for those prosecuting to ascertain whether there have been any previous convictions or cautions and to obtain details for presentation to the Court in the event of the prosecution being successful. They may also be used in evidence if the requirements of Section 101 of the Criminal Justice Act 2003 are met.

Information on a trader's previous record may be held in the Office of Fair Trading (OFT) Central Register of Convictions⁷, particularly if the trader operates from multiple sites in different feed authority areas. Feed authorities are encouraged to use the register to discover relevant history when considering a prosecution or formal caution, and to notify the OFT of successful prosecutions and formal cautions so that they may be included in the Register.

⁷ The Office of Fair Trading, Central Register of Convictions, Craven House, 40 Uxbridge Road, Ealing, London, W5 2BS.

3.3.16: Affixing the Notice or Order on the Premises

Regulations 21 and 22 of the Feed (Hygiene and Enforcement) Regulations direct that as soon as practicable after the making of an order or the service of a notice, a copy of the order or notice should be affixed in a conspicuous position on the premises by the feed authority.

The purpose of this is to inform the public, which includes anyone who may use the premises or equipment, that premises have been closed or a process or piece of equipment prohibited from being used.

An authorised officer, who is competent to explain the meaning and importance of the notice, should take this action. A witness need only accompany the officer if required by the Feed Authority. The authorised officer who initiated the action need not necessarily be involved.

The authorised officer should, if possible, firmly affix the document inside the premises, but in a position where it can clearly be seen and read from the outside, preferably on the inside of the glass of a door or window.

If such a position is unavailable the officer should use professional judgement as to the best place available and if necessary affix a second copy of the document to the outside of the premises, making sure, as far as possible, that it is protected from the weather and possible vandalism. The feed authority should arrange for periodic checks to be made on the document to establish that it is still there.

3.3.17: Unauthorised Removal or Defacement of Notices or Orders

The Feed (Hygiene and Enforcement) Regulations do not make any reference to defacing or removing a feed business prohibition order, a feed business emergency prohibition notice or order,. This is, however, covered by other legislation.

In England and Wales section 1 of the Criminal Damage Act 1971 makes it an offence for any person to destroy or damage property belonging to another without reasonable cause.

An emergency prohibition notice is the property of the feed authority. If the authorised officer discovers that a notice has been removed or defaced, he should replace the notice as soon as possible and consider starting proceedings for criminal damage.

Section 63 of the Magistrates' Courts Act 1980 a Court making an order to make provisions ancillary to it, such as requiring that the order should not be defaced or removed. The breach of such a requirement is punishable by a £5,000 fine or a fine of £50 per day where the breach continues after there has been a Court decision about the breach, or two months' imprisonment in either case. The authorised officer should ask the Court at the time of the making of an order to make provisions ancillary to it under Section 63 of the Magistrates' Courts Act 1980.

Where an order has been removed or defaced the officer should start proceedings under Section 63(3) of the Magistrates' Courts Act 1980 for disobedience to the Court's requirement that it should not be removed or defaced. Such proceedings can be started by making a complaint in writing to the Court, stating when the order was made, what its terms were and how a requirement of the order had been broken.

Section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995 makes it an offence for any person to damage or destroy the property of another without reasonable excuse. Any person therefore who removes or defaces a notice which is the property of the food authority will be guilty of an offence. The penalty following conviction - in the Sheriff Court – is a fine up to the statutory maximum or imprisonment of up to 3 months for a first offence (otherwise 6 months). If a notice is removed or defaced the authorised officer should report the matter to the Procurator Fiscal. The officer should ensure the Fiscal is fully appraised of the significance of the notice and the potential consequences for the public if it is removed or defaced without reasonable cause.

3.3.18: Lifting the Notice or Order

The feed business operator must apply in writing to the feed authority for a certificate lifting a feed business prohibition order, a feed business emergency

prohibition notice or order. On receiving such a request, the authorised officer should re-inspect the premises as soon as possible and determine as soon as is reasonably practicable, or in any event within 14 days, whether the notice or order can be lifted. A notice will expire if no application for an order is made within 3 days of the notice it having been served of the Feed (Hygiene and Enforcement) Regulations (see regulation 27(2)).

The decision on whether to issue the certificate or not should be made by the officer who initiated the action if this is possible or, if it is not, by another authorised officer with the relevant qualifications and experience.

If the feed authority is of the opinion that the health risk condition has been removed, arrangements should be made for the certificate under Regulation 21(7) or 22(8) of the Feed (Hygiene and Enforcement) Regulations as appropriate to be issued as quickly as possible, and in any case within 3 days. The certificate may be sent by fax, although the proprietor may also be informed of the decision verbally, thus allowing the premises to re-open immediately.

If the authorised officer is of the opinion that the health risk condition has not been removed, arrangements should be made under Regulation 21(7)(b) or 22(9)(b) of the Feed (Hygiene and Enforcement) Regulations for the Food Authority to issue a notification of continuing risk to health as quickly as possible. The feed authority must give reasons why it is not satisfied that the health risk condition has been removed.

Although a certificate lifting a feed business prohibition notice or feed business emergency prohibition notice may be issued before the application for a feed business emergency prohibition order or can be heard, the operator may still be prosecuted for the offence(s) against the Feed (Hygiene and Enforcement) Regulations or other specified feed law as appropriate.

The feed authority should ensure that the court is informed in this situation.

A feed business prohibition order made under regulation 21(4) on the feed business operator can only be lifted on application by the operator to the Court that made the order.

3.3.19: Breach of a Notice or Order

A person who knowingly contravenes a feed business prohibition order is guilty of an offence under Regulation 21(5) of the Feed (Hygiene and Enforcement) Regulations. A person who knowingly contravenes a feed business emergency prohibition notice or order is guilty of an offence under Regulation 22(5) or (6) of the Feed (Hygiene and Enforcement) Regulations, respectively.

The authorised officer should start proceedings for the offence under the appropriate legislation by laying information before a Justice of the Peace, or in Scotland the Procurator Fiscal.

If the authorised officer believes that there is sufficient evidence to show that the proprietor is unlikely to respond to a summons, application should be made for a warrant rather than a summons. The Court will decide if the circumstances justify this action and may ask the authorised officer for their view as to whether to endorse the warrant with bail. The authorised officer should use their professional judgement and take into account all relevant circumstances in their decision.

The feed authority should make contingency arrangements with its legal department, so that in the event of the breach of a notice or order, there is no delay in making an application to the Court.

3.3.20: Compensation

Regulation 22(10) of the Feed (Hygiene and Enforcement) Regulations provide for the feed authority to compensate the feed business operator for losses arising from the service of a feed business emergency prohibition notice if a feed business emergency prohibition order is not applied for from the Court within three days.

Compensation is also payable if the Court is not satisfied that an imminent risk of injury to health existed at the time the notice was served.

Compensation is payable in respect of “any loss” which is directly attributable to the wrongful service of the notice.

The feed authority may assess the amount of compensation due taking into account (among other things) the following aspects where applicable:

- The length of time the process or treatment was halted, or the use of premises or equipment was prohibited and for what purpose;
- Loss of trade;
- Value of spoiled feed;
- Loss of goodwill;
- Loss of wages;
- How much of the damage to trade is repairable;
- Obligation of the operator to mitigate their own loss;

If the amount of compensation cannot be agreed between the authority and the feed business operator, regulation 22(10) provides for the matter to be taken to arbitration.

CHAPTER 3.4: SEIZURE AND DETENTION

3.4.1: Introduction

This Chapter concerns the use of the detention and seizure powers under Regulation 25 of the Feed (Hygiene and Enforcement) Regulations.

3.4.2: General

It is presumed under feed law that all feed is intended for consumption by animals until it is proved to the contrary.

An officer may assist or advise the person in charge of the feed as appropriate. If there is any doubt about the feed being used for consumption by animals, then the officer should use the statutory procedures.

3.4.3: Detention of Feed

Authorised officers need to exercise careful judgement, and may need to seek expert advice, before using their powers to detain feed pending further investigation.

Feed that is suspected of not complying with specified feed law can often be readily identified, and the decision to detain can therefore be taken relatively easily.

The notice may specify that the feed is either to be held where it is, or moved to a place specified by the officer, pending further investigations.

Feed that requires special storage conditions, such as refrigeration, may need to be moved elsewhere, in which case the decision to require the feed to be moved should be discussed with the owner of the feed.

The decision to detain a whole batch, lot, or consignment needs careful consideration before a notice is served (see paragraph 3.4.7).

3.4.4: Seizure of Feed

The officer may be required to prove that the feed produced before the Justice of the Peace is the feed that was seized. The feed should only be left if the officer is confident that it will not be moved, used for human consumption, or the evidence destroyed.

3.4.5: Feed Condemnation Warning

A feed condemnation notification giving details of the time and place of the appearance before a Justice of the Peace should be given to the owner of the feed once the decision to seize feed has been taken. This notification is purely administrative and may therefore be signed by any authorised officer.

The officer delivering the notification does not need to hold the same qualifications as the officer who took the decision to detain or seize the feed, but should be sufficiently competent to explain the purpose of the notification and to deal with any obstruction.

Rapid notification by fax, telephone or e-mail must be followed up by formal notice served in accordance with regulation 26(1) of the Feed (Hygiene and Enforcement) Regulations.

3.4.6: Taking Action Without Inspecting

This could apply when the officer has reasonable grounds to suspect that consumption of the feed would be likely to cause a feed or food safety risk.

Information from another reliable source, e.g. another feed authority, An agriculture analyst, Animal Health officer or the Agency etc. may be sufficient to enable an authorised officer to act without inspecting.

Although an inspection of the feed is not legally necessary in such situations, it may nonetheless be prudent, if only for identification purposes.

3.4.7: Dealing With Batches, Lots or Consignments of Feed

Article 15(2) of Regulation (EC) 178/2002⁸ defines unsafe feed and is relevant to the Feed (Hygiene and Enforcement) Regulations and other specified feed law.

Article 15(3) of Regulation (EC) 178/2002 covers the situation where feed is part of a larger batch, lot or consignment of feed of the same class or

⁸ Regulation (EC) No. 178/2002 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

description. In such circumstances it is presumed, until the contrary is proved, that all of the feed in the batch, lot or consignment fails to comply with feed safety requirements.

The authorised officer should use professional judgement to decide whether to detain or seize the whole of the batch, lot or consignment. Appropriate expert advice should be sought if necessary.

If a whole batch, lot or consignment is detained and it subsequently becomes clear that only part of the detained feed is affected and needs to be seized, the remainder of the batch etc. may be released.

3.4.8: Voluntary Procedures

It should also be borne in mind that the use of voluntary procedures might contribute to a defence in any subsequent prosecution. It could, for example, be argued that the feed was not so contaminated that it had to be seized.

The fact that feed had been condemned by a Justice of the Peace would be persuasive in any prosecution, but would not in itself necessarily establish an offence. It would still be necessary for a case to be proved beyond reasonable doubt. In this respect certificates of analysis or examination are of particular value.

CHAPTER 3.5: IMPORT OF FEED FROM THIRD COUNTRIES

See Annex 3 of this Guidance.

SECTION 4: INSPECTIONS

CHAPTER 4.1: INSPECTIONS

4.1.1: Risk Rating of Feed Businesses

The Code of Practice includes a risk rating scheme for determining the frequency of which inspections should take place at feed businesses. When determining a risk score one element is an assessment by the feed authority of its confidence in the management/control systems of a feed business. The Code of Practice recognises the important role that trade associations and feed assurance schemes can play in assisting businesses comply with feed law and thereby the increased confidence membership of such trade bodies and feed assurance schemes can give in feed businesses management/control systems. A non-exhaustive list of trade associations and assurance schemes is included at Annex 4 to assist feed authorities in determining which trade associations and assurance schemes should give them increased confidence in feed businesses management/control systems.

CHAPTER 4.2 THE INSPECTION

4.2.1: Notice of Inspection

The general principle about pre-notification of inspections is set out in OFFC Regulation 882/2004 which states in Article 3(2) that “*official controls shall be carried out without prior warning, except in cases such as audits where prior notification of the feed or food business operator is necessary. Official controls may also be carried out on an ad hoc basis*”.

There will, however, be circumstances when it is advantageous to give advance notice, particularly when the purpose of inspection is to see a particular process in operation or it is necessary to gain access to records or facilities. Authorised officers should exercise discretion in this area guided by the overriding aim of ensuring compliance with feed legislation.

4.2.2: Co-ordination of Inspections

Where authorised officers from different enforcement agencies need to inspect the same premises, there can be advantages for feed businesses and feed authorities in co-ordinating the inspections. This is particularly true of inspections at manufacturing premises, where co-ordination can make the inspection process more effective and efficient. There may be particular advantages in joint visits to consider a new process or product, or where there have been significant changes in quality control procedures. Feed authorities should implement the provisions of the memorandum of understanding between LACORS and VMD in this regard.

Where a feed business is to be inspected by a local authority officer he/she should ascertain whether that business is also due for inspection under other areas of legislation he/she is authorised to enforce e.g. food hygiene and animal health. If this is the case then the visit should include all areas due for inspection in order to minimise burdens on businesses.

4.2.3: Biosecurity

Good biosecurity is a vital part of keeping all disease away from animals. Feed authorities should develop and implement procedures to minimise the risk of their officers and equipment from spreading disease to animals during the course of their enforcement activities. These procedures should be risk based and take account of the following:

- a) type of premises – e.g. arable, livestock, mixed, horticultural;
- b) restrictions applied to the premises – e.g. animal disease control;
- c) restrictions applied on all premises in a defined area – e.g. Restricted Infected Area / Infected Area;
- d) extent and reason for the visit – e.g. animal handling or; and
- e) whether more than 1 premises is to be visited.

“Biosecurity guidance to prevent the spread of animal diseases” has been developed by the Department for the Environment, Food and Rural Affairs

(Defra) which feed authorities should take account of when developing their own procedures on biosecurity. This guidance can be found at:

www.defra.gov.uk/animalh/diseases/pdf/biosecurity_guidance.pdf

It should be remembered that Regulation 24(14) of the Feed (Hygiene and Enforcement) Regulation does not authorise any person (including an authorised feed officer) except with out the permission of the local authority under the Animal Health Act 1981 (Act) to enter any premises on which an animal or bird affected with any disease to which the Act applies is kept or a premises declared under that Act to be infested with such a disease.

4.2.4: National and Community Guides

Article 20 of the Feed Hygiene Regulation 183/2005 requires that Member States encourage their feed industries to develop national guides to good practice to help feed business operators comply with the requirements of the Regulation. Feed business sectors will generally be responsible for the development and dissemination of these guides to good practice and must consult interested parties, such as competent authorities and user/consumer groups. In addition, guides must have regard to relevant Codex codes of practice. Member States are required to assess national good practice guides to ensure they satisfy the criteria laid down in the Regulation 183/2005.

Further details on the guidelines for the development of national guides can be found at:

www.ec.europa.eu/food/biosafety/hygienelegislation/register_national_guides_en.pdf

The FSA is currently developing a structure which will allow it to assess and grant recognition to good practice guides in the UK. Part of the process of the adoption of industry guides as national guidance will be to ensure that such documents do not “gold plate” the requirements set out in the Feed Hygiene Regulation. Once recognition has been granted to a Guide by the FSA it will be sent to the Commission for registration.

The Regulation also requires the European Commission to encourage the development of Community guides to good practice. Where Community guides are prepared, the European Commission will oversee the development and dissemination of these guides, in accordance with Article 22 of the Regulation. The Commission must act in liaison with Member States and other European stakeholders, and consult the EU Standing Committee on the Food Chain and Animal Health on the need for Community guides, their scope and content before starting work. The Standing Committee is responsible for assessing Community guides according to criteria similar to those for national Guides. When national guides are developed, authors of such guides should take into consideration any Community guides that have been developed. In particular, in areas where Community guides are already in existence, it is expected that feed business sectors will need to consider carefully whether national guides are required. This is mainly to ensure clarity for users of guides and also to ensure that national guides do not unnecessarily duplicate the provisions in Community guides. The aim should be for national guides to contain material that is not covered sufficiently in Community guides or which may need to be elaborated to reflect national situations.

The FSA has, together with the Assured Food Standards (AFS), begun the process of having the AFS Guide to Good Practice for Primary Production of Animal Feed adopted as a Community Guide. Community guides already in existence include:

European Feed Manufacturers Guide (EFMC) A community guide to good practice for the EU industrial compound feed and premixtures manufacturing sector for food producing animals

Community guide to good practice for feed additive and premixture operators

European Pet Food Industry Federation (FEDIAF) Guide to Good Practice for The Manufacture of Safe Pet foods

These Community Guides can be accessed at:

www.ec.europa.eu/food/food/animalnutrition/feedhygiene/guide_goodpractice_en.htm

It is anticipated that although the guides are mainly for the benefit of feed businesses that they will form a useful reference for official control bodies.

4.2.5: Assurance Scheme and other Industry Guidance

Many assurance schemes and other trade associations have produced guidance for their members on how to comply with the requirements of the Regulation 183/2005 and other feed law. These guides, whilst a useful source of information for control bodies should be treated with caution as they may encourage feed businesses to adopt standards which exceed the requirements of animal feed law and as such the requirements would be unenforceable by feed authorities.

Feed businesses are subject to independent audit as part of their membership of audit schemes. Where a feed business operator is prepared to share with an authorised officer the contents of a recent audit of their premises by a relevant assurance scheme, this should help the officer determine which areas of feed safety to concentrate on during their inspection, making the visit more efficient/effective.

CHAPTER 4.3 INSPECTION OF APPROVED PREMISES ADDITIONAL REQUIREMENTS

Chapter 4.3.1: General

Feed authorities must take into account the terms of the memorandum of understanding between the AMI and LACORS in deciding which body carries out the approval visit. Since the Veterinary Medicines Directorate (VMD) took control of AMI a memorandum of understanding (MoU) has been drafted between LACORS and VMD setting out agreed procedures to be followed in these circumstances. This MoU replaces that referred to in the Code of Practice and a copy of the LACORS/VMD MoU can be found at Annex 5.

CHAPTER 4.4: ACTION FOLLOWING INSPECTION

All relevant information on action following inspection is contained in the Code of Practice.

SECTION 5: SAMPLING AND ANALYSIS

Chapter 5.1 Sampling and Analysis

5.1.1 Guidance

The Food Standards Agency has produced guidance on the sampling of animal feeding stuffs which can be found at:

www.food.gov.uk/foodindustry/guidancenotes/foodguid/guidance/

Further guidance on sampling of Feedingstuffs for the presence of genetically modified (GM) material can be found at: **[DN web address to be added when the document has been published on the Agency website]**

5.1.2 OFFC Regulation 882/2004 – Article 11

Feed authorities should be aware of the provisions of Article 11(5) and (6), Methods of Sampling and Analysis, of the OFFC Regulation 882/2004 and ensure that adequate procedures are in place to guarantee the right of feed business operators to apply for supplementary expert opinion, without prejudice to the feed authorities obligation to take prompt action in the case of an emergency. Also, feed authorities need to ensure that feed business operators can obtain sufficient numbers of samples for a supplementary expert opinion unless this is impossible due to the highly perishable nature of the product or the small quantity of feed available for sampling.

ANNEXES

ANNEX 1: GLOSSARY OF TERMS

AA	Agricultural Analyst
AGENCY	Food Standards Agency
AH	Animal Health
AMI	Animal Medicines Inspectorate
DEFRA	Department for Environment, Food and Rural Affairs
EC	European Community
EU	European Union
FA	Feed Authority
Framework Agreement	Framework Agreement on Local Authority Food Law Enforcement
FVO	Food and Veterinary Office (of the European Commission)
HA	Home Authority
HACCP	Hazard Analysis and Critical Control Point
LACORS	Local Authorities Co-ordinators of Regulatory Services
OFT	Office of Fair Trading
SEERAD	Scottish Executive Environment and Rural Affairs Department
TSE	Transmissible Spongiform Encephalopathy
UKAS	United Kingdom Accreditation Service
VMD	Veterinary Medicines Directorate
VMHA	Veterinary Meat Hygiene Adviser

ANNEX 2: LINKS TO LEGISLATION AND GUIDANCE

Code of Practice on Feed Law on Feed Law (Great Britain)

Regulations Relating to Great Britain

www.food.gov.uk/multimedia/pdfs/feedcodeofpractice.pdf

The Feed (Hygiene and Enforcement) (England) Regulations 2005:

www.opsi.gov.uk/si/si2005/uksi_20053280_en.pdf

The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005:

www.opsi.gov.uk/legislation/scotland/ssi2005/ssi_20050608_en.pdf

The Feed (Hygiene and Enforcement) (Wales) Regulations 2005:

www.opsi.gov.uk/legislation/wales/wsi2005/20053368e.htm

Official Feed and Food Controls (England) Regulations 2007 (SI 2007 No. 3185):

www.opsi.gov.uk/si/si2007/uksi_20073185_en_1

Official Feed and Food Controls (Scotland) Regulations 2007 (SI 2007 No. 522):

www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070522_en_4

Official Feed and Food Controls (Wales) Regulations 2007 SI 2007 No. 3294 (W.290)

Further guidance on animal feed legislation can be found at:

www.food.gov.uk/foodindustry/farmingfood/animalfeedlegislation

EU Regulations

Regulation (EC) No. 178/2002 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:

www.food.gov.uk/multimedia/pdfs/1782002ecregulation.pdf

Regulation (EC) 1831/2003 -- Feed Additives

europa.eu/LexUriServ/site/en/oj/2007/l_188/l_18820070720en00030006.pdf

Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules:

www.food.gov.uk/multimedia/pdfs/8822004ecregulation.pdf

Regulation (EC) No. 183/2005 on feed hygiene:

www.food.gov.uk/multimedia/pdfs/regulationec1832005.pdf

FSA Guidance

- Controls on animal feed additives: Your questions answered;
- Guidance for farmers on Article 18(3) of the EC Feed Hygiene Regulation (183/2005) Guidance and statement of compliance;
- Guidance on Article 18(3) of the EC Feed Hygiene Regulation (183/2005) Guidance, compliance statements, Approval and registration activities and statement of compliance form;
- Ingredient declaration of compound feedingstuffs by percentage weight of inclusion guidance notes; and
- Undesirable substances in animal feed.

These guidance documents can be found at:

www.food.gov.uk/foodindustry/farmingfood/animalfeed/animalfeedlegislation

Model Forms / Template Forms in Microsoft Word Format

Declaration for Approval without Prior On-Site Inspection:

www.food.gov.uk/multimedia/worddocs/decforapp.doc

Model registration/approval application document:

www.food.gov.uk/multimedia/worddocs/modelapplication.doc

Feed Business Establishment / Feed Premises Inspection Report:

www.food.gov.uk/multimedia/worddocs/inspectionreport.doc

Feed Incident Report Form (Feed Authorities):

www.food.gov.uk/multimedia/worddocs/feedincidentreportform.doc

Model Forms for Use in Connection with formal enforcement powers under the Feed (Hygiene and Enforcement) Regulations:

<http://www.food.gov.uk/multimedia/worddocs/modelforms.doc>

Central Register of Letters Sent by the Food Standards Agency to Local Authorities

www.food.gov.uk/enforcement/laresource/centralref/#h_5

ANNEX 3: GUIDANCE FOR FEED AUTHORITIES ON THE IMPORT OF FEED FROM THIRD COUNTRIES

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A3.1: Introduction

All local authorities, other than District and Borough Councils (second tier councils), have responsibilities for certain aspects of imported feed controls. The purpose of this guidance is to set out and assist feed authorities on the level and type of activity needed to achieve effective and consistent enforcement on imported feed.

The guidance focuses on the principal legislation relating to the import of feed not of animal origin (FNAO). From 1 January 2006, FNAO import controls were harmonised at Community level by Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OFFC Regulation 882/2004). The provisions of the OFFC Regulation 882/2004 are directly applicable but are given effect at national level by the Official Feed and Food Controls Regulations 2007⁹ in Great Britain (OFFC Regulations). This legislation replaced the previous legislation controlling the import of animal feeding stuffs though the general approach in the new legislation is similar.

A3.2: Scope

The scope of this guidance extends to imported FNAO and imported products of animal origin (POAO). It has been revised in the light of OFFC Regulation 882/2004. The guidance does not cover control activities for POAO at Border Inspection Posts, where central guidance produced by Defra is available¹⁰. The guidance includes information to importers on the importation of processed animal protein.

Except where a specific distinction is made this guidance applies to all feed authorities, both inland and at points of entry including Port Health Authorities with feed law enforcement responsibility. For the purpose of this guidance “imported feed” means feed imported into the UK from outside the European

⁹ The Official Feed and Food Controls (England) Regulations SI 2007 No. 2007/3185
The Official Feed and Food Controls (Scotland) Regulations SSI 2007 No. 2007/522
The Official Feed and Food Controls (Wales) Regulations SI 2007 3294 (W.290)

¹⁰ For information and guidance on international trade in animal products see Defra’s website <http://www.defra.gov.uk/animalh/int-trde/default.htm>

Union (“third countries”); “point of entry” means a seaport, airport or international rail link at which imported feed is introduced into the UK.

Feed authorities with a point of entry provide the first line of control on imported feed to ensure it is safe and complies with EU and UK requirements. However, it is important that controls are also in place at Enhanced Remote Transit Sheds (ERTS), ships suppliers, international rail terminals, and other premises inland, as some FNAO will not have been subject to checks at points of entry.

A3.3: Status of this Guidance

This document should be considered as centrally issued guidance for the purpose of the Framework Agreement on Local Authority Food Law Enforcement¹¹. (Framework Agreement) Amendments have been made to the Standard in the Framework Agreement to clarify its application to imported feed control (Amendment issued in July 2004). The Framework Agreement also applies to official controls on animal feedingstuffs and references to food in the document should be read to include feed.

This guidance should also be read in conjunction with the Feed Law Enforcement Code of Practice (Great Britain) (the Code of Practice)¹² issued under the OFFC Regulations 2007. The Code of Practice provides direction and guidance on the local authority approach to enforcement generally.

A3.3.1: Imported Feed Legislation (FNAO)

OFFC Regulation 882/2004 introduces EU-wide harmonised rules for import controls for FNAO. The requirements (at Articles 15 to 25) extend to feeds not already covered by Directive 97/78/EC (POAO Veterinary Checks regime). The controls on imported POAO are carried out by Defra officials.

¹¹ www.food.gov.uk/enforcement/foodlaw/frameagree/

¹² www.food.gov.uk/multimedia/pdfs/feedcodeofpractice.pdf

A3.3.2: The Official Feed and Food Controls Regulations 2007 in Great Britain

The Official Feed and Food Controls Regulations give effect to Articles 15 to 25 of OFFC Regulation 882/2004 which implement official controls on imported feed.

Regulation 33 of the OFFC Regulations includes a mechanism for ensuring that where there is a serious or imminent risk to public or animal health, control measures may be put in place. In particular, it may be used to ensure that emergency decisions made at EU level are implemented without delay. It does so by giving the Food Standards Agency powers to make declarations regarding import conditions for particular products. These conditions would apply with immediate effect.

A3.3.3: Other legislation

There are specific EU harmonised requirements for feeds which can be applied at point of import as well as inland e.g. Directive No. 2002/32/EC on undesirable substances as implemented by the Feeding Stuffs Regulations 2005¹³. The powers to deal with non-conforming feed under EU harmonised legislation at import are those contained in the OFFC Regulations 2007.

A3.3.4: 'High risk' FNAO

The OFFC Regulation 882/2004 (Article 15(5)) provides that the Commission may issue a list of 'high risk' FNAO. These products will be identified on the basis of known or emerging risk, and will be subject to increased import controls at the point of entry. The frequency and nature of such checks will be specified by the Commission when the products are identified. The enhanced controls provided for by these arrangements include; prior notification, import through designated ports only, and specified documentary and physical checks at points of entry.

¹³ The Feeding Stuffs (England) Regulations 2005
The Feeding Stuffs (Scotland) Regulations 2005
The Feeding Stuffs (Wales) Regulations 2005

The Commission is currently developing a list of 'high risk' products together with rules implementing Article 15(5). When this has been completed national legislation will be amended appropriately and further guidance issued.

A3.4: Service Planning

The Framework Agreement includes service planning guidance. Section 2.3 of the framework ("Scope of the food service") and Section 2.4 ("Demands on the food service") provide for local authorities to set out the scope of the responsibilities and service provided and to describe any external factors that may impact on their service. Where relevant, local authorities should include in these sections imported feed responsibilities and the control arrangements in place.

Feed authorities with a point of entry should include details of resources allocated for imported feed control work in their service plans.

A3.5: Documented Policies and Procedures

All feed authorities should ensure that their written policies and procedures cover imported feed having regard to the work that might reasonably be anticipated within the administrative district and jurisdiction of the authority.

Procedures relating to examination of imported feed including deferred examinations under the OFFC Regulations 2007 should cover feed hygiene, compositional issues and examination for the presence of undesirable substances.

The Food Standards Agency under the provisions of the Framework Agreement may audit such procedures.

A3.6: Authorisation

Authorities with responsibility for import controls on animal feed should ensure that at least one officer is properly authorised to undertake imported feed control work and related enforcement action. One key issue which needs consideration in any review of authorisations is the identification of the specific legislation where enforcement powers originate. This will affect the content and wording of authorisation documentation.

For enforcement of legislation relating to undesirable substances in feed this should include authorisation under the Feeding Stuffs Regulations.

Officers should also be authorised to enforce relevant Regulations issued under the European Communities Act 1972 (e.g. Feed (Hygiene and Enforcement Regulations 2005). However, the European Communities Act does not contain specific enforcement powers; its primary function is to provide a mechanism by which Regulations can be enacted. Powers of enforcement for Regulations made under the Act are usually contained in the Regulations themselves. Therefore, the Agency's view is that all Regulations relevant to imported feed control should be specifically referred to in authorisation documents, e.g. the OFFC Regulations 2007, including officers' credentials.

The Agency's view is that officers do not need to be specifically authorised to enforce declarations made under Regulation 33 of the OFFC Regulations 2007 provided that they are authorised to enforce the OFFC Regulations 2007.

General advice on the authorisation of officers has been developed by LACORS. Authorities may also wish to consult their own legal advisors on this matter.

A3.7: Qualifications / Experience of Authorised Officers

Officers authorised to undertake imported feed control work and enforcement action should be appropriately qualified, experienced and competent to carry out the range of tasks and duties they are authorised to perform, in line with the relevant requirements of the Code of Practice. Staff should be kept up to

date in their area of competence and receive regular additional training as outlined in the Code of Practice and the Framework Agreement.

Feed authorities should have at least one officer competent in imported feed controls. Relevant update training could include:

- Attendance at Food Standards Agency enforcement training on imported feed control; and
- Other relevant training of an equivalent content, e.g. in-house training or cascade training relating to the above.

A3.8: Information

Feed authorities with a point of entry in their territory should maintain up to date information on:

- the port operator.
- access to port/Customs areas, including Enhanced Remote Transit Sheds (ERTS).
- stakeholders, including import agents and airlines/shipping operators.
- trade type (volume, nature, and trade routes).
- facilities where imported feed inspection can be carried out and arrangements for storage of detained/seized goods. Defra have issued further specific advice on operating procedures for sharing facilities at BIPS¹⁶.
- equipment available for carrying out inspections and sampling of imported feed.
- details of appointed and specialist laboratories for analysis and/or examination of samples that is able to provide an appropriate service for sample analysis (in particular relating to the time-scale of analysis and issue of results).
- health and safety requirements.
- security requirements.

Feed authorities with a point of entry, ERTS or international rail terminals should establish routine local liaison and communication with relevant local

organisations for the purpose of general exchange of information on feed imports and for the effective handling of incidents. These contacts could include, where appropriate:

- Animal Health (AH) formerly the State Veterinary Service (SVS),
- Port operator; import agents; Transit Shed \ ERTS operators,
- Maritime and Coastguard Agency (MCA),
- Neighbouring local authorities, particularly for joint boards and ports, which fall under the jurisdiction of more than one local authority, including Port Health Authorities (PHAs), and
- The Animal Medicines Inspectorate (AMI).

Where relevant feed authorities should ensure that their officers have access to secure areas at points of entry where local, national or international aviation, maritime, etc. security rules apply, e.g. the Channel Tunnel (Security Order) 1994.

A3.9: Records

A3.9.1: Identifying and recording feed importers

All local authorities should ensure that feed premises and traders in their district which import feed are identified and recorded in premises/trader databases and included in inspection programmes as appropriate.

A3.9.2: Records of consignments and examinations

Feed authorities with a point of entry should ensure that, where available, information relating to the number and type of feed consignments is maintained together with relevant information on the checks made to determine compliance with legal requirements. Where information is recorded, the level of information about feed examinations (including examinations undertaken at ERTS or international rail terminals) and deferred examinations should provide consignment traceability and permit effective internal monitoring. This information should include any identifying reference for the consignment examined, country of origin, information on the nature of the feed and the

checks carried out and, where any enforcement action or sampling has been undertaken, the details of the agent and/or consignor/consignee. Records of sampling checks and records relating to emergency controls should be held for up to six years.

A3.9.3: Arrangements for points of entry without permanent local authority presence

Where there is no permanent feed authority presence at an airport or seaport, and it is not considered by the authority to be a point of entry for feed, the local authority should (at least once every three months) contact the port operator, HMRC and/or other commercial operators to confirm the port's status regarding feed activities and/or obtain information about the volumes, types, countries of origin and customs status of feed entering the port since the last such enquiry. Local authorities should keep a record of these exchanges for a period of six years.

The purpose of these arrangements is to provide local authorities with updated information on feed being imported. This will enable risk-based judgements to be made on the targeting of enforcement action and to ensure that emergency controls or restrictions on certain feeds are being enforced. This includes at the designated point of entry, and requirements relating to documentary checks and associated statutory sampling (further details on risk-based checks can be found in Section A3.14).

A3.10: Reporting and Notification Arrangements

A3.10.1: Nominated officer for imported feed controls

Every local authority with a point of entry should appoint a nominated officer with the necessary competency in imported feed control to be a point of contact with the Food Standards Agency on imported feed matters. The details of the nominated officer or changes to the nominated officer should be notified to the Agency's Animal Feed Unit Enforcement Team (see contact details under A3.15 below). This officer may be the Lead Officer for feed law enforcement as required by the Code of Practice.

A3.10.2: Notification of feed hazards or incidents

Feed authorities should send details of any imports rejected, either at the point of entry or inland, where there is a direct or indirect risk to public or animal health, to the Agency's Incidents Branch¹⁴ using the Rapid Alert System for Food and Feed (RASFF) notification form. This will include imports rejected for reasons such as chemical, microbiological or foreign body contamination or imports from a country which is not authorised to export that category of products to the EU.

Guidance on completing the RASFF notification form has already been provided to local authorities. Authorities who have access to the European Commission's Circa website, will be able to download copies of the template for the RASFF notification form¹⁵.

The feed authority should also notify local Customs of the decision and the final destination of the consignment if it is to be allowed to be re-exported.

All local authorities should notify the Agency of a serious localised incident or a wider problem under the Feed Alert System as soon as a decision has been taken that one has occurred, using the appropriate contact details and reporting arrangements set out in the Code of Practice.

A3.11: Liaison / Referrals

Whenever inland authorities come across problems with imported feed, where the point of entry for the goods can be ascertained and similar problems are likely to be found in other imported consignments, it is important to ensure that the feed authority at the point of entry is informed to help target their future surveillance activities.

In certain circumstances, it may be necessary for feed authorities covering points of entry to refer imported feed matters to inland authorities. This would

¹⁴ Incidents Branch – Tel. 020 7276 8448, fax 020 7276 8446, email drazenka.tubin-delic@foodstandards.gsi.gov.uk or rajwinder.ubhi@foodstandards.gsi.gov.uk

¹⁵ www.forum.europa.eu.int/Public/irc/sanco/Home/main

include situations where inland supervision of consignments is required and also where checks at the point of entry reveal concerns that feed is non-compliant and it is appropriate to refer the matter to an inland authority.

Examples include:

- where checks on imported feed reveal labelling issues which cannot be enforced at the place of import.
- where examination under the OFFC Regulations 2007 has been deferred.
- where a non-compliant product is being allowed to be moved inland to be rectified or disposed of and surveillance is required
- where analysis indicates that product e.g. groundnuts are not suitable for human consumption but are referred for feed use.

Inland authorities should agree to assist with these referrals and respond as appropriate without undue delay and provide feedback to the feed authority at the point of entry on the outcome. To assist this process a suggested pro-forma for this purpose is available at Appendix 2. Records of such referrals and details of any action taken should be maintained by authorities.

A3.12: Inland Inspection of Imported Feed

Feed authority procedures should ensure feed (including imported feed) examination forms part of feed premises inspections.

During routine inspections and other visits to feed business premises (e.g. complaint visits, sampling visits) officers are requested to consider the feed in possession or offered for sale, and if imported, ensure it complies with relevant imported feed requirements.

The OFFC Regulations 2007 also cover imported feed materials, semi-finished products and labelling issues.

When considering specific imported feed inspection programmes local feed authorities should consider feed businesses within their area that routinely import feed from third countries, in particular those premises that are the first destination after import. Such premises are likely to include local feed

manufacturers and warehouses. Any inspection programme should also be informed by feed alerts and the premises compliance history.

In addition to assessing compliance with feed law reasonable steps should be taken to check the legality of the importation of any POAO or FNAO from a third country.

A3.12.1: Deferred examination of FNAO – inland controls

The OFFC Regulations 2007 allow for import controls, including examination, of consignments of FNAO to be deferred and undertaken by the inland feed authority covering the ERTS or international rail terminal or at any other place of destination in the UK. Further guidance on this is given in Section A3.14.3.

The decision to defer rests with the feed authority covering the point of entry and they need to liaise with the receiving authority to ensure that appropriate checks will be carried out and as such the procedure relies on co-operation between authorities. Receiving authorities should wherever possible agree to any reasonable request for a deferred examination. Under The OFFC Regulations 2007 the enforcement authority at the place of destination would become responsible for enforcement of the import controls once the point of entry authority had deferred examination to the place of destination.

Inland feed authorities should ensure that any available information on imported feed, which is sampled, detained, seized or destroyed, wherever practicable is recorded in relevant in-house records or databases.

A3.13: Sampling of Imported Feed

A3.13.1 Considerations for sampling

Routine imported feed sampling considerations, for local authority surveillance and enforcement purposes, should take account of:

- any statutory requirements for sampling laid down in EC decisions or emergency control regulations (usually this will occur at a point of entry),
- any agreed LACORS/Food Standards Agency sampling programmes,

- any sampling required following a feed alert or RASFF notification,
- information from any EC Recommendation, regional liaison group, local or other sampling survey, and
- any imported feed where there is no history or information on the product.

Feed authorities should also take into account local priorities, including complaints relating to imported feed, and their local business profile when considering sampling, and include these in their sampling programmes. Sampling policies and programmes should be reviewed from time to time to assess the need to include national or regional imported feed priorities/surveys the UK's Single Integrated National Control Plan¹⁶ and Guidance on priorities for feed law enforcement. The Guidance on priorities for feed law enforcement is published annually and can be found on the Agency's Enforcement Portal in letters to local authorities.

Commodities sampled under emergency control decisions or emergency control regulations should be detained until the enforcement authority receives the results unless otherwise stated in the implementing rules.

Feed authorities should take into account any specific central guidance on sampling or other matters set out by the Agency or Defra (Scottish Government Rural Directorate (SGRD) in Scotland, National Assembly for Wales Agriculture Department (NAWAD) in Wales), or LACORS.

Feed authorities should also be aware of the provisions of Article 11(5) and (6), Methods of Sampling and Analysis, of the OFFC Regulation 882/2004 and ensure that adequate procedures are in place to guarantee the right of feed business operators to apply for supplementary expert opinion, without prejudice to the feed authorities obligation to take prompt action in the case of an emergency. Also, feed authorities need to ensure that feed business operators can obtain sufficient numbers of samples for a supplementary expert opinion unless this is impossible due to the highly perishable nature of the product or the small quantity available for sampling.

¹⁶ <http://www.food.gov.uk/multimedia/pdfs/uknationalcontrolplan.pdf>

A3.13.2: Qualifications / experience / training of officers carrying out sampling

Only authorised officers, who have been properly trained in the appropriate techniques, including relevant EU protocols and Food Standards Agency guidance, should take samples. Sampling should only be undertaken by officers meeting the relevant qualification and experience requirements described in the Code of Practice.

A3.14: Feed of Non-Animal Origin (FNAO)

This section applies to feed authorities with a point of entry for feed, checks undertaken at ERTS or international rail terminals, and deferred examinations under the OFFC Regulations 2007.

The advice in this section also applies to composite products which contain POAO and which are also outside the Veterinary Checks regime covered by Directive 97/78/EC.

A3.14.1: Identification

It is important that feed authorities with a point of entry are aware of the volume and nature of feeds entering the port. Feed authorities overseeing seaports where enquiries with the port operator indicate that no feed is imported should check 100% of ships' manifests for imported feed. 100% checks should continue until enquiries with the port operator reveal no feed imports for a continuous period of three months, and further feed imports are not reasonably foreseeable. Thereafter contact should be made with the port operator at least once every three months to check the status of feed imports.

Feed authorities overseeing airports, ERTS and international rail terminals should set up, implement and maintain documented procedures on the arrangements in place to identify imported feed.

This might include:

- liaison with transit shed operators to obtain copies of cargo manifests;

- random checks of transit sheds/ERTS handling imported feed with a view to verifying the information arrangements in place; and
- informal notification systems in co-operation with importers or their agents.

A3.14.2: Prohibition

It is an offence under Regulation 27 of the OFFC Regulations 2007 for any person to import a product that does not comply with the feed safety requirements set out in Regulation (EC) 178/2002¹⁷. This prohibition applies to products being imported either direct from a third country or from a third country through another EU Member State.

A3.14.3: Examination

Imported feed should be subjected to risk based checks. OFFC Regulation 882/2004 requires systematic documentary checks, random identity checks and where appropriate physical checks. A systematic documentary check does not imply 100% checking of commercial documents but there should be risk based planned arrangements in place. However, documents required to accompany any consignment by feed law, such as under emergency control decisions, are likely to require 100% checking. Physical checks might include: checks on the feed itself, checks on the means of transport, checks on the packaging and analysis or any other check necessary to verify compliance with EC feed safety requirements. Such checks may also take into account any guarantees that the competent authority of the third country has given and which have been assessed by the Commission. The arrangements and follow up actions should be set out in relevant service policies and procedures.

Physical checks should be carried out under appropriate conditions inclusive of standards of hygiene and at a place with access to appropriate control facilities allowing investigations to be conducted properly. Samples should be handled in such a way as to guarantee both their legal and analytical validity.

¹⁷ General principles and requirements of food [sic feed] law such that public and animal health protection will not be compromised by the delay or with relevant feed law - www.food.gov.uk/multimedia/pdfs/1782002ecregulation.pdf

Where an authorised officer reasonably requires facilities and assistance to carry out checks on a product, the importer may be asked to provide these. The OFFC Regulations 2007 also allow an authorised officer to require that physical checks and identity checks take place at a specified place, where necessary for proper examination.

Checks should be informed by:

- statutory requirements for documentary checks and associated sampling laid down in relevant emergency control decisions and emergency control regulations,
- the risk associated with different types of feed safety issues,
- knowledge of the product e.g. new or unusual,
- any requirements following a Feed Alert or RASFF notification,
- the history of compliance for the product, country of origin and exporter/importer,
- the controls that the feed business importing the feed has carried out,
- any guarantees that the competent authority of the third country of origin has given under the third country pre-export checks provisions in OFFC Regulation 882/2004 (details under Section A15 below),
- any existing co-ordinated programmes e.g. at the request of or under the direction of other feed control/advisory bodies,
- adequacy or sufficiency of documentation e.g. discrepancies which need further investigation, and
- suspicion of non-compliance.

Checks may also be influenced by information received from inland authorities regarding non-compliant feed or from other control authorities or the port operator who may have concerns about a consignment.

Checks on imported feed should also take into account any guidance issued by the Food Standards Agency. Such guidance may cover feeds for which specific documentary checking regimes have been laid down or feeds with restricted points of entry and/or testing regimes laid down in Commission Decisions or Regulations. Local authorities with points of entry which are not designated to handle certain FNAO products subject to Emergency Control

Decisions may wish to ensure relevant port operators, local HMRC, or agents/importers are aware of any restrictions. Arrangements should also be in place to deal with any such consignments which may arrive at the point of entry.

Officers should give the owner, importer or importer's agent a receipt for, or a record of, all samples taken and a copy of the results in the case of non-compliance.

Feed authorities with points of entry, ERTS or international rail terminals, should aim to establish effective holding arrangements in liaison with local stakeholders such as transit shed operators or dock companies, to ensure that consignments about which they are seeking additional information cannot be removed from the port or ERTS.

A3.14.4: Deferred examinations of FNAO

The OFFC Regulations 2007 allow for the examination of consignments of FNAO to be deferred and undertaken by the feed authority covering the ERTS or international rail terminal or at any other place of destination in the UK. Deferred examinations may be considered where the feed authority at the point of entry has a valid reason why an examination needs to be deferred, but it is anticipated this is likely to be in exceptional circumstances only.

Either the feed authority covering the point of entry or the importer can request deferred examination. However, the final decision on whether to defer examination rests with the local authority covering the point of entry. In coming to any decision liaison with the receiving authority should be carried out to ensure that appropriate checks will take place and deferral should therefore be based on full co-operation and agreement between authorities.

Where products are subject to emergency control decisions or emergency control regulation measures which require designated points of entry, deferred examination is unlikely to be appropriate but there may be circumstances where there are overriding health and safety considerations. In such cases the

Food Standards Agency should be informed. In all cases high risk feed should be subject to relevant document and identity checks before being deferred for physical checks.

When any examination is deferred, the OFFC Regulations 2007 require that the importer should provide a written undertaking that the consignment has been sealed and will not be opened until it reaches its specified destination and opening has been authorised by the receiving authority. The feed authority at the point of entry should notify the receiving authority by the most expeditious means available that the feed has not been examined and forward to the authority a copy of any written undertaking given by the importer.

Deferred examinations under The OFFC Regulations 2007 should be carried out in accordance with Regulation 26 of the Regulations.

A3.15: Third Country Pre-Export Checks

OFFC Regulation 882/2004 includes provisions for the Commission to grant third countries reduced import checks on imported FNAO. Such arrangements will be restricted to those countries where the Commission is satisfied that effective official controls are in place to carry out the appropriate pre-export checks immediately prior to export to the EU. Details of relevant products and third countries will be notified to feed authorities, as appropriate.

This status can be repealed by the Commission in the light of information or experience. Where such arrangements are in place local authorities at points of entry should check relevant certification and consignments to validate such assurances. Particular consideration should be given to consignments accompanied by certification from non-accredited laboratories. Where authorities have concerns relating to any such arrangements based on checks carried out they should notify the Food Standards Agency¹⁸.

¹⁸ FSA (England) – Tel: 020 7276 8466, Fax: 020 7276 8478
FSA (Scotland) – Tel: 01224 285175
FSA (Wales) – Tel: 029 2067 8957

A3.16: Charges

OFFC Regulation 882/2004 provides that mandatory fees may be introduced for 'high risk' FNAO imports by means of implementing rules when these products are identified at Community level. This is dependent on the Commission putting forward proposals.

Commission emergency control decisions may in some cases provide for charges. Commission Decision 2006/754/EC (as amended), on GM LL Rice 601 in rice products allows for recovery of costs for certain provisions relating to these products. This Decision referred to enforcement by both feed and food authorities.

A3.17: Enforcement

Where, for the purpose of examination at points of entry, or deferred examination at ERTS, international rail terminals or other place of destination, an authorised officer considers that a consignment needs to be inspected to confirm compliance, Article 18 of OFFC Regulation 882/2004 and Regulation 29 of the OFFC Regulations 2007 in Great Britain allow the product to be detained pending the results of any examination associated with the official controls.

Where an authorised officer has detained a feed consignment pending any results of examination, they should notify in writing the person importing the feed or any person in possession of the feed who is entitled to be in possession of it. The notification should specify that the feed should not be removed from the place stated, until the officer's examination of the feed has been completed.

Article 18 of OFFC Regulation 882/2004 and Regulation 29 of the OFFC Regulations 2007 do not specify a time limit for examination and investigation of consignments. They give an option of whether to detain or not, if non-compliance is suspected. However, such examinations, and/or detention periods, should be expedited as quickly as practicable so as to avoid unreasonable disruption to the trade.

Where samples are submitted for analysis or examination, and the consignment is detained pending the results, local authorities should inform the analyst or examiner of that fact and also ensure that the consignment is stored appropriately and securely. The importer or the importer's agent should be informed of the analysis/examination results as soon as possible.

If it appears to an authorised officer upon inspection or examination of feed, that a batch, lot or consignment of feed fails to comply with feed safety requirements, Regulation 30 of the OFFC Regulations 2007 provides that the officer shall serve a Notice requiring:

- destruction of the relevant batch, lot or consignment
- the feed be subjected to special treatment
- re-dispatch of the feed outside the European Community
- another use of the feed for purposes other than those for which they were originally intended

In practice, the options specified in the Notice should be drawn up after appropriate consultation with the person importing the feed. The person on whom any Notice is served should be informed in writing by the authorised officer of any relevant appeal provisions at the time that the Notice is served. The Notice served should allow 60 days for a decision by the responsible person. Where the official control allows for re-dispatch, if after a 60 day period re-dispatch does not take place, the consignment should be destroyed, unless delay is justified.

Regulation 34 of the OFFC 2007 allows for costs associated with the detention of products which are being checked for compliance and the costs of controls on a non-conforming product to be recovered from the person responsible for the consignments.

Special treatment may include such treatment or processing to ensure the feed complies with EU requirements, or the requirements of the third country to where it is to be re-dispatched. Special treatment may also include processing for purposes other than human or animal consumption. Where special treatment is permitted liaison should take place with any other relevant

enforcement authority or organisation to ensure the necessary processing has been carried out. This process may also be used where a non-conforming product is being imported specifically for the purpose of undergoing treatment to comply with EU law.

A consignment should only be re-dispatched outside the EU where the importer has agreed to the proposed destination and has informed the competent authority for the third country why it has been rejected for import into the EU. Where the consignment is being re-dispatched to a country other than that of origin, the competent authority for the country of destination should provide notification to the competent authority controlling the product that it is willing to accept the consignment. The consignment should be officially detained pending re-dispatch.

Any decision on the approval of alternative usage of rejected goods should be informed by any relevant guidance issued by the EU or the Food Standards Agency on the appropriateness of alternative use.

Where official controls indicate that a consignment is injurious to public or animal health or unsafe, the consignment should be detained until it is either destroyed or undergoes other appropriate measures to protect human and animal health. Such consignments cannot be re-exported.

Where there is no evidence to suggest that a deliberate attempt has been made to import non compliant goods, and adequate control arrangements are in place, ports may consider voluntary surrender as an option for dealing with such consignments. In accordance with the Code of Practice where feed is voluntarily surrendered for destruction, a receipt should be issued and the description of the feed should include the phrase “voluntarily surrendered for destruction” with the person surrendering the feed or their representative signing the receipt.

Imported feed failing feed safety requirements may also be subjected to enforcement powers contained in the Feed (Hygiene and Enforcement) Regulations 2005 to ensure appropriate action is taken. Such provisions

include detention and seizure powers, applied in accordance with the Code of Practice.

Officers should have regard to the OFFC Regulations 2007, the Feeding Stuffs Regulations 2005 and any relevant Emergency Control Regulations, which may provide for specific detention powers and notice provisions in relation to certain feeds. Any designated port should have adequate facilities to ensure products can be sampled effectively, hygienically and under appropriate conditions.

Arrangements should be in place to ensure that detained or seized FNAO is stored appropriately, particularly to avoid cross contamination of other goods. Feed which is to be destroyed or disposed of should be dealt with so as to ensure that there is no possibility of it re-entering the feed/food chain e.g. deep burial at an approved waste disposal site. Copies of waste disposal notes should be kept on file.

Model documents for to detention, seizure and destruction of consignments of FNAO using the powers contained in the OFFC Regulations 2007 are attached at Appendix 2.

Appendix 1: Glossary of Terms

BIP	EU Border Inspection Post situated at a seaport or airport or international rail or road link – designated point of entry for products of animal origin from third countries.
Defra	Department of the Environment and Rural Affairs
ERTS	Enhanced Remote Transit Shed. Customs approved warehouse facilities where imported goods are held in temporary storage under Customs control. They are intended to facilitate entry of goods for Customs purposes and may be some distance from the seaport or airport, so may therefore fall under the jurisdiction of another local authority. May be referred to as “temporary storage facilities”.
FNAO	Feed of non-animal origin.
High risk FNAO	Products subject to special import conditions / emergency controls. These are laid down in specific Community and domestic legislation concerning individual products/groups of products and/or countries of origin.
Manifest	Document/computer file describing all cargo carried on a ship, cargo train or aircraft.
PHA	Port Health Authority. These are specially constituted local authorities with a remit of administering a range of environmental health functions in docks/seaports.
POAO	Product of animal origin.
T1 arrangements	A transit declaration made to HM Revenue and Customs. T1 signifies that the goods are not in Free Circulation i.e. they are still subject to Customs control.

Appendix 2: Model Documents

Referral Form 1

Fax

To: [INSERT INLAND LOCAL AUTHORITY] From: [Name, LA/PHA and Title]

Fax: [Insert destination fax number] Pages: [Total INSERT pages including cover sheet]

Phone: [Insert destination phone number] Date: [Insert Date]

Re: **REFERRAL OF IMPORTED FEED MATTER** REF No: [Insert your reference number]

Urgent For Action Please Call to discuss Please inform of outcome

This fax has been sent to refer an imported feed matter to you which requires follow-up action inland. Please feedback on the outcome of any follow-up action using form REFERRAL2 (copy attached) so the originator can close their file.

ADDITIONAL INFORMATION:

Date of arrival at port	
Vessel/aircraft	
Airway bill/bill of lading reference	
Shipping container number	
Description of goods	
Brand	
Quantity	
Batch/Lot No.	
Name and address of importer	
Address of destination of goods (if different from above)	
Date of release of goods from sea/airport	
Reason for referral	

ATTACHMENTS:

Analyst report Letter to importer Other.....

Referral Form 2 – Follow up

YOUR REF: Insert originator reference number from REFERRAL 1 form

Fax

To: [Name, LA/PHA and Title] From: [INSERT INLAND LOCAL AUTHORITY]

Fax: [Insert destination fax number] Pages: [Total INSERT pages including cover sheet]

Phone: [Insert destination phone number] Date: [Insert Date]

Re: **REFERRAL OF IMPORTED FEED MATTER – Outcome:** My Ref: [Insert your reference number if different form] No: originator ref]

- For information
 Resolved
 Please call to discuss

This fax has been sent to notify you of action taken in respect of a REFERRAL you sent previously.

ADDITIONAL INFORMATION:

Shipping container number	
Airway bill/bill of lading reference	
Description of goods	
Brand	
Quantity	
Batch/Lot No.	
Name and address of importer	
Address of destination of goods (if different from above)	
Action taken and outcome	

NOTICE FROM [NAME] LOCAL AUTHORITY/ PORT HEALTH

**The Official Feed and Food Controls (England/Scotland/Wales)
Regulations 2007**

NOTICE OF

**<DESTRUCTION>
<RE-EXPORT>
<SPECIAL TREATMENT>
<OTHER APPROPRIATE MEASURES>**

(Note : delete non applicable option/s)

To: *Insert importer's / person in control of feed name/address*

I being an authorised officer of [name] Local Authority/Port Health after consultation with you being the Importer or Feed business operator, hereby give notice to you in accordance with *Regulation 30 of The Official Feed and Food Controls (England/Scotland/Wales) Regulations 2007* that:-

The consignment described in the schedule below fails to comply with feed law *<and is injurious to human or animal health or unsafe>* in that:

A.5A.1: Insert analyst's findings including the regulations breached

AND

I hereby require you to:- either

< Destroy the feed within 60 days of the date stated on this notice > or

< Subject the feed to the following special treatment within 60 days of the date stated on this notice > or

<insert special treatment> or

< Re-dispatch the feed outside the Community within 60 days of the date stated on this notice

>

Note that failure to re-dispatch the consignment within the specified time period may result in its destruction under the provisions of Article 21 of Regulation (EC) No. 882/2004 unless a delay is justified.

or

< Take the following other appropriate measures within 60 days of the date stated on this notice >

<insert appropriate measures>

(Note : delete non applicable option/s)

The consignment is officially detained pending compliance with the terms of this notice

Guidance Notes – Non-Compliant Imported Feed (Non-Animal Origin)

The Official Feed and Food Control Regulations (England/Scotland/Wales) 2007 (the OFFC Regulations) – Implementing Commission Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

This document provides guidance on the relevant provisions under the OFFC Regulations, which came into force on the 14th December 2007, for consignments, which do not meet the requirements of the relevant European legislation. It is intended to inform feed operators importing feed from third countries to a UK port of the options available. It is not a full or authoritative statement of the law or its interpretation and should be read in conjunction with the relevant legislation. Only the courts can decide authoritatively whether, in particular circumstances, an offence has been committed.

PRELIMINARY NOTES

- A. The options stated in the accompanying letter/fax are those that are applicable to this consignment, which fails to meet the legal requirements for it to be placed on the market for human or animal consumption.
- B. The offering of an option does not guarantee acceptance of your proposals.
- C. Where there is a public health or animal health safety concern we, [Name LA/PHA]), may withdraw or prohibit any option.
- D. [Name LA/PHA] will issue a Notice under regulation 30. That notice should be issued within 7 days from the date of the accompanying letter/fax following confirmation of a course of action (option). Where no response has been made a Regulation 30 Notice will be issued indicating the most appropriate course of action determined by [Name LA/PHA].
- E. The importer/importer's representative shall be liable for any costs incurred by [Name LA/PHA] to exercise enforcement options for non-compliant consignments. (Regulation 34).
- F. The consignment is placed under official detention and movement is prohibited unless agreed by [Name LA/PHA].

The information in the accompanying letter/fax details the results of imported feed controls undertaken on the consignment declared. Sampling and analysis (where applicable) has been conducted in accordance with the requirements set by relevant European legislation.

The accompanying letter is a consultation with you with regard to the options available to prevent this consignment from being placed on the market for human or animal consumption. The letter outlines the options available to you in respect of this consignment.

These guidance notes refer to all options that may be offered in accordance with European legislation.

You are requested to respond within 7 days of receipt of the accompanying letter/fax with your response, together with any further information and assurances applicable.

In accordance with Article 11 of Regulation (EC) No. 882/2004, if you the importer do not accept the results of any official analysis of a sample taken from the consignment, as detailed in the accompanying letter/fax, you may request a second opinion.

Guidance on options available for non-compliant feed consignments

1. Destroy the consignment

Should you wish to destroy the consignment you may wish to use the [name] Council contracted waste disposal service or to use your own appointed waste disposal contractor.

Note: Where a non-compliant consignment is deemed unsafe it must be destroyed or undergo appropriate measures to protect human and animal health.

a) Using [name] contracted waste disposal service.

Arrangements for destruction will be required to be made with the [name] waste disposal contractor (tel. no.) and all associated disposal costs are attributable to you. You will be required to sign a voluntary surrender document (available from the port health office) and provide details of destruction arrangements made with the waste disposal contractor. Supervision / confirmation of destruction will be made by a local authority/port health representative.

Note: Liquid waste will require disposal to a site suitable to take such products.

b) Using your own appointed waste disposal contractor.

Should you wish to destroy a consignment using your own appointed contractor an authorised feed officer must agree to the suitability of the disposal arrangements. Disposal must be supervised by a representative from the local authority/port health office and all associated costs will be recovered from the importer or importers representative.

2. Subject the non compliant feed to special treatment

The non-compliant consignment may be treated or processed to bring the feed in line with community law or with the requirements of the third country of dispatch. Such treatment may include de-contamination in some cases but not dilution.

The non-compliant consignment may be eligible for sorting or physical treatment which is known to reduce the level of contamination to within legal limits.

Information will be required on the proposed process, future use, location of processing, transportation details and details of the relevant competent authority that will be undertaking the monitoring of the process. Arrangements for this monitoring must be co-ordinated with the competent authority in whose area the treatment or processing is to take place, in accordance with Article 4.3 of Regulation (EC) No. 882/2004.

3. Re-dispatch the consignment outside the EU for human consumption

A non-compliant consignment may be re-dispatched to a country outside the EU where the following conditions are met.

a) Return to the country of origin.

A non-compliant consignment may be returned to the country of origin where the importer or importers representative has first informed the competent authority of the

third country of origin of the reasons and circumstances for prohibiting import of the consignment into the European Community.

Evidence will be required to be submitted to the feed authority's satisfaction that this notification has taken place.

Where a consignment is considered to be injurious to human or animal health or unsafe, the consignment can only be destroyed or undergo appropriate measures to protect health, at the expense of the operator.

b) Re-dispatch to a country outside the European Community other than the country of origin

A non-compliant consignment may be re-dispatched to a country other than the country of origin where the importer or importers representative has first informed the competent authority of the third country of intended destination of the reasons and circumstances for rejection for prohibiting import of the consignment into the European Community.

In addition the competent authority of the third country of intended destination must notify [Name LA/PHA] that it is prepared to accept the consignment.

Where a consignment is considered to be injurious to health or unsafe, the consignment can only be destroyed or undergo appropriate measures to protect health, at the expense of the operator.

If the conditions for re-dispatch to the country of origin or an alternative third country are met a legal Notice will be served specifying the details provided. If after the expiry of 60 days specified in the Notice re-dispatch does not take place the consignment will be destroyed unless a delay is justified. All associated costs will be recovered from the importer or importers representative.

4. Processing for o purposes

Non-compliant consignments which are not injurious to human or animal health or unsafe may undergo processing for use for purposes other than for animal or human consumption.

Requests will be assessed on an individual basis and therefore information will be required on the proposed process, future use, location of processing, transportation details and details of the relevant competent authority who will be undertaking the monitoring of the process. The competent body at the destination will be informed. The appropriate UK competent authority may be consulted as to the viability of any option / proposal submitted.

You will be required to complete an undertaking specifying the relevant details.

Failure to comply with an agreed course of action will result in legal action being instigated and/or destruction of the consignment.

ANNEX: 4

Major Feed Assurance Schemes

Universal Feed Assurance Scheme (UFAS)

UFAS deals with the production and delivery of compound feeds and the supply of feed materials to the farm.

Feed Materials Assurance Scheme (FEMAS)

FEMAS has been developed to provide assurance to purchasers of feed materials that the feed materials they buy are safe and will meet the quality criteria specified. FEMAS is designed for application in all countries where feed materials are produced and application for certification to FEMAS is open to feed material suppliers in all countries.

Trade Assurance Scheme for Combinable Crops (TASCC)

TASCC was developed to ensure that crops of grain, oilseeds and pulses were treated responsibly once they left the farm. This includes combinable crops destined for both human food and animal feed use. It provides independent verification that the trade is meeting food/feed safety laws. UFAS, FEMAS and TASCC are owned and managed by the Agricultural Industries Confederation. Full details of the codes of practice, appendices and other information can be obtained from the AIC website: www.agindustries.org.uk

Major Farm Assurance Schemes

The following schemes are operated by Assured Food Standards (AFS).

Unless indicated otherwise, the websites for these can be all accessed via the Assured Food Standards website – www.littleredtractor.org.uk

The Assured Combinable Crops Scheme (ACCS)

Assured British Meat (ABM)

Assured Chicken Production (ACP)

Assured British Pigs (ABP) www.assuredpigs.co.uk

Assured Dairy Farms (ADF)

Assured Produce Scheme

The following schemes have recognised equivalence to AFS:

Quality Meat Scotland (QMS) www.qmscotland.co.uk

Farm Assured Welsh Livestock (FAWL) www.fawl.co.uk

Northern Ireland Beef and Lamb Quality Assurance Scheme (NIBL FQAS) –
www.lmchni.com

Genesis Quality Assurance (GQA) www.genesisqa.com

The following operate independently of AFS

British Egg Industry Council – The Lion Code www.britegg.co.uk

ANNEX: 5

LACORS/VMD Memorandum of Understanding

Memorandum of Understanding between the Local Authorities Co-ordinators of Regulatory Services (LACORS) and the Veterinary Medicines Directorate (VMD) in relation to the Enforcement of EC Regulation 183/2005¹⁹.

1. Introduction

1.1 This memorandum of understanding (MoU) is between LACORS and the VMD.

1.2 The MoU is not legally binding and it does not supersede the statutory duties and powers of the participating bodies.

2. Purpose

2.1 The purpose of the MoU is to ensure that enforcement of EC Regulation 183/2005, in Great Britain, is carried out in a manner which minimises duplication of official controls by local authorities (LAs) and the VMD's Animal Medicines Inspectorate (AMI). Whilst working to promote efficient enforcement of EC Regulation 183/2005 and minimising undue regulatory burdens on business, both LACORS and the VMD agree to ensure the maintenance of a safe feed/food chain.

¹⁹ Regulation (EC) No. 183/2005 of the European Parliament and the Council of 12 January 2005 laying down requirements for feed hygiene.

3. Roles & Responsibilities

VMD

The VMD is an executive agency of the Department for Environment, Food and Rural Affairs (Defra). Its main aim is to protect public health, animal health and promote animal welfare by ensuring the safety, quality and efficacy of all aspects of veterinary medicines in the UK.

3.2 The VMD is responsible for the assessment, issue and maintenance of all national marketing authorisations for veterinary medicines in accordance with European and domestic legislation; and for controls on the manufacture and distribution of veterinary medicinal products, specified feed additives and premixtures and feedingstuffs containing such products, as set out in Schedule 5 of the Veterinary Medicines Regulations 2006²⁰ (Schedule 5 products).

3.3 The VMD is also responsible for surveillance of residues of veterinary medicines in animals and animal products and for providing policy advice to Ministers on matters relating to veterinary medicines.

²⁰ The Veterinary Medicines Regulations 2006 SI 2006 No. 2407

AMI

3.4.1 The AMI is part of the VMD with responsibility for the enforcement EC Regulation 183/2005 in relation to Schedule 5 products.

LACORS

3.5. LACORS is the coordinating and advisory body for LA regulators. Its aim is to promote consistency of enforcement and good practice by LAs. LACORS achieves this through its specialist focus groups. The specialist group for feed law enforcement is the Fertiliser and Feed Focus Group. LAs are responsible for enforcement of feed law including EC Regulation 183/2005 except in as far as it relates to Schedule 5 products. The Food Standards Agency (FSA) acts as the central competent authority for animal feed law enforced by LAs.

4. Legislation

4.1. EC Regulation 183/2005 laying down requirements for feed hygiene sets out requirements for feed business operators who manufacture, distribute or use certain feed additives, premixtures and feedingstuffs. The requirements have been implemented in Great Britain by the Veterinary Medicines Regulations 2006 (in respect of Schedule 5 products including specified feed additives i.e. coccidiostats, histomonostats and growth promoters) for which the AMI have enforcement responsibility. Those aspects of EC Regulation 183/2005 which are enforced by LAs in Great Britain have been implemented by The Feed (Hygiene & Enforcement) (England) Regulations 2005²¹ (parallel legislation exist for Scotland and Wales).

5. Arrangements for enforcement of EC Regulation 183/2005

²¹ The Feeding (Hygiene and Enforcement) (England) Regulations 2005 SI 2005 No. 3280
The Feeding (Hygiene and Enforcement) (Scotland) Regulations 2005 SI 2005 NO. 605
The Feeding (Hygiene and Enforcement) (Wales) Regulations 2005 SI 2005 NO. 3368 (W.265)

5.1 To facilitate the consistent enforcement of EC Regulation 183/2005 the parties to this MoU shall agree an interpretation of the Regulation's essential conditions and produce guidance on these for feed business operators and enforcement officers/inspectors.

5.2 Where a feed business premises needs approval under EC Regulation 183/2005 by the AMI and LA, AMI approval will satisfy both requirements if the business uses the same systems to control Schedule 5 and non-schedule 5 products. It is also agreed that the AMI will undertake subsequent official controls²² at these approved, feed business premises to ensure continued compliance with the requirements of EC Regulation 183/2005. In these circumstances LAs will not routinely carry out official controls at these feed business premises.

Where a feed business premises is approved by the AMI but only requires to be registered by the LA then the official controls undertaken by the AMI to ensure compliance with EC Regulation 183/2005 need not be repeated by the LA.

Nothing in this MoU will prevent a LA from carrying out an official control at a feed business premises where this was necessary to investigate a complaint or suspected failure to comply with feed hygiene legislation.

5.3 Where feed business operators have different control systems in place for Schedule 5 and non-schedule 5 products, the AMI will inform LAs that this is the case and that the feed business is only approved for Schedule 5 products. In such circumstances, the LA shall carry out separate approval of the feed business premises and undertake official controls which are subsequently required. LA inspectors and AMI officers may undertake these official controls by doing joint visits together.

²² Official Controls are defined in Regulation (EC) 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. Article 10 of this Regulation should be read by LAs in conjunction with section 4 of the Feed Law Enforcement Code of Practice (Great Britain).

5.4 A list of feed businesses approved by the AMI is published on the VMD website and can be accessed at: www.vmd.gov.uk/industry/AMI/ami.htm.

5.5 It is noted that LAs have responsibility to undertake the official control of other areas of feed law enforcement, which will include the need to undertake visits to approved feed businesses e.g. to take samples of feedingstuffs.

6. Exchange of information – General

6.1 For the purposes of the MoU LA officers and AMI inspectors shall be encouraged to liaise and exchange information locally.

6.2 The VMD/AMI shall attend meetings of the LACORS Fertiliser and Feeding Stuff Focus Group twice a year.

6.3 Representatives of LACORS and the VMD shall be invited to attend each others meetings where it is relevant to do so. The FSA may also be invited to attend these meetings.

6.4 AMI Inspectors will be invited to attend meetings of regional LA food and agriculture groups in accordance with Feed Law Enforcement Code of Practice²³ and the VMD will encourage their inspectors to attend these meetings.

²³ Feed Law Enforcement Code of Practice (Great Britain) Chapter 1.1.7 – www.food.gov.uk/enforcement/foodlaw/feedlawcop/

7. Exchange of Relevant Information on Official Controls

7.1. Intelligence and information shall be passed between the lead officer for feed law enforcement²⁴ for the LA(s) in which area a feed business operator/premises is/are based and the AMI inspector responsible for undertaking official controls at the business. Details of these contacts shall be exchanged between LACORS and the VMD with the assistance of the FSA.

7.2. In the event of the appropriate LA officer or AMI Inspector not being available, contact shall be via the FSA's Animal Feed Unit or AMI headquarters.

7.3 After a visit to an approved feed business consideration will be given to what information needs to be conveyed to the other party about the official control, in particular:

- if it was not possible for the AMI to undertake an inspection of an approved premises, e.g. because the feed business was not dealing in Schedule 5 products at the time of the visit, this information must be passed onto the LA. In these circumstances the LA will determine whether it needs to carry out an official control of the premises. The LA will make this decision bearing in mind the last time the control systems for non-Schedule 5 products at the premises were inspected, and the risk rating allocated to the premises in accordance with the Feed Law Enforcement Code of Practice;

- If an Inspector of either the LA or AMI becomes aware that a feed business premises is not correctly approved or registered for all the activities being undertaken, or is in contravention of EC Regulation 183/2005 Annex II or other feed legislation, the Inspector/officer shall inform the other enforcement body at the earliest opportunity; and

- the pertinent aspects of an inspection undertaken by the AMI of non-Schedule 5 products will be passed to the LA in order that the LA can add this

²⁴ Lead officer for feed law enforcement is defined in the Feed Law Enforcement Code of Practice (Great Britain) at Chapter 1.2.8

information to its records and review the information to establish if any further action is required.

8. Joint enforcement.

8.1 In order to establish an understanding of respective responsibilities and activities, some joint inspections shall be undertaken by LA officers and AMI inspectors.

8.2 Once an understanding of respective responsibilities and activities has been attained future inspections may be carried out jointly or separately as may be appropriate. However, where inspections are conducted separately, both bodies must have regard to the provisions of this agreement to share relevant information and to avoid unnecessary duplication of inspections.

8.3 It is agreed that where either body is aware of an impending inspection by the other at which a sample of feed is to be taken in a prescribed (formal) way that body may request that appropriate samples are taken on behalf of the other body. Costs of analysis and sampling shall be borne by the requesting body.

8.4 It is agreed that where the AMI intends to take a formal sample it may request assistance from the relevant LA. The LA will lend such assistance where possible.

8.5 LAs and the AMI should liaise on their sampling of feedingstuffs to maximise the efficiency of resources available for sampling and to minimise the burdens on business. This liaison should involve regional LA feed liaison groups where possible.

9. Detection of Illegal Activities

9.1 LACORS and VMD shall provide each other with advice and guidance on:

- (i) authorised products and their permitted use;
- (ii) banned products; and
- (iii) unauthorised products.

9.2 If during an inspection of a feed business premises an officer of either body becomes aware of significant breaches of the obligations under EC Regulation 183/2005 he/she may take appropriate action immediately in order to maintain the safety of the food/feed chain. Where such action is necessary the officer concerned shall immediately notify the other enforcement body of the issue and the action taken. Where there are breaches of the obligations which do not require immediate action to be taken, then action will be taken following discussion between the LA and AMI.

9.3 Where either the LA or the AMI receives information that a feed business operator may be in breach of the obligations of EC Regulation 183/2005 or other feed law, they shall liaise with each other before taking appropriate action.

9.4 Where, in relation to EC Regulation 183/2005 either an LA or the AMI intends to issue or has issued an improvement notice, they shall inform the other party and forward a copy of the notice to them.

9.5 Where an LA intends to issue a prohibition notice or apply for a prohibition order then they shall inform the AMI.

9.6 Where either an LA or the AMI intends to issue a suspension or revocation of a feed business premises approval or registration, they shall inform the other party to this MoU.

10. Follow-up action

10.1 It is agreed that LAs and the AMI will use their best endeavours to provide any evidence/information needed by the other party where legal action is required to be taken against a feed business operator following a breach of feed law.

11. Review, amendments, disputes and termination

11.1 This MoU will be reviewed annually. However, both LACORS and VMD can request a review of the MoU at anytime if they believe it is necessary to do so.

11.2 Both LACORS and the VMD can propose amendments to the MoU at anytime. Amendments will only be made with the agreement of both LACORS and the VMD.

11.3 Either LACORS or the VMD can terminate the MoU by giving 3 months notice to the other, in writing.

LIST OF INTERESTED PARTIES

AA Feeds
ACAF Members
AMTRA
Agivey Pet Foods
Alpharma Animal Health Ltd
Animal Pharm
Association of Wholesalers to the
Veterinary Profession
Assured Food Standards
Association of London Government
BASF UK Ltd
Bayer PLC
Bernard Matthews plc
Boehringer Ingelheim Ltd
Brian G Spencer Ltd
British Deer Farmers Association
British Free Range Egg Producers
Association
British Goat Society
British Horse Society
British Industrial Biological Research
Association
British Pig Association
Burson-Marseller
Butterworths Law of Food & Drugs
Cadport
Canine Health Census
Cheminex (Sales) Ltd
Consumers the European Group (UK)
Dalgety Agriculture Ltd
Dandy Dog Foods
Department of Pre-Clinical Veterinary
Studies
Digest: Food Policy and Legislation
Dow Elanco Ltd
Eco Animal Health
J C Alborough Ltd
J Dowds & Sons Ltd.
Linda Clow, Express Dairies
The Department of Health
The Environment Agency
The Local Government Association
Trading Standards Institute
W&R Barnett Ltd.
Judith Nelson, Agricultural Industries
Confederation

Archie McFie, Agricultural Industries
Confederation
Mr P Boulton – Agriprem (Holdings) Ltd
Mr M Witt – ABN Ltd
Mr A Inglis – Alexander Inglis & Son Ltd
Roger Dawson, Animal Health Distributors
Association
Peter Rotherham, Association of Port
Health Authorities
Paul Lenartowicz, Association of Public
Analysts
Mr J Rider – Barnaby Side Farm
Mr C Beattie, H Beattie and Son
Mr R Smullen – Biomar Ltd
Avril Allman, Biotechnology & Biological
Sciences Research Council
Mr P D G Bowen
Mr S Eskinazi – Braes Feed Ingredients
Harry Evans, British Association of Feed
Supplement & Additive Manufacturers
Carl Padgett, British Cattle Veterinary
Association
Louisa Platt, British Egg Industry Council
Claire Williams, British Equestrian Trade
Association
Helena Cotton, British Equine Veterinary
Association
David Collins, British Institute of
Agricultural Consultants
Peter Bradnock, British Poultry Council
Paul Smith, British Retail Consortium
Alan Duncan, British Society of Animal
Science
Jane Davis, British Trout Association
Celia Bennet, British Veterinary
Association
Mr T Morgan – Carreg-y-Llech
Mr T Drew – Centaur Grain Ltd
Didier Jens, CEFIC
Tina Garrity, Chartered Institute of
Environmental Health
John Avers – City of London Port Health
Authority
Chantal Fauth –COCERAL
Peter Stephenson, Compassion in World
Farming
Sue Davies, Consumers Association

LIST OF INTERESTED PARTIES

Wendy Cave, Co-operative Group (CWS) Ltd.
Julian Salmon, Country Land and Business Owners Association
Nick Way, Country Land and Business Owners Association - Wales
Ed Komorowski, Dairy UK Ltd
Chris Savery, The Dairy Group Ltd
Ron Ennion, Eurofins Scientific Laboratory Eurotech Nutrition Ltd
Mr R Ervine, Fane Valley Co-Operative Farm and Food Society
Jose MacDonald, Farming and Livestock Concern UK
Mr Neil McGarry, Favour Pet Foods Federation of Agricultural Cooperatives (UK) Ltd
David Hands, Federation of Small Businesses
Bill Harris, Feed Fat Association
Mr Roger Clegg, Feedwell Animal Foods Ltd.
Daniel Pearsall, Fishmeal Information Network
Lucy Harris, Foodaware
Tim Lobstein, Food Commission
Lynn Insall, Food & Drink Federation
Fort Dodge Animal Health
Mr P Fullarton – Forum Products Ltd
Pete Riley, Friends of the Earth Game Conservancy Trust
James McCulloch, Michael Putnam, The George Group
Mr S Shand – Gleadell Agriculture Ltd
Mr J Gilkinson – Gortavoy Feeds & Farm Supplies
Anne-Severine Nistad, Grain and Feed Trade Association
Green Crop Driers Association
Ben Ayliffe, Greenpeace
Hanford Feeds Ltd
Harbro Farm Sales
Hoechst (UK) Ltd
Hoechst Marion Roussel Ltd
Mr D Rowe – Holbud Ltd
Mr A Howie – Howie Animal Feeds Ltd
Institute of Biology
Chartered Institute of Environmental Health Officers
Institute of Food Science and Technology
Stuart Barlow, International Fishmeal and Fishoil Organisation
Inter Regional Group
International Registration Consultancy
Janssen Pharmaceuticals Ltd
Jeremy Boxall, LEAF (Linking Environment and Farming)
John Cheetham
Mr P D Montgomery, John Thomson & Sons Ltd.
Kaken Pharmaceuticals Co Ltd
George Merson, LGC Teddington Ltd
Lilly Industries Ltd
Les Bailey, Local Authorities Coordinators of Regulatory Services
Lys Mill Ltd
Mr Mark Nicholl, Mackle Pet Foods
Mallinckrodt Veterinary Ltd
Marine Harvest McConnell Farms Office
Mr M Marshall
Martin Grantley-Smith, Meat and Livestock Commission
Medicines Control Agency
Merial
Milk Marque
Mr P Shaw, Moneymore Supplies Ltd.
Mr George Gregg, Moores Animal Feeds
Iqbal Sacranie, Muslim Council of Britain
Jill Hewitt, National Association of Agricultural Contractors
Damian Testa, National Association of British and Irish Millers
National Beef Association
Tim Brigstocke, National Cattle Association (Dairy)
Patience Purdy, National Council of Women
Sue Dibb, National Consumer Council
Stella Nicholas, National Consumer Federation
Alex Dinsdale, National Farmers Union
National Federation of City Farms
Farah Nazeer, National Federation of Women's Institutes

LIST OF INTERESTED PARTIES

National Housewives Association
Stephen Dawson, National Office of
Animal Health
National Pharmaceutical Association
National Pig Association
Pete Morris, National Sheep Association
Neville Chandler, National Renderers
Association
Nor-Feed (UK) Ltd
Mr N Jackson – Norfeed (UK)
Ornamental Fish Industry
Mr D Morgan – Penllan Farm
People's Dispensary for Sick Animals
Pesticide Action Network UK
Janet Nunn, Pet Care Trust
Tamara Garmston, Pet Food
Manufacturers Association (PFMA)
Monika Prenner, M. Bellingham, Pet Food
Manufacturers Association (PFMA)
The Pet Health Council
Peter Hand Animal Health Ltd
Pet Trade and Industry Association Ltd
Pfizer Ltd
Richard Harris, Potato Processors
Association
Provision Trade Federation Ltd
Provita Eurotech Ltd.
Robin Crawshaw, R C Feed
Mr D Renney, Roche Products Ltd
Mrs D Thomson – Roses Nutrition Ltd
Dr G Rosen, The Royal Association of
British Dairy Farmers
Jeff Gill, Royal College of Veterinary
Surgeons
John Millward, Royal Pharmaceutical
Society of Great Britain
John Avizienius, Royal Society for the
Prevention of Cruelty to Animals
Royal Society of Chemistry
Ruddock and Sherratt (Public Analysts)
Rumenco
Mr R Ervine – Sands of Newry
Mr D Charters, Scott's Feeds Ltd
Angela Bowden, Seed Crushers and Oil
Processors Association
Mr S Smellie - L S Smellie & Sons Ltd
Mabel Foye, Society of Feed
Technologists
Society of Master Saddlers
Francis Blake, Soil Association
Solvay Animal Health
State Veterinary Office
Jeanette Longfield, SUSTAIN
Mr I Hutchinson, Thomas Hutchinson &
Sons Ltd.
Sandy Driskell, Trading Standards Institute
Philip Owen – Trading Standards Institute
Mr M Raymond – Trenewydd Fawr
Mrs J Arneil, Trouw Nutrition
Diane Calvert, Townswomen's Guilds
Mr D Sweeney, United Feeds
Mr H Korsager – United Fish Industries UK
Ltd
Judith Nelson, United Kingdom Agricultural
Supply Trade Association
Derek Ward, United Kingdom Agricultural
Supply Trade Association
Ian Pike, United Kingdom Association of
Fish Meal Manufacturers
UK Federation of Businesses &
Professional Women
Peter Crofts, United Kingdom Register of
Organic Farming Standards
Alan Lawrence, UK Renderers Association
Keith Sanders, UK RVO Processors
Association
Syed Aziz Pasha, Union of Muslim
Organisations of UK and Eire
Unipet Petfoods Supplies
Vericore
Vetark
WCF Ltd
Janet Godfrey, Women's Food and
Farming Union
Lesley Hutchison, Women's National
Commission

EXTRACT FROM IMPACT ASSESSMENT FOR FEED (HYGIENE AND ENFORCEMENT) (ENGLAND) REGULATIONS 2005

1. Title of Proposal:

The Feed (Hygiene and Enforcement) (England) Regulations 2005.

Administration and Enforcement of:

Regulation of the European Parliament and of the Council laying down requirements for feed hygiene (EC No183/2005) (The EC Feed Hygiene Regulation)

2. Purpose and Intended Effect of Measure

(i) The Objective

2.1. The main objective of the measure is to protect human and animal health from contaminated or otherwise unsafe food and feed.

2.2. The Feed (Hygiene and Enforcement) (England) Regulations 2005 (the Regulations) provide the legal basis for administrative measures and the enforcement of penalties applicable to infringements of the EC Feed Hygiene Regulation, which is directly applicable in European Union Member States.

2.3. Amongst other things, the EC Feed Hygiene Regulation will extend approval and registration arrangements currently restricted to premises dealing with feed additives (under Council Directive 95/69/EC) to nearly all feed businesses, including farms, involved in producing, holding or marketing feeds.

2.4. The EC Feed Hygiene Regulation will apply from 1 January 2006 and will require most feed businesses to be registered or approved. Premises already registered/approved under Council Directive 95/69/EC will have to comply with the conditions in the Feed Hygiene Regulation by the above date. Premises registering for the first time will have to comply by 1 January 2008, giving them sufficient time to comply with the new requirements, along similar lines as the provisions of a separate but related Regulation on food hygiene.

3. Compliance costs for local authorities

3.1. It is expected that there will be additional costs for local authorities in relation to enforcing this legislation. In the first instance this will be related to the administrative task of receiving applications from businesses for approval/registration. From January 2008, local authorities will be responsible for making checks on feed businesses which have been registered for the first time under the Feed Hygiene Regulation, to ensure compliance with the conditions of the legislation. (Establishments already approved or registered under Directive 95/69/EC are already subject to checks). The Co-ordinating body for local authority

EXTRACT FROM IMPACT ASSESSMENT FOR FEED (HYGIENE AND ENFORCMENT) (ENGLAND) REGULATIONS 2005

trading standards (LACORS) have indicated that they will submit a detailed costed bid in the near future. There is also a requirement for trading standard officers of local authorities to be trained on feed safety management procedures based on HACCP. The Food Standards Agency is addressing this need and has arranged a programme of courses aimed at equipping local authority officers with the relevant skills to enforce the EC feed hygiene legislation.