

GUIDANCE ON THE ANIMAL FEED REQUIREMENTS OF EC REGULATION 178/2002 ON THE GENERAL PRINCIPLES OF FOOD LAW

This document is a guide to the provisions of Article 15 of EC Regulation 178/2002. It is intended for the use of enforcement personnel and feed business operators (for example, growers of feed crops, feed manufacturers, importers, merchants, food businesses selling food products into the animal feed chain), including new businesses wishing to gain an understanding of this particular provision. It should be read in conjunction with, not as a substitute for, the EC Regulation. In particular, its interpretation of Article 15 is only the opinion of the Food Standards Agency. Only the courts can decide whether in particular circumstances an offence has been committed. Feed business operators who have a specific query should seek advice from their legal advisers, relevant trade association(s) or enforcement authority, as appropriate.

Introduction

1. EC Regulation 178/2002 of 28 January 2002 established the European Food Safety Authority, laid down the general principles and requirements of food law, and laid down procedures in matters of food safety. It came into force on 21 February 2002, although certain key provisions did not apply until 1 January 2005. The principal aim of the Regulation is to protect human health and consumer interests in relation to food while at the same time improving the functioning of the EU market for food and feed.

2. For the purposes of the EC Regulation, food law includes feed produced for or fed to food-producing animals. It therefore applies to all stages of the production, processing and distribution of feed, subject to certain exemptions for pet food and primary production for private domestic use.

3. The EC Regulation imposes a number of responsibilities on feed business operators (defined as the natural or legal person responsible for ensuring that the requirements of food law are met within the feed business under their control). In particular:

- feed must not be unsafe, i.e. it must not have an adverse effect on human or animal health, or make animal products unsafe for human consumption;
- the labelling, advertising and presentation of feed must not mislead consumers;
- feed business operators must be able to identify any individuals or businesses from which they have obtained food-producing animals, feed or feed ingredients and the businesses to which they have supplied products, and be able to produce this information on demand;
- feed business operators must withdraw unsafe feed from sale, or recall it from purchasers if it has already been sold; and
- feed business operators must inform the competent authorities of the action they are taking and collaborate with action taken by the competent authorities.

4. The EC Regulation applies directly in all Member States and therefore does not require transposition into domestic legislation. Enforcement of the feed-related Articles is provided for by regulation 15 of the Feed (Hygiene and Enforcement) Regulations 2005 (there are separate but parallel Regulations for England, Scotland, Wales and Northern Ireland) and is the responsibility of the trading standards departments of local authorities (county, borough, unitary or metropolitan district councils) in Great Britain and of the Department of Agriculture and Rural Development in Northern Ireland. The Port of London Health Authority is a designated feed authority for the Port of London, but is the only port health authority so designated.

Guidance on Other Articles of EC Regulation 178/2002

5. Guidance on the interpretation and implementation of certain aspects of EC Regulation 178/2002 was adopted by the Standing Committee on the Food Chain and Animal Health on 20 December 2004 and is available on the Commission's website at:

http://ec.europa.eu/food/food/foodlaw/guidance/guidance_rev_7_en.pdf

This guidance concerns Articles 11-12 and 16-20, which cover imports and exports of food and feed, presentation of food and feed, the responsibilities of food and feed business operators, traceability, and the withdrawal and if necessary the recall of unsafe food and feed.

6. The Commission's guidance does not cover Article 15, which concerns feed safety requirements. As this document is intended to supplement the Commission's guidance and not to substitute for it, it is concerned only with Article 15.

Article 15 -- Feed Safety Requirements

7. Feed must not be marketed or fed to food-producing animals if it is unsafe. In this context, unsafe means that it is considered to have an adverse effect on animal or human health, or that it is considered to make the food derived from food-producing animals unsafe for human consumption. In those cases where a feed identified as unsafe is part of a larger consignment of the same feed product, then all of the consignment will be considered unsafe unless evidence is produced that the rest of it satisfies EC feed safety requirements. These requirements apply equally to one-off sales and to feed supplied free of charge.

8. Feed can be rendered unsafe in several ways -- for example by contamination, by the presence of foreign objects, by deterioration due to age or decomposition. Once a feed business operator has identified an unsafe feed, or a hazard which may potentially have made the feed unsafe, a risk assessment should be carried out. The nature of the risk assessment will depend on a variety of factors, such as the nature and intended use of the feed product, the age and species of the animals which may have consumed it, and the nature of the safety breach. The risk assessment should nevertheless attempt to address two key questions: the harm which might be caused; and the likelihood of that harm. The action to then be taken -- for example to control the hazard, withdraw the feed, monitor its use -- will depend on the outcome of the risk assessment.

9. Feed will be deemed to be safe in so far as it complies with the provisions laid down in EC feed legislation -- for example, it does not contain levels of undesirable substances above those specified, it does not contain any prohibited ingredients, or the specified maximum inclusion rates for permitted additives are not exceeded. However, this will not in itself prevent the enforcement authority from placing restrictions on feed which complies with specific EC-derived feed legislation if they have grounds for believing that it may be unsafe for other reasons -- for example, deterioration due to age or decomposition, or high levels of a particular contaminant which (although there may be no maximum permitted level for it laid down in feed legislation) may potentially have an adverse effect on animal or human health.

10. In the absence of any specific EC provisions on aspects of feed safety, feed will be deemed to be safe if it complies with any national requirements, provided that these requirements have been drawn up in accordance with Articles 28 and 30 of the Treaty establishing the European Community. However, as is the case with EC legislation, the fact that a feed may be deemed to be safe if it complies with national provisions does not prevent enforcement officials taking action if they consider the feed to be unsafe despite complying with specific legislation. Articles 28 and 30 mentioned above prohibit quantitative restrictions on imports, or measures having an equivalent effect, except where "justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property". In practice it might be very difficult to produce an acceptable justification for the European Court of Justice, but in any case the UK has few national feed safety requirements over and above those laid down in EC feed law -- for example, a number of the limits of variation in Schedule 4 to the Feeding Stuffs Regulations 2005 and some provisions of the Agriculture Act 1970.

**Animal Feed Unit
Food Standards Agency
December 2007**