



Guidance for Feed and Food
Business Operators on the
import provisions for feed and
food of non-animal origin of
known or emerging risk

Regulation (EC) No. 669/2009
(as amended)

If you require this information in an alternative format – such as audio,
large print, Braille – please contact us.

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SUMMARY

Intended audience:	Feed and food business operators, who import feed and/or food of non-animal origin of known or emerging risk.
Regional coverage:	This guidance is applicable in England. Similar guidance has been prepared for the Devolved Administrations.
Purpose:	The intention is to provide information regarding the increased level of controls on imports of certain feed and food of non-animal origin to assist compliance.
Legal status:	This guidance is intended to explain the Regulation. Where best practice is outlined, the advice is contained in shaded boxes.
Essential actions to comply with regulation(s):	Relevant importers should ensure that they become familiar with the requirements and, liaise with the relevant local authority, when importing products listed under Annex I of the Regulation.

REVISION HISTORY

This guidance follows the Government [Code of Practice on Guidance](#). If you believe this guidance breaches the Code for any reason, or have any comments on the guidance, please contact us on the number shown on the front sheet.

Revision No.	Revision date	Purpose of revision	Revised by
1	12 March 2010	Amendments to Article 19, Annexes I and II.	Commission Regulation (EU) No 212/2010
2	20 April 2011	Annual review	Imported Food Team

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INTRODUCTION

1. Regulation (EC) No 882/2004 establishes a harmonised framework of general rules for the organisation of official controls to ensure compliance with feed and food law, and animal health and animal welfare rules. The Official Feed and Food Controls (England) Regulations 2009 implement Regulation 882/2004 in England.
2. Regulation 882/2004 includes requirements for the official control of feed and food of non-animal origin (FNAO) being imported from third countries. Article 15(5) of Regulation 882/2004 provides that a list of certain feed and food products be drawn up based on known or emerging risks and be subject to increased controls at points of entry into the EU, and that fees related to these controls should be established. On 25 July 2009 Regulation (EC) No 669/2009 implementing Regulation 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, ('Regulation 669/2009') was published. Regulation 669/2009 sets out rules for the increased level of official controls for products that represent a known or emerging risk. The Official Feed and Food Controls (England) Regulations 2009 ('the OFFC Regulations') provide for the execution and enforcement of Regulation 669/2009. These Regulations also revoked and re-enacted, with changes, the Official Feed and Food Controls (England) Regulations 2007. Similar legislation has been introduced in the Devolved Administrations.

INTENDED AUDIENCE

3. Feed and food business operators (FBOs) and their representatives who are, or intend to, import products from certain non-EU countries as listed in Annex I of Regulation 669/2009.

PURPOSE OF GUIDANCE

4. Regulation 669/2009 requires an increased level of controls on imports of certain feed and food at designated points of entry (DPEs) into England. These controls are reviewed by the Commission based on the outcome of these controls and other sources of information under Article 2 of Regulation 669/2009. To assist FBOs and their representatives we have produced this Guidance, using a question and answer format, to explain the purpose and the legal requirements applicable to businesses importing products from non-EU countries as listed in Annex I of Regulation 669/2009, and the enforcement arrangements in place.

LEGAL STATUS OF GUIDANCE

5. This guidance has been produced to explain clearly the legal requirements of the Regulation 669/2009. Advice on best practice has also been included. The guidance on legal requirements cannot cover every situation and you may need to refer to the relevant legislation itself to see how it applies in your circumstances. You are not required by law to follow best practice advice. To distinguish between the two types of information, all advice on best practice is in shaded boxes with a heading of Best Practice. Businesses with specific queries may wish to seek the advice of their local enforcement agency, which will usually be the environmental health/trading standards department of the local authority or the port health authority.

GLOSSARY

6. The following terms are used in the guidance:

Regulation 669/2009 – Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC

Regulation 178/2002 – Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

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

The OFFC Regulations – The Official Feed and Food Controls (England) Regulations 2009. (SI 2009 No 3255).

FBOs – feed or food business operators and/or their representatives

FSA – Food Standards Agency

DPE – Designated Point of Entry

CED – Common Entry Document

EU – European Union

FNAO – Feed and Food of Non-Animal Origin

Authorised Officer – any person authorised to act in matters arising under Part 3 of the Regulations, and Articles 15 to 24 of Regulation 882/2004.

Q & A GUIDANCE

Q1. What is the purpose of Regulation (EC) No 669/2009?

A1. The purpose of Regulation 669/2009 is to provide a list of feed and food of non-animal origin (FNAO) imported from certain non-EU countries (known as “third” countries) that, based on known or emerging risks to public health, are subject to an increased level of official controls at points of entry to the EU. The increased controls are intended to enable the risk from these products to be controlled more effectively to protect public health.

The results of the controls will also assist the European Commission to assess whether additional controls should be applied. Such further controls may be applied either by increasing the level of identity and physical checks under Regulation 669/2009, or by applying emergency safeguard measures under Article 53 of Regulation 178/2002. If the controls under Regulation 669/2009 indicate that there is a lower risk to public health, the frequency of identity and physical checks will be reduced. Alternatively, the products may be removed from the list in Annex I of Regulation 669/2009, in which case the products would be subject to routine checks based on risk under Articles 15 to 24 of Regulation 882/2004.

Q2. What does this legislation do?

A2. Regulation 669/2009 came into effect on 25 January 2010. FBOs (importers) are required to pre-notify the relevant competent authorities of the arrival of consignments of certain FNAO and have to present these products at a DPE in order that the necessary official controls can be undertaken. Annex I of Regulation 669/2009 contains the list of these products from specified third countries and sets out the frequency and nature of the controls that must take place. Regulation 669/2009 also establishes a system of fees for these controls. Implementation of this framework provides controls for the protection of public health based on the risks of the products. It therefore provides arrangements for FNAO of known or emerging risk similar to those for products of animal origin, which are considered “high-risk” products.

Q3. Will the existing controls under Article 53 of Regulation (EC) No 178/2002 still apply?

A3. Yes. (See below).

Q4. Why are certain products included in Annex I to Regulation 669/2009?

A4. Feed or food products that pose a known or emerging risk to public health are included in Annex I. This may be due to the presence of contaminants/undesirable substances such as pathogens bacteria, aflatoxins, Sudan dyes, heavy metals or pesticides.

Q5. Why are increased controls required for these products?

A5. Increased levels of controls will enable Member States to more easily identify potentially non-compliant products and prevent them from entering the feed and food chain, and facilitate the collection of accurate monitoring data in order to assess the risks to public health of such products.

Q6. When do these increased controls apply?

A6. These controls came into force on 25 January 2010.

Q7. On what basis is it decided what should be on the list of Annex I products?

A7. The approach is evidence based using a number of information sources. These include data from the Rapid Alert System for Food and Feed (RASFF); reports from the Commission's Food and Veterinary Office on feed and food safety procedures in non-EU countries; reports and information received from non-EU countries and the European Food Safety Authority, scientific assessments. All of these sources are considered when the European Commission reviews the list.

Q8. Where can the list of Annex I products be found?

A8. The list can be found under Annex I of Regulation 669/2009 (as amended) and a link to the list is available on our website at:

http://www.food.gov.uk/foodindustry/imports/banned_restricted/highrisknonpoao

Q9. Will the list of Annex I products be reviewed?

A9. Yes. Using the criteria and information above, the European Commission will be responsible for reviewing on a regular basis, at least quarterly, the list of Annex I products. They will publish any updates and the FSA will ensure that any updates are made publicly available on our website, see link at Q & A 8.

Q10. Does the list cover both feed and food?

A10. Yes. The list covers feed and food of non-animal origin of known or emerging risk. Annex I of Regulation 669/2009 specifies whether a product has been listed for feed or food.

Q11. What is the procedure for taking products off the list?

A11. One aim of Regulation 669/2009 is to provide the Commission with information on the official controls carried out at DPEs on the listed products. The Commission takes the results of these controls into account when assessing whether changes should be made to the list of products in Annex I of Regulation 669/2009, including the risks to public health. Based on the Commission's assessment, further additional controls may be applied to the products, or the existing controls may be retained or reduced. Following consideration by the Commission, any product that is no longer considered to represent a known or emerging risk will be removed from the list at the next review. The frequency of physical and identity checks may be changed for products on the list based on the assessment of risk. If controls show that a product on the list poses a serious risk to public health, the Commission may issue an emergency safeguard measure under Article 53 of Regulation 178/2002.

Q12. What is an “emergency safeguard measure”?

A12. Where feed or food imported from a third country is likely to constitute a serious risk to public health, or the environment, then imports of the feed or food in question can be suspended from the third country concerned, or special conditions can be applied.

Q13. What do FBOs need to do to comply with these increased controls?

A13. FBOs responsible for the importation into the EU of a consignment of Annex I listed feed or food from the specified third countries must give adequate prior notification to the relevant feed or food authority at the DPE at which the product will first enter the EU. The information required to be supplied to the relevant authority is the estimated date and time of arrival of the consignment and its specific nature. Part I of the Common Entry Document (CED) must be completed by the FBO and sent to the enforcement authority at the DPE at least one working day prior to the physical arrival of the consignment. A model CED is available in Annex II of Regulation 669/2009. Products must be subject to import checks at a DPE at UK/EU borders. FBOs may present CEDs, with Part 1 duly completed, to the DPE electronically, as a means of prior notification.

Failure of a FBO or their representative to pre-notify a DPE, or to attempt to bring in a consignment of Annex I listed feed or food at a point of entry that is not a DPE, is an offence. This will result in the consignment(s) being detained to either be destroyed or re-dispatched (Articles 19 (2) (b) and 21 of Regulation 882/2004).

Q14. What is a consignment?

A14. A “consignment” is defined in Article 3 (c) of Regulation 669/2009 as “a quantity of any of the feed or food of non-animal origin listed in Annex I to this Regulation of the same class

or description, covered by the same document(s), conveyed by the same means of transport and coming from the same third country or part of such country". If these conditions are fulfilled, a consignment can comprise more than one container and a single CED can cover the consignment. However if a consignment consists of more than one of the products listed in Annex I of Regulation 669/2009, then a separate CED is required for each product.

Q15. What is a DPE?

A15. A DPE is a port (airport or seaport) which has access to the appropriate control facilities and is approved to handle some or all of the feed and food products listed in Annex I of Regulation 669/2009. Each DPE is required to have sufficient numbers of appropriately qualified staff, and checking and storage facilities, including cold storage facilities where a controlled temperature is required due to the nature of the consignment, appropriate equipment for unloading and sampling for examination/analysis, and access to designated laboratories.

Q16. Who approves (i.e. designates) a DPE?

A16. The FSA, (in the UK).

Q17. Where can the list of DPEs for the UK be found?

A17. The list of DPEs for the UK, can be found at:
http://www.food.gov.uk/foodindustry/imports/banned_restricted/highrisknonpoao

Q18. Can all products listed in Annex I of Regulation 669/2009 be imported through any designated DPEs?

A18. A DPE can be designated for some or all products listed in Annex I. Details are given on the list of DPEs on the FSA website.

Q19. Who completes the CED?

A19. Part I of the CED should be completed by the FBO and transmitted to the enforcement authority for the DPE, so that it is received at least one working day prior to the physical arrival of the consignment.

Part II of the CED will be completed by the authorised officer at the relevant feed/food authority present at the DPE (normally the Port Health Authority unless the product is for feed use in which case it will be the local authority responsible for feed issues) if the product was found to be compliant following checks.

Part III of the CED is completed by an authorised officer at the DPE if the consignment is non-compliant.

Q20. Can the CED be transmitted electronically?

A20. Yes, the CED can be sent electronically.

Q21. What language should be used for the CED?

A21. The CED must be completed in the official language of the Member State. In the UK this must be completed in English.

Q22. What checks will be carried out on consignments and by whom?

A22. Enforcement officers at the DPE will carry out official controls on consignments of Annex I products.

The Regulation requires documentary checks to be completed within 2 working days from the time of arrival at the DPE, unless exceptional and unavoidable circumstances arise.

Identity and physical (including sampling for testing) checks will be carried out at the frequencies specified in Annex I of Regulation 669/2009 which are according to the particular feed and food product and country of origin. Results of physical checks should be available as soon as possible.

Q23. Where are these checks carried out?

A23. Documentary, identity and physical checks will be carried out at the DPE.

Q24. Will consignments be sampled for analysis?

A24. The physical check will include sampling for laboratory analysis or examination in order to test for the hazards listed in Annex I of Regulation 669/2009.

Q25. Will consignments be held at the port until the checks are completed?

A25. Article 8(2) of Regulation 669/2009 provides that the feed/food enforcement authority at the DPE may authorise a consignment to be transported to the final destination pending the results of the physical test. As Regulation 669/2009 concerns products, where there is evidence of a known or emerging risk to public health, enforcement authorities at DPEs may consider it appropriate to control the product at the DPE. Where the consignment is

authorised to be transported to its final destination, arrangements must be in place to ensure that the consignment remains under the continuous control of the competent (enforcement) authority for the place of destination. Arrangements include providing clear separation from other products and ensuring the security of the product to prevent tampering until the results of the physical checks are known.

Q26. Some imports of fresh produce have a short shelf life. Can checks on such a consignment take place at the food business?

A26. In some exceptional cases, when a product is listed in Annex I of Regulation 669/2009, the controls set down in Annex I may permit consignments of the product to leave the DPE and undergo the identity and physical checks at the point of destination shown on the CED. Such cases include those where the product is highly perishable and where sampling at the DPE would result in the product being damaged to an unacceptable extent.

Where such authorisation is possible, the enforcement authority at the DPE will liaise with the enforcement authority at the point of destination, which will undertake the identity and physical checks. Liaison will include ensuring that the point of destination meets the relevant minimum requirements for a DPE set out in Article 4 of Regulation 669/2009 and that appropriate arrangements are made to ensure the consignment remains under continuous control of the competent authority until the results of the physical checks are available. The documentary check will take place at the DPE.

Similar controls may be specified in exceptional cases when a product is added to Annex I, where the nature of the packaging is such that the product cannot be sampled at the DPE without causing a serious risk to food safety or damaging the product to an unacceptable extent. Authorised officers at DPEs are aware of the need to carefully control the sampling of, for example, seasonings, spices and fresh products, to avoid contamination.

There is provision in Article 9(1) of Regulation 669/2009 to allow certain DPEs operating under specific geographical constraints to carry out physical checks at the premises of FBOs, as long as specific conditions are met.

Q27. What are the “specific geographical constraints” referred to in Article 9(1)?

A27. This is to allow small DPEs, for example at land borders with third countries, to carry out checks at business premises subject to the premises meeting certain conditions. Such cases can only be authorised by the Commission. These provisions are not expected to apply in the UK.

Q28. What assistance do FBOs have to provide feed and food authorities to assist official controls at the DPE?

A28. In some cases equipment that is otherwise sufficient for routine unloading and sampling of products, may not be sufficient due to the special characteristics of a consignment. In such circumstances, FBOs may need to assist the DPE in unloading consignments, and providing sampling equipment.

Q29. What happens once the checks are successfully completed?

A29. If a consignment is compliant, the enforcement authority at the DPE will complete Part II of, and stamp and sign, the CED. A copy will be retained by the DPE. The original CED must accompany the consignment to its final destination.

Where a consignment has been moved to a secure place, under the control of an inland local authority pending the results of physical checks, a certified copy of the CED will have been issued to accompany the consignment. The original CED will be retained at the DPE. On receipt of satisfactory results of the physical checks, the enforcement authorities at the DPE will complete and authorise the CED.

Q30. A consignment is due to go to several destinations, when can it be split?

A30. Consignments (as defined in Article 3 (c) of Regulation 669/2009) of Annex I listed products must not be split until all the increased levels of controls have been completed, and the competent (enforcement) authorities, at either the DPE or the final destination of the consignment, have completed the CED.

Best Practice

However, where there are mixed container loads i.e. containers with both Annex I listed products together with non-listed products, then the products not subject to additional checks may be released.

To assist identifying products within mixed consignments, FBOs may wish to consider providing:

- labels/marks on the transport containers/packages of mixed consignments indicating the contents within each container. This should preferably be written in English.
- correct details of products on associated commercial documents e.g. the invoice should be in English and if possible provide a detailed description of products, not just described as a consolidation or using just the products' common name within the country of origin.

Where consignments of Annex I listed products are found to have avoided official controls appropriate enforcement action will be taken.

Q31. When can the FBO request that the consignment be released for free circulation by Customs?

A31. Once the CED has been completed the FBO can present the CED in paper or electronic form to Customs seeking release for free circulation. Alternatively, a FBO may request that the enforcement authority notifies Customs electronically to confirm that a CED has been presented and endorsed, and that the consignment can be released from customs control.

Q32. What is the transitional period and what does it mean for FBOs?

A32. Article 19 of Regulation 669/2009 provides for a transitional period of five years (which ends on 13 August 2014) from the coming into force of Regulation 669/2009. This is to allow authorised officers at DPEs in an EU Member State not equipped with the necessary facilities for carrying out identity and physical checks (including sampling for testing), to arrange for the checks to be carried out at another point of control, which meets the minimum requirements in Article 4 of Regulation 669/2009, in the same Member State and, has been authorised for that purpose. However, it is not expected that any DPEs in the UK will be affected, as current DPEs meet the minimum requirements.

Q33. Do fees have to be paid?

A33. Yes. Under Article 14 of Regulation 669/2009 Member States must ensure that fees are collected to cover the costs incurred by carrying out the official controls provided for in Regulation 669/2009, including sampling, analysis, storage and any measures taken following non-compliance.

Q34. How much will the fees be?

A34. Under Article 27(4) of Regulation 882/2004 the fees collected for the purposes of official controls must not be greater than the costs borne by the responsible competent authority, taking into consideration staff costs, costs of facilities, tools, equipment, training, travel, and associated costs, and laboratory analysis and sampling costs.

Q35. To whom are the fees paid?

A35. Fees should be paid to the competent authority at the DPE, or in cases where any sampling for testing checks were carried out outside the DPE, to the competent authority responsible.

Q36. What happens if a consignment fails the official feed and food controls?

A36. If a consignment fails these controls then the authorised enforcement officer of the DPE will complete Parts II and III of the CED and detain the goods to decide what appropriate enforcement action will be taken in accordance with Articles 19, 20 and 21 of Regulation 882/2004. These Articles allow the goods to be destroyed, subjected to special treatment, i.e. treatment or processing to bring the feed or food in line with the requirements of EU law or, re-dispatched outside the EU. The enforcement officer at the DPE will discuss with the FBO the options available. FBOs will also be liable for any costs incurred by the DPE in respect of the actions taken as above.

Q37. What can I do if I disagree with action taken by the authorities at the DPE or elsewhere?

A37. The competent authority will provide information on rights of appeal in accordance with Articles 33 to 34 of the OFFC Regulations.

CONTACTS

- Imported Food Helpline: 020 7276 8018

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- Imported Feed contact: 020 7276 8469

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