

GUIDANCE TO THE MAIN PROVISIONS OF THE FEEDING STUFFS (ENGLAND) REGULATIONS 2005 (AS AMENDED)

This document is an introductory guide to the main provisions. It is intended for the use of enforcement personnel and feed business operators (for example, feed manufacturers, importers, merchants, food businesses selling food products into the animal feed chain), including new businesses wishing to gain an understanding of the legislation.

This guide should be read in conjunction with, not as a substitute for, the legislation. Its interpretation of the law is only an opinion. 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 solicitor or local enforcement authority.

Introduction

1. Legislation concerning animal feeding stuffs, which includes pet food and feed for horses, farmed fish and in limited cases wild animals, is harmonised throughout the EU and based on measures negotiated in Brussels by the Member States. There are three types of legislative measures:

- a Regulation, which is binding in its entirety and directly applicable in all EU Member States;
- a Directive, which is binding on the Member States to which it is addressed as regards the result to be achieved, although the form of its implementation is at the discretion of the Member States' national authorities; and
- a Decision, which is binding in its entirety to those to whom it is addressed but requires transposition into Member States' law before it can have effect.

All three types of legislation require provisions for their enforcement. This is usually achieved by linking the measures to the powers of enforcement officers and penalties for non-compliance.

2. This legislation concerns the integrity of the feed chain and is primarily intended to safeguard animal and human health. Much of it concerns labelling and marketing, to ensure both traceability throughout the feed chain and the provision of accurate information to purchasers and enforcement authorities. "Quality" issues, such as the proportions of particular ingredients to be used in a feed, or their source, and the nutritional content (or "profile") of feeds are outside the scope of the legislation. These matters are generally covered by industry feed assurance schemes and other codes of practice, which have no statutory basis.

3. The bulk of EU feed legislation on the marketing, labelling and composition of animal feeding stuffs is currently given force in England by these Regulations. Separate but parallel Regulations apply in Scotland, Wales and Northern Ireland.

Additional legislation also applies to animal feed, some of which is the responsibility of other government bodies such as Defra's BSE Division and the Veterinary Medicines Directorate.

4. The Food Standards Agency is responsible for most feeding stuffs legislation. Legislation drafted by the Agency is normally signed in England by the Secretary of State for Health. Enforcement of the legislation is mainly the responsibility of local authority trading standards departments in Great Britain and the Department of Agriculture and Rural Development in Northern Ireland.

Further Explanation of Certain Provisions

Regulation 2 -- Interpretation

5. This regulation sets out the definitions, which are chiefly derived from EC legislation. Some definitions can also be found in directly applicable EC Regulations, such as Regulation 178/2002 on the General Principles of Feed and Food Law and Regulation 1831/2003 on Feed Additives.

6. Two of the definitions may require additional explanation, as follows:

- "additive" -- only those additives which have been specifically authorised for use in feed can be so used, following a scientific assessment of their safety, quality and efficacy. The authorisation procedure is laid down in EC Regulation 1831/2003 on Feed Additives, which applies directly. However, the Regulation also covers coccidiostats and histomonostats, as well as some products classified as zootechnical additives under Article 6.1(d) of the Regulation, for example growth promoters. These are the responsibility of Defra's Veterinary Medicines Directorate (VMD). The definition used in the Feeding Stuffs Regulations excludes those particular types of additives. However, three functional groups (digestibility enhancers, gut flora stabilisers and substances which favourably affect the environment) covered by the zootechnical category do fall within the Agency's area of responsibility.
- "Member State" – although the UK clearly is a Member State of the European Union, the term arises in these Regulations in the context of imports and is used as a shorthand for other Member States.

Regulations 3 and 4 -- Modification of the Agriculture Act 1970

7. The definitions of "feeding stuffs" and "pet animal" in the Agriculture Act 1970 are being amended by regulation 3 of these consolidated Regulations, which is why they are not included in the list of definitions in regulation 2.

8. Regulation 3(2) modifies section 66(2)(b) of the Act to substitute the catch-all term "ingredient" for "ingredient, additive or premixture" in sub-paragraphs (i) and (ii). In our opinion, the ordinary English meaning of "ingredient" seems capable of covering additives and premixtures as well as feed materials.

9. Sections 68-72 of the Act are potentially capable of applying to the labelling of additives and premixtures. Article 16 of 1831/2003 also concerns the labelling of feed additives and premixtures, but the provisions of EC Regulations cannot be repeated in national legislation. Section 66(2) has therefore been modified to include a new paragraph (c) to ensure that there is no overlap between the provisions of sections 68-72 of the Act and Article 16 of 1831/2003.

10. The modifications to the Agriculture Act 1970 include a reference to animals bred for fur, for consistency with the definition in EU law. Although the breeding of animals for fur is no longer permitted in the UK, the production of feed for such animals is allowed.

Regulation 5 -- Prescribed Material

11. The labelling provisions of EC Regulation 1831/2003 apply to additives and premixtures on their own, and not to animal feeding stuffs which contain them. This regulation is therefore worded to ensure that it applies to additives and premixtures only where they have been incorporated in feeding stuffs.

Regulation 6 -- Exemption

12. The intention of this regulation is to exempt feed for animals kept for scientific or research purposes (for example, feeding trials for new feed additives) from the labelling requirements for compound feeding stuffs. This is due in part to the potentially specialised nature of such feed, and in part to the likelihood that such feed will not be put into circulation on a commercial basis.

Regulation 7 -- Revocation

13. Certain amendments inserted by the Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (England) Regulations 2003 (S.I. 2003 No. 1503) were not incorporated in these Regulations at the time they were made because the provisions had been suspended by order of the High Court. The legal dispute over these provisions, which concerned the labelling of the ingredients of compound feed according to their percentage inclusion, was resolved by a ruling of the European Court of Justice in December 2005, partially upholding the validity of the Directive which introduced the requirement into EC feed law. The labelling of compound feed by percentage weight of ingredients, with a tolerance of +/-15% for each declaration, has therefore been reintroduced into law in England by the Feeding Stuffs (England) (Amendment) Regulations 2006 (S.I. 2006 No. 2808), which came into force on 17 November 2006. This instrument also revoked the suspended provisions of the Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (England) Regulations 2003.

Regulation 8 -- Matters Required and Permitted to be Contained in a Statutory Statement or Otherwise Declared

14. This regulation covers the labelling of feeding stuffs (whether or not containing additives). The labelling of additives and premixtures not contained in feeding stuffs

is covered by Article 16 of EC Regulation 1831/2003 (subject to the transitional provisions in Article 25.2). The provisions of the Feeding Stuffs Regulations 2000 relating to applications for additive authorisations made prior to 18 October 2004 have been retained (by means of saving and transitional provisions) in regulation 20.

Regulation 9 -- Forms of Statutory Statement

15. This regulation sets out the various forms and circumstances in which labelling information is to be provided to purchasers of feed. It refers to the term "prescribed material", which (per regulation 5) does not include additives and premixtures on their own.

Regulation 10 -- Limits of Variation

16. This regulation sets permitted levels of tolerance for the results of analyses undertaken by enforcement officials to verify labelling declarations, to allow for unavoidable variations in the inclusion rates of various ingredients during the manufacturing process. Many of the tolerance levels for some analytical declarations in Schedule 4 derive from EU legislation -- Directive 90/44/EEC amending Directive 79/373/EEC on Compound Feedingstuffs -- while others are national provisions.

Regulation 13 -- Control of Feed Materials

17. The term "feed materials" -- meaning materials which can be fed to animals singly or used as ingredients in compound feeding stuffs -- was introduced by Directive 96/25/EC, replacing the former term "straights". The intention is to ensure the provision of clear and consistent information throughout the feed chain through the use of common terms and standardised descriptions. The labelling requirements are set out in Schedule 2 and paragraph 11 of Part I of Schedule 3, and apply to those who "put into circulation" (the definition of this is given in regulation 2).

18. There are some derogations from the requirement to label feed materials; these are set out in paragraphs 12 to 15 of Schedule 3. The chief derogations are that certain analytical information is not required for by-products of agro-industrial processing with a moisture content of more than 50%, and that labelling is not required at all where the feed material is supplied to a livestock farmer by an arable farmer who grew it in the first place.

19. Feed materials listed in Part II of Schedule 2 may be put into circulation only under the names specified. However, the list is non-exclusive: i.e., it lists only the most commonly used feed materials. Feed materials not listed in Part II can still be used, but the names must clearly indicate the nature of the feed material and must not mislead purchasers. The category names listed in Part III of Schedule 2 should not be used to label feed materials for farmed livestock, as this option was removed in November 2003.

20. New labels may be needed when consignments are divided or ownership changes. Labels should always show the name or business name, etc. of the person responsible for the labelling information. Where the seller of a feed material

is different to the person responsible for the labelling information, the seller will be liable as there are offences linked to sale.

21. Farmers will also put feed materials into circulation when they sell crops such as cereals (wheat, etc.) or pulses (peas, beans, etc.) to a compounder or merchant. Most farms do not have appropriate weighing facilities and therefore the first weighing of a consignment will usually take place at the point of intake into a compounder's or merchant's premises.

22. The list of feed materials is applicable to feed for all animals except creatures living freely in the wild. The "Land Animal Products" listed in section 9 of Part II of Schedule 2 may be used only in pet food because the use of almost all products of animal origin in feed for farmed livestock is prohibited under TSE and animal by-products legislation. This legislation, which is the responsibility of Defra, specifies those products which may still be used in feed and the livestock species to which they may be fed, and lays down the requirements for their processing, transport and storage. Enquiries about the scope and interpretation of this legislation should be addressed to Defra's BSE Division.

Regulation 14 -- Control of Products Intended for Animal Feed containing Undesirable Substances

23. Undesirable substances, as defined in regulation 2, are generally (a) naturally occurring environmental contaminants which are present at low levels in feed and food products, particularly vegetable crops drawing nutrients directly from the soil; and (b) process contaminants which may be introduced into the feeding stuff either during or as a consequence of its treatment, manufacture and storage. Examples of naturally occurring environmental contaminants are arsenic, cadmium, lead and mercury; examples of process contaminants are aflatoxin B1 and dioxins.

24. The provisions on undesirable substances are the only provisions of the Feeding Stuffs Regulations which apply to feed for creatures living freely in the wild (typically seeds and peanuts for wild birds visiting domestic gardens).

25. The blending down of feed products (including additives and premixtures) with levels of contamination above those specified -- i.e., dilution by mixing with other consignments of the same materials which are not contaminated -- was prohibited in August 2003 following the most recent consolidation of the Undesirable Substances Directive (2002/32/EC). All feed materials and feeding stuffs must now comply with the maximum permitted levels laid down in Schedule 5, irrespective of any further processing which may be intended. Consignments with levels of contamination above those specified should be disposed of outside the feed and food chains (e.g., by sending for alternative uses, for destruction, or returning to the country of dispatch).

26. Regulations 14(8) to 14(10) were introduced following an opinion adopted by the European Food Safety Authority on organic arsenic, which was considered to be less harmful than the inorganic form. This opinion emerged from an ongoing review of the maximum permitted levels for undesirable substances, many of which were set some time ago and have not been revised in the light of current scientific

knowledge. Further amendments to these maximum levels, and the introduction of levels for other undesirable substances not yet listed in Schedule 5, can be expected.

Regulation 15 -- Control of Feeding Stuffs containing Prohibited Materials

27. The prohibition on the use of the materials listed now applies to their use as feed materials (i.e., fed singly) as well as to their inclusion in compound feeds. However, it should be noted that the list in this regulation is not comprehensive; most products of animal origin are also prohibited, but this is dealt with in TSE and animal by-products legislation for which Defra's BSE Division is responsible.

Regulation 16 -- Control of Certain Protein Sources

28. Some of the products listed in the Annex to Directive 82/471/EEC -- by-products from the production of amino acids by fermentation, amino acids and their salts and analogues of amino acids -- have been reclassified as additives under EC Regulation 1831/2003, and have therefore been removed from Schedule 6. The remaining groups have been renumbered for clarity.

Regulation 19 -- Control of Feeding Stuffs intended for Particular Nutritional Purposes

29. Products intended for particular nutritional purposes are known as dietetic feeds. "Particular nutritional purpose" is defined in regulation 2, but the list of purposes is restrictive; feeding stuffs may be marketed and promoted only for the purposes specified in column 1 of Schedule 7. The terms "dietetic feed" and "product for a particular nutritional purpose" may not be used for feeds intended for the management of purposes not so specified.

30. Dietetic feeds must meet the requirements laid down in Schedule 7. For each particular nutritional purpose listed, the feed must possess the specified nutritional characteristics, be used only for the animal species stated, be subject to any recommended length of use, and be labelled with the information specified. (Other provisions concerning the additional information to be declared on the label are set out in paragraph 25 of Part I of Schedule 3.) The composition of the feed must also be capable of achieving the particular nutritional purpose for which it is intended.

31. Feeds labelled to claim that they treat, prevent or cure disease are regarded as medicinal and fall within the responsibility of the Veterinary Medicines Directorate. Products for chronic ailments other than those listed in Schedule 7 will also fall within VMD's responsibility and be subject to veterinary legislation, as will feeds with ingredients regarded as medicinal by function.

32. The particular nutritional purposes in Schedule 7 include a number of feeds for horses and cats and dogs as well as farmed livestock.

Regulation 20 -- Control of Additives and Premixtures

33. This regulation replaces regulation 13 of the Feeding Stuffs Regulations 2000, reflecting the fact that additives and premixtures are now controlled under EC Regulation 1831/2003. As authorisations for new feed additives are now processed entirely by the European Food Safety Authority under the EC Regulation, it is no longer necessary to link them to national administrative procedures. Under EC Regulation 1831/2003, the list of currently authorised feed additives published by the Commission becomes a register and will be updated when necessary. The first edition of the register was published in November 2005.

34. Further information on feed additives can be found on the Commission's website at:

http://ec.europa.eu/food/food/animalnutrition/feedadditives/index_en.htm

35. Additives authorised under the previous measures (Directives 70/524 and 82/471) are to be subjected to a re-authorisation procedure, as laid down in Article 10 of EC Regulation 1831/2003. This specifies the deadlines by which applications for re-authorisation must be made, but it is not clear how long the Commission expects the review as a whole to take.

Regulation 21 – Confidential information relating to additives

36. This regulation provides for the continued confidentiality of information already obtained by officials under the previous additives authorisation procedure. Confidentiality with regard to applications for new authorisations is covered by Article 18 of EC Regulation 1831/2003.

Breaches of the Regulations

37. Regulations 22 and 23 provide the linkage between failure to comply with the requirements of the Feeding Stuffs Regulations and the penalties for such non-compliance set out in section 74 of the Agriculture Act 1970. The maximum penalty available to the courts for offences under these Regulations is a 3 month term of imprisonment and/or a fine at level 5 on the standard scale. The standard scale of fines for summary-only offences is set out in section 52 of the Criminal Justice Act 1988, as amended, and is currently as follows:

Level 1 -- £200

Level 2 -- £500

Level 3 -- £1,000

Level 4 -- £2,500

Level 5 -- £5,000

The Schedules to the Regulations

38. Schedule 1 to the Feeding Stuffs Regulations 2000 listed a number of agreed methods for the calculation of the energy values of compound feeds, including particular nutritional products for cats and dogs. However, the EC provisions relating to these latter calculations -- Directives 95/10 and 99/78 -- expired in March 2002 without being either extended or replaced. In consequence, these provisions have been removed.

39. The Food Standards Agency has been advised that gamanase, an enzyme used in the calculation of the energy values of ruminant diets, has been discontinued. However, no substitute enzyme has yet been validated, and therefore it has not been possible to amend or replace the current method of calculation.

40. Schedule 3 was formerly Schedule 4 to the Feeding Stuffs Regulations 2000. The previous order in which the required labelling declarations were laid down has been amended so that the information is now set out in what appeared to us and to consultees to be a more logical order. The authorised intermediate products and authorised medicated premixes referred to in paragraph 2 of Part I of this Schedule are subject to their own controls regime, including labelling, under legislation for which Defra's Veterinary Medicines Directorate is responsible.

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November 2006**