

DRAFT FEEDING STUFFS (WALES) REGULATIONS 2005

Note on Main Provisions

This note is a brief guide to the salient points of the draft Regulations, to assist in the consultation process. It should not be regarded or relied upon as a detailed or authoritative interpretation.

Preamble

1. The preamble refers to the exercise of powers relating to “measures in the veterinary and phytosanitary fields for the protection of public health”. This reference has been included for clarity and completeness.

Regulation 2 – Interpretation

2. This regulation sets out the definitions. Certain definitions which appeared in the Feeding Stuffs Regulations 2000 have been omitted from these consolidated Regulations either because they appear in the Agriculture Act 1970 (“the Act”), e.g. “feeding stuffs”; or they are no longer relevant, e.g. “dossier”; or because the term only appears once and is therefore felt not to warrant a definition, e.g. “Medicated Feedingstuffs Directive”.
3. Some of the definitions have been amended or require additional explanation, as follows:
4. “additive” – EC Regulation 1831/2003 (the Additives Regulation) also applies to some functional groups of additives that come within the responsibility of the Veterinary Medicines Directorate (VMD) – growth promoters, coccidiostats, and histomonostats. The definition adopted in regulation 2 aims to exclude these functional groups, which are covered by the category of zootechnical additives, mentioned at item (d) of Article 6.1 of EC Regulation 1831/2003. However, certain functional groups covered by the zootechnical additives category fall within the Agency’s area of responsibility. Previous EC legislation (the now superseded Directive 70/524/EEC – the Additives Directive) did not provide a definition of zootechnical additives, but paragraph 4 of Annex I of EC Regulation 1831/2003 lists “digestibility enhancers”, “gut flora stabilisers” and “substances which favourably affect the environment” as three of the functional groups in this category. These groups come within the responsibilities of the Agency. The fourth functional group listed under paragraph 4 of Annex 1, “other zootechnical additives”, is principally the responsibility of the Veterinary Medicines Directorate.
5. “compound feeding stuffs” – to assist users of the Regulations, the definition from the Compound Feeding Stuffs Directive has been inserted here rather than a cross-reference to the Directive. This is consistent with the approach previously adopted for the definitions of complete and complementary feeding stuffs.

6. "EEA State" – this has been re-defined in line with the views of Cabinet Office Legal Advisors (COLA). In regulation 2, the definition of Member State excludes the UK and in consequence so does the definition of EEA State for the purposes of these Regulations. The reference to "EEA State other than the UK" in the Feeding Stuffs Regulations 2000 has therefore been removed from these consolidated Regulations.
7. "feeding stuffs" – the definition in the Act is being amended by regulation 3 of these consolidated Regulations so is not repeated here.
8. "pet animal" – the definition in the Act is also being amended by regulation 3 of these consolidated Regulations, which copies out rather than cross-refers to the definition in Council Directive 79/373/EEC.
9. "premixture" – the definition has been amended to reflect the definition in EC Regulation 1831/2003.
10. "protein equivalent of biuret" – the definition has been moved to a footnote in Schedule 4 (formerly Schedule 6), as it seems more logical for this to be located at the only place in these consolidated Regulations where the phrase appears.
11. "veterinary medical product" and "zootechnical product" – these and some related definitions have been deleted, as certain zootechnical feed additives are the subject of separate Regulations to be made by the Veterinary Medicines Directorate of the Department for Environment, Food and Rural Affairs (Defra.)

Regulations 3 and 4 – Modification of the Agriculture Act 1970

12. The regulations which modify the Act have been grouped together for ease of use.
13. The definition of 'feeding stuff' which appeared in regulation 2 of the Feeding Stuffs Regulations 2000 referred to the definition in the Act, i.e. subject to regulation 14(6), the term has the meaning attributed to it by section 66(1) as modified by regulation 20(1)(a). The definition was set out in full at regulation 20(1)(a) of the Feeding Stuffs Regulations 2000. In these consolidated Regulations, the definition of 'feeding stuff' has been included only once, and is unchanged from that in the Feeding Stuffs Regulations 2000 as amended.
14. In regulation 3(2), section 66 2(b) of the Act has been modified to substitute the catch-all term 'ingredient' for 'ingredient, additive or premixture' in subparagraphs (i) and (ii). This is because in our opinion the ordinary English meaning of 'ingredient' would seem capable of covering additives and premixtures where appropriate as well as feed materials. It is not possible to repeat the provisions of EC Regulations in national legislation. Article 16 of 1831/2003 relates to the labelling of feed additives and premixtures, while section 68-72 of the Act is also concerned with the labelling of additives and premixtures. Section 66 (2) has also been modified to include a new

paragraph (c). This is to ensure that there is no overlap between the provisions of sections 68-72 of the Act and Article 16 of 1831/2003.

15. This consolidation relates only to the Feeding Stuffs Regulations. It does not include previous amendments to the Sampling and Analysis Regulations, the Enforcement Regulations, and the Establishments and Intermediaries Regulations which were made at the same time as the Feeding Stuffs Regulations were amended. These other Regulations will remain in effect but unconsolidated, pending the making of Regulations to provide for the enforcement of EC Regulation 882/2004 on Official Feed and Food Controls, and of the EC Regulation on Feed Hygiene.

Regulation 5 – Prescribed material

16. The labelling provisions of Article 16 of EC Regulation 1831/2003 apply to feed additives and premixtures and not to feedingstuffs which contain such products. The provisions for the labelling of such products, as set out in Article 16 of Directive 96/51/EC, remain unchanged and are implemented in regulation 3 of the draft consolidated Regulations. Regulation 5 of these consolidated Regulations has been drafted to ensure that in relation to additives and premixtures, the consolidated Regulations apply only where they have been incorporated in feedingstuffs. Where they are not incorporated, the labelling provisions of EC Regulation 1831/2003 apply directly.

Regulation 6 in the Feeding Stuffs Regulations 2000 – Register of Marks

17. We are taking the opportunity this consolidation provides to remove the provisions relating to the register of marks (regulation 6 of the Feeding Stuffs Regulations 2000), as it appears that they are out of step with harmonised EC feedingstuffs legislation.
18. These provisions have no equivalent in EU legislation. EC Directive 2002/2/EC removed the option to label compound feedingstuffs for farmed livestock by category of ingredient (“cereal grains”, “oil seeds”, “dried forages”, etc.) and requires that the specific feed materials be listed in the statutory statement. The register of marks is out of step with these requirements because it does not provide purchasers with specific ingredient information.

Regulation 7 – Revocation

19. Certain amendments inserted by the Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (Wales) Regulations 2003 (S.I. 2003 No. 1850 (W.200)) have *not* been incorporated in these Regulations. These amendments concern Directive 2002/2/EC and the labelling of compound feed by percentage declaration, which are subject to judicial review and currently suspended by order of the High Court. Proceedings in the European Court of Justice to determine the *vires* of the relevant provisions of Directive 2002/2/EC are in progress, and it may be some months before judgement is given.

Regulation 8 – Matters required and permitted to be contained in a statutory statement or otherwise declared

20. The scope has been amended to cover only the labelling of feedingstuffs, (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. As a result, regulation 11 and Schedule 5 of the Feeding Stuffs Regulations 2000 have been omitted from these consolidated Regulations. 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 savings and transitional provisions) in regulation 20 of the consolidated Regulations.

Regulation 9 – Forms of statutory statement

21. The amendments take account of the effect of EC Regulation 1831/2003. The term “prescribed material” has been used, as defined in regulation 5, which does not include additives and premixtures on their own. Article 16 of EC Regulation 1831/2003 covers the requirements for the labelling and packaging of additives and premixtures.

Regulation 10 – Limits of variation

22. This regulation provides permitted levels of tolerance for the results of analyses undertaken to verify labelling declarations. Directive 90/44/EEC, amending Directive 79/373/EEC on compound feedingstuffs, lays down the tolerance levels for some categories of analytical declarations. The tolerances not so specified by Directive 90/44 and listed in parts B, D and E of Schedule 4 may have been carried forward from earlier national legislation and retained for historic reasons. There may be scope for reviewing these tolerance levels at a future date, to determine whether they may be out of step with EC feed legislation and whether they may be tightened to reflect modern computer-controlled manufacturing processes. It is possible that the European Commission may consider the question of tolerance levels in relation to the development of more accurate methods of analysis during its forthcoming review of current feed labelling legislation. We are therefore proposing to retain these tolerance levels for the present.

Regulation 20 – Control of additives and premixtures

23. 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 made under the EC Regulation, it is no longer necessary to link them to national enforcement powers by including a reference to additive Regulations in Part IX of Schedule 3. Regulation 13 and Schedule 3 of the Feeding Stuffs Regulations 2000 have therefore been deleted from these consolidated

Regulations. The Commission publishes from time to time a consolidated list of all currently authorised feed additives. Under EC Regulation 1831/2003 this list becomes a register and will be updated by the Commission when necessary. This regulation also provides for the enforcement of certain provisions of EC Regulation 1831/2003 and the transitional measures laid down in Article 25 concerning applications and authorisations.

Regulation 21 – Confidential information relating to additives

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

The Schedules

25. Schedule 3 was formerly Schedule 4 to the Feeding Stuffs Regulations 2000. Authorised intermediate products and authorised medicated premixes referred to in paragraph (2) of this Schedule are subject to their own controls regime, including labelling, under Regulations for which VMD is responsible.
26. Although the provisions relating to the percentage declaration of compound feed ingredients introduced by S.I. 2003 No. 1503 have been suspended by order of the High Court, the previous provisions relating to declaration by category for feed for farmed livestock have not been reintroduced at this stage because legal proceedings have not been concluded. If the European Court of Justice rules against the claimants in the ABNA case (C-453/03), the High Court will lift its suspension. If that happens before the 2005 Regulations are made, the suspended provisions will be drafted into the new Regulations. If the ECJ hands down a ruling in favour of the claimants before the 2005 Regulations are made, it is likely that the provisions contained in paragraph 19 of Schedule 4 of the 2000 Regulations, or something to similar effect, will be drafted into the new Regulations. If proceedings have not been concluded in time, paragraph 19 of Schedule 3 will remain as drafted, subject to any necessary post-consultation review.
27. Schedule 6 was formerly Schedule 8 to the Feeding Stuffs Regulations 2000. Certain groups of products -- group 2.3 ("by-products from the production of amino acids by fermentation") and all of groups 3 and 4 ("amino acids and their salts" and "analogues of amino acids") -- have been removed from this Schedule because they are now covered by EC Regulation 1831/2003.
28. Schedule 7 was formerly Schedule 9 to the Feeding Stuffs Regulations 2000. In column 4 of the former Schedule there were references to energy values "until 30th March 2002 calculated according to EC method" for certain products for cats and dogs. These are obsolete and have been deleted.