

**Official Feed and Food Controls (Wales)
Regulations 2006 (SI 2006 No. 590 (W.66))**

**Guidance notes for feed and food
businesses on the imports provisions for
products of non-animal origin**

(January, 2006)

Introduction

From 1st January 2006, the legislation controlling **feed and food of non-animal origin** imported from non-European Union (non-EU) countries into the UK changed. The Official Feed and Food Controls (Wales) Regulations 2005¹ (and parallel legislation in Scotland, England and Northern Ireland) came into force and replaced previous UK legislation (principally, the Imported Food Regulations 1997) but the general approach in the new legislation is similar. It has been necessary to make some minor revisions to the 2005 Regulations and the Regulations for England have now been revoked and replaced by the Official Feed and Food Controls (Wales) Regulations 2006² which came into force on 11 January 2006 (the legislation for Scotland, England and Northern Ireland is similarly being revised). The revisions which have been made, however, do not affect the provisions relating to imports.

This guidance note, using a question and answer format, explains the legal requirements for import businesses that are set out in Part 3 of the Official Feed and Food Controls (Wales) Regulations 2006 (**The OFFC Regulations**)³ and outlines the arrangements for enforcement of these. It should be read together with the Regulations.

The Guidance will be updated regularly, in particular, to take account of on-going developments at European Community level and in response to stakeholder feedback.

Important note

Whilst this guidance is not legally binding, it does represent the considered views of the Food Standards Agency. However only the courts can give a definitive view on the law.

¹ SI 2005/2626 (a copy of these 2005 Regulations is available at: <http://www.opsi.gov.uk/legislation/wales/wsi2005/20053254e.htm>)

² SI 2006/15. (a copy of these Regulations is available at: <http://www.opsi.gov.uk/legislation/wales/wsi2006/20060590e.htm>)

³ 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 welfare rules. Official Journal L191, 28.5.2004, 1-52. A copy of the Regulation is available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_191/l_19120040528en00010052.pdf

Q1. Why are the OFFC Regulations being introduced?

A1. The new domestic legislation is required because new rules on enforcement checks (also called enforcement controls or official controls) for feed and food of non-animal origin have been agreed at European Community level and must be applied nationally by the Member States. These new rules are included in EU Regulation No 882/2004 on Official Feed and Food, Animal Health and Animal Welfare Controls (**the EU Regulation**). This was introduced to improve the consistency and effectiveness of feed and food controls across the EU and at its borders. It provides a more comprehensive and integrated approach to the current rules that apply to imports of products of non-animal origin.

Q2. What types of products do the OFFC Regulations apply to?

A2. The Regulations apply to products of non-animal origin being imported into England from non-EU countries (or third countries). This includes foods such as vegetables, cereals, nuts, mushrooms, fruit, and products made from these. It also applies to animal feedingstuffs including feed materials, compound feedingstuffs and feed additives.

Q3. Do the OFFC Regulations cover imports of food of animal origin?

A3. No. Food of animal origin is covered by the Products of Animal Origin (Third Country Imports) (Wales) (No. 4) Regulations 2004. However, the OFFC Regulations do apply to composite products which may contain a small (or limited) amount of product of animal origin.

Q4. What standards do imported feed and food covered by the OFFC Regulations need to comply with?

A4. Such imported feed and food should meet the same or equivalent hygiene and compositional standards as feed and food produced in the UK and in other EU Member States. Further information on these requirements and the relevant legislation can be found on the FSA website www.food.gov.uk (other useful links are provided later in this document).

Q5. Will there be any changes to the checks currently carried out?

A5. In practice you will probably not notice any change in the way your feed or food is checked.

Q6. Who will carry out checks in England?

A6. There is no change to current arrangements: for food, the local authority or port health authority is responsible for carrying out enforcement checks in England; and, for feed, the enforcement authority is the trading standards department of the local authority in whose territory the point of entry is located.

Q7. Where will these checks be carried out?

A7. As happens now, checks may be carried out at the point of entry but they may also be carried out at the point of release, warehouses, operators' premises or at other points in the feed or food chain. In exceptional circumstances, the enforcement authority at the point of entry may need to defer the checks to another place inland. In this case, you will have to give a written undertaking that the consignment is sealed and will remain sealed until it reaches its destination and until the enforcement authority at its destination agrees it can be opened.

Q8. What type of checks will be carried out?

A8. The same types of checks as are currently carried out. These include documentary checks where commercial and other documents accompanying the consignment are examined, as well as identity checks which involve a visual inspection to ensure that the documents tally with the labelling and content of the consignment. In some cases, physical checks may also be undertaken. These checks may include samples being taken for analysis in a laboratory or by a food examiner. Feed and food consignments may be detained when such checks are taking place.

Q9. What actions can the enforcement authorities take when products do not comply with legal requirements?

A9. As now, the enforcement authority may require that the feed or food be destroyed or that it is re-despatched outside the EU (this will be subject to certain conditions). However, recognising that some products might need to enter the EU specifically for reprocessing, the new controls allow enforcement authorities to submit such feed or food for special treatment (such as reprocessing or heat treatment). In certain circumstances, the enforcement authority may feel it appropriate to prosecute for breaches of import requirements.

Q10. What can I do if I disagree with action taken by the local or port health authority?

A10. In the first instance, you should discuss your concerns with the enforcement officer or authority directly. Where formal action has been taken, such as through service of official notices, you have the right to appeal. You may appeal to a Magistrate's Court against decisions taken by the enforcement authorities within one month from the date on which the notice was served. If your appeal fails you may appeal to the Crown Court.

Q11. Do I have to pay for routine checks made by the enforcement authority?

A11. In general, you will not have to pay the costs of sampling or analysis

However, where a product is found not to comply with import requirements, costs which are incurred by enforcement authorities associated with enforcement action such as detention, special treatment and/or re-despatch, are recoverable from the person responsible for the consignment.

But, as now, there are certain types of food subject to additional EU safeguard or emergency measures, such as pistachio nuts from Iran which are subject to enhanced checks for aflatoxin contamination, where the enforcement authorities may recover costs of relevant controls from you.

Q12. I have heard that there are new requirements for the import of 'high risk' feed and food of non-animal origin (non-POAO) – is this correct?

A12. The EU Regulation provides that the Commission may issue a list of 'high risk' non-POAO products. These products will be subject to increased import controls at specially designated points of entry. In addition, you will have to pre-notify the local or port health authority at these designated ports of the arrival of consignments. However, the Commission has not yet issued the list of 'high risk' products so it is not possible at this stage to legislate for these products at a national level. Once the list of products has been agreed at EU level, it is intended that the OFFC Regulations will be amended appropriately. In the meantime existing EU safeguard measures continue to apply.

Q13. In what circumstances will the provisions on declarations in the case of serious risk to animal or public health be used and how will I find out when declarations have been put in place?

A13. Declarations may be issued where there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly. In particular, they may be used to ensure that Emergency Control Decisions made at EU level may be implemented in the UK without delay. The Food Standards Agency will publicise declarations when they are made.

Q14. If I have further enquiries, what do I do?

A14. If you have further general enquiries, contact the Food Standards Agency's Imported Food Helpline by email to imported.food@foodstandards.gsi.gov.uk or by phone on 020 7276 8018.

If you have enquires about specific consignments, you should, in the first instance, contact: for food - the local or port health authority at the port of entry; and, for animal feed, the local authority (usually the trading standards department) in whose area the port of entry is located.

You can identify the relevant authority using the finder at:

<http://www.food.gov.uk/enforcement/yourarea/>

Contact details for port health authorities can be found at:

<http://www.apha.org.uk/aphaports.htm>

Q15. Where may I get further information?

A15. Information on the import of food can also be found on the Food Standards Agency website at www.food.gov.uk/imports.

The Agency has also produced Question and Answer Notes on the EU Regulation. These are primarily aimed for enforcement authorities but may also provide some useful background information. These notes can also be found on the Agency's website at

<http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/offcqaotes>

The European Commission has produced Guidance on imports to the Community. A copy may be downloaded from the Commission's website at:

http://europa.eu.int/comm/food/international/trade/interpretation_imports.pdf