



The Proposed Animal Feed (Miscellaneous Amendments) (Wales) Regulations 2020

Launch date: 02 October 2020

Respond by: 13 November 2020

This consultation will be of most interest to

Animal feed businesses, local enforcement authorities, and other interested stakeholders, who may have an interest in the policy and legislation on feed intended for particular nutritional purposes (PARNUTS)

Consultation Subject

The proposed animal feed (Miscellaneous Amendments) (Wales) Regulations 2020 will enforce Regulation (EU) 2020/354 on establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC in Wales.

Purpose of the consultation

To seek comments from industry, enforcement authorities, and other interested stakeholders on the proposal to make the Animal Feed (Miscellaneous Amendments) (Wales) Regulations 2020.

How to respond

Responses to this consultation should be sent to:

Adam.McDowell@food.gov.uk Adam McDowell Regulatory Policy Team	Postal address: 11, Southgate House, Wood St, Cardiff
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Details of consultation

Introduction

1. We welcome your comments on
 - The Food Standard Agency's proposal for a statutory instrument to implement and enforce Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC in Wales.
2. The FSA in England and NI will be carrying out similar consultations relating to their regions. Food Standards Scotland will be carrying out their own consultation.
3. The proposed Regulations will amend the existing [Animal Feed \(Marketing, Composition and Use\) \(Wales\) Regulations 2016](#) and the [Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016](#).

Background

4. Feed intended for particular nutritional purposes, also known as dietetic feed, is feed with a specific nutritional purpose that animals receive for their health. For example, to support the kidneys in the case of chronic kidney problems.
5. The placing on the market and use of feed is regulated by Regulation (EC) No 767/2009. In accordance with Article 9 of that Regulation, feed intended for particular nutritional purposes (dietetic feed) may only be marketed if its intended use is included in a list of intended uses established in accordance with Article 10 of Regulation 767/2009. Examples of intended uses include 'reducing copper in the liver' and 'reduction of excessive bodyweight'.
6. The list of intended uses of feed intended for particular nutritional purposes is currently contained in Commission Directive 2008/38/EC which also established the general provisions for feed intended for particular nutritional purposes.
7. Articles 11 to 17 of Regulation (EC) No 767/2009 established new principles and rules for the placing on the market of feed, including labelling. As a consequence, several entries in the list of intended uses of feed intended for particular nutritional purposes contained in Directive 2008/38/EC became outdated, partially because of poor and overly general descriptions in the

column 'Essential nutritional characteristics'. For such entries, it has been very difficult for the local authorities to verify compliance with the provisions of Regulation (EC) No 767/2009, including whether the specific composition of the feed concerned fulfils the respective particular intended nutritional purpose.

8. Commission Regulation (EU) 2020/354 repeals and replaces Directive 2008/38/EC and specifically;
 - Replaces the general provisions of Directive 2008/38/EC with those noted in Regulation (EU) 2020/354
 - Updates the list of intended uses for particular nutritional purposes by;
 - (a) adding and removing particular nutritional purposes;
 - (b) amending the essential nutritional characteristics, labelling declarations, recommended length of time and the provisions in the 'other provisions' column of the particular nutritional purposes

Commission Regulation (EU) 2020/354

9. According to Article 1, feed intended for particular nutritional purposes may be marketed only if:
 - (a) The general provisions for feed intended for particular nutritional purposes laid down in Part A of the Annex to Regulation (EU) 2020/354 are complied with, and
 - (b) Its intended use is included in Part B of the Annex of Regulation (EU) 2020/354 and the provisions of the respective entry are complied with.
10. By way of derogation from Article 1, feed intended for particular nutritional purposes which complies with the provisions of Directive 2008/38/EC may continue to be placed on the market, provided that an application for an intended use included therein has been submitted to the Commission in accordance with Article 10 of Regulation (EC) No 767/2009 before 25 March 2021 and until the Commission decides on the respective application.
11. Feed intended for particular nutritional purposes which has been labelled before 25 March 2022 in accordance with the rules applicable before 25 March 2020 may continue to be placed on the market and used until the existing stocks are exhausted.
12. The updated list of intended uses for feed intended for particular nutritional purposes is now included in Part B of the Annex of Regulation (EU) 2020/354

EU Transition Period

13. The UK left the European Union on 31 January 2020. As part of the Withdrawal Agreement, a transition period was agreed during which EU legislation would continue to apply in the UK. The Transition Period ends at 11pm on 31 December 2020. The provisions of Regulation 2020/354 apply from 25 December 2020.

Main proposal

The proposal being considered is:

14. To provide for the enforcement of Regulation (EU) 2020/354 in Wales
15. The proposed domestic regulations would allow for the enforcement in Wales of Regulation (EU) 2020/354.
16. If the legislation were not made, as of 25th December 2020, both Directive 2008/38/EC and Regulation (EU) 2020/354 would apply in Wales under Part 5 and Part 7 of the Animal Feed (Marketing, Composition and Use) Regulations 2016. As a result, two different and conflicting lists of the intended uses of feed for Particular Nutritional Purposes would be enforceable.
17. Domestic Legislation is required to enforce 2020/354 in Wales and to remove all references to the previous directive (Directive 2008/38/EC) to ensure there is no conflict in UK law.

Enforcement

18. The proposed regulations allow for the enforcement of Commission Regulation (EU) 2020/354 in Wales.
19. The proposed draft regulations for implementing Commission Regulation (EU) 2020/354 intend to follow the same approach to enforcement as is taken with Directive 2008/38/EC in the Animal Feed (Composition, marketing and Use) (Wales) Regulations 2016 which is via a term of imprisonment not exceeding six months or to a fine, or both. The proposed draft regulations will remove the provisions enforcing 2008/38/EC and replace them with equivalent provisions enforcing 2020/354, with no change to the enforcement option.
20. The proposed draft domestic regulations also amend the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 by adding Regulation (EU) 2020/354 to the list of 'specified feed law'. As such, all the powers and provisions under the Animal Feed (Hygiene, Sampling etc.

and Enforcement) (Wales) Regulations 2016 will also apply to the enforcement of Regulation (EU) 2020/354. Enforcement measures include improvement notices, powers of entry and powers of entry and detention.

As these enforcement measures already apply to the enforcement of Directive 2008/38/EC, there will be no substantive changes to the way that Regulation (EU) 2020/354 will be enforced in comparison to Directive 2008/38/EC

Engagement and Consultation Process

21. A six-week public consultation is being launched to provide interested parties with an opportunity to comment on the proposal to draft domestic legislation enforcing Regulation (EU) 2020/354 and its associated impacts. The FSA anticipate that the impact on both businesses and enforcement authorities in familiarising themselves with these enforcement regulations will be negligible.
22. FSA policy officials consider that it is appropriate in these circumstances, given the very technical nature of the amendments being made that a consultation of six weeks takes place. Furthermore, stakeholders, a limited amount of which were identified, will be contacted directly when the consultation opens and again one week before the consultation closes.
23. Any responses received as part of this consultation will be given careful consideration and a summary of the responses received will be published on our website within three months of the consultation closing.

Questions asked in this consultation:

1. Will implementation of these Regulations affect your business? If you believe your business or business in your area would be affected by the regulations, please provide us with information on the number of food businesses potentially affected, their location and ideally size in terms of the number of employees.
2. Do you consider that the policy/proposed Regulations will have an effect on opportunities for use of the Welsh language?
3. We would like to know your views on the effects that Regulation (EU) 2020/354 would have on the Welsh language, specifically on:
 - i) opportunities for people to use Welsh and
 - ii) on treating the Welsh language no less favourably than English.
4. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Other relevant documents

[Regulation \(EU\) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC](#)

[Regulation \(EC\) 767/2009 on the placing on the market and use of feed](#)

[Commission Directive 2008/38/EC of 5 March 2008 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes](#)

[The Animal Feed \(Composition, Marketing and Use\) \(Wales\) Regulations 2016](#)

[The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016](#)

Responses

Responses are required by close 13 November 2020. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Adam McDowell
Regulatory Policy Team
Food Standards Agency in Wales

Annex A: Standard Consultation Information

Disclosure of the information you provide

Information provided in response to this consultation may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Any automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The Food Standards Agency will be what is known as the 'Controller' of the personal data provided to us.

Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

The Data Protection Act 2018 states that, as a government department, the Food Standards Agency may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

What we do with it

All the personal data we process is located on servers within the European Union. Our cloud based services have been procured through the government framework agreements and these services have been assessed against the national cyber security centre cloud security principles.

No third parties have access to your personal data unless the law allows them to do so. The Food Standards Agency will sometimes share data with other government departments, public bodies, and organisations which perform public functions to assist them in the performance of their statutory duties or when it is in the public interest.

What are your rights?

You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter.

If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner's Office (ICO) at <https://ico.org.uk>, or telephone 0303 123 1113.

Our Data Protection Officer in the FSA is the Information Management and Security Team Leader who can be contacted at the following email address: informationmanagement@food.gov.uk

Further information

If you require a more accessible format of this document please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#).

Impact Assessment

The Welsh Government's Code of Practice on Impact Assessments states that an Impact Assessment should normally be published alongside a formal consultation. We consider that the impact on both businesses and enforcement authorities of the

proposed Regulations will be negligible. They will only provide enforcement for a directly applicable European Regulation with no national measures.

If, however, the consultation should bring to light any impact on enforcement bodies or industry which has not been anticipated, we will reconsider the need for an Impact Assessment.

Annex C: List of interested parties

Pen-Y-Parc Ltd

GT&E Feeds

Clydach Farm

Bwlchgyroes Farm Feeds

R&S Ward Ltd

Cambrian Pet Foods Ltd

Bibby Agri

Raw Feeding Cwmbran

Three Counties Agriculture

Pet at home

Wye Valley Country Store

Raw Feeding Wales

Maelor Feeds

RM Jones

Raw Dog Food Cymru

ForFarmers UK Ltd

Farm & Pet Place

Natural Feeds & Fertilisers Ltd

Powys Leys

Henry Cole & Co Ltd

NWF Agriculture

M&S Livestock Feeds & Pet Supplies

Corwen Farmers Ltd