WELSH STATUTORY INSTRUMENTS

2005 No. 3254 (W.247)

AGRICULTURE, WALES
FOOD, WALES

The Official Feed and Food Controls (Wales) Regulations 2005

Made - - - - 24 November 2005

Coming into force - - 1 January 2006

The National Assembly for Wales, in exercise (as respects regulation 41 of the following Regulations) of the powers conferred by sections 16(1), 17(2) and 48(1) of the Food Safety Act 1990 [F1] and now vested in it [F2]), having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency and, being designated for the purposes of section 2(2) of the European Communities Act 1972 [F3] in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals and the common agricultural policy of the European Community [F4] and measures in the veterinary field for the protection of public health [F5], in exercise (as respects the following Regulations apart from regulation 41) of the powers conferred by that section, after open and transparent public consultation during the preparation of these Regulations as required by Article 9 of 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 [F6], makes the following Regulations:

F1 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990; section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), **Schedule 6** to the Food Standards Act 1999 (1999 c. 28) and S.I. 2004/2990.

F2 Functions of "the Secretary of State" so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act.

F3 1972 c. 68.

F4 S.I. 2005/1971.

F5 S.I. 2003/1246.

F6 OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

PART I

PRELIMINARY

Title, commencement and application

1. The title of these Regulations is the Official Feed and Food Controls (Wales) Regulations 2005, they come into force on 1 January 2006 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"the Agency" ("*yr Asiantaeth*") means the Food Standards Agency;

"the Assembly" ("*y Cynulliad*") means the National Assembly for Wales;

"authorised officer" ("*swyddog awdurdodedig*")—

(a) in relation to a competent authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Official Control Regulations; and

(b) in relation to a relevant enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under Part II of these Regulations in relation to their execution and enforcement of regulation 16;

"competent authority" ("*awdurdod cymwys*") means an authority which, by virtue of regulation 3, is designated for the purposes of any of the provisions of Regulation 882/2004;

"feed authority" ("*awdurdod bwyd anifeiliaid*") means the authority required by section 67(1) of the Agriculture Act 1970 [F7] to enforce that Act within its area or district as the case may be;

"food authority" ("*awdurdod bwyd*") has the meaning it bears by virtue of section 5(1A) of the Act;

"the Official Control Regulations" ("*y Rheoliadau Rheolaethau Swyddogol*") means these Regulations and Regulation 882/2004;

"port health authority" ("*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984 [F8], a port health authority for that district constituted by order under section 2(4) of that Act;

"premises" ("*mangre*") includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

"primary production" ("*cynhyrchu sylfaenol*") has the meaning it bears in Regulation 852/2004;

"Regulation 178/2002" ("*Rheoliad 178/2002*"), "Regulation 852/2004" ("*Rheoliad 852/2004*"), "Regulation 853/2004" ("*Rheoliad 853/2004*"), "Regulation 882/2004" ("*Rheoliad 882/2004*") and "Directive 2004/41" ("*Cyfarwyddeb 2004/41*") have the meanings respectively given to them in Schedule 1;

"relevant enforcement authority" ("*awdurdod gorfodi perthnasol*") means a body which, by virtue of regulation 17, is made responsible for executing and enforcing paragraph (3) of regulation 5, paragraph (8) of regulation 9 and regulations 11 and 16;

"relevant feed law" ("*cyfraith bwyd anifeiliaid berthnasol*") has the meaning given to it in Schedule 2; and

"relevant food law" ("*cyfraith bwyd berthnasol*") has the meaning given to it in Schedule 3.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Any expression used both in these Regulations and in Regulation 178/2002 or Regulation 882/2004 has the meaning it bears in Regulation 178/2002 or Regulation 882/2004 as the case may be.

(4) Any reference in these Regulations to a food authority includes a reference to a port health authority and in the context of such a reference any reference to a food authority's area includes a reference to a port health authority's district.

F7 1970 c. 40.
F8 1984 c. 22.

PART II

MAIN PROVISIONS

Competent authorities

3.—(1) Subject to paragraphs (2) and (5), any body specified in Column 1 of Schedule 4 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant feed law.

(2) Where the feed authority is designated as a competent authority pursuant to paragraph (1) the designation extends to its area or district only, as the case may be.

(3) Subject to paragraphs (4) to (6), any body specified in column 1 of Schedule 5 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in column 2 of that Schedule in so far as those provisions apply in relation to relevant food law.

(4) Where the feed authority is designated as a competent authority pursuant to paragraph (3) the designation will extend to its area or district only as the case may be.

(5) Where the Agency is designated as a competent authority pursuant to paragraph (1) or (3) for the purposes of Article 31(1) of Regulation 882/2004, the designation extends in relation to primary production and the associated operations in respect of which the Agency executes and enforces the Food Hygiene (Wales) Regulations 2005 [F9] by virtue of regulation 5(1)(a) of those Regulations.

(6) Where the Agency is designated as a competent authority pursuant to paragraph (3) for the purposes of Article 31(2) of Regulation 882/2004, the designation will extend, as regards Article 31(2)(a) to (e), to those establishments and activities in respect of which the Agency executes and enforces the Food Hygiene (Wales) Regulations 2005 by virtue of regulation 5(2) of those Regulations.

F9 S.I. 2005/3292 (W.252).

Exchanging and providing information

4.—(1) For the purposes of enabling competent authorities, other OFFC authorities and Member States to fulfil the obligations placed on them by Regulation 882/2004 competent authorities may exchange among themselves or provide to other OFFC authorities any information received by them in the execution or enforcement of relevant feed law or relevant food law.

(2) For the purpose of executing or enforcing relevant feed law or relevant food law, competent authorities may exchange among themselves any information received by them in the execution or enforcement of relevant feed law or relevant food law.

(3) Competent authorities may share information received by them in the execution or enforcement of relevant feed law or relevant food law with the bodies which execute and enforce relevant feed law or relevant food law in England, Northern Ireland and Scotland for the purposes of facilitating the execution or enforcement of relevant feed law or relevant food law in those countries.

(4) Paragraphs (1), (2) and (3) are without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

(5) For the purposes of this regulation, "other OFFC authorities" means authorities designated in the United Kingdom as competent authorities for the purposes of Regulation 882/2004 other than the competent authorities designated under these Regulations.

Obtaining information

5.—(1) For the purpose of enabling competent authorities and Member States to fulfil the obligations placed on them by Regulation 882/2004 and for the purpose of executing or enforcing relevant feed law or relevant food law, a competent authority may require a control body—

(a) to provide the competent authority with any information which it has reasonable cause to believe the control body is able to give; or

(b) to make available to the competent authority for inspection by it any records which it has reasonable cause to believe are held by the control body or are otherwise within its control (and if they are kept in computerised form, to make them available in a legible form).

(2) The competent authority may copy any records made available to it under paragraph (1)(b).

(3) A person who —

(a) fails without reasonable excuse to comply with any requirement imposed under paragraph (1); or

(b) in purported compliance with such a requirement furnishes information which he or she knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(4) For the purposes of paragraph (1), the term "control body" ("*corff rheoli*") includes any member, officer or employee of a control body.

Power to issue codes of recommended practice

6.—(1) For the guidance of feed authorities and food authorities, the Assembly may issue codes of recommended practice as regards—

(a) functions conferred upon those authorities in their capacity as competent authorities by or under Regulation 882/2004; or

(b) the execution and enforcement of Part III of these Regulations.

(2) The Agency may, after consulting the Assembly, give a feed authority or food authority a direction requiring them to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on them as competent authorities by or under Regulation 882/2004, every feed authority and food authority—

(a) must have regard to any relevant provision of any such code; and

(b) must comply with any direction which is given under this regulation and requires them to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) will, on the application of the Agency, be enforceable by mandatory order.

(5) The Agency must consult the Assembly before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Assembly will have regard to any relevant advice given by the Agency.

Monitoring of enforcement action

7.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing relevant audit legislation.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant audit legislation.

(3) Each annual report of the Agency must contain a report on its activities during the year in enforcing any relevant audit legislation for which it is the enforcement authority and its performance in respect of —

(a) any standards under paragraph (2) that apply to those activities; and

(b) any objectives relating to those activities that are specified in the statement of objectives and practices under section 22 of the Food Standards Act 1999 [F10].

(4) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant audit legislation and such a report may include guidance as to action which the Agency considers would improve that performance.

(5) The Agency may direct an authority to which such a report has been made —

(a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report; and

(b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.

(6) Section 19 of the Food Standards Act 1999 applies in relation to information obtained through monitoring under this regulation as if it were information obtained through monitoring under section 12 of that Act.

F10 1999 c. 28.

Power to request information relating to enforcement action

8.—(1) For the purpose of carrying out its function under regulation 7 in relation to any enforcement authority the Agency may require a person mentioned in paragraph (2) —

(a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give; or