STATUTORY INSTRUMENTS

2015 No. 454

AGRICULTURE, ENGLAND

The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015

Made - - - -	*25th February 2015*
Laid before Parliament	*5th March 2015*
Coming into force - -	*6th April 2015*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 66(1), 67(5), 74A(4), 79(9) and 84 of the Agriculture Act 1970(**1**), as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000(**2**).

In so far as these Regulations cannot be made under the 1970 Act, the Secretary of State makes these Regulations in exercise of his powers as a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to the common agricultural policy of the European Union(**4**), the control and regulation of genetically modified organisms(**5**), measures in the veterinary and phytosanitary fields for the protection of public health(**6**) and measures relating to feed produced for or fed to food-producing animals(**7**), as read with paragraph 1A of Schedule 2 to that Act.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for a reference to EU instrument mentioned in regulation 2(5) to be construed as references to that instrument as any Annex to it may be amended from time to time.

There has been open and transparent public consultation during the preparation of these Regulations in accordance with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European

(**1**) 1970 c.40. Section 66(1) contains definitions of the expressions "the Ministers", "prescribed" and "regulations". The definition of "the Ministers" was amended by the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), Schedule 5, paragraph 1. Functions of "the Ministers", so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46). By virtue of S.I. 1999/3141, functions of the Secretaries of State for Wales and Scotland previously exercisable in relation to England ceased to be so exercisable and were transferred to the Minister of Agriculture, Fisheries and Food. Section 74A was inserted by the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6. Sections 66(1) and 84 were amended by S.I. 2004/3254. Section 66(1) was also amended by S.I. 2010/2280.

(**2**) S.I. 2000/656.

(**3**) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (2008 c.7).

(**4**) S.I. 1972/1811, amended by S.I. 2002/794.

(**5**) S.I. 1991/755.

(**6**) S.I. 1999/2027.

(**7**) S.I. 2003/2901.

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(**8**) or, in the case of provisions relating to feed for non food-producing animals, of section 84(1) of the Agriculture Act 1970.

PART 1

Introductory

Title, application and commencement

1. These Regulations may be cited as the Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015, apply in relation to England only and come into force on 6th April 2015.

Interpretation and scope

2.—(1) In these Regulations —

"the Act" means the Agriculture Act 1970;

"Regulation 882/2004" means 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 animal welfare rules(**9**);

"Regulation 183/2005" means Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene(**10**);

"Regulation 152/2009" means Commission Regulation (EC) No 152/2009 laying down the methods of sampling and analysis for the official control of feed(**11**);

"Regulation 767/2009" means Regulation (EC) No 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC(**12**);

"the Agency" means the Food Standards Agency;

"analyst" means an agricultural analyst or a deputy agricultural analyst;

"area" includes the district of the Port of London;

"authorised officer" means a person (whether or not an officer of the enforcement authority) who is authorised by the enforcement authority, either generally or specially, to act in relation to matters arising under these Regulations;

(**8**) OJ No. L31, 1.2.2002, p.1. This Regulation was last amended by Regulation (EU) No. 652/2014 of the European Parliament and of the Council (OJ No. L189, 27.6.2014, p.1).
(**9**) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.29). This Regulation was last amended by Regulation (EU) No. 652/2014 of the European Parliament and of the Council (OJ No. L189, 27.6.2014, p.1).
(**10**) OJ No. L35, 8.2.2005, p.1. This Regulation was last amended by Commission Regulation (EU) No. 225/2012 (OJ No. L77, 16.3.2012, p.1).
(**11**) OJ No. L54, 26.2.2009, p.1. This Regulation was last amended by Commission Regulation (EU) No. 709/2014 (OJ No. L188, 27.6.2014, p.1).
(**12**) OJ No. L229, 1.9.2009, p.1. This Regulation was last amended by Commission Regulation (EU) No. 939/2010 (OJ No. L277, 21.10.2010, p.4).

"enforcement authority" means the body identified as having a duty to enforce under regulation 21;

"feed authority" means an authority identified in section 67(1) of the Act as having the duty to enforce Part IV of that Act within its area;

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

"prescribed manner" means the manner prescribed by Regulation 152/2009;

"specified feed law" means the instruments specified in Schedule 1.

(2) Subject to paragraph (3), any other expression used in these Regulations and in Regulation 882/2004, Regulation 183/2005 or Regulation 152/2009 has the same meaning in these Regulations as it does in the EU Regulation.

(3) Where, apart from this paragraph, any period of less than seven days which is specified in these Regulations would include any day which is —

(a) a Saturday, a Sunday, Christmas Day or Good Friday; or

(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971,

that shall be excluded from the period.

(4) In these Regulations "feed" or "feeding stuff" does not include any of the following feed additives or premixtures consisting solely of such additives —

(a) coccidiostats;

(b) histomonostats; and

(c) all other zootechnical additives except —

(i) digestibility enhancers,

(ii) gut flora stabilisers, and

(iii) substances incorporated into feed with the intention of favourably affecting the environment.

(5) Any reference in these Regulations to Regulation 183/2005 or Regulation 152/2009 is a reference to that Regulation as any Annex to it may be amended from time to time.

PART 2

Requirements for Feed Hygiene, Registration and Approval

Scope and interpretation of Part 2

3.—(1) This Part does not apply to the activities mentioned in Article 2(2) of Regulation 183/2005.

(2) Any reference in this Part or in Schedule 2 to a numbered Article or Annex is a reference to the Article or Annex so numbered in Regulation 183/2005.

Competent authorities

4.—(1) The competent authorities for the purposes of specified Articles are —

(a) in respect of Articles 9(1) and (3), 18(3), 20(2), 21(1) and 22(2)(b), the Agency and the enforcement authority;

(b) in respect of Articles 7, 9(2), 10, 13, 14, 15, 16, 17, 18(1),(2) and (4) and 19(2), the enforcement authority; and

(c) in respect of Article 19(1), the Agency.

(2) The competent authorities for the purposes of the section headed "Dioxin Monitoring" in Annex II are —

(a) in respect of paragraph 2(e), the enforcement authority; and

(b) in respect of paragraph 7, the enforcement authority and the Agency.

Enforcement of specified provisions of Regulation 183/2005

5. A person who contravenes or fails to comply with any of the provisions of Regulation 183/2005 specified in the first column of Table 1 or Table 2 of Schedule 2 commits and offence.

Form of notification with a view to registration

6. A person who is required under Article 9 (officials controls, notification and registration) to notify the enforcement authority of the information mentioned in paragraph (2)(a) or (b) of that Article must ensure that any such notification —

(a) is in writing and signed by that person or on their behalf;

(b) contains the person's name and, if different, business name;

(c) contains the person's address and, if different, the address of any establishment to which the notification relates;

(d) identifies the feed business activities in such form as may be required by the enforcement authority may require; and

(e) is properly directed to the enforcement authority for the area in which the establishment to which the notification relates is situated.

Form of application for approval

7. Where approval of a feed business establishment is required pursuant to Article 10, an application to the enforcement authority for the area in which the establishment is located must be made which —

(a) is in writing and signed by or on behalf of the applicant;

(b) contains the name or business name and the address of the applicant and, if different, the address of the establishment;

(c) identifies which of the feed business activities specified in Article 10(1) or as may be specified pursuant to Article 10(3) the applicant is exercising or intends to exercise and for which approval is sought;

(d) in the case of a person to whom Article 17(2) (exemption from on-site visits) applies, includes a statement to the effect that the establishment is one to which Article 17(1) applies and a declaration of compliance as required by paragraph (2) of that Article; and

(e) is properly directed to the enforcement authority for the area in which the establishment to which the declaration relates is situated.

Procedure for suspension of registration or approval

8.—(1) Where an enforcement authority proposes to take action pursuant to Article 14 (temporary suspension of registration or approval) it must serve on the feed business operator a notice in accordance with paragraph (2).

(2) The notice served by the enforcement authority must —

(a) specify the operative date of the notice ("the operative date");

(b) state that on the operative date the enforcement authority intends to suspend the registration or approval of the establishment pursuant to Article 14 and these Regulations;

(c) specify the feed business activity or activities to which the notice relates;

(d) identify the remedial action required;

(e) state that unless remedial action has been carried out to the satisfaction of the enforcement authority within one year of the operative date, the registration or approval will be revoked without further notice on the first anniversary of the operative date; and

(f) provide information on the time limit for appealing under regulation 12.

Procedure for lifting of suspension

9. Where the enforcement authority that has served notice on a feed business operator under regulation 8 is satisfied that —

(a) the remedial action required under paragraph (2)(e) of that regulation has been carried out; and

(b) the period for action specified in that sub-paragraph has not expired,

it must immediately lift the suspension and notify the feed business operator to that effect.

Procedure for revocation of registration or approval

10.—(1) Where an enforcement authority proposes to take action in the circumstances set out in Article 15 (revocation of registration or approval) it must serve on the feed business operator a notice in accordance with paragraph (2).

(2) A notice served under paragraph (1) must —

(a) specify the operative date of the notice;

(b) state that the registration or approval as the case may be has been revoked;

(c) specify the feed business activity or activities to which the revocation relates;

(d) identify which of the conditions of revocation set out in Article 15 is applicable;

(e) provide information on the time limits for appealing under regulation 12.

(3) Where an enforcement authority has revoked a registration or approval under this regulation it must —

(a) make the appropriate amendments to its own register of feed business establishments; and

(b) promptly transmit to the Agency the necessary information to ensure compliance with Article 19(3) (updating of national lists).

Form of application for amendments to registration or approval

11. Where a feed business operator wishes to apply for amendments to registration or approval pursuant to Article 16 (amendments to registration or approval of an establishment), an application to the enforcement authority for the area in which the relevant feed business establishment is located must be made which —

(a) is signed by or on behalf of the applicant;

(b) contains the name or business name and the address of the applicant and, if different, the address of the establishment;