STATUTORY INSTRUMENTS

2015 No. 255

AGRICULTURE, ENGLAND

The Animal Feed (Composition, Marketing and Use) (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), 68(1), 74A(1) 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 powers in the Agriculture Act 1970 specified above, 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 references to the Annexes to the EU instruments mentioned in regulation 2(3) to be construed as references to those Annexes as they may be amended from time to time.

(**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. Functions of the Minister of Agriculture were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I .2002/794). 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.

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 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 and general

Title, application and commencement

1. These Regulations may be cited as the Animal Feed (Composition, Marketing and Use) (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 —

"Directive 82/475" means Commission Directive 82/475/EEC laying down the categories of feed materials which may be used for the purposes of labelling compound feedingstuffs for pet animals(**9**);

"Directive 2002/32" means Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed(**10**);

"Regulation 178/2002" means 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;

"Regulation 1829/2003" means Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(**11**);

"Regulation 1831/2003" means Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition(**12**);

"Directive 2008/38" means Commission Directive 2008/38/EC establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes(**13**);

"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,

(**8**) OJ No. L31, 1.2.2002, p.1, as 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. L213, 21.7.1982, p.27. This Directive was last amended by Commission Directive 98/67/EC (OJ No. L261, 24.9.1998, p.10).
(**10**) OJ No. L140, 30.5.2002, p.10. This Directive was last amended by Commission Regulations (EU) No 1275/2013 (OJ No. L328, 7.12.2013, p.86).
(**11**) OJ No.L268, 18.10.2003, p.1. This Regulation was last amended by Regulation (EC) No 298/2008 of the European Parliament and of the Council (OJ No. L97, 9.4.2008, p.64).
(**12**) OJ No. L268, 18.10.2003, p. 29. This Regulation was last amended by Regulation (EC) No. 767/2009.
(**13**) OJ No. L62, 6.3.2008, p.9. This Directive was last amended by Commission Regulation (EU) No 1123/2014 (OJ No. L304, 23.10.2014, p.81).

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(**14**);

"the Agency" means the Food Standards Agency;

"feed authority" means an authority identified in section 67(1) of the Agriculture Act 1970 as having the duty to enforce Part IV of that Act within its area or district as the case may be.

(2) Any expression used in these Regulations and in Regulation 178/2002, Regulation 1831/2003 or Regulation 767/2009 has the meaning in these Regulations that it bears in the EU Regulation concerned.

(3) Any reference to an Annex to Directive 82/475, Directive 2002/32, Directive 2008/38 or Regulation 767/2009 is a reference to that Annex as it may be amended from time to time.

(4) These Regulations do not apply to any feed additive in category (d) or (e) of Article 6(1) of Regulation 1831/2003, with the exception of those in the functional groups listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation(**15**).

PART 2

Enforcement of Regulation 178/2002

Interpretation of this Part

3. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 178/2002.

Offence of failing to comply with a specified provision of Regulation 178/2002

4.—(1) A person who contravenes or fails to comply with a provision specified in paragraph (2) commits an offence.

(2) The specified provisions are —

(a) Article 12, in so far as it relates to feed (conditions on export or re-export to third countries);

(b) Article 15(1) (prohibition on the placing on the market or feeding to any animal of unsafe feed);

(c) Article 16, in so far as it relates to feed (prohibition on misleading labelling, advertising or presentation);

(d) Article 18(2) and (3) (requirements that operators must have traceability information and make such information available to competent authorities) in so far as they relate to feed business operators; and

(e) Article 20 (responsibilities of feed business operators regarding feed that does not satisfy feed safety requirements).

Competent authorities for the purposes of Regulation 178/2002

5. The competent authority —

(**14**) OJ No. L229, 1.9.2009, p.1. This Regulation was last amended by Commission Regulation (EC) No. 939/2010 (OJ No. L277, 21.10.2010, p.4).

(**15**) Categories (d) and (e) of Article 6(1) comprise, respectively, zootechnical additives and coccidiostats and histomonostats. Functional groups listed in paragraphs 4(a), (b) and (c) of Annex I comprise digestibility enhancers, gut flora stabilisers and substances which favourably affect the environment.

(a) for the purposes of Articles 15 and 18 is the feed authority in its area or district; and

(b) for the purposes of Article 20 is the feed authority in its area or district or the Agency.

PART 3

Enforcement of Regulation 1829/2003

Interpretation of this Part

6. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 1829/2003.

Offence of failing to comply with a specified provision of Regulation 1829/2003

7.—(1) A person who contravenes or fails to comply with a provision specified in paragraph (2) commits an offence.

(2) The specified provisions are —

(a) Article 16(2) (prohibition on placing on the market, using or processing a product referred to in Article 15(1)(**16**) unless it is covered by an authorisation and satisfies relevant conditions), as read with Article 20(6) (requirement that products in relation to which the Commission has adopted a measure under this Article must be withdrawn from the market);

(b) Article 21(1) (requirement that the authorisation holder and the parties concerned must comply with conditions imposed in an authorisation for that product, and that the authorisation holder must comply with post-market monitoring requirements);

(c) Article 21(3) (requirement that an authorisation holder inform the Commission of any new scientific or technical information about a product which might affect the evaluation of the safety of its use in feed, or of any prohibition or restriction on the feed in a third country); and

(d) Article 25 (requirement for certain labelling indications).

Competent authority for the purposes of Regulation 1829/2003

8. The national competent authority for the purposes of Chapter III of Regulation 1829/2003 is the Agency.

PART 4

Enforcement of Regulation 1831/2003

Interpretation of this Part

9. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 1831/2003.

(**16**) The products referred to in Article 15(1) are genetically modified organisms (GMOs) for feed use, feed containing or consisting of GMOs and feed produced from GMOs.

Offence of failing to comply with a specified provision of Regulation 1831/2003

10.—(1) A person who contravenes or fails to comply with a provision specified in paragraph (2) commits an offence.

(2) The specified provisions are —

(a) Article 3(1) (prohibition on placing on the market, processing or using a feed additive unless it is covered by an authorisation and satisfies relevant conditions), as read with paragraph (2) (national authorisation for scientific experimental purposes), paragraph (4) (conditions on mixing of additives) and Article 10 (status of existing products);

(b) Article 3(3) (restriction on the persons who may first place on the market certain additives);

(c) Article 12(1) (requirement that any person using or placing on the market an additive, or a feed into which it has been incorporated, or any other interested party, must ensure that any conditions which have been imposed are respected);

(d) Article 12(2) (requirement on the holder of an authorisation to observe monitoring obligations where they have been imposed, to inform the Commission of any new information about a product which might affect the evaluation of the safety of its use in feed, or of any prohibition or restriction on the feed imposed by the competent authority in a third country);

(e) Article 16(1),(3) and (4) (prohibition on the placing on the market of feed additives or premixtures unless labelled in the specified manner and with prescribed information), as read with paragraph (2) (derogation for certain flavouring compounds); and

(f) Article 16(5) (requirement that additives and premixtures must be marketed only in closed packages or containers which must be closed in such a way that the fastener is damaged on opening and cannot be re-used).

PART 5

Enforcement of Regulation 767/2009

Interpretation of this Part and Schedule 1

11. In this Part and in Schedule 1 any reference to a numbered Article or Annex is a reference to the Article or Annex so numbered in Regulation 767/2009.

Offence of failing to comply with a specified provision of Regulation 767/2009

12.—(1)) Subject to the transitional provisions contained in Article 32, a person who —

(a) contravenes or fails to comply with a provision of Regulation 767/2009 specified in Schedule 1; or

(b) places on the market or uses a feed that fails to comply with Article 6(1) or 8,

commits an offence.

(2) Where, pursuant to Article 17(2)(c), the name of a specific feed material may be replaced by the name of the category to which the feed material belongs, only the categories listed in the Annex to Directive 82/475 may be indicated.

Competent authorities for the purposes of Regulation 767/2009

13.—(1) Each feed authority in its area or district is the competent authority for the purposes of —

(a) Article 5(3), 13(1)(a) and 17(3) and Annex VII, Chapter 1, paragraph 8; and