

EXPLANATORY MEMORANDUM TO

The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 and Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 and Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016. I am satisfied that the (monetised and non-monetised) benefits identified in the appraisal outweigh the costs.

Vaughan Gething AM
Deputy Minister for Health

17 March 2016

Description

Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 and Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 will consolidate all European and domestic requirements relating to animal feed into two Statutory Instruments.

1. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None.

2. Legislative Background

Legal Services confirm that the Animal Feed (Composition, Marketing and Use) (Wales) Regulations are to be made in exercise of the Welsh Ministers' powers under sections 66, 68, 74A and 84 of the Agriculture Act 1970 ("the 1970 Act"), and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 ("the 1972 Act"). The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations are to be made in exercise of the Welsh Ministers' powers under sections 66, 67, 74A, 79 and 84 of the 1970 Act ") and section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act.

The Welsh Ministers have been designated for the purposes of section 2(2) of the 1972 Act in relation to:

- the primary production of food and measures relating to feed produced for or fed to food-producing animals (European Communities (Designation) (No.2) Order 2005);
- measures in the veterinary and phytosanitary fields for the protection of public health (European Communities (Designation) (No.2) Order 2008);
- measures in relation to the common agricultural policy of the European Union (the European Communities) (Designation) (No.5) Order 2010); and, in relation to the Animal Feed (Composition, Marketing and Use) (Wales) Regulations,
- the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms (European Communities (Designation) (No.4) Order 2013).

The ambulatory references are to be made in exercise of the Welsh Ministers' power under paragraph 1A of Schedule 2 to the 1972 Act.

The Regulations are to be subject to the negative procedure. Paragraph 2(2) of Schedule 2 to the 1972 Act provides that regulations that are made under section 2(2) of the same Act may be subject to the negative or affirmative procedure. In this case, in light of the fact that the section 2(2) powers are being combined with other powers (i.e. those in the 1970 Act), and the fact that the Regulations do not involve substantial government expenditure or any other particularly sensitive matters, it is considered appropriate to subject the Regulations to the negative procedure.

3. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to

- a) Consolidate existing Regulations
- b) Introduce minor technical updates required by Commission Regulation 2015/327 and Commission Regulation (EU) 2015/2294
- c) Introduce new safeguards on enforcement
- d) Introduce ambulatory references in respect of certain EU Regulations so that further minor technical amendments do not require a new Statutory Instrument

a) Consolidation of existing Regulations

There are currently five feed-related SIs for which the FSA has policy responsibility, these are:

- the Genetically Modified Animal Feed (Wales) Regulations 2004 (S.I. 2004 No. 3221 (W. 277));
- the Feed (Hygiene and Enforcement) (Wales) Regulations 2005 (S.I. 2005 No. 3368 (W. 265));
- the Feed (Sampling and Analysis and Specified Undesirable Substances) (Wales) Regulations 2010 (S.I. 2010 No. 2287 (W. 199));
- the Animal Feed (Wales) Regulations 2010 (S.I. 2010 No. 2652 (W. 220));
- the Feed (Hygiene and Enforcement) and the Animal Feed (Wales) (Amendment) Regulations 2013 (S.I. 2013 No. 3207 (W. 317))

The Regulations consolidate the requirements of the five feed-related SIs into two SIs. The consolidations are intended to reduce the burden on feed business operators, who need to be aware of and comply with the requirements of animal feed legislation, as it will be easier for them to find relevant information. The consolidations will impact on all feed businesses in Wales.

b) Introduce minor technical updates required by Commission Regulation 2015/327 and Commission Regulation (EU) 2015/2294

Commission Regulation (EU) 2015/327 of 2 March 2015 updates requirements for the placing on the market and conditions of use of additives consisting of preparations by amending Annexes III and IV of Regulation (EC) No 1831/2003.

Commission Regulation (EU) 2015/2294 of 9 December 2015 establishes a new functional group of feed additives by amending Annex I of Regulation (EC) No 1831/2003.

These minor technical amendments are incorporated into the Regulations. Future changes to these Annexes will be covered by the ambulatory references detailed below.

c) Introduction of enforcement safeguards

The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2015 will introduce the following new safeguards for officers exercising their powers under these Regulations, as well as increasing the maximum penalties for particular offences:

- Make clear in Regulation 30(1) that officers using their powers of entry must produce, if requested to do so, some duly authenticated documentation showing the officer's identity and authority.
- Require in Regulation 30(2) for officers to provide the occupier with no less than 48 hours' notice where prior notice of entry is necessary.
- Make clear in Regulation 30(3) that premises used wholly or mainly as a dwelling are excluded from an officer's powers of entry without a warrant.
- Require in Regulation 30(6) that officers using their powers of entry ensure that premises are left in as close a condition as is practicable to that in which they were found by the officer at the time of entry.
- Require in Regulation 30(15) that officers must provide the occupier with a description of any records seized and a statement of how long seized records will be detained as evidence in proceedings under feed law.
- Make clear in Regulation 38(3) requirements on serving notices, including that the notice must be in writing and signed by an authorised officer acting on behalf of the enforcement authority.
- Increase the maximum term of imprisonment for offences on summary conviction from 3 months to 6 months. The maximum term of imprisonment for indictable offences remains the same (i.e. not exceeding 2 years).

d) Introduction of ambulatory references

Ambulatory references included in the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 and Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 include:

- Amendments to Regulation (EC) No 1831/2003 laying down requirements for feed hygiene.
- Amendments to the annexes of Regulation (EC) No 1831/2003 on additives for use in animal nutrition.

4. Consultation

A public consultation exercise was carried out by the Food Standards Agency (FSA) from 12 January 2015 to 6 April 2015. The FSA in Wales received a single response from the Office of the Government Chemist which was supportive of the proposed approach.

As no costs are envisaged for the subsequent minor technical amendments to EU Regulations that are included in the Regulations (at 3(b) above), it is not considered that the changes made after the consultation exercise are significant enough to require further consultation under Article 9 of Regulation 178/2002.

5. Regulatory Impact Assessment

Options

Option 1: Do nothing: leave the regulatory framework as it is.

Option 2: Consolidate the Regulations, provide safeguards for enforcement officers and introduce ambulatory references that take account of minor technical amendments to existing Regulations.

Costs and Benefits

The costs and benefits associated with the Regulations have been appraised over a ten-year period 2015-16 to 2024-25.

Option 1

Costs to Government:

By not enforcing EU Regulations, the UK will be risking infraction by the EU. Fines for infraction are significant and ongoing.

Benefits

There are no incremental benefits associated with Option 1. This is the baseline which all other options are appraise against.

Option 2

Costs

Costs to Industry

The consolidations do not change the provisions of the current regulations; the only change is that rules governing feed will now be located in two rather than five separate documents. Any costs of familiarisation for industry would therefore be negligible.

In June 2015, the FSA wrote to a trade association representing animal feed manufacturers for information on costs associated with Commission Regulation 2015/327. The trade association informed that in terms of costs on labelling for additive preparations, this will be a negligible impact on the producers, as they understand that many producers already provide the required information in the form of data sheets.

The EU Regulation puts in place transitional arrangements so that products which meet the previous requirements can continue to be placed on the market until 23 March 2017 and may then also continue to be used until existing stocks are exhausted.

In addition, the FSA has been advised that Commission Regulation 2015/2294 will cause negligible impact.

Costs to Enforcement

The FSA in Wales directly funds enforcement of animal feed official controls in Wales, including feed officer training. The dissemination of changes to the animal feed regulations would therefore be regarded as business as usual to the FSA, with no additional cost.

Costs to Consumers

We do not envisage that the consolidations would result in any costs to consumers. The proposed consolidations will not change the provisions of the relevant existing legislation.

Benefits

Benefits to Industry

There may be benefits to industry in terms of simplification as a result of the consolidations. Any new entrants into the sector would only need to familiarise themselves with two statutory instruments as opposed to the five at present. It is difficult to estimate how many new businesses will enter the sector over the next ten years (which is the expected lifespan of the policy). We are therefore unable to monetise the benefits at this time for the reduced familiarisation.

Benefits to Enforcement

There may be benefits to enforcement in terms of simplification as a result of the consolidations. After the change, any new entrants into the sector would only need to familiarise themselves with two statutory instruments as opposed to the five at present. The FSA does not record the number of new entrant feed officers and therefore it is not possible to separate new entrants out from the data on numbers of feed officers. We are therefore unable to monetise the benefits at this time for the reduced familiarisation.

Benefits to Consumers

We do not envisage that the consolidation will result in any benefits (or costs) to consumers. The consolidation does not change the content of the regulations; the only change is that the requirements will be located in two documents rather than five.

Wider Impacts

Small & micro business assessment

The UK feed industry sector is comprised of mainly small and micro businesses (generally greater than 90%⁴) and therefore the greatest impact from new feed measures introduced in the UK will, in the vast majority of cases, be on small and micro businesses. For this reason the FSA assesses the impact on small and micro businesses as standard when undertaking impact assessments.

EU legislation generally applies to food/feed businesses regardless of size, as requirements are intended to be risk based to reflect the activities undertaken. Due to the high ratio of small and micro feed businesses in the UK it is often not feasible to exempt smaller businesses from new feed measures as this would fail to achieve the intended effect of reducing risks to consumer health. That said, FSA makes every effort to minimise burdens on small and micro businesses and pays particular attention to impacts on them.

Social

There will be no impacts on existing health, wellbeing or other social inequalities, on human rights, on levels of crime or crime prevention, or on skills and education. There will be no differential impact on rural or urban areas, nor any specific local or regional effects.

Environmental

There are no environmental impacts identified as a result of the consolidation of these Regulations.

Powers of entry

The Powers of entry in national legislation for which the FSA has policy responsibility have been reviewed and consulted on in England. Following the outcome of this review, FSA Wales has introduced new safeguards to the powers provided for in The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2015 to match equivalents elsewhere in the UK .

Details of the safeguards are as follows:

- Make clear in Regulation 30(1) that officers using their powers of entry must produce, if requested to do so, some duly authenticated documentation showing the officer's identity and authority.
- Require in Regulation 30(2) for officers to provide the occupier with no less than 48 hours' notice where prior notice of entry is necessary.
- Make clear in Regulation 30(3) that premises used wholly or mainly as a dwelling are excluded from an officers normal powers of entry.
- Require in Regulation 30(6) that officers using their powers of entry ensure that premises are left in as close a condition as is practicable to that in which they were found by the officer at the time of entry.
- Require in Regulation 30(15) that officers must provide the occupier with a description of any records seized and a statement of how long seized records will be detained as evidence in proceedings under feed law.