

Impact Assessment (IA)

Title:

Consolidations of domestic provisions in England on animal feed in the draft (i) the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015, and (ii) the Animal Feed (Hygiene, Sampling, etc. and Enforcement) (England) Regulations 2015

Date: 9 February 2015

Stage: Implementation

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries:

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IA No: Food0148

Lead department or agency:

Food Standards Agency

Other departments or agencies:

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0.01m	£0.01m	-£0.001m	No	N/A

What is the problem under consideration? Why is government intervention necessary?

The legal requirements for animal feed are currently provided in five separate Statutory Instruments (SIs). A simplified system of domestic animal feed legislation giving effect to EU requirements is proposed to make it easier for feed business operators to find information on regulatory requirements for feed relevant to their businesses.

What are the policy objectives and the intended effects?

The legal requirements on animal feed, currently provided in five SIs, will be consolidated into two SIs: The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 will consolidate the legislative requirements on the composition, marketing and use of animal feed. The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 will consolidate legislative requirements on hygiene and enforcement of animal feed, including rules relating to sampling and analysis.

The consolidations are intended to reduce the burden on all stakeholders, particularly feed business operators implementing the requirements of animal feed legislation, as it will be easier for them to find relevant information.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1. Do Nothing – this would mean that any potential benefits resulting from the proposed consolidation would not be realised.

Option 2. Proceed with the consolidations as proposed to combine the legal requirements on (i) composition, marketing and use, and (ii) hygiene and enforcement of animal feed currently provided in separate instruments into two single statutory instruments. **This is the preferred option**

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2020

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a		Non-traded: n/a

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible

Jane Ellison

Date: 25.02.2015

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised costs by 'main affected groups'

None. This is the baseline against which the policy option is appraised.

Other key non-monetised costs by 'main affected groups'

None. This is the baseline against which the policy option is appraised.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'

None. This is the baseline against which the policy option is appraised.

Other key non-monetised benefits by 'main affected groups'

None. This is the baseline against which the policy option is appraised.

Key assumptions/sensitivities/risks

This option assumes that the consolidation will not go ahead.

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: n/a	Benefits: n/a	Net: n/a	N/A	N/A

Description: Consolidate the Animal Feed (i) Composition and Marketing regulations, (ii) Hygiene, Sampling etc. and Enforcement regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.01

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'
No monetised costs identified

Other key non-monetised costs by 'main affected groups'
Any costs of familiarisation for industry and enforcement are considered negligible (see key assumptions below).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0.001	0.01

Description and scale of key monetised benefits by 'main affected groups'
Benefits to industry in terms of time savings as a result of simplification through consolidations of approximately: £6,121 (Present Value).

Other key non-monetised benefits by 'main affected groups'
Businesses and enforcement would now find it easier to refer to rules governing feed; as this will now be located in two rather than five separate documents.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
As consolidations do not change the provisions of the current regulations it is assumed that any costs associated with familiarisation for industry and enforcement would be negligible. We assume new entrants into the sector would only need to familiarise themselves with two statutory instruments as opposed to the five at present; a time saving of approximately 3 hours per business.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0.001	Net: -0.001	No	N/A

Evidence Base (for summary sheets)

Problem under consideration

1. The legal requirements on animal feed are currently provided in five separate statutory instruments. This is perceived to make it difficult for feed business operators to access information on legal requirements relevant to feed controls specific to their business operation.

Rationale for intervention

2. The consolidations offer the opportunity to combine all the legal requirements on animal feed composition and labelling, and hygiene and enforcement into two single Statutory Instruments (SIs), respectively. The proposals will reduce the number of animal feed SIs resulting in legislation that is more accessible, providing more clarity and ease of reference for enforcers and feed businesses alike. The proposals will provide relevant information in two succinct SIs thus reducing the potential burden of consulting several different pieces of legislation. The proposal is one element of the Food Standards Agency (FSA) commitment under the Government's Red Tape Challenge¹ to reduce the regulatory burden on business.

Policy objective

3. The objective is to make it easier for feed businesses to understand what legislation applies to them and to reduce the burden on businesses implementing the legal requirements placed on them by replacing five separate SIs with two SIs containing the animal feed legal requirements relevant to them.

Background: English national legislation and the proposed consolidation

Current domestic legislation in England – brief description

4. Currently, in England, the EU Directives and Regulations (described in Appendix A) are given effect by five Statutory Instruments (SIs). These are:
 - The Genetically Modified Animal Feed (England) Regulations 2004 (S.I. 2004 No 2334)²;
 - The Feed (Hygiene and Enforcement) (England) Regulations 2005 (S.I. 2005 No 3280)³;
 - The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010 (S.I. 2010 No 2280)⁴;
 - The Animal Feed (England) Regulations 2010 (S.I. 2010 No 2503)⁵; and
 - The Feed (Hygiene and Enforcement) and the Animal Feed (England) (Amendment) Regulations 2013 (S.I. 2013 No 3133)⁶.

The proposed consolidated English national legislations

5. The five SIs are proposed to be consolidated into two single SIs:
 - The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015

¹ <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

² <http://www.legislation.gov.uk/uksi/2004/2334/contents/made>

³ <http://www.legislation.gov.uk/uksi/2005/3280/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/2010/2280/contents/made>

⁵ <http://www.legislation.gov.uk/uksi/2010/2503/contents/made>

⁶ <http://www.legislation.gov.uk/uksi/2013/3133/contents/made>

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

The Animal Feed (Composition, Marketing and Use) Regulations 2015

6. The consolidated SIs essentially combine the relevant provisions of the Genetically Modified Animal Feed (England) Regulations 2004 (S.I. 2004 No 2334), Animal Feed (England) Regulations 2010 (S.I. 2010 No 2503) and those provisions of the Feed (Hygiene and Enforcement) (England) Regulations 2005 (S.I. 2005 No 3280) which enforce Regulation (EC) No. 178/2002.
7. Specific features of the proposed consolidated SI, as they appear in the SI are:
 - i. Enforcement provisions for EU Regulations 178/2002 and 1829/2003 are now to be found in Parts 2 and 3 of the proposed draft SI.
 - ii. Parts 4 to 7 of the proposed draft SI reproduce what is currently in SI 2010/2503.

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

8. This draft SI essentially combines the provision of the Feed (Hygiene and Enforcement) (England) Regulations 2005 (S.I. 2005 No 3280) minus those enforcing EU Regulation 178/2002, with those provisions of the Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010 (S.I. No 2280) as amended that relate to sampling and analysis and provide implementing measures for EU Regulation 152/2009.
9. There is very little change in the new draft SI by way of substantive provision, but the order and structure has been changed to make it more logical, and the drafting has been modernised in certain ways, i.e. made gender-neutral and “shall” in the way of obligation replaced by “must”.
10. Regulation 7 in the 2005 Regulations concerning the form of declaration regarding transitional measures has not been carried forward into the new SI as it is now obsolete.

11. Specific features of the proposed consolidated SI, set out in the order they appear in the SI:
- i. Part 2 which concerns requirements for feed hygiene, registration and approval contains substantively the same provisions as appear in SI 2005/3280. These are structured differently with the enforceable provisions of 183/2005 set out in more detail in Schedule 2.
 - ii. Part 3 mainly carries forward the sampling and analysis provisions of SI 2010/2280 and combines these with the sampling and analysis provisions of SI 2005/3280. Part 4 deals with enforcement matters primarily as they impinge on enforcement officers and authorities.
 - iii. Part 5 deals with enforcement tools affecting Feed Business Operators, such as improvement notices and powers of entry.
 - iv. Regulation 30 combines the powers contained in regulations 24 and 24A of SI 2005/3280.
 - v. Regulation 31(8) contains a special provision relating to the labelling of GM feed that provides for a court to order the re-labelling of non-compliant feed rather than its destruction in certain circumstances.
 - vi. All penalties for offences under these Regulations are grouped together in one place under Regulation 34 to make it easier for stakeholders to understand and additional safeguards have been introduced for officers exercising their powers under these Regulations (the safeguards are outlined in more detail under 'Powers of entry' in the Wider Impacts section below. The maximum term of imprisonment for a summary conviction has been increased from three to six months to bring this in line with current Ministry of Justice policy.

Description of options considered (including do nothing)

Option 1 – Do nothing: Do not consolidate the relevant requirements for animal feed composition and marketing, and hygiene and enforcement currently provided in three and two separate SIs, respectively, into two SIs

12. Option 1 would mean that there would be no change to the current situation. Any benefits to businesses from consolidation would not be taken up and the FSA would not meet its commitments under the Red Tape Challenge.

Option 2 – Consolidate the relevant requirements on animal feed composition and marketing, and hygiene and enforcement currently provided in three and two separate SIs, respectively, into two SIs

13. Under Option 2, all requirements for feed composition and labelling, and hygiene and enforcement, would be consolidated into single statutory instruments, respectively. This would provide benefits for both enforcers and feed business operators, who after the change would only need to refer to single SIs to get information about the respective provision.

14. This is the preferred option.

Sectors and Groups Affected

Industry

15. The consolidation will impact on all feed businesses in England that need to comply with feed law. To identify these businesses we have used data provided by local authorities, which shows that in January 2014 there were 143,690 such business premises in England, including manufacturers, businesses placing feed products on the market, mixers, farms, and businesses engaged in storage, transport and import. This data does however not hold information on business size, but we have used the Interdepartmental Business Register (IDBR 2013)⁷ to calculate an estimate of the proportion of feed businesses of different sizes. Table 1 below shows the number of businesses affected by size.

Table 1: Number of feed business premises affected according to business size⁸ (England)

⁷ <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/2013/index.html>

⁸ Business size is defined according to number of employees (0-9 = micro, 10 – 49 = small, 50 – 249 = medium, 250+ = large) consistent with Business Population Estimates (BPE) methodology - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254552/13-92-business-population-estimates-2013-stats-release-4.pdf.

	Micro	Small	Medium	Large	Total
England	132,071	8,472	2,868	280	143,690

Source: Local Authorities/ ONS - IDBR

Enforcement

16. The consolidation will also impact on enforcers of feed law. According to the data provided by Local Authorities in relation to feed law as part of their annual returns to the FSA for routine enforcement monitoring purposes there were approximately 49.6 full time equivalent officers occupying posts enforcing feed law, in 2012-13⁹.

Consumers

17. We do not envisage that the consolidation of feed law will have any impacts on consumers. No requirements on businesses will change as a result and we envisage that the regulations will mainly be used by businesses and enforcers.

Option Appraisal

Option 1: Do Nothing – Do not consolidate the animal feed (i) composition and marketing, and (ii) hygiene and enforcement regulations

Costs and benefits

18. There are no costs and benefits with this option as this is the baseline against which the policy option is appraised.

Option 2: Consolidate the animal feed (i) composition and marketing, and (ii) hygiene and enforcement regulations

Costs

Costs to Industry

Familiarisation Costs (Negligible)

19. 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; virtually no additional cost to business.

Costs to Enforcement

Familiarisation Costs (Negligible)

20. 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 enforcement bodies would therefore be negligible; virtually no additional cost to local authorities.

Costs to Consumers

21. We do not envisage that the consolidations would result in any costs to consumers as the only change is that rules governing feed will now be located in two rather than five separate documents. The proposed consolidations will not change the provisions of the relevant existing legislation.

Benefits

Benefits to Industry

Reduced familiarisation costs to new entrants into the sector (Ongoing Benefit)

⁹ Based on FSA data obtained from animal feed enforcement returns.

22. 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 have, however, looked at historical data on entrants into the sector, which shows that, over the past 5 years, on average, 9 businesses entered the sector per annum¹⁰.
23. Familiarisation costs can be quantified by multiplying the wage rate of the person familiarising themselves with the number of hours it takes for familiarisation. We assume that a business manager will be responsible for familiarisation; taking approximately one hour per business and statutory instrument; a current total familiarisation time of approximately five hours per business. This would reduce to two hours after the consolidations, i.e. a time saving of three hours per business. Multiplying this time saving (3 hours) by the ASHE (Annual Survey of Hours and Earnings)¹¹ median hourly wage rate of a business manager (£ 26.34¹²) which is then multiplied by the number of new entrants (9 businesses per annum) into the sector; yields a total benefit to business (England only) of approximately £ 711.13 per annum.

Benefits to Enforcement

Reduced familiarisation costs to new entrants into the sector (Ongoing Benefit)

24. 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

25. 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.

Summary of Total Costs and Benefits under Option 2

26. Under Option 2 there will be no cost to enforcement and industry. Simplification through consolidations will generate a total ongoing benefit to industry (new entrants) of approximately £7111 over 10 years. Applying a discount rate of 3.5% as per HMT Green book guidance yields a present value (PV) benefit of approximately £6,121 over 10 years.
27. The net impact on industry and society is therefore a total net benefit of £7111 over 10 years (£6,121 (Net Present Value (NPV)). A summary of the total costs and benefits under Option 2 are set out in table 2 below.

¹⁰ Data based on ONS average annual business birth rates for manufacture of prepared animal feed (SIC 1091)

¹¹ <http://www.statistics.gov.uk/statbase/product.asp?vlnk=13101>

¹² Wage rate obtained from Annual Survey of Hours and Earnings 2013, Median hourly wage rate of 'production managers and directors in manufacturing' was used, £20.26, <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-328216>. This uprated by 30% to account for overheads in line with Standard Cost Model (SCM) methodology (£26.34 inclusive) - SCM methodology <http://www.berr.gov.uk/files/file44503.pdf>

Table 2 – Summary: Total Cost and Benefits (Option 2)

COSTS	Yr 0	Yr1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Total	Average Annual	PV
ENFORCEMENT													
Local Authorities	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Total Costs to Enforcement	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
INDUSTRY													
Manufacture of prepared animal feed	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Total Costs to Industry	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0

BENEFITS	Yr 0	Yr1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Total	Average Annual	PV
ENFORCEMENT													
Local Authorities	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Total Benefits to Enforcement	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
INDUSTRY													
Manufacture of prepared animal feed	£711	£711	£711	£711	£711	£711	£711	£711	£711	£711	£7,111	£711	£6,121
Total Benefits to Industry	£711	£711	£711	£711	£711	£711	£711	£711	£711	£711	£7,111	£711	£6,121

NET IMPACT	Yr 0	Yr1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Total	Average Annual	PV
Net Enforcement	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Net Industry	£711	£711	£711	£711	£711	£711	£711	£711	£711	£711	£7,111	£711	£6,121
Net Society	£711	£711	£711	£711	£711	£711	£711	£711	£711	£711	£7,111	£711	£6,121

CONSULTATION

Formal Public Consultation

29. The FSA conducted a formal consultation from 24 September 2014 to 10 December 2014 the purpose of which was to seek stakeholder views on the draft consolidated instrument and to provide stakeholders with the opportunity to comment on the draft new Regulations and the associated Impact Assessment.

30. Eleven responses were received; these were from Trading Standards Institute (TSI), Sunderland City Council (SCC), and National Farmers Union (NFU), Which, British Egg Industry Council (BEIC), a private Consultant, the Pet Food Manufacturers Association (PFMA), the BAFSAM, the Public Analyst Scientific Services, a consumer and the Agricultural Industries Confederation (AIC).

Summary of Comments

31. Stakeholders were asked to comment on the two consolidated statutory instruments for animal feed and the impact assessment. The consultation questions can be found in the Annex.

32. There was a general consensus amongst industry and enforcement bodies that they supported the proposed consolidation. There were specific comments on the Enforcement SI in relation to the introduction of additional safeguards for officers exercising certain powers under the Regulations. Stakeholders asked for clarity on the audits and whether prior notification of the occupier was necessary. One stakeholder suggested that the requirements under the Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations relating to time limits, service of notices, offences by corporate bodies etc., and defences only appear to relate to offences under these Regulations and not those in the Animal Feed (Composition, Marketing and Use) (England) Regulations. Another stakeholder suggested that the Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations would be better aligned with the changes introduced by Regulation 691/2013¹³.

33. Where there were specific comments on the draft new Regulations, which the FSA considered would improve them without adding a regulatory burden, these have been reflected in the final SI.

¹³ amending Regulation (EC) No 152/2009 as regards methods of sampling and analysis

Statutory Review

34. The FSA is required by the UK Government to carry out a review every five years on the way in which EU legislation is implemented and enforced by the relevant domestic legislation and, to the extent that it is reasonably practicable, to compare that with how the same EU measures are implemented or enforced in other Member States. The FSA will carry out a review in April 2020 or earlier to assess whether the Regulations are achieving their intended objectives.

One In, Two Out Status

35. This consolidation of five domestic statutory instruments into two statutory instruments is out of scope of One-In-Two-Out, as the requirements are of EU origin and they do not introduce any gold plating. Identification of savings equivalent to twice the burden of the estimated costs to business is not therefore required.

Wider Impacts

Small & micro business assessment

36. The UK feed industry sector is comprised of mainly small and micro businesses (generally greater than 90%¹⁴) 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.

37. 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

38. 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

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

Powers of entry

40. The Powers of entry in national legislation for which the FSA has policy responsibility have been reviewed and consulted¹⁵ on. As a result of the review the FSA has introduced new safeguards to the powers provided for in The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015. 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.

¹⁴ based on data taken from the ONS – Inter-Departmental Business Register (IDBR) - <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/2013/index.html>

¹⁵ <http://www.food.gov.uk/news-updates/consultations/consultations-england/2013/fsa-review-poe>

- 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.

Criminal offences

41. In line with Ministry of Justice policy the FSA has increased the maximum term of imprisonment for offences available 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). The increase to 6 months will therefore reflect the powers of Magistrates' court to sentence up to six months and therefore facilitate more cases being heard at magistrates' court rather than requiring trial at Crown Court.

EU Feed law – brief description

Legislation on animal feed is harmonised at European Union (EU) level. It applies principally to feed for farmed livestock, but also covers feed for horses, pets, farmed fish, zoo and circus animals, and creatures living freely in the wild.

Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed sets limits for a range of specified contaminants that may occur in feed.

Directive 2008/38/EC establishing a list of intended uses of animal feeding stuffs for particular nutritional purposes regulates the marketing and use of such products, otherwise known as “dietetic feeds”.

Regulation (EC) No. 183/2005¹⁶ on feed hygiene requires most feed businesses involved in making, marketing or using feed to be registered or approved. Feed businesses in this context include manufacturers selling by-products of food production into the feed chain, livestock farmers and arable farms growing crops for feed use. The Regulation applies at all points in the supply and use of feed, and requires feed businesses to comply with standards in respect of facilities, storage, personnel and record-keeping.

Regulation (EC) No. 178/2002¹⁷ on the general principles of food law (which includes feed law) prohibits the marketing of unsafe feed and requires feed business to have traceability procedures in place.

Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed regulates the authorisation and marketing of feed that contains or consists of or is derived from genetically modified organisms.

Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition regulates the authorisation, marketing and use of feed additives. These products are more tightly controlled than other categories of feeds because they are considered to carry a higher potential risk to human and animal health.

Regulation (EC) No. 882/2004¹⁸ on official food and feed controls lays down the principles to be followed in the enforcement of these controls and specifies the action to be taken both to check businesses’ compliance with the rules and when breaches are found.

Regulation (EC) No. 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed is the principal EU instrument that regulates the labelling and packaging of feeds, and also contains provisions on safety and composition, including a list of materials that are prohibited for use as feed.

Regulation (EC) No. 152/2009¹⁹ on sampling and analysis sets out the harmonised methods to be used for a range of analytes. For analytes for which there is no harmonised EU method, laboratories are free to use any procedure that will give a scientifically valid result.

Legislation on the labelling and composition of animal feed covers:

- the information to be provided to purchasers on feed labels;
- the nutritional claims that can be made for certain feed products;
- the names and descriptions to be applied to various feed materials (that is, ingredients either fed singly or included in compound (manufactured) feeds);
- the additives (including vitamins, colourants, flavourings, binders) authorised for use in animal feed;

¹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:035:0001:0022:EN:PDF>

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

¹⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0882:20120101:EN:PDF>

¹⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009R0152-20140101&rid=1>

- the maximum levels of various contaminants (e.g. arsenic, lead, dioxins and certain pesticides); and
- certain substances that must not be used in feed.

These provisions are contained in a number of EU measures. The principal measures are:

- Regulation 1831/2003 on additives for use in animal nutrition;
- Directive 2002/32 on undesirable substances in animal feed;
- Directive 2008/38 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes; and
- Regulation 767/2009 on the placing on the market and the use of feed.

Annex

Consultation Questions

Draft consolidated Regulations

We invite stakeholders to comment on the two consolidated statutory instruments for animal feed. We would particularly welcome views on the following:

Q1. Does the consolidated legislation make it easier to identify animal feed requirements on composition, marketing and use, and hygiene, sampling etc. and enforcement?

Q2. Does the order and structure of the consolidated animal feed legislation seem logical?

Q3. Does the language used in the consolidated animal feed legislation make it easier to understand.

Impact Assessment

We invite stakeholder's comments on the Impact Assessment for the consolidated animal feed legislation. In particular, we would welcome views on the following:

Q4: Have we properly identified the groups of businesses affected by the proposal? If not, please identify those not included?

Q5: Do you agree that the costs of the consolidations to businesses would be negligible?

Q6. Do you agree that the costs of the consolidations to enforcers would be negligible?

Q7. Do you consider that there may be an impact on consumers as a result of these consolidations? If yes, how would they be affected?

Q8: Do you agree with the explanation at paragraphs 22 and 23 of the IA, that the consolidation of the animal feed regulations into two statutory instruments will reduce the familiarisation costs for new entrants to the sector? If not, please explain why and how this could be improved.

Q6. Do you agree with the explanation at paragraph 24 of the IA that the consolidation of the animal feed regulations into two statutory instruments would reduce the familiarisation costs for new entrant Enforcement Officers? If not, please explain why and how this could be improved.

Q7. We have been unable to identify the number of new entrant feed officers and therefore unable to monetise ongoing familiarisation costs (paragraph 24 of the IA refers). Any information that stakeholders can provide on the average annual number of new entrants engaged in feed enforcement activities would be welcome.

For all responses in relation to the Impact Assessment, and particularly where you disagree with our assessment, it would helpful if you could provide information to explain your response so that we may properly understand and evidence changes to the assessment where necessary.