

2003 No. 1026

AGRICULTURE

The Feeding Stuffs (Amendment) Regulations 2003

<i>Made</i> - - - - -	<i>3rd April 2003</i>
<i>Laid before Parliament</i>	<i>9th April 2003</i>
<i>Coming into force</i> - -	<i>1st May 2003</i>

The Secretary of State for Health, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures in the veterinary and phytosanitary fields for the protection of public health, in exercise of the powers conferred on him by that section, after consultation 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(c), makes(d) the following Regulations:

Title, commencement and extent

1.—(1) These Regulations may be cited as the Feeding Stuffs (Amendment) Regulations 2003 and shall come into force on 1st May 2003.

(2) Regulations 2 to 6, 13 and 15 shall extend to England only.

Amendment of the Feeding Stuffs Regulations 2000

2. The Feeding Stuffs Regulations 2000(e) shall be amended so far as they extend to England in accordance with regulations 3 to 6.

3. In regulation 2 (interpretation), immediately after the definition of “energy value” in paragraph (1) there shall be inserted the following definition—

““the Enforcement Directive” means Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition(f) as amended by Council Directive 1999/20/EC(g), Directive 2000/77/EC of the European Parliament and of the Council(h) and Directive 2001/46/EC of the European Parliament and of the Council(i);”.

(a) S.I. 1999/2027.

(b) 1972 c. 68.

(c) OJ No. L31, 1.2.2002, p.1. Under Article 3 of Regulation (EC) No. 178/2002 (OJ No. L31, 1.2.2002, p.1) “food law” extends to feed produced for, or fed to, food producing animals.

(d) The reserve powers in paragraph 5 of Schedule 3 to the Government of Wales Act 1998 (1998 c. 38) and section 57 of the Scotland Act 1998 (1998 c. 46) have been exercised in the case of these Regulations.

(e) S.I. 2000/2481, amended by S.I. 2001/541, S.I. 2001/3389 and S.I. 2002/892.

(f) OJ No. L265, 8.11.95, p. 17.

(g) OJ No. L80, 25.3.99, p. 20.

(h) OJ No. L333, 29.12.2000, p. 81.

(i) OJ No. L234, 1.9.2001, p. 55.

4. In each of regulations 7(1) and 25(1), for the expression “and the Feeding Stuffs (Amendment) Regulations 2002” there shall be substituted the expression “, the Feeding Stuffs (Amendment) Regulations 2002 and the Feeding Stuffs (Amendment) Regulations 2003”.

5. In regulation 14 (control of feeding stuffs and feed materials containing undesirable substances), for paragraph (9) there shall be substituted the following paragraph—

“(9) Where a person to whom the first paragraph of Article 16a of the Enforcement Directive applies has evidence that any feed material specified in column 2 of Chapter A of Part II of Schedule 7, which he has brought into England from a third country or put into circulation and which he holds or owns, contains any substance specified in column 1 of that Chapter in excess of the level specified in relation to it in column 3 of that Chapter, he shall—

- (a) notify the Agency and the authority which, by virtue of section 67(1), has the duty to enforce Part IV of the Act in relation to the feed material concerned; and
- (b) supply them with the information specified in the second paragraph of Article 16a of the Enforcement Directive.”.

6. In Schedule 3 (permitted additives and provisions relating to their use)—

(a) for the footnote to Part VII of the Table (permitted preservatives) there shall be substituted the following footnote—

“(1) Note also that (as referred to in Part IX of this Table) one preservative is permitted by virtue of Commission Regulation (EC) No. 1594/1999(a) and one by Commission Regulation (EC) No. 1252/2002(b).”; and

(b) for the provisions in Part IX of the Table (European Community Regulations by which additives are controlled) there shall be substituted the provisions set out in the Schedule to these Regulations.

Amendment of the Feeding Stuffs (Enforcement) Regulations 1999

7. The Feeding Stuffs (Enforcement) Regulations 1999(c) shall be amended in accordance with regulations 8 to 14.

8. In paragraph (1) of regulation 2 (general interpretation)—

(a) for the definition of “Directive 95/53” there shall be substituted the following definition—

““Directive 95/53” means Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition as amended by Council Directive 1999/20/EC, Directive 2000/77/EC of the European Parliament and of the Council and Directive 2001/46/EC of the European Parliament and of the Council;”; and

(b) immediately after the definition of “product” there shall be inserted the following definition—

““put into circulation” means sold or otherwise supplied, or had in possession with a view to selling or otherwise supplying;”.

9. In paragraph (1) of regulation 3 (enforcement), for the expression “and (8) and requirements made under regulations 4(5)(a) and 6(1)(b)(i)” there shall be substituted the expression “(5)(a) and (8), 6(1)(b)(i), 6A and 6B”.

10. For paragraph (7) of regulation 4 (control of products brought into the United Kingdom from third countries) there shall be substituted the following paragraph—

“(7) For the purposes of paragraph (6)—

- (a) it shall be for the competent authority to determine in which of the ways specified in the indents of Article 8.2 of Directive 95/53 the importer is to deal with the product concerned; and

(a) OJ No. 188, 21.7.1999, p. 35.

(b) OJ No. L183, 12.7.2002, p. 10.

(c) S.I. 1999/2325, amended in relation to England by S.I. 2000/656, S.I. 2000/2481, S.I. 2001/541, S.I. 2001/3389 and S.I. 2002/892, in relation to Wales by S.I. 2000/656, S.I. 2001/2253 (W163), S.I. 2001/3461 (W280) and S.I. 2002/1797 (W172) in relation to Scotland by S.S.I. 2000/62, S.S.I. 2000/453, S.S.I. 2001/104, S.S.I. 2001/334 and S.S.I. 2002/285 and in relation to Northern Ireland by S.R. 2001/209, S.R. 2001/428 and S.R. 2002/623.

- (b) in making that determination the competent authority shall comply with the second sub-paragraph of that Article.”.

11. In regulation 6—

- (a) for paragraph (2) there shall be substituted the following paragraph—

“(2) In complying with its duty under paragraph (1)(b)(i) the competent authority shall, where it considers that there is a serious risk of the kind referred to in regulation 6B(1), satisfy itself that the way selected cannot harm human or animal health or the environment.”; and

- (b) in paragraph (6), for the expression “, or make use of the right specified in the first paragraph, of Article 14 of Directive 95/53, as regards notification of the matters required to be notified, or, as the case may be, which may be notified under that Article” there shall be substituted the expression “of Article 14 of Directive 95/53 as regards the matters required to be notified under that Article”.

12. Immediately after regulation 6 there shall be inserted the following provisions—

“Control of products brought into the United Kingdom from third countries or traded within the European Community

6A.—(1) Where a person to whom the first paragraph of Article 16a of Directive 95/53 applies has evidence that any product to which the second indent of that paragraph applies, which he has brought into the United Kingdom from a third country or put into circulation and which he holds or owns, does not comply with any provision specified in a Directive listed in Article 2.1(a) of that Directive, he shall—

- (a) notify the Food Standards Agency and the competent authority; and
- (b) supply them with the information specified in the second paragraph of Article 16a of that Directive.

(2) Any person who fails to comply with paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

6B.—(1) Where the competent authority has information indicating that a product presents a serious risk to human or animal health or to the environment, it shall give to the person in charge of the product notice in writing that, until the notice is withdrawn, the product or any specified part of it—

- (a) is not to be used in animal nutrition; and
- (b) either is not to be removed or is to be removed to a place specified by the authority,

and any person who knowingly contravenes the requirements of such a notice shall be guilty of an offence and liable—

- (c) on summary conviction to a fine not exceeding the statutory maximum, and
- (d) on conviction on indictment to a fine.

(2) Where the competent authority gives notice in writing in accordance with paragraph (1), it shall as soon as reasonably practicable determine whether or not it considers that the product concerned fails to comply with a Community provision covered by Article 2.1(a) of Directive 95/53 and that there is a serious risk of the kind referred to in that paragraph, and—

- (a) if it does not so consider it shall forthwith withdraw the notice; and
- (b) if it does so consider it shall—
 - (i) investigate the matter referred to in the second indent of Article 16b.1 of Directive 95/53, and
 - (ii) to the extent necessary for the purpose of facilitating compliance with any requirement made pursuant to regulation 4(5) or 6(1), withdraw the notice.

(3) Upon the product concerned being dealt with in accordance with any requirement made by the competent authority pursuant to regulation 4(5) or 6(1), or where the competent authority determines that no such requirement is to be made, it shall, to the extent that it has not already done so, withdraw the notice given in accordance with paragraph (1).”.

13.—(1) In each of the provisions specified in paragraph (2), for the expression “and the Feeding Stuffs (Amendment) Regulations 2002” there shall be substituted the expression “, the Feeding Stuffs (Amendment) Regulations 2002 and the Feeding Stuffs (Amendment) Regulations 2003”.

(2) The provisions are regulations 7(2) and (4), the text of subsection (8) of section 67 of the Agriculture Act 1970^(a) shown as modified by regulation 9 and the text of subsection (17) of section 76 of that Act shown as modified by regulation 10.

14. For paragraph (b) of regulation 12 (modification of section 83 of the Agriculture Act 1970) there shall be substituted the following provision—

“(b) for subsection (5) there were substituted the following subsection—

“(5) Subsection (4) of this section shall not prevent an inspector who has taken a sample of any material in the prescribed manner from disclosing—

- (a) to the manufacturer, or to the last seller or last supplier of the material, information as to the place where, and the person from whom, the sample was taken;
- (b) to that manufacturer, last seller or supplier, or to any person who had the material on his premises for the purpose of sale or supply, information as to the results of any analysis of that sample; or
- (c) any information the disclosure of which is necessary in order to prevent a serious risk to human health, animal health or the environment arising.”.

Amendment of the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999

15. In paragraph (2) of regulation 2 (definition of “feedingstuff” and related definitions and general interpretation) of the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999^(b), at the end of the definition of “Directive 95/53” there shall be added the words “, Directive 2000/77/EC of the European Parliament and of the Council and Directive 2001/46/EC of the European Parliament and of the Council”.

Signed by authority of the Secretary of State for Health

Hazel Blears
Parliamentary Under-Secretary of State,
Department of Health

3rd April 2003

(a) 1970 c. 40.

(b) S.I. 1999/1872, amended by S.I. 2001/541 and S.I. 2002/892.

**PROVISIONS SUBSTITUTED FOR PART IX OF THE TABLE TO SCHEDULE 3 TO THE
FEEDING STUFFS REGULATIONS 2000****“PART IX****EUROPEAN COMMUNITY REGULATIONS BY WHICH ADDITIVES ARE CONTROLLED¹**

Commission Regulation (EC) No. 2316/98 concerning authorisation of new additives and amending the conditions for authorisation of a number of additives already authorised in feedingstuffs².

Commission Regulation (EC) No. 1594/1999 amending the conditions for the authorisation of an additive in feedingstuffs³.

Commission Regulation (EC) No. 2439/1999 on the conditions for authorisation of additives belonging to the group “binders, anti-caking agents and coagulants” in feedingstuffs⁴.

Commission Regulation (EC) No. 1353/2000 concerning the permanent authorisation of an additive and the provisional authorisation of new additives, new additive uses and new preparations in feedingstuffs⁵.

Commission Regulation (EC) No. 2437/2000 concerning the permanent authorisation of an additive and the provisional authorisation of new additives in feedingstuffs⁶.

Commission Regulation (EC) No. 2013/2001 concerning the provisional authorisation of a new additive use and the permanent authorisation of an additive in feedingstuffs⁷.

Commission Regulation (EC) No. 2200/2001 concerning provisional authorisation of additives in feedingstuffs⁸.

Commission Regulation (EC) No. 256/2002 concerning the provisional authorisation of new additives, the prolongation of provisional authorisation of an additive and the permanent authorisation of an additive in feedingstuffs⁹.

Commission Regulation (EC) No. 1252/2002 concerning the provisional authorisation of a new additive in feedingstuffs¹⁰.

Commission Regulation (EC) No. 1876/2002 concerning the provisional authorisation of a new use of an additive in feedingstuffs¹¹.

Commission Regulation (EC) No. 2188/2002 concerning the provisional authorisation of new uses of additives in feedingstuffs¹².

¹ Certain of the above Regulations relate to additive categories which include additives controlled by the Additives Directive, and which are listed in the relevant Part(s) of Parts I to VIII of the Table to this Schedule (e.g. the preservative formic acid is covered by Regulation (EC) No. 1594/1999, but certain other preservatives are covered by Part VII of the Table).

² OJ No. L289, 28.10.98, p. 4.

³ OJ No. L188, 21.7.1999, p. 35.

⁴ OJ No. L297, 18.11.1999, p. 8. The Annex to this Regulation is now replaced by the Annex to Regulation (EC) No. 739/2000 (OJ No. L87, 8.4.2000, p. 14).

⁵ OJ No. L155, 28.6.2000, p. 15.

⁶ OJ No. L280, 4.11.2000, p. 28.

⁷ OJ No. L272, 13.10.2001, p. 24.

⁸ OJ No. L299, 15.11.2001, p. 1.

⁹ OJ No. L41, 13.2.2002, p. 6.

¹⁰ OJ No. L183, 12.7.2002, p. 10.

¹¹ OJ No. L284, 22.10.2002, p. 7.

¹² OJ No. L333, 10.12.2002, p. 5.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Feeding Stuffs Regulations 2000 (S.I. 2000/2481, as already amended) which extend largely to England only, the Feeding Stuffs (Enforcement) Regulations 1999 (S.I. 1999/2325, as already amended) which extend to the whole of the United Kingdom and the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (S.I. 1999/1872, as already amended) which also extend to the whole of the United Kingdom.
2. Regulations 2 to 6, 13 and 15 of these Regulations extend to England only. Regulations 7 to 12 and 14 extend to the whole of the United Kingdom.
3. These Regulations implement—
 - (a) the second sub-paragraph of Article 8.2 of Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition (OJ No. L265, 8.11.95, p.17); and
 - (b) Directive 2001/46/EC of the European Parliament and of the Council amending Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and Directives 70/524/EC, 96/25/EC and 1999/29/EC on animal nutrition (OJ No. L234, 1.9.2001, p.55).
4. These Regulations also provide for the enforcement of the following Community Regulations—
 - (a) Commission Regulation (EC) No. 1252/2002 concerning the provisional authorisation of a new additive in feedingstuffs (OJ No. L183, 12.7.2002, p.10);
 - (b) Commission Regulation (EC) No. 1876/2002 concerning the provisional authorisation of a new use of an additive in feedingstuffs (OJ No. L284, 22.10.2002, p.7); and
 - (c) Commission Regulation (EC) No. 2188/2002 concerning the provisional authorisation of new uses of additives in feedingstuffs (OJ No. L333, 10.12.2002, p.5).
5. These Regulations—
 - (a) amend the Feeding Stuffs Regulations 2000 by—
 - (i) inserting into regulation 2 a definition of the term “the Enforcement Directive” (*regulation 3*),
 - (ii) making consequential amendments to regulations 7(1) and 25(1) (*regulation 4*),
 - (iii) imposing on those responsible for establishments producing products for animal nutrition an obligation to notify the Food Standards Agency and the relevant local authority, and supply them with specified information, if they have evidence that feed materials which they have imported or put into circulation contain certain undesirable substances at levels above the maximum ones prescribed (*regulation 5*), and
 - (iv) adding three new Commission Regulations to the list of Commission Regulations under which authorisation for the marketing of feed additives has been granted, which is contained in Part IX of the Table to Schedule 3, and making a consequential amendment to the footnote to Part VII of that Table (*regulation 6 and the Schedule*); and
 - (b) amend the Feeding Stuffs (Enforcement) Regulations 1999 by—
 - (i) updating the definition of the term “Directive 95/53” in regulation 2 by inserting into it a reference to Directive 2001/46/EC (*regulation 8(a)*),
 - (ii) inserting into that regulation a definition of the term “put into circulation” (*regulation 8(b)*),
 - (iii) providing for the enforcement by the competent authority of new regulations 6A and 6B as inserted by regulation 12 of these Regulations (*regulation 9*),
 - (iv) providing that it is the function of the competent authority to determine in which of the ways specified in the indents of Article 8.2 of Directive 95/53/EC a person who has imported from a third country a consignment of products for animal nutrition which does not comply with specified EC controls on animal feed is to deal with the consignment and specifying how that function is to be performed (*regulation 10*),

- (v) specifying how the competent authority is to perform its function of determining in which of the ways specified in the indents of Directive 13.1 of Directive 95/53/EC a person who has brought in from the European Community a consignment of products for animal nutrition which does not comply with specified EC controls on animal feed is to deal with the consignment (*regulation 11(a)*),
 - (vi) substituting for the existing regulation 6(6) a provision which requires the competent authority to provide the Food Standards Agency with specified information (*regulation 11(b)*),
 - (vii) inserting a new provision, regulation 6A, which imposes on those responsible for establishments producing products for animal nutrition an obligation to notify the Food Standards Agency and the competent authority, and supply them with specified information, if they have evidence that products for animal nutrition which they have imported or put into circulation do not comply with specified EC controls prescribed in relation to such products (*regulation 12*),
 - (viii) inserting a further new provision, regulation 6B, which requires a competent authority having information that a consignment of products for animal nutrition presents a serious risk to human or animal health or the environment to prohibit its use and control its movement pending further investigation and the authority determining how the consignment should be dealt with (*regulation 12*),
 - (ix) making consequential amendments to specified provisions (*regulation 13*), and
 - (x) permitting inspectors who have taken samples of materials in the prescribed manner to disclose information obtained in the course of so doing in order to prevent a serious risk to human or animal health on the environment from arising (*regulation 14*); and
- (c) make consequential amendments to the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (*regulation 15*).

6. A regulatory impact assessment has been prepared for these Regulations and has been placed in the library of each House of Parliament, together with a transposition note setting out how the second sub-paragraph of Article 8.2 of Directive 95/53/EC and the main elements of Directive 2001/46/EC are transposed into domestic law by these Regulations. Copies may be obtained from the Animal Feed Unit of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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