

2006 No. 113

AGRICULTURE, ENGLAND

The Feeding Stuffs and the Feeding Stuffs (Sampling and Analysis) (Amendment) (England) Regulations 2006

<i>Made</i> - - - -	<i>23rd January 2006</i>
<i>Laid before Parliament</i>	<i>26th January 2006</i>
<i>Coming into force</i> - -	<i>16th February 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by sections 66(1), 74A, 77(4), 78(6) and 84 of the Agriculture Act 1970(a) (as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000(b) and articles 2 and 6 of the Ministry of Agriculture Fisheries and Food (Dissolution) Order 2002(c)).

In so far as these Regulations cannot be made under the powers in the Agriculture Act specified above, the Secretary of State makes these Regulations in exercise of her powers as a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(d) in relation to the common agricultural policy of the European Community(e) and measures in the veterinary and phytosanitary fields for the protection of public health(f).

There has been consultation in accordance with the requirements of section 84(1) of the Agriculture Act 1970 or as appropriate 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(g).

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- (a) 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. 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.
- (b) S.I. 2000/656.
- (c) S.I. 2002/794.
- (d) 1972 c.68.
- (e) S.I. 1972/1811.
- (f) S.I. 1999/2027.
- (g) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

Title, application and commencement

1. These Regulations may be cited as the Feeding Stuffs and the Feeding Stuffs (Sampling and Analysis) (Amendment) (England) Regulations 2006, apply in relation to England only and come into force on 16th February 2006.

Amendments to the Feeding Stuffs (England) Regulations 2005

2.—(1) In Schedule 5 (prescribed limits for undesirable substances) to the Feeding Stuffs (England) Regulations 2005(a), Chapter A is amended in accordance with paragraphs (2) to (4).

(2) In relation to the entries for fluorine —

- (a) for the expression “Mineral mixtures for cattle, sheep and goats” in column 2 substitute the expression “Complementary feeding stuffs containing 4% phosphorous or less” and opposite that expression, in column 3 for the figure “2000” substitute “500”;
- (b) for the expression “Other complementary feeding stuffs” in column 2 substitute the expression “Complementary feeding stuffs containing more than 4% phosphorous” and opposite that expression, in column 3 for the expression “(fluorine content per percentage point phosphorous in the feeding stuff)” substitute “per 1% phosphorous”.

(3) In relation to the entries for lead, for the expression “grass meal, lucerne meal or clover meal” in column 2 substitute the expression “green fodder (including products such as hay, silage, fresh grass, etc)”.

(4) In relation to the entries for mercury, after the entry “– feed materials produced by the processing of fish or other marine animals” in column 2 insert the entry “– calcium carbonate” and opposite that entry, in column 3 insert the figure “0.3”.

Amendments to the Feeding Stuffs (Sampling and Analysis) Regulations 1999

3.—(1) The Feeding Stuffs (Sampling and Analysis) Regulations 1999(b) are amended in relation to England in accordance with paragraphs (2) to (6).

(2) In regulation 1 (title, commencement and interpretation), at the end of the definition of Directive 2002/70/EC add the expression “as amended by Commission Directive 2005/7/EC(c).”.

(3) In regulation 6, for paragraph (4) substitute the following —

“(4) Where a sample of a feeding stuff is to be analysed pursuant to —

- (a) section 75(1) (sample analysed at the request of the purchaser) of the Act, or
- (b) section 78(1) (further analysis by Government chemist) of the Act in so far as that sub-section does not relate to official controls,

and neither paragraph (1) nor (3) applies, the analysis shall be carried out in the like manner as that prescribed by Article 11(1)(a) or as appropriate (b) of Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure verification of compliance with feed and food law, animal health and animal welfare rules(d).”.

(4) In Schedule 2 Part I (general provisions), after paragraph 3 add the following paragraph —

“4. Assessment of compliance in analysis for undesirable substances

(a) Subject to paragraph (c), in the case of analysis to detect the presence of one or more of the undesirable substances listed in Schedule 5 to the Feeding Stuffs (England) Regulations 2005 (“the Schedule”), a feeding stuff which has been sampled and analysed in accordance with these Regulations does not comply with the relevant prescribed limit or limits set out in the Schedule if, after taking into account expanded measurement uncertainty and

(a) S.I. 2005/3281

(b) S.I. 1999/1663, as previously amended by S.I. 2001/541, S.I. 2002/892, S.I. 2003/1296, S.I. 2004/2146 and S.I. 2005/3281.

(c) OJ No. L27, 29.1.2005, p.41.

(d) OJ No. L191, 28.5.2004, p.1.

correction for recovery in accordance with paragraph (b), the analytical result indicates the presence of an undesirable substance in excess of the maximum content specified for that substance in column 3 of the Schedule.

(b) In assessing compliance for the purposes of paragraph (a), the analysed concentration must be corrected for recovery and the expanded measurement uncertainty subtracted from the analytical result.

(c) The procedure in paragraphs (a) and (b) is not applicable in the case of microscopic analysis or in any other case where the method of analysis makes it impossible to estimate measurement uncertainty and correction for recovery.”.

(5) In relation to the entries regarding dioxins and dioxin-like PCBs in Annex I to Part II (methods of analysis) of Schedule 2 —

(a) in column 2 after the expression “Annex II to that Directive” add “, (in relation to point 2 of Annex I as replaced by, and in relation to point 2 of Annex II as amended by, Directive 2005/7/EC)”;

(b) in column 3 opposite the expression added by sub-paragraph (a) insert “OJ No. L27, 29.1.2005, p.41”.

(6) In Schedule 3 Part II (notes for completion of certificate) in note (8) add the following sub-paragraph —

“(d) in cases where paragraph 4 of Part I of Schedule 2 is applicable, the result —

(i) corrected or uncorrected for recovery, the manner of reporting and the level of recovery being indicated;

(ii) as x plus or minus U , where x is the analytical result and U is the expanded measurement uncertainty, using a coverage factor of 2 to give a level of confidence of approximately 95%.”.

Signed by authority of the Secretary of State for Health

Caroline Flint
Parliamentary Under Secretary of State
Department of Health

23rd January 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, amend the Feeding Stuffs (England) Regulations 2005 (“the 2005 Regulations”) and further amend the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (“the 1999 Regulations”).

2. The Regulations implement the following European Community legislation —

- (a) Commission Directive 2005/6/EC (OJ No. L24, 27.1.2005, p.33) amending Directive 71/250/EEC as regards reporting and interpretation of analytical results required under Directive 2002/32/EC;
- (b) Commission Directive 2002/7/EC (OJ No. L27, 29.1.2005, p.41) amending Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs; and
- (c) Commission Directive 2002/8/EC (OJ No. L27, 29.1.2005, p.44) amending Annex 1 to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed.

3. The Regulations also make consequential amendments to the 1999 Regulations to reflect the fact that as from 1.1.2006 the general obligation on Member States, formerly contained in Council Directive 95/53/EC, to ensure that sampling and analysis carried out in pursuit of official controls follows prescribed Community methods, is now given effect by Article 11 of 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 (OJ No. L191, 28.5.2004, p.1).

4. Regulation 2 of these Regulations implements Commission Directive 2005/8/EC by amending Schedule 5 to the 2005 Regulations in respect of certain entries for lead, fluorine and mercury.

5. In regulation 3 of these Regulations —

- (a) paragraphs (2) and (5) implement Commission Directive 2005/7/EC in transposing by reference the amendments made by that Directive to Commission Directive 2002/70/EC;
- (b) paragraph (3) makes the consequential amendments referred to in paragraph 3 above;
- (c) paragraphs (4) and (6) implement Commission Directive 2005/6/EC by introducing new requirements regarding expanded measurement uncertainty and correction for recovery when analysing and reporting on the analysis of animal feed to determine the levels of undesirable substances.

6. A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House of Parliament together with a transposition note setting out how the operative provisions of Commission Directives 2005/6, 2005/7 and 2005/8 are transposed into domestic law by these Regulations. Copies may be obtained from the Primary Production Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2 6NH.

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