

2006 No. 3472

AGRICULTURE, ENGLAND

FOOD, ENGLAND

**The Official Controls (Animals, Feed and Food) (England)
Regulations 2006**

<i>Made</i> - - - -	<i>28th December 2006</i>
<i>Laid before Parliament</i>	<i>8th January 2007</i>
<i>Coming into force</i> - -	<i>16th February 2007</i>

CONTENTS

Part 1

General

1. Title, application and commencement
2. Interpretation

Part 2

Designation of competent authorities and the exchange of information amongst them

3. Purposes of designations
4. Designation of the Secretary of State as competent authority
5. Designation of local authorities, etc, as competent authorities
6. Exchange of information

Part 3

Audits and Community controls

7. Powers of auditors and exception for Food Standards Agency auditors
8. Powers of the Secretary of State in relation to audits of local authorities, etc
9. Powers of the Food Standards Agency undertaking audits on behalf of the Secretary of State
10. Community controls

Part 4

Assistance and co-operation under Title IV and recovery of expenses

11. Local authorities' duties under Title IV

12. Facilitating assistance and co-operation under Title IV
13. Recovery of expenses

Part 5

Enforcement and penalties

14. Interpretation of Part 5, etc
15. Enforcement
16. Powers of enforcement officers
17. Offences and penalties
18. Offences by bodies corporate
19. Time limits for prosecution
20. Amendment to the 2006 Regulations

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the common agricultural policy of the European Community, medicinal products and measures in the veterinary and phytosanitary fields for the protection of public health.

He has carried out a consultation in accordance with 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), as last amended by Regulation (EC) No. 575/2006 of the European Parliament and of the Council^(d).

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972.

Part 1

General

Title, application and commencement

1. These Regulations may be cited as the Official Controls (Animals, Feed and Food) (England) Regulations 2006, shall apply in England only, and come into force on 16th February 2007.

Interpretation

2.—(1) In these Regulations—

“the 2006 Regulations” means the Official Feed and Food Controls (England) Regulations 2006^(e);

“audit” means, except in regulation 10, an audit of a competent authority carried out for the purposes of Article 4.6 of Regulation 882/2004 in relation to one or more pieces of relevant legislation;

(a) SI 1972/1811 in relation to the common agricultural policy and medicinal products, and SI 1999/2027 in relation to veterinary and phytosanitary measures for the protection of public health.

(b) 1972 c. 68.

(c) OJ No. L31, 1.2.2002, p.1.

(d) OJ No. L100, 8.4.2006, p. 3.

(e) SI 2006/15, amended by SI 2006/1179.

“auditor” means a person carrying out such an audit;

“the food authority” in relation to any relevant legislation for which a designation is made under these Regulations has the same meaning as it has in that relevant legislation;

“inspector” means, in relation to any piece of relevant legislation, an inspector, veterinary inspector, or other officer authorised by the Secretary of State or other authority to act in England under that relevant legislation;

“the local authority” in relation to any relevant legislation for which a designation is made under these Regulations has the same meaning as it has in that relevant legislation;

“premises” means premises or other property, place or means of transport;

“Regulation 882/2004” means 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(a), as amended by Commission Regulation (EC) No 776/2006 amending Annex VII as regards Community reference laboratories(b) and as read with—

- (a) Commission Decision 2006/677 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules(c);
- (b) Commission Regulation (EC) No 2074/2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) No 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(d);
- (c) Commission Regulation (EC) No 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004, and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004(e); and
- (d) 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 as last amended by Regulation (EC) No. 575/2006 of the European Parliament and of the Council;

“relevant legislation” means feed law and food law to which Regulation 882/2004 applies and animal health and welfare rules, except—

- (a) “relevant feed law” and “relevant food law” as defined in the 2006 Regulations; and
- (b) the Veterinary Medicines Regulations 2006(f) in so far as they regulate zootechnical additives and medicated feedingstuffs.

(2) In the definition of “relevant legislation” in paragraph (1)—

- (a) “medicated feedingstuffs” has the meaning given in Article 1.6 of Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products (g) as amended by Directive 2004/28/EC of the European

(a) OJ No. L165, 30.4.2004, p.1; see the corrected text as set out in the corrigendum to the Regulation published in OJ No. L 191, 28.5.2004, p. 1.

(b) OJ No. L136, 24.5.2006, p. 3.

(c) OJ No. L 278, 10.10.2006, p. 15.

(d) OJ No. L338, 22.12.2005, p. 27.

(e) OJ No. L338, 22.12.2005, p. 83.

(f) SI 2006/2407.

(g) OJ No. L311, 28.11.2001, p. 1.

Parliament and of the Council amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products (a); and

(b) “zootechnical additives” means feed additives in the categories mentioned in Article 6.1(d) and (e) of Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition (b) with the exception of those belonging to the functional group listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation.

(3) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in Regulation 882/2004.

(4) Unless the context otherwise requires, references in these Regulations to an “Article” or “Title” are to an Article or Title, respectively, of Regulation 882/2004.

Part 2

Designation of competent authorities and the exchange of information amongst them

Purposes of designations

3. Designations in this Part are made for the purposes of Article 4.1.

Designation of the Secretary of State as competent authority

4. The Secretary of State is designated a competent authority in relation to relevant legislation.

Designation of local authorities, etc, as competent authorities

5.—(1) The local authority is designated a competent authority in relation to functions of enforcement and execution (other than prosecution) which it exercises under relevant legislation.

(2) The food authority is designated a competent authority in relation to functions of enforcement and execution (other than prosecution) which it exercises under relevant legislation.

(3) In this regulation, “the local authority” and “the food authority” include a local authority or food authority which exercises its functions referred to in paragraph (1) or (2) as an “enforcement authority” under and within the meaning of relevant legislation.

Exchange of information

6. Competent authorities designated under these Regulations may disclose information to each other and to other competent authorities in the United Kingdom and other member States for the purposes of Regulation 882/2004.

Part 3

Audits and Community controls

Powers of auditors and exception for Food Standards Agency auditors

7.—(1) An auditor may exercise the powers in this regulation if he is authorised—

(a) by a competent authority designated under these Regulations to carry out an audit of its activities; or

(b) by the Secretary of State to carry out an audit pursuant to regulation 8(3).

(a) OJ No. L136, 30.4.2004, p. 58.
(b) OJ No. L268, 18.10.2003, p. 29.

(2) For the purposes of carrying out an audit, an auditor may enter premises to which an inspector has a power of entry under relevant legislation (“audit premises”) as if the auditor were an inspector meeting the criteria for gaining such entry under that relevant legislation.

(3) An auditor exercising his power of entry may bring with him any person whose assistance he reasonably requires.

(4) An auditor may request such information from any person at any audit premises as he reasonably requires for purposes of the audit, and may inspect such records as he reasonably requires for those purposes.

(5) An auditor may make or require copies of such records.

(6) When exercising the powers conferred by this regulation an auditor shall upon request produce evidence of his authorisation under these Regulations.

(7) This regulation does not apply where regulation 9 applies.

Powers of the Secretary of State in relation to audits of local authorities, etc

8.—(1) The Secretary of State may require a competent authority designated under regulation 5 to provide him with information about any audits it has carried out or undergone or which it plans to carry out or undergo.

(2) Where the Secretary of State requires information under paragraph (1), he shall do so in writing and shall state the time limit within which the required information is to be provided.

(3) The Secretary of State may require—

- (a) an auditor to carry out an audit of a competent authority designated under regulation 5; and
- (b) the competent authority concerned to provide such assistance to that auditor as he may reasonably require in order to carry out the audit.

Powers of the Food Standards Agency undertaking audits on behalf of the Secretary of State

9.—(1) Where the Secretary of State arranges for the Food Standards Agency to undertake an audit in relation to relevant legislation, the audit provisions of the 2006 Regulations shall apply as if—

- (a) the undertaking of such an audit were a purpose described in regulations 8(1) and 9(1) of the 2006 Regulations; and
- (b) the competent authority concerned were an enforcement authority to which regulations 8 and 9 of the 2006 Regulations applied.

(2) The audit provisions of the 2006 Regulations are—

- (a) regulations 8 and 9(1) to (8) and (10), as read with regulation 10; and
- (b) regulation 11.

(3) Regulations 17(2), (4) and (5)(c), 18(2) to (9), 19 to 21, 41 to 43, 45 and 46 of the 2006 Regulations shall apply where paragraph (1) of this regulation applies as if that paragraph were a provision of the 2006 Regulations falling to be enforced or executed under the 2006 Regulations.

Community controls

10. In so far as he does not already have powers to do so, for the purposes of facilitating audits to be carried out by Commission experts pursuant to Article 45, an inspector may enter any premises to which he has a power of entry under relevant legislation, and—

- (a) bring with him any such experts; and
- (b) show them such records as he inspects.

Part 4

Assistance and co-operation under Title IV and recovery of expenses

Duties of local authorities, etc, under Title IV

11. A local authority or food authority which is designated a competent authority under regulation 5 shall notify the Secretary of State if it considers that it is unable to undertake action required in any individual case under Title IV (administrative assistance and cooperation in the areas of feed and food) and shall provide such information to the Secretary of State as he may reasonably request.

Facilitating assistance and co-operation under Title IV

12.—(1) For the purposes of assisting a competent authority of another member State as provided for under Article 36.3, or enabling a competent authority designated under these Regulations to do so, an inspector exercising his powers under relevant legislation to enter premises or to inspect records may—

- (a) bring with him authorised officers of a competent authority of another member State;
- (b) show to them such records as he inspects; and
- (c) make copies for them or require copies to be made for them of such records as he has powers to make or require under the relevant legislation.

(2) For the purposes of facilitating a visit by an inspection team sent by the Commission as provided for in Article 40.3(a), an inspector may bring with him representatives of the Commission when exercising his powers under relevant legislation to enter premises or to inspect records.

Recovery of expenses

13.—(1) Expenses charged by a competent authority to a feed or food business pursuant to Article 40.4 shall be paid by that business on the written demand of the competent authority concerned.

(2) Expenses charged by a competent authority to an operator pursuant to Article 28 shall be paid by that operator on the written demand of the competent authority concerned.

(3) In this regulation “competent authority” means a competent authority designated under regulation 4 or 5.

Part 5

Enforcement and penalties

Interpretation of Part 5, etc

14.—(1) In this Part—

- (a) “an enforcement officer” means an officer authorised to enforce these Regulations by the competent authority responsible for enforcement pursuant to regulation 15;
- (b) “premises” excludes any premises or part of premises used exclusively as a dwelling;
- (c) “a relevant auditor” means an auditor exercising powers under regulation 7;
- (d) “a relevant inspector” means an inspector accompanied by any person pursuant to regulation 10 or 12.

(2) Regulations 15 to 19 do not apply where regulation 9 applies.

Enforcement

15. Enforcement of these Regulations shall be the responsibility of the competent authority which in any given circumstances authorises the exercise of powers under these Regulations.

Powers of enforcement officers

16.—(1) An enforcement officer may—

- (a) at any reasonable hour enter premises;
- (b) make any enquiries, observe any activity or process, and take photographs; and
- (c) inspect any article or records of any class which appear to the enforcement officer to be relevant for the purposes of his investigation, and may make or require copies of such records and remove such records as he reasonably requires.

(2) An enforcement officer shall—

- (a) produce evidence of his authorisation when requested to do so;
- (b) as soon as he reasonably can, provide to the person appearing to him to be responsible for records he removes under paragraph (1)(c) a written receipt identifying those records; and
- (c) as soon as he reasonably can after deciding that they are no longer required, return such records, apart from those used as evidence in court proceedings.

Offences and penalties

17.—(1) A person is guilty of an offence if without reasonable excuse he obstructs or causes or permits to be obstructed—

- (a) a relevant auditor;
- (b) a relevant inspector;
- (c) any person who accompanies a relevant auditor or relevant inspector under regulation 7(3), 10 or 12; or
- (d) an enforcement officer.

(2) For the purposes of paragraph (1), to obstruct includes—

- (a) failure—
 - (i) to produce records;
 - (ii) to provide copies; or
 - (iii) to provide reasonable facilities for copying records, as required under these Regulations; and—
- (b) failure by any person to provide information in his possession when requested to do so by a relevant auditor, a relevant inspector or an enforcement officer.

(3) A person is guilty of an offence if without reasonable excuse he supplies to a relevant auditor, a relevant inspector or an enforcement officer information which, in any material particular, is false or misleading.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

Offences by bodies corporate

18.—(1) If an offence under regulation 17 committed by a body corporate is shown to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Time limits for prosecution

19. A prosecution for an offence under this Part may begin no later than after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecutor,

whichever is the earlier.

Amendment to the 2006 Regulations

20.—(1) The 2006 Regulations are amended as follows.

(2) In regulation 2(1), in the paragraph defining Community legislation, after “Directive 2004/41,” add “Regulation 999/2001”.

(3) In Schedule 1, after the definition of “Directive 2004/41”, insert—

“ “Regulation 999/2001” means Regulation (EC) 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (a) as defined (as “the Community TSE Regulation”) in the Transmissible Spongiform Encephalopathies (England) (No. 2) Regulations 2006(b) and as amended by Commission Regulation (EC) 1041/2006 amending Annex III to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards monitoring of transmissible spongiform encephalopathies in ovine animals(c);”.

(4) In Schedule 3, in the definition of “relevant food law”, in paragraph (a)—

- (a) after sub-paragraph (vi) delete “and”;
- (b) at the end of paragraph (vii) add—

“, and

(viii) the matters regulated under Schedule 2 to the Transmissible Spongiform Encephalopathies (England) (No. 2) Regulations 2006 in so far as that Schedule applies in relation to animals slaughtered for human consumption, together with the matters covered under point 2 of Part II of Chapter A of Annex III to Regulation 999/2001 in so far as that point applies in relation to animals slaughtered for human consumption”.

Barry Gardiner

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

28th December 2006

(a) OJ No. L147, 31.5.2001, p. 1.

(b) SI 2006/1228.

(c) OJ No. L187, 8.7.2006, p. 10.

EXPLANATORY NOTE

(This Note does not form part of the Regulations)

These Regulations apply and enforce Regulation (EC) No. 882/2004 (OJ No. L165, 30.4.2004, p.1; corrected in the corrigendum published in OJ No. L191, 28.5.2004, p. 1) (“Regulation 882/2004”) in England in relation to animal health and welfare rules, and feed and food law excluded from the Official Feed and Food Controls Regulations (England) 2006 (“the 2006 Regulations”), which also apply and enforce Regulation 882/2004.

These Regulations provide for the designation of the Secretary of State and local authorities (including food authorities) as competent authorities for the purposes of Article 4.1 of Regulation 882/2004 (regulations 3 to 5). The designations relate to:

- (a) animal health and welfare rules;
- (b) food law which concerns controls on animals;
- (c) feed law not listed in Schedule 3 to the 2006 Regulations; and
- (d) food law concerning controls on food excluded from the designations in the 2006 Regulations, namely:
 - (i) organic foods, including imported organic food products;
 - (ii) protected name food products and specific character food products;
 - (iii) veterinary medicines residues;
 - (iv) pesticides residues;
 - (v) the import from third countries of, and intra-Community trade in, products of animal origin; and
 - (vi) beef labelling.

They also relate to transmissible spongiform Encephalopathies (“TSEs”) in relation to testing (including sampling) controls on bovine, ovine and caprine animals slaughtered for human consumption.

The designations do not include medicated feedingstuffs and zootechnical additives, which are covered in paragraph 4 of Schedule 5 to the Veterinary Medicines Regulations 2006 (SI 2006/2407).

These Regulations provide for the exchange of information between competent authorities in England and elsewhere in the United Kingdom, and in the European Union (regulation 6).

They create independent powers for a competent authority’s auditors to conduct audits required under Article 4.6 of Regulation 882/2004 (regulation 7). Provision is made for the Secretary of State to call for information from a local authority about its audits; and for him to require an auditor to carry out an audit of that local authority’s official controls as a competent authority (regulation 8).

Regulation 9 provides that where the Secretary of State arranges that the Food Standards Agency is to carry out an audit for purposes of Regulation 882/2004 of relevant legislation under these Regulations, monitoring provisions of the 2006 Regulations apply together with the corresponding enforcement provisions from the 2006 Regulations.

The Regulations also supplement existing powers of inspectors so that they may bring Commission experts with them for purposes of the Commission’s own audits (regulation 10). There are provisions to facilitate assistance and co-operation between Member States required under Title IV (Articles 34 to 40) of Regulation 882/2004 (regulations 11 and 12), in particular to enable officials of the Commission and other Member States to attend with an inspector who investigates suspected breaches under the relevant legislation. Regulation 13 provides for the payment on written demand of expenses charged under Article 40.4 and Article 28 of Regulation 882/2004.

Part 5 provides for the enforcement of the Regulations. It is an offence under regulation 17 to obstruct an auditor, an enforcement officer, or an inspector who brings with him representatives from the Commission or other Member States, or any persons accompanying an inspector or auditor pursuant to the Regulations. It is also an offence under regulation 17 to provide misleading or false information to, or to fail to provide information requested by, an inspector or auditor or an enforcement officer. The penalty on summary conviction for the offences is a fine at level 5 of the standard scale (currently £5,000) or three months' imprisonment, or both (regulation 17(4)).

Regulation 20 amends the 2006 Regulations to remove from the definition of "relevant food law" in so far as it applies in relation to food, Schedule 2 to the Transmissible Spongiform Encephalopathies (England) (No. 2) Regulations 2006 ("the TSE Regulations") and certain provisions in the EU Regulation on TSEs (Regulation No. EC 999/2001 (OJ No. L147, 31.5.2001, p. 1)) relating to the monitoring of TSEs in slaughtered goats and sheep.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been placed in the library of both Houses of Parliament and copies can be obtained from the OFFC Implementation Team, Department for Environment, Food and Rural Affairs, Area 204, 1A Page Street, London, SW1P 4 PQ.

2006 No. 3472

AGRICULTURE, ENGLAND

FOOD, ENGLAND

The Official Controls (Animals, Feed and Food) (England)
Regulations 2006

£3.00

© Crown copyright 2007

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1695 1/2007 161695T 19585

