
STATUTORY INSTRUMENTS

2010 No. 2280

AGRICULTURE, ENGLAND

The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010

<i>Made</i>	- - - -	<i>7th September 2010</i>
<i>Laid before Parliament</i>		<i>20th September 2010</i>
<i>Coming into force</i>	- -	<i>11th October 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 66(1), 67(5), 74A, 79(9) and 84 of the Agriculture Act 1970(1), as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000(2).

In so far as these Regulations cannot be made under the powers contained in the Agriculture Act 1970, the Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(3).

He has been designated for the purposes of section 2(2) in relation to measures in the veterinary and phytosanitary fields for the protection of public health(4), the common agricultural policy of the European Union(5) and measures relating to feed produced for or fed to food-producing animals(6).

There has been consultation during the preparation of these Regulations in accordance with the requirements of section 84(1) of the Agriculture Act 1970 or, as appropriate, of 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(7).

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- (1) 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 and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). 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. Functions of the Minister of Agriculture were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I.2002/794). Section 74A was inserted by the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6. Sections 66(1) and 84 were amended by S.I. 2004/3254.
- (2) S.I. 2000/656.
- (3) 1972 c. 68.
- (4) S.I. 1999/2027.
- (5) S.I. 1972/1811, amended by S.I. 2002/794.
- (6) S.I. 2003/2901.
- (7) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468

PART 1

General and introductory

Title, application and commencement

1. These Regulations may be cited as the Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010, apply in relation to England only and come into force on 11th October 2010.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Agriculture Act 1970;

“Regulation 152/2009” means Commission Regulation (EC) No.152/2009 laying down the methods of sampling and analysis for the official control of feed⁽⁸⁾;

“the Feed Hygiene Regulations” means the Feed (Hygiene and Enforcement) (England) Regulations 2005⁽⁹⁾;

“the GM Feed Regulations” means the Genetically Modified Animal Feed (England) Regulations 2004⁽¹⁰⁾; and

“analyst” means an agricultural analyst or deputy agricultural analyst.

(2) Any expression used in these Regulations and Regulation 152/2009 has the meaning that it bears in Regulation 152/2009.

(3) Any reference to a numbered section is a reference to the section so numbered in the Act as modified by these Regulations.

Prescribed metric substitution

3. For the purposes of its application to feeding stuffs, the Act shall be read as if —

(a) in section 68(2)(b) the words “to sales in quantities of not more than 25 kilograms” were substituted for the words “to sales of small quantities (that is to say, sales in quantities of not more than fifty six pounds or the prescribed metric substitution)”; and

(b) in section 76(5) the words “six kilograms” were substituted for the words “fourteen pounds or the prescribed metric substitution”.

PART 2

Miscellaneous requirements relating to sampling and analysis

Methods of sending a final sample

4. Any final sample required to be sent to any person pursuant to —

with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).

⁽⁸⁾ OJ No. L54, 26.2.2009, p.1.

⁽⁹⁾ S.I.2005/3280, amended by S.I. 2006/3120 and S.I. 2009/3255.

⁽¹⁰⁾ S.I. 2004/2334, amended by S.I. 2005/1265 and S.I. 2007/3007.

- (a) paragraph 8 of Annex I to Regulation 152/2009;
- (b) section 77(1) or (2);
- (c) section 78(1)(a), (2) or (4);
- (d) regulation 30(1), (2) or (5) or 31(2) of the Feed Hygiene Regulations; or
- (e) regulation 6(2)(b) or (c) of the GM Feed Regulations,

may be sent by any appropriate method or delivered by hand.

Qualifications of analysts

5. The prescribed qualifications for an analyst for the purposes of section 67(5) in so far as it relates to feeding stuffs and the required qualifications for a person analysing feed for the purposes of the GM Feed Regulations are that —

- (a) the analyst must —
 - (i) be a Chartered Chemist or possess a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry, and
 - (ii) be a Fellow or Member of the Royal Society of Chemistry; and
- (b) the analyst's practical experience of the examination of feed must be attested by another analyst appointed under section 67(3).

Analysis other than in the course of official controls

- 6.—(1) Where a sample of feed is to be analysed pursuant to —
- (a) section 75(1) (sample analysed at the request of the purchaser); or
 - (b) section 78(1) (further analysis by Government Chemist) in so far as that subsection does not relate to official controls,

the method of analysis shall be the appropriate one, if any, set out in Regulation 152/2009.

(2) In cases where there is no appropriate method of analysis in Regulation 152/2009, the analysis shall be carried out in the manner referred to in 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⁽¹¹⁾ as read with [Commission Regulation \(EC\) No. 669/2009](#) implementing Regulation (EC) No.882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision [2006/504/EC](#)⁽¹²⁾.

Form of certificate of analysis

7. The certificate of analysis of any feed to be sent pursuant to —
- (a) section 77(4);
 - (b) regulation 30(4) or 31(3) of the Feed Hygiene Regulations; or
 - (c) regulation 6(2)(b) of the GM Feed Regulations,

must be in the form set out in Schedule 1 and must be completed in accordance with the notes to that Schedule.

(11) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.29). This Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14).

(12) OJ No. L194, 25.7.2009, p.11.

PART 3

Amendment and modification of other legislation with regard to sampling and analysis

Amendment or modification of the Act

8. The Act is amended or as the case may be modified in accordance with regulations 9 to 20.

9. In section 66(1) (interpretation of Part IV), insert at the appropriate place the following definitions —

““final sample” has the meaning that it bears in Annex I to Regulation 152/2009;”;

““Regulation 152/2009” means [Commission Regulation \(EC\) No. 152/2009](#) laying down the methods of sampling and analysis for the official control of feed;”.

10. Section 68 (duty of seller to give statutory statement) in so far as it applies in relation to feeding stuffs shall apply as if —

- (a) in subsection (4)(b) “final sample” were substituted for “sampled portion”; and
- (b) in subsection (5) —
 - (i) “final sample” were substituted for “sample taken from the portion in question”, and
 - (ii) “in accordance with Regulation 152/2009” were substituted for “in the prescribed manner”.

^{F1}11.

12. Section 70 (use of names or expressions with prescribed meanings) in so far as it applies in relation to feeding stuffs shall apply as if —

- (a) in subsection (2) “final sample” were substituted for “sampled portion”; and
- (b) in subsection (4) —
 - (i) “final sample” were substituted for “sampled portion”, and
 - (ii) “that sample” were substituted for “the sample taken from that portion”.

13. Section 71 (particulars to be given of certain attributes if claimed to be present) in so far as it applies in relation to feeding stuffs shall apply as if —

- (a) in subsection (2)(b) “final sample” were substituted for “sampled portion”; and
- (b) in subsection (3) —
 - (i) “final sample” were substituted for “sampled portion”, and
 - (ii) “that sample” were substituted for “the sample taken from that portion”.

^{F2}14.

^{F3}15.

16. Section 75 (purchaser’s right to have sample taken and analysed) in so far as it applies in relation to feeding stuffs shall apply as if in subsection (1) “in accordance with Regulation 152/2009” were substituted for “in the prescribed manner”.

17. Section 76 (inspector’s power to enter premises and take samples) in so far as it applies in relation to feeding stuffs shall apply as if —

- (a) in subsection (1) “in accordance with Regulation 152/2009” were substituted for “in the prescribed manner”; and

(b) for subsection (4) the following were substituted —

“(4) Without prejudice to any other power or duty as to the taking of samples, an inspector may for the purposes of this Part of this Act take a sample of any material which has been sold for use as a feeding stuff or which he has reasonable cause to believe to be intended for sale as such.”.

18. Section 77 (division of samples and analysis by agricultural analyst) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) for subsection (1) the following were substituted —

“(1) Where an inspector has taken a sample and prepared and packaged final samples in accordance with Regulation 152/2009 the inspector, in addition to sending a final sample to the agricultural analyst for the inspector’s area in accordance with the requirements of paragraph 8 of Annex I to that Regulation —

(a) shall send one final sample —

(i) where the sample was taken pursuant to the request of a purchaser under section 75 of this Act, to the seller or his agent;

(ii) in any other case, to the person on whose premises the sample was taken, or, if the person on whose premises the sample was taken purchased the material in question for use and not for resale, to the seller or his agent; and

(b) subject to section 78 of this Act, shall retain at least one final sample for nine months.”;

(b) for subsection (2) the following were substituted —

“(2) If the person who manufactured any material of which an inspector has taken a sample as mentioned in subsection (1) is not a person to whom a final sample is required to be sent under that subsection, the inspector shall send a final sample to the manufacturer unless he does not know and is unable after making reasonable inquiries to ascertain before the expiration of fourteen days from the date when the sample was taken —

(a) the manufacturer’s name; or

(b) any address of the manufacturer in the United Kingdom.”;

(c) in subsection (3) —

(i) “final sample” were substituted for “part of a sample”, and

(ii) “in accordance with Regulation 152/2009” were substituted for “in the prescribed manner”; and

(d) in subsection (4) —

(i) “final sample” were substituted in each case for “part of a sample” or “part of the sample” as the case may be,

(ii) “in such manner, if any, as may be prescribed” were omitted,

(iii) “subsection (1)” were substituted for “subsection (1)(a)”, and

(iv) in paragraph (b) “subsection (1)(a)(ii)” were substituted for “subsection (1)(b)(ii)”.

19. Section 78 (further analysis by Government Chemist) in so far as it applies in relation to feeding stuffs shall apply as if —

(a) in subsection (1) —

(i) for paragraph (a) the following were substituted —

“(a) to send the final sample retained by the inspector under section 77(1)

(b) of this Act (as that section is modified by regulation 18(a) of the

Status: Point in time view as at 23/11/2010.

Changes to legislation: There are currently no known outstanding effects for the The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010. (See end of Document for details)

Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010) (“the retained sample”) to the Government Chemist for analysis;”, and

- (ii) in paragraph (b) “retained sample” were substituted for “remaining part” and “that sample” were substituted for “that part”;
- (b) in subsection (2) —
 - (i) “in accordance with Regulation 152/2009” were substituted for “in the prescribed manner”,
 - (ii) in paragraph (a)(i) “retained sample” were substituted for “remaining part of the sample”,
 - (iii) in paragraph (a)(ii) “retained sample, whether that sample” were substituted for “remaining part, whether that part”, and
 - (iv) in paragraph (b) “the retained sample” were substituted for “that remaining part”;
- (c) in subsection (4) —
 - (i) “in accordance with Regulation 152/2009” were substituted for “in the prescribed manner”, and
 - (ii) “retained sample” were substituted for “remaining part of the sample”;
- (d) in subsection (5) —
 - (i) “part of a” were omitted,
 - (ii) in paragraph (a) “part of the” were omitted, and
 - (iii) in paragraph (b) “the retained sample” were substituted for “the part”; and
- (e) in subsection (6) —
 - (i) “in such manner, if any, as may be prescribed any part of” were omitted, and
 - (ii) “the sample” were substituted for “the part”.

20. Section 79 (supplementary provisions relating to samples and analysis) in so far as it applies in relation to feeding stuffs shall apply as if in subsection (3) —

- (a) “is specified by Regulation 152/2009 or” were inserted after “quality of any material”; and
- (b) “the method so specified or prescribed” were substituted for “the method prescribed”.

Textual Amendments

- F1** Reg. 11 revoked (23.11.2010) by [The Animal Feed \(England\) Regulations 2010 \(S.I. 2010/2503\)](#), reg. 1, [Sch. 2 para. 9](#)
- F2** Reg. 14 revoked (23.11.2010) by [The Animal Feed \(England\) Regulations 2010 \(S.I. 2010/2503\)](#), reg. 1, [Sch. 2 para. 9](#)
- F3** Reg. 15 revoked (23.11.2010) by [The Animal Feed \(England\) Regulations 2010 \(S.I. 2010/2503\)](#), reg. 1, [Sch. 2 para. 9](#)

Amendment of the Feed Hygiene Regulations

- 21.**—(1) The Feed Hygiene Regulations are amended in accordance with paragraphs (2) to (6).
- (2) In paragraph (1) of regulation 2 (interpretation) —
- (a) omit the definition of “point 4 compliant laboratory”;
 - (b) for the definition of “prescribed manner” substitute the following definition —

“prescribed manner” means the manner prescribed by Regulation (EC) No. 152/2009 of the European Parliament and of the Council laying down the methods of sampling and analysis for the official control of feed or otherwise in accordance with Article 11(1) of Regulation 882/2004;” and

(c) omit the definition of “sampled portion”.

(3) For regulation 29 (application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations) substitute the following —

“Appointment of agricultural analysts

29.—(1) Subject to paragraph (3), an enforcement authority shall appoint one or more agricultural analysts in connection with the performance of its duty under regulation 16.

(2) An agricultural analyst appointed under paragraph (1) must have those qualifications prescribed in relation to the Act by regulation 5 of the Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010.

(3) An agricultural analyst already appointed by an enforcement authority pursuant to section 67(3)(b) of the Act shall be deemed to be appointed for the purposes of paragraph (1).”.

(4) In regulation 30 (procedure relating to samples for analysis) —

(a) for paragraph (1)(b) substitute the following —

“(b) send one part for analysis to the agricultural analyst for the area of the enforcement authority from which the authorised officer derives his authority;”;

(b) for paragraph (3) substitute the following —

“(3) The part of the sample sent to the agricultural analyst must be accompanied by a statement signed by the authorised officer confirming that the sample was taken in the manner prescribed by law.”; and

(c) in paragraph (4) omit the expression “or as the case may be the point 4 compliant laboratory”.

(5) In regulation 31 (secondary analysis by the Government Chemist) for paragraph (3)(a) substitute the following —

“(a) completed in the form set out in Schedule 1 to the Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010 and in accordance with the notes to that Schedule; and”.

(6) In regulation 32 (additional provisions relating to sampling and analysis) —

(a) in paragraph (2) omit the expression “the analyst at the point 4 compliant laboratory”; and

(b) in paragraph (3) omit the expression “an analyst at a point 4 compliant laboratory”.

Amendment of the GM Feed Regulations

22.—(1) The GM Feed Regulations are amended in accordance with paragraphs (2) and (3).

(2) In regulation 6(1) (application of various provisions of the Act), omit sub-paragraphs (c) and (d).

(3) Omit regulation 7 (application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999).

Status: Point in time view as at 23/11/2010.

Changes to legislation: There are currently no known outstanding effects for the The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010. (See end of Document for details)

Amendment of the Official Feed and Food Controls (England) Regulations 2009

23.—(1) The Official Feed and Food Controls (England) Regulations 2009⁽¹³⁾ are amended in accordance with paragraph (2).

(2) In Schedule 2 (definition of relevant feed law), in paragraph (b) for the expression “the Feeding Stuffs (Sampling and Analysis) Regulations 1999” substitute “the Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010”.

Revocation

24. The Feeding Stuffs (Sampling and Analysis) Regulations 1999⁽¹⁴⁾ are revoked.

PART 4

Undesirable substances

Amendment of the Feeding Stuffs (England) Regulations 2005

^{F4}**25.**

Textual Amendments
F4 Reg. 25 revoked (23.11.2010) by [The Animal Feed \(England\) Regulations 2010](#) (S.I. 2010/2503), reg. 1, [Sch. 2 para. 9](#)

Signed by authority of the Secretary of State for Health.

Anne Milton
Parliamentary Under-Secretary of State,
Department of Health

⁽¹³⁾ S.I. 2009/3255.
⁽¹⁴⁾ S.I. 1999/1663. Those Regulations were amended by S.I. 2001/541, S.I. 2003/1296, S.I. 2003/1503, S.I. 2003/2912, S.I. 2004/1301, S.I. 2004/2146, S.I. 2004/2688, S.I. 2005/3281 and S.I. 2006/113.

Status: Point in time view as at 23/11/2010.

Changes to legislation: There are currently no known outstanding effects for the The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010. (See end of Document for details)

Part 2

Notes for completion of certificate.

1. Insert the name of the local authority.
2. Insert date.
3. Insert name of person submitting the sample for analysis and mode of transport.
4. Insert the name or description applied to the material.
5. Insert the distinguishing mark on the sample and the date of sampling shown.
6. Indicate the particulars marked, labelled or otherwise documented.
7. Insert the relevant results, the conclusions drawn from those results and any other relevant observations. Expand this section as necessary.
8. In the case of analysis of substances for which no method is prescribed by relevant EU legislation, after the results indicate the method used.

F⁵SCHEDULE 2

Regulation 25(3)(a)

Entries to be substituted in Chapter A of Schedule 5 to the Feeding Stuffs Regulations 2005

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Textual Amendments

F5 Sch. 2 revoked (23.11.2010) by [The Animal Feed \(England\) Regulations 2010 \(S.I. 2010/2503\)](#), reg. 1, [Sch. 2 para. 9](#)

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EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations provide for the execution in England of [Commission Regulation \(EC\) No. 152/2009](#) laying down the methods of sampling and analysis for the official control of feed (OJNo. L54, 26.2.2009, p.1), (“the Commission Regulation”). The Commission Regulation repeals and re-enacts with certain amendments a large number of European directives concerning methods of sampling and analysis of feeding stuffs. The Regulations revoke (in relation to England) the Feeding Stuffs (Sampling and Analysis) Regulations 1999 ([S.I. 1999/1663](#), amended by [S.I. 2001/541](#), [S.I. 2003/1296](#), [S.I. 2003/1503](#), [S.I. 2003/2912](#), [S.I. 2004/1301](#), [S.I. 2004/2146](#), [S.I. 2004/2688](#), [S.I.2005/3281](#) and [S.I. 2006/113](#)) which implemented those directives and re-enact those administrative provisions of the 1999 Regulations which need to be kept in force.

2. These Regulation also, in Part 4, amend the Feeding Stuffs (England) Regulations 2005 (S.I. 2005/3281; previous amending instruments are S.I. 2006/113, S.I. 2006/2808, S.I. 2006/3120, S.I. 2007/3008, S.I. 2008/1523, S.I. 2009/28 and S.I. 2009/2825) in order to implement Commission Directive 2009/141/EC amending Annex 1 to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels for arsenic, theobromine, *Datura* sp., *Ricinus communis* L., *Croton tiglium* L. and *Abrus precatorius* L., (OJ No. L308, 24.11.2009, p.20) (“the Commission Directive”).

3. The Regulations put in place administrative and other measures for the execution of the Commission Regulation, in particular by —

- (a) providing for metric equivalents of imperial quantities mentioned in the Agriculture Act 1970 (*regulation 3*);
- (b) prescribing the methods of sending samples for analysis (*regulation 4*);
- (c) prescribing the required qualifications for agricultural analysts (*regulation 5*);
- (d) providing for the methods to be used where an analysis is carried out other than in the context of official controls (*regulation 6*); and
- (e) prescribing the form to be used for a certificate of analysis (*regulation 7 and Schedule 1*).

4. The Regulations in Part 3 make textual amendments to primary and secondary legislation in order to avoid any instances of overlap or inconsistency between the Commission Regulation and domestic legislation (*regulations 8 to 23*) and revoke the 1999 Regulations (*regulation 24*).

5. The Regulations implement the Commission Directive by amending provisions of the Feeding Stuffs (England) Regulations 2005 concerning undesirable substances in animal feeds, notably in relation to maximum permitted levels for the substances mentioned in the title to the Commission Directive as set out in paragraph 2 (*regulation 25 and Schedule 2*).

6. A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Animal Feed Branch of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

Status:

Point in time view as at 23/11/2010.

Changes to legislation:

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