
STATUTORY INSTRUMENTS

2010 No. 2280

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

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⁽¹⁾;

“the Feed Hygiene Regulations” means the Feed (Hygiene and Enforcement) (England) Regulations 2005⁽²⁾;

“the GM Feed Regulations” means the Genetically Modified Animal Feed (England) Regulations 2004⁽³⁾; 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”.

(1) OJNo. L54, 26.2.2009, p.1.

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

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

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 —
- (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(4) 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](#)(5).

(4) 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).

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

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.

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”.

11. Section 69 (marking of material prepared for sale) in so far as it applies in relation to feeding stuffs shall apply as if —

- (a) in subsection (4)(c) “final sample” were substituted for “sampled portion”; and
- (b) in subsection (5) “final sample in question” were substituted for “sample taken from the portion in question”.

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”.
- 14.** In section 73 (deleterious ingredients in feeding stuff) —
- (a) in subsection (1) —
 - (i) for “sampled portion” substitute “final sample”, and
 - (ii) omit “the sample taken from”; and
 - (b) in subsections (2)(a) and (b), (2A) and (3)(b) in each case for “sampled portion” substitute “final sample”.
- 15.** In section 73A —
- (a) in subsection (1) —
 - (i) for “sampled portion” substitute “final sample”, and
 - (ii) omit “the sample taken from”; and
 - (b) in subsections (2)(a) and (b) and (3) in each case for “sampled portion” substitute “final sample”.
- 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 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

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- (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”.

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;”;
- (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.”;
- (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).

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

- 23.—(1) The Official Feed and Food Controls (England) Regulations 2009(6) 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(7) are revoked.

PART 4

Undesirable substances

Amendment of the Feeding Stuffs (England) Regulations 2005

- 25.—(1) The Feeding Stuffs (England) Regulations 2005(8) are amended in accordance with paragraphs (2) and (3).
- (2) In paragraph (8) of regulation 14 (control of products intended for animal feed containing undesirable substances), for the expression “is within the limit specified in the relevant entry in column 3 of Schedule 5” substitute “is less than 2 parts per million”.
- (3) In Schedule 5 (prescribed limits for undesirable substances) —
- (a) in Chapter A, for the entries relating to arsenic substitute the entries set out in Schedule 2 to these Regulations; and
- (b) in Chapter B, for the entries relating to castor oil plant (*Ricinus communis* L.) substitute the following —

(6) S.I. 2009/3255.

(7) 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.

(8) S.I. 2005/3281, amended by 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.

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Undesirable substances</i>	<i>Products intended for animal feed</i>	<i>Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i>
Seeds and husks from <i>Ricinus communis</i> L., <i>Croton tiglium</i> L. and <i>Abrus precatorius</i> L. as well as their process derivatives (in so far as determinable by analytical microscopy), separately or in combination.	All feeding stuffs	10

(c) in Chapter C —

(i) for the entries relating to theobromine substitute the following —

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Undesirable substances</i>	<i>Products intended for animal feed</i>	<i>Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i>
Theobromine	Complete feeding stuffs	300
	except:	
	– complete feeding stuffs for pigs	200
	– complete feeding stuffs for dogs, rabbits, horses and fur-producing animals	50

(ii) omit the expression “*Croton – Croton tiglium* L.”, and

(iii) for the expression “*Datura stramonium* L.” substitute “*Datura* sp.”.

Signed by authority of the Secretary of State for Health.

7th September 2010

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

Status:

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Changes to legislation:

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