
EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Wales, provide for the execution and enforcement there 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. L165, 30.4.2004, p.1 in relation to “relevant feed law” and “relevant food law”, each defined in regulation 2(1) of these Regulations. The revised text of this Regulation EC/882/2004 is now set out in a Corrigendum, OJ No. L191, 28.5.2004, p.1).

2. These Regulations also impose prohibitions on the introduction of imports of certain feed and certain food into Wales in the light of Article 11 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 (OJ No. L31, 1.2.2002, p.1), as was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4) and as read with Article 10 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L139, 30.4.2004, p.1; the revised text of that Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.3).

3. These Regulations also amend the General Food Regulations 2004 (S.I.2004/3279) in so far as they apply in relation to Wales, to provide for the execution and enforcement there of Article 12 of Regulation (EC) No. 178/2002, which imposes conditions on the export and re-export of food and feed from the Community for placing on the market of third countries, in so far as that Article relates to food. These Regulations also insert a new regulation, 6A, into the General Food Regulations 2004 in so far as they apply in relation to Wales. That new regulation provides a defence in relation to exports in the case of prosecutions for contravening or failing to comply with food law. The defence applies both in relation to items intended for export to a third country and to items intended for export to a member State.

4. These Regulations cite as enabling powers both section 2(2) of the European Communities Act 1972 (1972 c. 68) and certain sections of the Food Safety Act 1990 (1990 c. 16). The Food Safety Act powers have been exercised to enact regulation 41(2) of these Regulations, which inserts a revised regulation 4 into the General Food Regulations 2004 to provide for the execution and enforcement of Article 12 of Regulation (EC) No. 178/2002 in so far as it relates to food, as described in paragraph 3 above.

5. These Regulations —

- (a) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation (EC) No. 882/2004 (regulation 3);
- (b) provide for the exchange and provision of information by competent authorities (regulation 4);
- (c) enable a competent authority to require a control body to provide information and make records available and provide that a person who —
 - (i) fails to comply with a requirement to provide information or make records available, or
 - (ii) in purported compliance with such a requirement furnishes false or misleading information,

Status: This is the original version (as it was originally made).

- is guilty of an offence (regulation 5);
- (d) enable the National Assembly for Wales to issue codes of recommended practice to feed authorities and food authorities (regulation 6);
 - (e) give the Food Standards Agency the function of monitoring the performance of enforcement authorities in enforcing certain legislation (regulation 7);
 - (f) give the Food Standards Agency the power, for the purpose of carrying out the function referred to in sub-paragraph (e) of this paragraph —
 - (i) to require information to be provided and records to be made available (regulation 8); and
 - (ii) to authorise individuals (who may thereby exercise certain powers, including a power of entry) (regulation 9);
 - (g) define certain terms used in regulation 7 to 9 of these Regulations (regulation 10);
 - (h) provide that a person who —
 - (i) obstructs a person exercising powers to enter premises, take samples or inspect and copy records,
 - (ii) fails to comply with requirements to provide information or make available records or provide facilities, records, information or other assistance, or
 - (iii) in purported compliance with such a requirement furnishes false or misleading evidence,will be guilty of an offence (regulation 11);
 - (i) provide a right of appeal in respect of the decision of the competent authority concerning the approval of certain establishments taken under Article 31 of Regulation (EC) No. 882/2004 (regulations 12 and 13);
 - (j) provide that an authorised officer of a competent authority may take with him or her the staff of the competent authority of another Member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation (EC) No. 882/2004 (regulation 14);
 - (k) provide that when an “enforcing officer”, defined in regulation 15(2), enters premises for the purpose of executing and enforcing official controls that officer may take with him or her a Commission expert to enable that expert to carry out functions under Article 45 of Regulation (EC) No. 882/2004 (regulation 15);
 - (l) provide that a person who enters premises under the powers referred to in sub-paragraphs (j) or (k) and discloses any information obtained on the premises with regard to any trade secret is guilty of an offence unless that person does so in the performance of his or her duty (regulation 16);
 - (m) specify which authorities are responsible for executing and enforcing regulations 9(8), 11 and 16 (regulation 17);
 - (n) provide powers of entry for authorised officers of the authorities referred to in sub-paragraph (m) (regulation 18);
 - (o) create the offence of obstructing an officer acting in the execution of Part II of these Regulations (regulation 19);
 - (p) provide penalties for offences (regulation 20);
 - (q) provide a time limit for bring prosecutions for offences under Part II (regulation 21);
 - (r) make provision for the enforcement and execution of Part 3 of these Regulations (regulations 23 and 24);

- (s) provide that the Commissioners for Her Majesty's Revenue and Customs carry out the functions given to customs services under Article 24 of Regulation (EC) No. 882/2004 (regulation 25);
- (t) make provision for the deferred enforcement and execution of these Regulations until the product reaches its destination (regulation 26);
- (u) in the light of Article 11 of Regulation (EC) No. 178/2002 as read with Article 10 of Regulation (EC) No. 852/2004 (as described in paragraph 2 above) prohibit the introduction into Wales of certain feed and certain food unless specified conditions are met (regulation 27);
- (v) provide for the checking of products introduced into Wales (regulation 28);
- (w) provide that an enforcement authority has the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation (EC) No. 882/2004 and is the competent authority for the purposes of Article 22 of that Regulation (imports of feed and food from third countries) (regulation 29);
- (x) provide for the service of notices when an authorised officer of an enforcement authority wishes to take certain measures or exercise certain powers under Article 19 of Regulation (EC) No. 882/2004 (regulation 30);
- (y) provide a right of appeal in respect of the service of a notice under regulation 30 (regulations 31 and 32);
- (z) provide for the National Assembly for Wales or the Agency by written declaration to suspend or impose conditions on the introduction into Wales of any product from a third country where either of them learns or reasonably suspects that any food or feed that has been or may be introduced into Wales from that third country is likely to constitute a serious risk to animal or public health (regulation 33);
- (aa) provide for charges to be payable in relation to controls carried out on consignments (regulation 34);
- (bb) provide for the procurement and analysis of samples of food for the purposes of the execution and enforcement of the "Import Provisions", defined in regulation 22 (regulations 35 and 36);
- (cc) provide powers of entry for authorised officers of a food authority in relation to the execution and enforcement of the Import Provisions (regulation 37);
- (dd) create the offence of obstructing an officer acting in the execution of the Import Provisions (regulation 38);
- (ee) create offences of contravening or failing to comply with specified regulations and failing to comply with a notice served under the Import Provisions and provide penalties for offences under Part III (regulation 39);
- (ff) provide a time limit for bringing prosecutions for offences under Part III (regulation 40);
- (gg) amend the General Food Regulations 2004 (S.I. 2004/3279) in so far as they apply in relation to Wales, as described in paragraph 3 above (regulation 41);
- (hh) provide that where the commission of an offence under these Regulations is due to the act or default of some other person that other person is guilty of the offence (regulation 42);
- (ii) provide that in proceedings for an offence under these Regulations it is a defence for the accused to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (regulation 43);
- (jj) provide that where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or a person

Status: This is the original version (as it was originally made).

purporting to act as such that officer or person as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 44);

(kk) provide that where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner that partner as well as the partnership is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 45);

(ll) provide for the protection of officers acting in good faith (regulation 46);

(mm) provide for the service of documents (regulation 47);

(nn) provide for the revocation of specified instruments to the extent (regulation 48).

6. A full Regulatory Appraisal on the effect that these Regulations will have on the costs of business has been prepared and placed in the Library of the National Assembly for Wales. Copies may be obtained from the Food Standard Agency, Southgate House, Wood Street, Cardiff CF10 1EW.