
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales only, provide for the continuing execution and enforcement of Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene (OJ No L 35, 8.2.2005, p 1), (“Regulation 183/2005”) and Commission Regulation (EC) No 152/2009 laying down the methods of sampling and analysis for the official control of feed (OJ No L 54, 26.2.2009, p 1), (“Regulation 152/2009”), and also make provision as to administration generally in relation to feed law, in particular so as to give effect to 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 L 165, 30.4.2004, p 1), (“Regulation 882/2004”).

Part 2 of these Regulations deals with the execution and enforcement of Regulation 183/2005, which provides that almost all businesses producing, trading in or using animal feed should be either registered, or as the case may be approved, by the competent authorities. The excepted activities to which Regulation 183/2005, and consequently Part 2 of these Regulations, do not apply, are set out in Article 2 of that Regulation and comprise—

- (a) the private domestic production of feed for animals not kept for food production, or kept for private domestic consumption only;
- (b) the feeding of non food-producing animals;
- (c) the feeding of animals kept for private domestic consumption or for direct supply, by the producer, of small quantities of primary products to the final consumer or to local retailers;
- (d) the direct supply, by the producer, of small quantities of primary produced feed to local farms for use on those farms; and
- (e) the retailing of pet food.

In particular provision is made in Part 2 to—

- (a) designate the competent authorities for the purposes of the various functions mentioned in Regulation 183/2005 (*regulation 4*);
- (b) identify those provisions of Regulation 183/2005 where failure to comply gives rise to an offence (*regulation 5 and Schedule 2*);
- (c) set out the requirements which must be observed by anyone—
 - (i) notifying the enforcement authority with a view to registering a feed business establishment (*regulation 6*); or
 - (ii) applying for approval of a feed business establishment (*regulation 7*);
- (d) lay down the procedures to be followed by an enforcement authority when—
 - (i) suspending the registration or approval of a feed business establishment (*regulation 8*);
 - (ii) lifting the suspension of a registration or approval (*regulation 9*); or
 - (iii) revoking the registration or approval of a feed business establishment (*regulation 10*);
- (e) set out the requirements to be observed by anyone applying for an amendment to a registration or approval (*regulation 11*);

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

- (f) provide for a right of appeal against decisions relating to registrations or approvals taken by enforcement authorities (*regulation 12*); and
- (g) specify the fees payable by an applicant for approval or amendment to an approval (*regulation 13 and Schedule 3*).

Part 3 of these Regulations provides for the execution of Regulation 152/2009 and contains other provisions relating to sampling and analysis, in particular by—

- (a) making provision for the appointment of agricultural analysts and prescribing the required qualifications for a person appointed (*regulation 14*);
- (b) laying down the procedure to be observed when taking and dividing samples for analysis (*regulation 15*);
- (c) providing for secondary analysis of a sample to be carried out by the Laboratory of the Government Chemist (*regulation 16*);
- (d) making provision for the sending or hand delivery of samples (*regulation 17*);
- (e) prescribing the form and evidential status of a certificate of analysis (*regulation 18*);
- (f) making provision for methods of analysis where the sampling has not been carried out in the course of official controls (*regulation 19*); and
- (g) making it an offence to tamper or otherwise interfere with a sample (*regulation 20*).

Part 4 of these Regulations contains provisions relating to the execution and enforcement of these Regulations, in particular—

- (a) specifying that it is the duty of each feed authority in its area to enforce the Regulations (*regulation 21*);
- (b) making provision for the Welsh Ministers to appoint one or more persons to take over the functions of a feed authority in specified circumstances (*regulation 22(1)*);
- (c) setting conditions on the exercise of an authorised officer's powers outside of that officer's local authority area (*regulation 22(2)*); and
- (d) limiting the personal liability of an authorised officer acting in good faith (*regulation 23*).

Part 5 of these Regulations contains enforcement powers and provisions dealing with related matters; in detail—

- (a) a power for an authorised officer to serve an improvement notice where a feed business is failing to comply with specified feed law (*regulation 24*);
- (b) the right of a business operator to appeal to a magistrates' court against an improvement notice (*regulation 25*);
- (c) the right of further appeal to the Crown Court (*regulation 26*);
- (d) additional matters relating to appeals (*regulation 27*);
- (e) provision for a court to impose a prohibition order on a feed business operator convicted of an offence under specified feed law (*regulation 28*);
- (f) a power for a magistrates' court to impose on an operator an emergency prohibition order under specified conditions and after due notice has been served (*regulation 29*);
- (g) powers for an authorised officer for specified purposes to enter premises, together with associated powers of inspection etc. (*regulation 30*);
- (h) a power for an authorised officer to detain or seize non-compliant feed and apply to the magistrates' court for its destruction or disposal (*regulation 31*);
- (i) a number of offences relating to the exercise of enforcement powers (*regulation 32*);

- (j) provision for recovery of expenditure incurred by the enforcement authority in dealing with non-compliance (*regulation 33*);
- (k) the maximum penalties that a court may impose for offences under these Regulations (*regulation 34*);
- (l) defences to offences under specified feed law (*regulation 35*);
- (m) provision that responsible persons within corporate bodies or Scottish partnerships may in specified circumstances be personally liable for offences committed by those bodies (*regulation 36*);
- (n) provisions relating to where proceedings for an offence may be taken under specified feed law and the time limits for beginning a prosecution under these Regulations (*regulation 37*); and
- (o) requirements regarding the service of notices (*regulation 38*).

Part 6 of these Regulations contains provisions that make consequential amendments to the Official Feed and Food Controls (Wales) Regulations 2009 (*regulation 39*) and revoke certain other regulations (*regulation 40 and Schedule 5*).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Food Standards Agency at Food Standards Agency Wales, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW or from the Agency's website at www.food.gov.uk/wales.