

APPENDIX 3

THE DRAFT OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2005 – SUMMARY OF THE PRINCIPAL ELEMENTS OF THE STATUTORY INSTRUMENT (SI)

Please note that this summary aims only to explain the principal elements of the draft SI. It has been prepared for the purposes of the consultation to help interested parties understand the issues on which we would particularly appreciate their views.

Main Provisions

Regulation 3 – Competent authorities

This designates the competent authorities in England for the purposes of EU Regulation 882/2004. The competent authorities are those authorities that are responsible for organising or undertaking official controls in respect of feed law and food law. It is proposed that the SI, in general, should cover all feed law and food law with a view to ensuring a consistent and integrated approach. This means that both the Food Standards Agency and Defra (the Secretary of State) must be designated as competent authorities. In doing so, it is necessary to define their particular responsibilities. This is to be achieved by identifying the areas of feed and food law for which Defra is the competent authority (a full list is being prepared but some examples are included in Regulation 3(12)). By default, all other areas are the Agency's responsibility. The only exception to this relates to official control of medicated feed and zootechnical additives. Defra, and in particular the Veterinary Medicines Directorate, has responsibility for these areas and has decided to apply EU Regulation 882/2004 by means of the new Veterinary Medicines Regulations 2005. These draft Regulations are the subject of a separate consultation. Details are available on the website of the Veterinary Medicines Directorate at: <http://www.vmd.gov.uk/>

In view of the responsibilities of local authorities and port health authorities for official feed and food controls, 'feed authorities' and 'food authorities' are also designated. In addition, HM Customs and Excise (Revenue and Customs from 1 April 2005) is designated in the draft SI (the Commissioners) as a competent authority because of their involvement in import controls. However, this issue is to be considered further by Agency and HM Customs and Excise officials.

The particular areas of EU Regulation 882/2004 for which the different competent authorities have responsibility are defined by reference to specific Articles as outlined in Schedules 2 and 3 of the SI.

Regulation 4 – Exchanging information

An 'information gateway' is established to provide the competent authorities with a means of exchanging information that they receive in relation to the execution and enforcement of official controls. This is proposed to ensure that obligations in the EU Regulation, for example, for monitoring and reporting enforcement activity, may be met. It provides a mechanism for the various competent authorities to contribute enforcement

data to the national control plan and annual reports that the UK will be required to prepare. Careful consideration is still being given to this point and to the possibility of relying instead on implied powers for exchange of information from the EU Regulation itself.

Regulation 5 – Obtaining information

This gives powers to the competent authorities to require ‘control bodies’ (private bodies) to make available to them any information and records associated with the execution of official controls. Again, this is needed to ensure that obligations in the EU Regulation for monitoring and reporting enforcement activity may be met

Regulation 7 – Amendment of the Food Standards Act 1999

The 1999 Act is being amended to extend the Agency’s function in respect of auditing and monitoring the enforcement activity of the enforcement authorities that have responsibility for official controls of feed and food. The current provisions restrict this function to the enforcement of: the Food Safety Act 1990 and regulations made under it; Part IV of the Agriculture Act 1970 and regulations made under that part of the Act that are concerned with animal feed; and some, but not all, feed and food legislation made under the European Communities Act 1972. To be consistent with the scope of EU Regulation 882/2004, the function should extend to ‘feed law’ and ‘food law’ as defined for the purposes of that EU Regulation and these have a broader scope than the legislation currently covered.

The Agency’s function under the 1999 Act, as amended, will cover areas for which Defra is the enforcement authority. This means that the Agency would have a duty to audit Defra in these areas. The intention is that these Defra areas will be identified as exceptions to the Agency’s function and agreement on responsibly and arrangements for audit reached between the two Departments. The amendment as currently drafted also covers marketing standards for food, such as for olive oil and eggs. Such marketing standards are specifically excluded from the scope of Regulation 882/2004 (separate and detailed control arrangements are already in place) and so these areas will have to be excluded from this audit function.

The proposed amendment is in the individual territorial SIs for England, Scotland, Wales, and Northern Ireland, but because the Act itself applies UK-wide, consideration is being given to a UK-wide amendment.

Regulation 8 – Right of appeal

This gives feed and food business operators a right of appeal, to a magistrate’s court, against decisions taken by the competent authorities in respect of the approval of feed and food establishments. Although the specific requirements for the approval of premises is set out in the new EU Feed Hygiene Regulation and EU Food Hygiene legislation^{1, 2}, the right of appeal is included here as the procedures for the competent

¹ Regulation (EC) No 1831/2003 of the European Parliament and of the Council laying down requirements for feed hygiene. Official Journal L35, 8.2.2005, 1-22.

authorities involved in granting approvals are provided in Article 31 of Regulation 882/2004. The alternative would be to include the right of appeal in the domestic feed and food hygiene legislation.³

Official Controls on Feed and Food of non-animal origin from third countries

Regulation 21 – Deferred enforcement

The powers here allow the enforcement authority at the point of entry to defer enforcement to an inland authority. This is sometimes necessary if specific facilities are required for examination, e.g. for vacuum packed products. The powers may be used for any third country imports of feed and food of non-animal origin including those that are identified as 'specified products' (i.e. 'high risk' feed and food of non-animal origin). The provisions here essentially continue existing provisions for deferred enforcement in the current national rules on imported food⁴ which will be revoked by the new SI.

Regulation 23 – Suspension of designated points of entry

Under the new SI, 'specified products' ('high risk' feed and food of non-animal origin) may only be imported through designated points of entry. The Agency will be responsible for designating such points of entry. This particular Regulation in the SI gives powers to the Agency and Defra (the Secretary of State) to suspend the operation of a designated point of entry where its continued operation presents a risk to public or animal health.

Regulations 24 to 27 – specified products

These Regulations prohibit the introduction of 'specified products' except at designated points of entry. They also prohibit the introduction of non-conforming products. In addition, they require that the feed or food business operator responsible has provided the competent authority at the designated point of entry with advance warning of the arrival of 'specified products' and they must present them at the designated point of entry. The 'specified products' are to be identified at EU level by means of implementing rules.

Regulation 33 – Serious risk to animal or public health

This provides a mechanism of ensuring that where there is a serious risk to animal or public health, control measures may be put in place rapidly. In particular, it can be used to ensure that Emergency Decisions made at EU level may be implemented in England without delay. It does so by giving the Agency and Defra (the Secretary of State) powers to make declarations regarding import conditions for particular products. These

² Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. Official Journal L226, 25.6.2004, 22-82.

³ The Food Hygiene (England) Regulations 2005 and The Feed Hygiene (England) Regulations 2005 (both these SIs are currently in draft form).

⁴ Imported Food Regulations 1997, SI 1997 No 2537.

conditions would apply with immediate effect and avoid the delay that would result if the SI had to be amended.

Regulation 34 - liability for charges

This provides a mechanism for charging where: a) fees for import controls for 'specified products' are set in Community legislation (there is not yet any agreement on this at EU level but the provision anticipates fees being set); and, b) the enforcement authority incurs costs in respect of actions taken in the case of non-compliance (or suspicion of non-compliance), for example costs of detention or destruction of feed or food.

Amendment to the General Food Regulations 2004

Regulation 41 – Amendment to the General Food Regulations 2004

This amends the General Food Regulations 2004 such that they implement Article 12 of the EU General Food law Regulation (178/2002)⁵ which sets out the conditions for export of food to third countries. The amendment provides an associated defence for businesses for products that were sold domestically but were intended for export. In doing so, it will be necessary to revoke export defences that are already included in existing domestic food legislation. A full list of these is being prepared but this includes, for example, Regulation 8 of Jam and Similar Products (England) Regulations 2003 (SI 2003, No 3120).

⁵ 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. Official Journal L31, 1.2.2002, 1-24.