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WELSH STATUTORY INSTRUMENTS

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**2010 No. 2287 (W.199)**

**AGRICULTURE, WALES**

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

<i>Made</i>	- - - -	<i>15 September 2010</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>17 September 2010</i>
<i>Coming into force</i>	- -	<i>11 October 2010</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 66(1), 67(5), 74A, 79(9) and 84 of the Agriculture Act 1970 <sup>M1</sup>, and under section 2(2) of the European Communities Act 1972 <sup>M2</sup>.

The Welsh Ministers are designated for the purposes of section 2(2) in relation to measures in the veterinary and phytosanitary fields for the protection of public health <sup>M3</sup>, the common agricultural policy of the European Union <sup>M4</sup> and measures relating to feed produced for or fed to food-producing animals <sup>M5</sup>.

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 <sup>M6</sup>.

**Marginal Citations**

- M1** 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 the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(S.I. 1999/672\)](#) and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the [Government of Wales Act 2006 \(2006 c. 32\)](#).
- M2** 1972 c. 68.
- M3** S.I. 2008/1792.
- M4** S.I. 2005/2766. Functions of the National Assembly for Wales under this designation and the designation under [S.I. 2005/1971](#) were transferred to the Welsh Ministers by paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Feed (Sampling and Analysis and Specified Undesirable Substances) (Wales) Regulations 2010*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

**M5** [S.I. 2005/1971](#).

**M6** 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 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).

## PART 1

### General and introductory

#### Title, application and commencement

1. The title of these Regulations is the Feed (Sampling and Analysis and Specified Undesirable Substances) (Wales) Regulations 2010, they apply in relation to Wales and come into force on 11 October 2010.

#### Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Agriculture Act 1970;

“Regulation 152/2009” (“*Rheoliad 152/2009*”) means Commission Regulation ([EC](#)) [No. 152/2009](#) laying down the methods of sampling and analysis for the official control of feed <sup>M7</sup>;

“the Feed Hygiene Regulations” (“*y Rheoliadau Hylendid Bwyd Anifeiliaid*”) means the Feed (Hygiene and Enforcement) (Wales) Regulations 2005 <sup>M8</sup>;

“the GM Feed Regulations” (“*y Rheoliadau Bwyd Anifeiliaid AE*”) means the Genetically Modified Animal Feed (Wales) Regulations 2004 <sup>M9</sup>; and

“analyst” (“*dadansoddwr*”) 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.

#### Marginal Citations

**M7** OJ No. L54, 26.2.2009, p.1.

**M8** [S.I. 2005/3368](#) (W.265) amended by [S.I. 2006/3256](#) (W.290) and [S.I. 2009/3376](#) (W.298).

**M9** [S.I. 2004/3221](#) (W.277) amended by [S.I. 2007/3173](#) (W.278).

#### Prescribed metric substitution

3. For the purposes of its application to feeding stuffs, the Act is to 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

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- (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

<sup>F1</sup>4. ....

##### Textual Amendments

- F1** [Reg. 4](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), **Sch. 5**

#### Qualifications of analysts

<sup>F2</sup>5. ....

##### Textual Amendments

- F2** [Reg. 5](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), **Sch. 5**

#### Analysis other than in the course of official controls

<sup>F3</sup>6. ....

##### Textual Amendments

- F3** [Reg. 6](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), **Sch. 5**

#### Form of certificate of analysis

<sup>F4</sup>7. ....

##### Textual Amendments

- F4** [Reg. 7](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), **Sch. 5**

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## 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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—

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“(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 will 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) (Wales) 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,

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- (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 will 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**

<sup>F5</sup>**21.** . . . . .

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**Textual Amendments**

**F5** [Reg. 21](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), [Sch. 5](#)

### **Amendment of the Genetically Modified Animal Feed (Wales) Regulations 2004**

<sup>F6</sup>**22.** . . . . .

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**Textual Amendments**

**F6** [Reg. 22](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), [Sch. 5](#)

### **Amendment of the Official Feed and Food Controls (Wales) Regulations 2009**

<sup>F7</sup>**23.** . . . . .

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**Textual Amendments**

**F7** [Reg. 23](#) revoked (12.5.2016) by [The Animal Feed \(Hygiene, Sampling etc. and Enforcement\) \(Wales\) Regulations 2016 \(S.I. 2016/387\)](#), reg. 1(2), [Sch. 5](#)

### **Revocation**

**24.** The Feeding Stuffs (Sampling and Analysis) Regulations 1999 <sup>M10</sup> are revoked.

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**Marginal Citations**

**M10** [S.I. 1999/1663](#) amended by [S.I. 2001/2253](#) (W.163), [S.I. 2002/1797](#) (W.172), [S.I. 2003/1677](#) (W.180), [S.I. 2003/1850](#) (W.200), [S.I. 2004/2734](#) (W.241), [S.I. 2006/116](#) (W.14) and [S.I. 2006/617](#) (W.69).

## PART 4

### Undesirable substances

#### Amendment of the Feeding Stuffs (Wales) Regulations 2006

**25.**—(1) The Feeding Stuffs (Wales) Regulations 2006 <sup>M10</sup> are amended in accordance with paragraphs (2) and (3).

(2) In paragraph (9) 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” 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;
- (b) in Chapter B, for the entries relating to castor oil plant (*Ricinus communis* L.) substitute the entries set out in Schedule 3 to these Regulations; and
- (c) in Chapter C—
  - (i) for the entries relating to theobromine substitute the entries set out in Schedule 4 to these Regulations,
  - (ii) omit the expression “Croton – *Croton tiglium* L.”, and
  - (iii) for the expression “*Datura stramonium* L.” substitute “ *Datura* sp. ”.

**Marginal Citations**

**M11** [S.I. 2006/116](#) (W.14) amended by [S.I. 2006/617](#) (W.69), [S.I. 2006/2928](#) (W.263), [S.I. 2006/3256](#) (W.296), [S.I. 2007/3171](#) (W.277), [S.I. 2008/1806](#) (W.174), [S.I. 2009/106](#) (W.20) and [S.I. 2009/2881](#) (W.254).

*Gwenda Thomas*  
Deputy Minister for Social Services, under  
authority of The Minister for Health and Social  
Services, one of the Welsh Ministers



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F8 SCHEDULE 1

Regulation 7

Form of Certificate of Analysis

**Textual Amendments**

**F8** Sch. 1 revoked (12.5.2016) by The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (S.I. 2016/387), reg. 1(2), Sch. 5

Form of Certificate of Analysis

"Certificate of Analysis of Animal Feed"

I, ..... (insert name) the undersigned analyst for(1) .....  
 (insert 3) ..... certify that I received on(2) .....  
 sample ..... of(4) ..... one part of a  
 fastened up and marked(5) ..... for analysis, which was duly sealed and  
 ..... and was accompanied by  
 a label or other documentation or marking (specify as appropriate) containing the  
 following(6) .....  
 .....  
 and by a signed statement that the sample was taken in the manner prescribed by law.  
 I declare that the part of the sample has been analysed by me or under my direction, and that the results of the  
 analysis are as follows(7)(8) .....  
 .....  
 .....  
 .....  
 .....  
 Signature of analyst: ..... Date: .....  
 Address: .....

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....

SCHEDULE 2

Regulation 25(3)(a)

Entries to be substituted in Chapter A of Schedule 5  
to the Feeding Stuffs (Wales) Regulations 2006

<i>Column 1</i> <i>Undesirable substances</i>	<i>Column 2</i> <i>Products intended for animal feed</i>	<i>Column 3</i> <i>Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i>
Arsenic	Feed materials except:	2

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— meal made from grass, from dried lucerne or from dried clover, and dried sugar beet pulp and dried molasses sugar beet pulp	4
— palm kernel expeller	4
— phosphates and calcareous marine algae	10
— calcium carbonate	15
— magnesium oxide	20
— feeding stuffs obtained from the processing of fish or other marine animals	25
— seaweed meal and feed materials derived from seaweed	40
Iron particles used as tracer	50
Additives belonging to the functional group of compounds of trace elements	30
except	
— copper sulphate pentahydrate and copper carbonate	50
— zinc oxide, manganese oxide and copper oxide	100
Complete feeding stuffs	2
except	
— complete feeding stuffs for fish and for fur-producing animals	10
Complementary feeding stuffs	4
except	
— mineral feeding stuffs	12

**Notes in respect of all entries incolumn 3:**

The maximum contents refer to total arsenic.

The maximum contents refer to an analytical determination of arsenic, whereby extraction is performed in nitric acid (5% w/w) for 30 minutes at boiling

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point. Equivalent extraction procedures can be applied where it can be demonstrated that the procedure used has an equal extraction efficiency.

SCHEDULE 3

Regulation 25(3)(b)

Entries to be substituted in Chapter B of Schedule 5 to the Feeding Stuffs (Wales) Regulations 2006

<b>Column 1</b> <b>Undesirable substances</b>	<b>Column 2</b> <b>Products intended for animal feed</b>	<b>Column 3</b> <b>Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</b>
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

SCHEDULE 4

Regulation 25(3)(c)(i)

Entries to be substituted in Chapter C of Schedule 5 to the Feeding Stuffs (Wales) Regulations 2006

<b>Column 1</b> <b>Undesirable substances</b>	<b>Column 2</b> <b>Products intended for animal feed</b>	<b>Column 3</b> <b>Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</b>
Theobromine	Complete feeding stuffs except: <ul style="list-style-type: none"> <li>— complete feeding stuffs for pigs</li> <li>— complete feeding stuffs for dogs, rabbits, horses and fur-producing animals</li> </ul>	300 200 50

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations provide for the execution in Wales of Commission Regulation (EC) No. 152/2009 laying down the methods of sampling and analysis for the official control of feed (OJ No. 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 Wales) the Feeding Stuff (Sampling and Analysis) Regulations 1999 (S.I. 1999/1663, amended by S.I. 2001/2253 (W.163), S.I. 2002/1797 (W.172), S.I. 2003/1677 (W.180), S.I. 2003/1850 (W.200), S.I. 2004/2734 (W.241), S.I. 2006/116 (W.14) and S.I. 2006/617 (W.69)), which implemented those directives, and re-enact those administrative provisions of the 1999 Regulations which need to be kept in force.

2. These Regulations also, in Part 4, amend the Feeding Stuff (Wales) Regulations 2006 (S.I. 2006/116 (W.14), previous amending instruments are S.I. 2006/617 (W.69), S.I. 2006/2928 (W.263), S.I. 2006/3256 (W.296), S.I. 2007/3171 (W.277), S.I. 2008/1806 (W.174), S.I. 2009/106 (W.20) and S.I. 2009/2881 (W.254)), 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 Stuff (Wales) Regulations 2006 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 above (regulation 25 and Schedules 2, 3 and 4).

6. A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations and is available from the Food Standards Agency, 11th Floor, Southgate House, Cardiff CF10 1EW.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Sch. 2 revoked by [S.I. 2010/2652 Sch. 2](#)
- Sch. 3 revoked by [S.I. 2010/2652 Sch. 2](#)
- Sch. 4 revoked by [S.I. 2010/2652 Sch. 2](#)
- reg. 11 revoked by [S.I. 2010/2652 Sch. 2](#)
- reg. 14 revoked by [S.I. 2010/2652 Sch. 2](#)
- reg. 15 revoked by [S.I. 2010/2652 Sch. 2](#)
- reg. 25 revoked by [S.I. 2010/2652 Sch. 2](#)