

WELSH STATUTORY INSTRUMENTS

2005 No. 3254

The Official Feed and Food Controls (Wales) Regulations 2005

PART III

OFFICIAL CONTROLS ON FEED AND FOOD OF NON-ANIMAL ORIGIN FROM THIRD COUNTRIES

Interpretation of this Part of the Regulations

22. In this Part of the Regulations—

“authorised officer” (“*swyddog awdurdodedig*”), in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Import Provisions;

“the Commissioners” (“*y Comisiynwyr*”) means the Commissioners for Her Majesty's Revenue and Customs;

“enforcement authority” (“*awdurdod gorfodi*”) means the feed enforcement authority or the food enforcement authority;

“the Import Provisions” (“*y Darpariaethau Mewnforio*”) means this Part of these Regulations and Articles 15 to 24 of Regulation 882/2004;

“outside Wales enforcement authority” (“*awdurdod gorfodi y tu allan i Gymru*”) means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except Wales;

“product” (“*cynnyrch*”) means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (feed and food of non-animal origin not included in the scope of Directive [97/78/EC](#)) and includes those composite food products listed in the Annex to Commission Decision [2002/349/EC](#) laying down the list of products to be examined at border inspection posts under Council Directive [97/78/EC](#)^{M1} which include only a limited percentage of products of animal origin and which are thereby excluded from the provisions of Directive [98/78/EC](#) by Article 3(1) of that Decision;

“the relevant territories” (“*y tiriogaethau perthnasol*”) means the territories referred to in Annex I to Regulation 882/2004.

Commencement Information

II [Reg. 22](#) in force at 1.1.2006, see [reg. 1](#)

Marginal Citations

M1 OJ No. L121, 8.5.2002, p.6.

Feed enforcement responsibilities

23. It is the responsibility of the feed authority to execute and enforce the Import Provisions in its area or district as the case may be in relation to feed.

Commencement Information

I2 [Reg. 23](#) in force at 1.1.2006, see [reg. 1](#)

Food enforcement responsibilities

24. It is the responsibility of each food authority to execute and enforce the Import Provisions in its area in relation to food.

Commencement Information

I3 [Reg. 24](#) in force at 1.1.2006, see [reg. 1](#)

Functions of the Commissioners

25. The Commissioners must carry out the functions given to customs services under Article 24 of Regulation 882/2004 in relation to feed and food.

Commencement Information

I4 [Reg. 25](#) in force at 1.1.2006, see [reg. 1](#)

Deferred execution and enforcement

26.—(1) Where—

- (a) a product from a third country has entered Wales;
- (b) customs examination of that product has been completed or has been deferred until it reaches its place of destination elsewhere in the United Kingdom;
- (c) an authorised officer of the enforcement authority for the place of entry has on reasonable grounds issued an authorisation confirming that—
 - (i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in Wales, or
 - (ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and
- (d) a person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in Wales, will become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking must—

- (a) state the destination of the product; and
- (b) confirm that—

- (i) the container containing the product has been sealed and will not be opened until it has reached that destination,
 - (ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if in Wales or, as the case may be, the outside Wales enforcement authority if the destination is not in Wales, and
 - (iii) the container will be available at that destination for examination under the Import Provisions or, as the case may be, legislation with respect to imported products in force elsewhere in the United Kingdom.
- (3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), that officer must—
- (a) (if the product's place of destination is within Wales) notify the enforcement authority for that place or (if the product's place of destination is in any other part of the United Kingdom) notify the outside Wales enforcement authority—
 - (i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions, and
 - (ii) if customs examination of the product has been deferred, of that fact; and
 - (b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).
- (4) Where a product has been sent to a destination in Wales from another part of the British Islands and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination will become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in Wales.
- (5) No person may breach an undertaking given under paragraph (1)(d).

Commencement Information

I5 [Reg. 26](#) in force at 1.1.2006, see [reg. 1](#)

Prohibition on introduction of certain feed and food

- 27.**—(1) No person may—
- (a) introduce into Wales from a third country specified feed which contravenes or fails to comply with feed safety requirements; or
 - (b) introduce into Wales from elsewhere in the relevant territories specified feed originating in a third country which fails to comply with feed safety requirements.
- (2) No person may—
- (a) introduce into Wales from a third country specified food which fails to comply with—
 - (i) food safety requirements; or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004; or
 - (b) introduce into Wales from elsewhere in the relevant territories specified food originating in a third country which fails to comply with—
 - (i) food safety requirements; or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004.
- (3) In this regulation—
- (a) “specified feed” (“*bwyd anifeiliaid penodedig*”) means feed that is a product;
 - (b) “specified food” (“*bwyd penodedig*”) means food that is a product.

Commencement Information

16 [Reg. 27](#) in force at 1.1.2006, see [reg. 1](#)

Checks on products

28.—(1) The person responsible for introducing any product into Wales must permit an authorised officer of an enforcement authority to carry out checks in relation to the product pursuant to Article 16 of Regulation 882/2004.

(2) When an authorised officer is carrying out checks in relation to a product pursuant to Article 16 of Regulation 882/2004, the person introducing the product must provide the facilities and assistance which the authorised officer reasonably requires to carry them out.

(3) When an authorised officer of an enforcement authority is carrying out an identity check or a physical check on a product in accordance with Article 16 that officer will be entitled to require that the check takes place at a specified place.

Commencement Information

17 [Reg. 28](#) in force at 1.1.2006, see [reg. 1](#)

Detention, destruction, special treatment, re-dispatch and other appropriate measures and costs

29.—(1) 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 882/2004 if the conditions set out in those Articles are fulfilled.

(2) The enforcement authority is the competent authority for the purposes of Article 22 of Regulation 882/2004.

Commencement Information

18 [Reg. 29](#) in force at 1.1.2006, see [reg. 1](#)

Decisions pursuant to Article 19 of Regulation 882/2004 (imports of feed and food from third countries)

30.—(1) If an authorised officer of an enforcement authority wishes to take any of the measures referred to in Article 19(1)(a) and (b) of Regulation 882/2004 in respect of feed or food the officer must serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it after the officer has heard that feed or food business operator as provided in Article 19.

(2) If an authorised officer of an enforcement authority wishes to exercise any of the powers referred to in Article 19(2) of Regulation 882/2004 in respect of feed or food the officer must serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

Commencement Information

19 [Reg. 30](#) in force at 1.1.2006, see [reg. 1](#)

Right of appeal in respect of notices served under regulation 30

31.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 30 may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings.

(3) The period within which an appeal under paragraph (1) may be brought is one month from the date on which the notice was served on the person desiring to appeal and the making of a complaint for an order is deemed for the purposes of this paragraph to be the bringing of the appeal.

(4) Where on an appeal under paragraph (1) a magistrates' court determines that the decision of the authorised officer of the enforcement authority is incorrect, the authority must give effect to the determination of the court.

Commencement Information

I10 [Reg. 31](#) in force at 1.1.2006, see [reg. 1](#)

Appeals to Crown Court against dismissal of appeal under regulation 31

32. A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under regulation 31(1) may appeal to the Crown Court.

Commencement Information

I11 [Reg. 32](#) in force at 1.1.2006, see [reg. 1](#)

Serious risk to animal or public health

33.—(1) Where the Assembly or the Agency learns of, or has reasonable grounds to suspect, that food or feed has been or may be introduced from a third country is likely to constitute a serious risk to animal or public health, either of them may by written declaration suspend, or impose conditions on, the introduction into Wales of any product from the whole or any part of that third country.

(2) Such a declaration will be in writing and published in such manner as the Assembly or the Agency, as the case may be, thinks fit specifying the products and the third country or part thereof concerned.

(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof must specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person may introduce that product into Wales if it originates in the third country or part thereof specified in the declaration.

(5) Where a declaration is in force imposing conditions on the introduction of any product, no person may introduce that product into Wales if it originates in the third country or part thereof specified in the declaration unless the product complies with conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

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Commencement Information

I12 [Reg. 33](#) in force at 1.1.2006, see [reg. 1](#)

Liability for charges

34.—(1) The enforcement authority must notify the person responsible for a consignment of the charge falling to be paid for the controls carried out on it by the authority.

(2) Any charge notified to a person by the enforcement authority under paragraph (1) will be payable by that person to the enforcement authority on demand.

(3) The charge referred to in paragraph (1) is any charge for the costs incurred in relation to the consignment by the enforcement authority acting as the competent authority for the purposes of Article 22 of Regulation 882/2004 by virtue of regulation 29(2).

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Commencement Information

I13 [Reg. 34](#) in force at 1.1.2006, see [reg. 1](#)

Procurement by authorised officers of samples with regard to food

35. An authorised officer of a food enforcement authority may, for the purposes of the execution and enforcement by that authority of the Import Provisions—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
 - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption, or
 - (ii) is found by the officer on or in any premises which the officer is authorised to enter by or under regulation 37;
- (c) take a sample from any food source, or a sample of any contact material, which is found by the officer on or in any such premises; and
- (d) take a sample of any article or substance which is found by the officer on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

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Commencement Information

I14 [Reg. 35](#) in force at 1.1.2006, see [reg. 1](#)

Analysis etc. of samples

36.—(1) An authorised officer of an enforcement authority who has procured a sample under regulation 35 must—

- (a) if the officer considers that the sample should be analysed, submit it to be analysed by a public analyst;
- (b) if the officer considers that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—

- (a) to be analysed by the public analyst for the area in which the purchase was made; or
- (b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample must be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner determines that he or she is for any reason unable to perform the analysis or examination, the sample must be submitted or, as the case may be, sent by him or her to such other food analyst or examiner as he or she may determine.

(5) A food analyst or examiner must analyse or examine as soon as practicable any sample submitted or sent to him or her under this regulation, but may, except where—

- (a) he or she is the public analyst for the area in question; and
- (b) the sample is submitted to him or her for analysis by an authorised officer of an enforcement authority,

demand in advance the payment of such reasonable fee as he or she may require.

(6) Any food analyst or examiner who has analysed or examined a sample must give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) must be signed by him or her, but the analysis or examination may be made by any person acting under his or her direction.

(8) In any proceedings under the Import Provisions, the production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or
- (b) of a document supplied to him or her by the other party as being a copy of such a certificate,

will be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the food analyst or examiner be called as a witness.

(9) Any reference in this regulation to a public analyst for a given area will, where two or more public analysts are appointed for any area, be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations^{M2} apply to a sample procured by an authorised officer of an enforcement authority under regulation 35 as if it were a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) must be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

Commencement Information

I15 Reg. 36 in force at 1.1.2006, see **reg. 1**

Marginal Citations

M2 S.I. 1990/2463, to which there are amendments not relevant to these Regulations.

Powers of entry of authorised officers of a food enforcement authority

37.—(1) An authorised officer of a food enforcement authority will, on producing, if so required, some duly authenticated document showing that officer's authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area or as the case may be district, for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Import Provisions in relation to food;
- (b) to enter any premises, whether within or outside the authority's area or as the case may be district, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and
- (c) to enter any premises for the purpose of the performance by the authority of their functions under the Import Provisions,

but admission to any premises used only as a private dwelling-house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant signed by him or her authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation will continue in force for a period of one month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may take with him or her such other persons as the officer considers necessary, and on leaving any unoccupied premises which he or she has entered by virtue of such a warrant must leave them as effectively secured against unauthorised entry as that in which they were found.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
 - (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the officer such assistance as the officer may reasonably require.
- (6) Any officer exercising any power conferred by paragraph (5) may—
- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions; and
 - (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(7) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any other person any information obtained by him or her on the premises with regard to any trade secret, that person will, unless the disclosure was made in the performance of his or her duty, be guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981, to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Commencement Information

I16 Reg. 37 in force at 1.1.2006, see [reg. 1](#)

Obstruction etc. of officers

38.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of the Import Provisions; or
- (b) without reasonable cause, fails to give to any person acting in the execution of the Import Provisions any assistance or information which that person may reasonably require of him or her for the performance of that person's functions under the Import Provisions,

will be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which he or she knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

will be guilty of an offence.

(3) Nothing in paragraph (1)(b) may be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Commencement Information

I17 Reg. 38 in force at 1.1.2006, see [reg. 1](#)

Offences and penalties

39.—(1) Any person who—

- (a) contravenes or fails to comply with paragraph (5) of regulation 26, regulation 27 or paragraph (4) or (5) of regulation 33; or
- (b) fails to comply with a notice served upon that person under the Import Provisions,

will be guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under the Import Provisions will be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

(3) A person guilty of an offence under regulation 38 will be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

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Commencement Information

I18 [Reg. 39](#) in force at 1.1.2006, see [reg. 1](#)

Time limit for prosecutions (imports)

40. No prosecution for an offence under the Import Provisions which is punishable under regulation 39(2) will be begun after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecutor,

whichever is the earlier.

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Commencement Information

I19 [Reg. 40](#) in force at 1.1.2006, see [reg. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Official Feed and Food Controls (Wales) Regulations 2005, PART III .