WELSH STATUTORY INSTRUMENTS

2007 No. 196 (W.15)

AGRICULTURE, WALES

FOOD, WALES

The Official Controls (Animals, Feed and Food) (Wales) Regulations 2007

Made - - - -	*30 January 2007*
Coming into force - -	*31 January 2007*

The National Assembly for Wales is designated [M1] for the purposes of section 2(2) of the European Communities Act 1972 [M2] in relation to the common agricultural policy of the European Community (subject to certain exceptions) and measures in the veterinary field for the protection of public health.

It has carried out a consultation in accordance with 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 [M3] as last amended by Commission Regulation (EC) No. 575/2006 of the European Parliament and of the Council [M4].

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by section 2(2) of the European Communities Act 1972:

Marginal Citations

M1 SI 2005/2766 in relation to the common agricultural policy (subject to certain exceptions), and SI 2003/1246 in relation to veterinary measures for the protection of public health.

M2 1972 c. 68.

M3 OJ No. L31, 1.2.2002, p.1.

M4 OJ No. L100, 8.4.2006, p. 3.

PART 1

General

Title, application and commencement

1.—(1) The title of these Regulations is the Official Controls (Animals, Feed and Food) (Wales) Regulations 2007.

(2) These Regulations apply in relation to Wales and come into force on 31 January 2007.

Interpretation

2.—(1) In these Regulations—

"the 2006 Regulations" ("*Rheoliadau 2006*") means the Official Feed and Food Controls (Wales) Regulations 2006 [M5];

"the food authority" ("*yr awdurdod bwyd*") in relation to any relevant legislation for which a designation is made under these Regulations has the same meaning as it has in that relevant legislation;

"inspector" ("*arolygydd*") means in relation to any piece of relevant legislation, an inspector, veterinary inspector, or other officer authorised by the National Assembly or other authority to act in Wales under that relevant legislation;

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"the local authority" ("*yr awdurdod lleol*") in relation to any relevant legislation for which a designation is made under these Regulations has the same meaning as it has in that relevant legislation;

"premises" ("*mangre*") means premises or other property, place or means of transport;

"Regulation 882/2004" ("*Rheoliad 882/2004*") means 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 [M6], as amended by Commission Regulation (EC) No 776/2006 amending Annex VII as regards Community reference laboratories [M7] and as read with—

(a) Commission Decision 2006/677 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules [M8];

(b) Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004[M9];

(c) Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004, and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004[M10]; and

(d) 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 as last amended by Commission Regulation (EC) No. 575/2006 of the European Parliament and of the Council;

"relevant legislation" ("*deddfwriaeth berthnasol*") has the meaning given in paragraph (3).

(2) In these Regulations—

(a) "audit" ("*archwiliad*") means, except in regulation 10, an audit of a competent authority carried out for the purposes of Art 4.6 of Regulation 882/2004 in relation to one or more pieces of relevant legislation; and

(b) "auditor" ("*archwilydd*") means a person carrying out such an audit.

(3) In these Regulations, "relevant legislation" ("*deddfwriaeth berthnasol*") means feed law and food law to which Regulation 882/2004 applies and animal health and welfare rules, except—

(a) "relevant feed law" ("*cyfraith bwyd anifeiliaid berthnasol*") and "relevant food law" ("*cyfraith bwyd berthnasol*") as defined in the 2006 Regulations; and

(b) the Veterinary Medicines Regulations 2006 [M11] in so far as they regulate zootechnical additives and medicated feedingstuffs.

(4) In paragraph (3)(b)—

"medicated feedingstuffs" ("*bwydydd anifeiliaid â meddyginiaeth*") has the meaning given in Article 1.6 of Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products [M12] as amended by Directive 2004/28/EC of the European Parliament and of the Council amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products [M13]; and

"zootechnical additives" ("*ychwanegion sootechnegol*") means feed additives in the categories mentioned in Article 6.1(d) and (e) of Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition [M14] with the exception of those belonging to the functional group listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation.

(5) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in Regulation 882/2004.

(6) Unless otherwise required by the context, references in these Regulations to an "Article" ("*Erthygl*") or "Title" ("*Teitl*") are to an Article or Title, respectively, of Regulation 882/2004.

(7) Any reference in these Regulations to a Community instrument is a reference to that instrument as from time to time amended.

Marginal Citations

M5 SI 2006/590 (W.66) as amended by SI 2006/1704 (W.166), regulation 1(3).

M6 OJ No. L165, 30.4.2004, p.1; *see* the corrected text as set out in the corrigendum to the Regulation published in OJ No. L 191, 28.5.2004, p. 1.

M7 OJ No. L136, 24.5.2006, p. 3.

M8 OJ No. L 278, 10.10.2006, p. 15.

M9 OJ No. L338, 22.12.2005, p, 27.

M10 OJ No. L338, 22.12.2005, p. 83.

M11 SI 2006/2407.

M12 OJ No. L311, 28.11.2001, p. 1.

M13 OJ No. L136, 30.4.2004, p. 58.
M14 OJ No. L268, 18.10.2003, p. 29.

PART 2

Designation of competent authorities and the exchange of information amongst them

Purposes of designations

3. Designations in this Part are made for the purposes of Article 4.1.

Designation of the National Assembly as competent authority

4. The National Assembly is designated a competent authority in relation to relevant legislation.

Designation of local authorities, etc, as competent authorities

5.—(1) The local authority is designated a competent authority in relation to functions of enforcement and execution (other than prosecution) which it exercises under relevant legislation.

(2) The food authority is designated a competent authority in relation to functions of enforcement and execution (other than prosecution) which it exercises under relevant legislation.

(3) In this regulation, "the local authority" and "the food authority" include a local authority or food authority which exercises its functions referred to in paragraph (1) or (2) as an "enforcement authority" under and within the meaning of relevant legislation.

Exchange of information

6. Competent authorities designated under these Regulations may disclose information to each other and to other competent authorities in the United Kingdom and to other member States for the purposes of Regulation 882/2004.

PART 3

Audits and Community controls

Powers of auditors and exception for Food Standards Agency auditors

7.—(1) An auditor may exercise the powers in this regulation if he or she is authorised—

(a) by a competent authority designated under these Regulations to carry out an audit of its activities; or

(b) by the National Assembly to carry out an audit pursuant to regulation 8(3).

(2) For the purposes of carrying out an audit, an auditor may enter premises to which an inspector has a power of entry under relevant legislation ("audit premises") as if the auditor were an inspector meeting the criteria for gaining such entry under that relevant legislation.

(3) An auditor exercising his or her power of entry may bring with him or her any person whose assistance he or she reasonably requires.

(4) An auditor may request such information from any person at any audit premises as he or she reasonably requires for purposes of the audit, and may inspect such records as he or she reasonably requires for those purposes.

(5) An auditor may make or require copies of such records.

(6) When exercising the powers conferred by this regulation an auditor must upon request produce evidence of his or her authorisation under these Regulations.

(7) This regulation does not apply where regulation 9 applies.

Powers of the National Assembly in relation to audits of local authorities, etc.

8.—(1) The National Assembly may require a competent authority designated under regulation 5 to provide it with information about any audits that competent authority has carried out or undergone or which that competent authority plans to carry out or undergo.

(2) Where the National Assembly requires information under paragraph (1), it must do so in writing and must state the time limit within which the required information is to be provided.

(3) The National Assembly may require—

(a) an auditor to carry out an audit of a competent authority designated under regulation 5; and

(b) the competent authority concerned to provide such assistance to that auditor as the auditor may reasonably require in order to carry out the audit.

Powers of the Food Standards Agency undertaking audits on behalf of the National Assembly

9.—(1) Where the National Assembly arranges for the Food Standards Agency to undertake an audit in relation to relevant legislation, the audit provisions of the 2006 Regulations apply as if—

(a) the undertaking of such an audit were a purpose described in regulation 8(1) and 9(1) of the 2006 Regulations; and

(b) the competent authority concerned were an enforcement authority to which regulations 8 and 9 of the 2006 Regulations applied.

(2) The audit provisions of the 2006 Regulations are—

(a) regulations 8 and 9(1) to (8) and (10), as read with regulation 10; and

(b) regulation 11.

(3) Regulations 17(2), (4) and (5)(c), 18(2) to (9), 19 to 21, 41 to 43, 45 and 46 of the 2006 Regulations apply where paragraph (1) of this regulation applies as if that paragraph were a provision of the 2006 Regulations falling to be enforced or executed under the 2006 Regulations.

Community controls

10. In so far as an inspector does not already have powers to do so, for the purposes of facilitating audits to be carried out by Commission experts pursuant to Article 45, an inspector may enter any premises to which he or she has a power of entry under relevant legislation, and—

(a) bring with him or her any such experts; and

(b) show them such records as he or she inspects.

PART 4

Assistance and co-operation under Title IV

Duties of local authorities, etc, under Title IV

11. A local authority or food authority which is designated a competent authority under regulation 5 must notify the National Assembly if it considers that it is unable to undertake action required in any individual case under Title IV (administrative assistance and cooperation in the areas of feed and food) and must provide such information to the National Assembly as the National Assembly may reasonably request.

Facilitating assistance and co-operation under Title IV

12.—(1) For the purposes of assisting a competent authority of another member State as provided for under Article 36.3, or enabling a competent authority designated under these Regulations to do so, an inspector exercising his or her powers under relevant legislation to enter premises or to inspect records may—

(a) bring with him or her authorised officers of a competent authority of another member State;

(b) show to them such records as he or she inspects; and

(c) make copies for them or require copies to be made for them of such records as he or she has powers to make or require under the relevant legislation.

(2) For the purposes of facilitating a visit by an inspection team sent by the Commission as provided for in Article 40.3(a), an inspector may bring with him or her representatives of the Commission when exercising his or her powers under relevant legislation to enter premises or to inspect records.

Recovery of expenses

13.—(1) Expenses charged by a competent authority to a feed or food business pursuant to Article 40.4 must be paid by that business on the written demand of the competent authority concerned.

(2) Expenses charged by a competent authority to an operator pursuant to Article 28 must be paid by that operator on the written demand of the competent authority concerned.

(3) In this regulation "competent authority" ("*awdurdod cymwys*") means a competent authority designated under regulation 4 or 5.

PART 5

Enforcement and penalties

Interpretation and application of Part 5, etc.

14.—(1) In this Part—

(a) "an enforcement officer" ("*swyddog gorfodi*") means an officer authorised to enforce these Regulations by the competent authority responsible for enforcement pursuant to regulation 15;

(b) "premises" ("*mangre*") excludes any premises or part of premises used exclusively as a dwelling;

(c) "a relevant auditor" ("*archwilydd perthnasol*") means an auditor exercising his or her powers under regulation 7;

(d) "a relevant inspector" ("*arolygydd perthnasol*") includes accompanied by any person an inspector pursuant to regulations 10 or 12.

(2) Regulations 15 to 19 do not apply where regulation 9 applies.

Enforcement

15. Enforcement of these Regulations is the responsibility of the competent authority which in any given circumstances authorises the exercise of powers under these Regulations.

Powers of enforcement officers

16.—(1) An enforcement officer may—

(a) at any reasonable hour enter premises;

(b) make any enquiries, observe any activity or process, and take photographs; and

(c) inspect any article or records of any class which appear to the enforcement officer to be relevant for the purposes of his or her investigation, and may make or require copies of such records and remove such records as he or she reasonably requires.

(2) An enforcement officer must—

(a) produce evidence of his or her authorisation when requested to do so;

(b) as soon as he or she reasonably can, provide to the person appearing to him or her to be responsible for records he or she removes under paragraph (1)(c) a written receipt identifying those records; and

(c) as soon as he or she reasonably can after deciding that they are no longer required, return such records, apart from those used as evidence in court proceedings.

Offences and penalties

17.—(1) A person is guilty of an offence if without reasonable excuse he or she obstructs or causes or permits to be obstructed—

(a) a relevant auditor;

(b) a relevant inspector;

(c) any person who accompanies a relevant auditor or relevant inspector under regulations 7(3), 10, or 12; or

(d) an enforcement officer.

(2) For the purposes of paragraph (1), to obstruct includes—

(a) failure—

(i) to produce records;

(ii) to provide copies; or

(iii) to provide reasonable facilities for copying records,

as required under these Regulations; and—

(b) failure by any person to provide information in his or her possession when requested to do so by a relevant auditor, a relevant inspector or an enforcement officer.

(3) A person is guilty of an offence if without reasonable excuse he or she supplies to a relevant auditor, a relevant inspector or an enforcement officer information which, in any material particular, is false or misleading.

(4) A person guilty of an offence under this regulation is 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.

Offences by bodies corporate

18.—(1) If an offence under regulation 17 committed by a body corporate is shown to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on his or her part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body.

(3) "Officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Time limits for prosecution

19. A prosecution for an offence under this Part may begin no later than 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.

Amendment to the 2006 Regulations

20.—(1) The 2006 Regulations are amended as follows.

(2) In regulation 2(1), in the paragraph which begins " "Regulation 178/2002" ("*Rheoliad 178/2002*")" insert after the words " "Directive 2004/41" ("*Cyfarwyddeb 2004/41*")," the words " "Regulation 999/2001" ("*Rheoliad 999/2001*")".

(3) In Schedule 1, after the definition of " "Directive 2004/41" ("*Cyfarwyddeb 2004/41*")", insert—

> ""Regulation 999/2001" ("*Rheoliad 999/2001*") means Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies as amended [M15] and has the same meaning as the definition of "Community TSE Regulation" ("*Rheoliad TSE y Gymuned*") in the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006 [M16];".

(4) In paragraph (a) of Schedule 3—

(a) after sub-paragraph (vi) delete "and";

(b) at the end of paragraph (vii)(bb) delete ";" and add—

> ", and
>
> (viii) the matters regulated under Schedule 2 to the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006 in so far as that Schedule applies in relation to animals slaughtered for human consumption, together with point 2 of Part II of Chapter A of Annex III to Regulation 999/2001

in so far as that point applies in relation to animals slaughtered for human consumption".

Marginal Citations

M15 OJ No. L147, 31.5.2001, p. 1 as amended by Commission Regulation (EC) 1041/2006 amending Annex III to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards monitoring of transmissible spongiform encephalopathies in ovine animals (OJ No. L187, 8.7.2006, p. 10.)

M16 SI 2006/1226 (W.117).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998 [M17]

D. Elis-Thomas
The Presiding Officer of the National Assembly

30 January 2007

Marginal Citations

M17 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to Wales and enforce Regulation (EC) No. 882/2004 (OJ No. L165, 30.04.2004, p. 1) ("Regulation 882/2004") of the European Parliament and of the Council in relation to animal health and welfare rules, and feed and food law excluded from the Official Feed and Food Controls (Wales) Regulations 2006 ("the 2006 Regulations"), which also apply and enforce Regulation 882/2004. The text of Regulation 882/2004 was revised and is now set out in a Corrigendum (OJ No. L191, 28.05.2004, p. 1).

These Regulations provide for the designation of the National Assembly for Wales and local authorities (including food authorities) as competent authorities for the purposes of Article 4.1 of Regulation 882/2004 (regulations 3 to 5). The designations relate to:

(a) animal health and welfare rules;

(b) food law which concerns controls on animals;

(c) feed law not listed in Schedule 3 to the 2006 Regulations; and

(d) food law concerning controls on food or feed excluded from the designations in the 2006 Regulations, namely:

  (i) organic foods, including imported organic food products;

  (ii) protected name food products and specific character food products;

  (iii) veterinary medicines residues;

  (iv) pesticides residues;

  (v) the import from third countries of, and intra-Community trade in, products of animal origin; and

  (vi) beef labelling.

They also relate to transmissible spongiform encephalopathies ("TSEs") in relation to testing (including sampling) controls on bovine, ovine and caprine animals slaughtered for human consumption.

The designations do not include medicated feedingstuffs and zootechnical additives, which are covered in paragraph 4 of Schedule 5 to the Veterinary Medicines Regulations 2006 (S.I. 2006/2407).

These Regulations provide expressly for the exchange of information between competent authorities in Wales and elsewhere in the United Kingdom, and in the European Union (regulation 6).

They create independent powers for a competent authority's auditors to conduct audits required under Article 4.6 of Regulation 882/2004 (regulation 7). Provision is made for the National Assembly for Wales to call for information from a local authority about its audits; and for it to require an auditor to carry out an audit of that local authority's official controls as a competent authority (regulation 8).

Where the National Assembly for Wales arranges that the Food Standards Agency is to carry out an audit of relevant legislation under these Regulations, monitoring provisions of the 2006 Regulations apply together with the corresponding enforcement provisions from the 2006 Regulations (regulation 9 of these Regulations).

The Regulations also supplement existing powers of inspectors so that they may bring Commission experts with them for purposes of the Commission's own audits (regulation 10).

There are provisions to facilitate assistance and co-operation between member States required

under Title IV (Articles 34 to 40) of Regulation 882/2004 (regulations 11 and 12), in particular to enable officials of the Commission and other member States to attend with an inspector who investigates suspected breaches under the relevant legislation. Regulation 13 provides for the payment on written demand of expenses charged under Article 40.4 and Article 28 of Regulation 882/2004.

Part 5 provides for the enforcement of the Regulations, including powers of enforcement officers for this purpose (regulation 16). It is an offence under regulation 17 to obstruct an auditor, an enforcement officer, or an inspector who brings with him or her representatives from the Commission or other member States, or any persons accompanying an inspector or auditor. It is also an offence under regulation 17 to provide misleading or false information to, or to fail to provide information requested by, an inspector or auditor or an enforcement officer. The penalty on summary conviction for the offences is a fine at level 5 of the standard scale (currently £5,000) or three months' imprisonment, or both (regulation 17(4)). Provision is made for the prosecution of offences committed by corporate bodies (regulation 18), and time limits for prosecution are specified in regulation 19.

Regulation 20 amends the 2006 Regulations to remove from the definition of “relevant food law” in so far as it applies in relation to food, Schedule 2 of the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006 (“the TSE Regulations”) and certain provisions in the EU Regulation on TSEs (Regulation (EC) No. 999/2001 (OJ No. L147, 31.5.2001, p. 1)) relating to the monitoring of TSEs in slaughtered goats and sheep.

A regulatory appraisal has been prepared in respect of these Regulations and is available from the Office of the Chief Veterinary Officer, National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ.

Status:
Point in time view as at 31/01/2007.

Changes to legislation:
There are currently no known outstanding effects for the The Official Controls (Animals, Feed and Food) (Wales) Regulations 2007 (revoked).