

2004 No. 2688

AGRICULTURE, ENGLAND

**The Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis)
and the Feeding Stuffs (Enforcement) (Amendment) (England)
(No. 2) Regulations 2004**

<i>Made</i>	- - - -	<i>13th October 2004</i>
<i>Laid before Parliament</i>		<i>28th October 2004</i>
<i>Coming into force</i>		<i>19th November 2004</i>

The Secretary of State for Health, in exercise of the powers conferred on him by sections 66(1), 74A and 84 of the Agriculture Act 1970(a) (as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000(b) and article 2 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002(c)), and being a Minister designated(d) for the purposes of section 2(2) of the European Communities Act 1972(e) in relation to the Common Agricultural Policy of the European Community, in exercise of the powers conferred on him by that last mentioned section (in so far as these Regulations cannot be made under the powers of the Agriculture Act 1970 specified above), after consultation as required by section 84(1) of the Agriculture Act 1970 and by 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(f), makes the following Regulations:

Title, application and commencement

1. These Regulations may be cited as the Feeding Stuffs, the Feeding Stuffs (Sampling and Analysis) and the Feeding Stuffs (Enforcement) (Amendment) (England) (No. 2) Regulations 2004, shall apply in relation to England only and shall come into force on 19th November 2004.

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- (a) 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 S.I. 1999/672. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46). By virtue of S.I. 1999/3141, functions of the Secretaries of State for Wales and Scotland previously exercisable in relation to England ceased to be so exercisable and were transferred to the Minister of Agriculture, Fisheries and Food. Section 74A was inserted by the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6.
- (b) S.I. 2000/656.
- (c) S.I. 2002/794.
- (d) S.I. 1972/1811, amended by S.I. 2002/794.
- (e) 1972 c. 68.
- (f) OJ No. L31, 1.2.2002, p.1, as amended by Regulation (EC) No. 1642/2003 (OJ No. L245, 29.9.2003, p.4). Under Article 3 of the EC Regulation “food law” extends to feed produced for, or fed to, food producing animals.

Amendments to the Feeding Stuffs Regulations 2000

2.—(1) The Feeding Stuffs Regulations 2000(a) are amended, in so far as they apply in relation to England, in accordance with paragraphs (2) to (5).

(2) In regulation 14 (control of feeding stuffs and feed materials containing undesirable substances) after paragraph (6) add the following —

“(7) Paragraphs (8) and (9) shall apply to any person who has in his possession or control for the purposes of a trade or business any of the following products intended for animal feed —

- (a) palm kernel expeller;
- (b) feeding stuffs obtained from the processing of fish or other marine animals;
- (c) seaweed meal and feed materials derived from seaweed; or
- (d) complete feeding stuffs for fish or for fur producing animals.

(8) Any person referred to in paragraph (7) shall, if requested by an inspector, procure and produce to the inspector an analysis in order to demonstrate that the content of inorganic arsenic in a product intended for animal feed listed in paragraph (7) is within the limit specified in the relevant entry in column 3 of Part I of Schedule 7.

(9) Any person who without reasonable excuse fails to comply with a request made under paragraph (8) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

(3) For regulation 15 (control of compound feeding stuffs containing prohibited materials) substitute the following —

“Control of feeding stuffs containing prohibited materials

15.—(1) No person shall put into circulation for use as a feeding stuff, or use as a feeding stuff, any material which contains —

- (a) faeces, urine or separated digestive tract contents resulting from the emptying or removal of the digestive tract, irrespective of any form of treatment or admixture;
- (b) hide treated with tanning substances, including its waste;
- (c) seeds or other plant propagating materials which, after harvest, have undergone specific treatment with plant protection products for their intended use in propagation, or derived by-products;
- (d) wood, including sawdust or other materials derived from wood, which has been treated with wood preservatives as defined in Annex V of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market(b);
- (e) subject to paragraph (3), waste (whether or not subjected or to be subjected to further processing) obtained from the treatment of “urban waste water”, “domestic waste water”, or “industrial waste water” (as those terms are defined in Article 2 of Council Directive 91/271/EEC concerning waste water treatment), whatever the origin of the waste water concerned(c);
- (f) solid urban waste, such as household waste, but excluding catering waste as defined by Regulation (EC) 1774/2002 laying down health rules concerning animal by-products not intended for human consumption(d);
- (g) packaging and parts of packaging from products used in agriculture or the food industry.

(a) S.I. 2000/2481, amended by S.I. 2001/541, S.I. 2001/3389, S.I. 2002/892, S.I. 2003/1026, S.I. 2003/1503, S.I. 2003/2912 and S.I. 2004/1301.

(b) OJ No. L123, 24.4.98, p.1.

(c) OJ No. L135, 30.5.91, p.40, as amended by Commission Directive 98/15/EC, OJ No. L67, 7.3.98, p.29.

(d) OJ No. L273, 10.10.2002, p.1.

(2) For the purposes of paragraph (1) “waste” shall have the meaning given in Article 1 of Council Directive 74/442/EEC(a).

(3) For the purposes of paragraph (1)(e), the term “waste water” shall be construed in accordance with the footnote to point 5 of the Annex to Commission Decision 2004/217/EC adopting a list of materials whose circulation or use for animal nutrition purposes is prohibited(b).”.

(4) In Part IX (European Community Regulations by which additives are controlled) of Schedule 3 —

(a) after the reference to Commission Regulation (EC) No. 490/2004 insert the following —

“Commission Regulation (EC) No. 879/2004 concerning the provisional authorisation of a new use of an additive already authorised in feeding stuffs (*Saccharomyces cerevisiae*) (27).

Commission Regulation (EC) No. 880/2004 authorising without time limit the use of beta-carotene and canthaxanthin as additives in feeding stuffs belonging to the group of colouring matters including pigments (28).

Commission Regulation (EC) No. 1259/2004 concerning the permanent authorisation of certain additives already authorised in feeding stuffs (29).

Commission Regulation (EC) No. 1288/2004 concerning the permanent authorisation of certain additives and the provisional authorisation of a new use of an additive already authorised in feeding stuffs (30).

Commission Regulation (EC) No. 1332/2004 concerning the permanent authorisation of certain additives in feeding stuffs (31).

Commission Regulation 1333/2004 concerning the permanent authorisation of a certain additive in feeding stuffs (32).

Commission Regulation (EC) No. 1453/2004 concerning the permanent authorisation of certain additives in feeding stuffs (33).

Commission Regulation (EC) No. 1465/2004 concerning the permanent authorisation of an additive in feeding stuffs (34).”.

(b) at the end add the following —

“(27) OJ No. L162, 30.4.2004, p.65.

(28) OJ No. L162, 30.4.2004, p.68.

(29) OJ No. L239, 9.7.2004, p.8.

(30) OJ No. L243, 15.7.2004, p.10.

(31) OJ No. L247, 21.7.2004, p.8.

(32) OJ No. L247, 21.7.2004, p.11.

(33) OJ No. L269, 17.8.2004, p.3.

(34) OJ No. L270, 18.8.2004, p.11.”.

(5) For the entries relating to arsenic, fluorine, lead, aflatoxin B₁, free gossypol and endosulphan which are set out in columns 1 to 3 of Part I (feeding stuffs) of Schedule 7 (prescribed limits for undesirable substances) substitute the entries set out in columns 1 to 3 respectively of the Schedule to these Regulations.

Consequential amendments to the Feeding Stuff Regulations 2000

3.—(1) The Feeding Stuff Regulations 2000 are further amended, in so far as they apply in relation to England, in accordance with paragraphs (2) and (3).

(2) In paragraph (1) of regulation 7 (limits of variation) after “(England)” insert “(No. 2)”.

(a) OJ No. L194, 25.7.75, p.39, as last amended by Regulation (EC) 1882/2003, OJ No. L284, 31.10.2003, p.1.

(b) OJ No. L67, 5.3.2004, p.31.

(3) In paragraph (1) of regulation 25 (modification of section 74A(3) of the Agriculture Act 1970) after “(England)” insert “(No. 2)”.

Consequential amendments to the Feeding Stuffs (Sampling and Analysis) Regulations 1999

4.—(1) The Feeding Stuffs (Sampling and Analysis) Regulations 1999(a) are amended in so far as they apply in relation to England in accordance with paragraphs (2) and (3).

(2) In paragraph 3(e)(ii) of Part I of Schedule 2 (methods of analysis) after “(England)” insert “(No. 2)”.

(3) In paragraph (11)(a) of Part II (notes for completion of certificate) of Schedule 3 (form of certificate of analysis) after “(England)” insert “(No. 2)”.

Consequential amendments to the Feeding Stuffs (Enforcement) Regulations 1999

5.—(1) The Feeding Stuffs (Enforcement) Regulations 1999(b) are amended in so far as they apply in relation to England in accordance with paragraphs (2) to (5).

(2) In paragraph (2)(a) and in paragraph (4) of regulation 7 (modification of the Agriculture Act 1970 for certain purposes) after “(England)” insert “(No. 2)”.

(3) In the modified version of subsection (8) of section 67 of the Agriculture Act 1970 which is set out in regulation 9, after “(England)” insert “(No. 2)”.

(4) In the modified version of subsection (17) of section 76 of the Agriculture Act 1970 which is set out in regulation 10, after “(England)” wherever it appears insert “(No. 2)”.

(5) In each of regulations 11, 11A and 11B, after “(England)” insert “(No. 2)”.

Signed by authority of the Secretary of State for Health

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

13th October 2004

(a) S.I. 1999/1663, amended by S.I. 1999/1871, S.I. 2001/541, S.I. 2002/892, S.I. 2003/1296, S.I. 2003/1503, S.I. 2003/2912 and S.I. 2004/2146.

(b) S.I. 1999/2325, amended by S.I. 2000/656, S.I. 2000/2481, S.I. 2001/541, S.I. 2001/3389, S.I. 2002/892, S.I. 2003/1026, S.I. 2003/1296 and S.I. 2003/1503.

SCHEDULE

Regulation 2(5)

ENTRIES TO BE SUBSTITUTED IN PART I OF SCHEDULE 7 TO THE FEEDING STUFFS REGULATIONS 2000

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Arsenic	Feed materials except:	2
	— meal made from grass, from dried lucerne and from dried clover and dried sugar beet pulp and dried molasses sugar beet pulp	4
	— palm kernel expeller	4 (of which the content of inorganic arsenic must be less than 2)
	— phosphates and calcareous marine algae	10
	— calcium carbonate	15
	— magnesium oxide	20
	— feedingstuffs obtained from the processing of fish or other marine animals	15 (of which the content of inorganic arsenic must be less than 2)
	— seaweed meal and feed materials derived from seaweed	40 (of which the content of inorganic arsenic must be less than 2)
	Complete feeding stuffs except:	2
	— complete feeding stuffs for fish and fur- producing animals	6 (of which the content of inorganic arsenic must be less than 2)
Complementary feeding stuffs except:	— mineral feeding stuffs	4
		12 Note in respect of all entries in column 3 The maximum levels refer to total arsenic
Fluorine	Feed materials except:	150
	— feedingstuffs of animal origin with the exception of marine crustaceans such as marine krill	500
	— phosphates and marine crustaceans such as marine krill	2000
	— calcium carbonate	350
	— magnesium oxide	600
	— calcareous marine algae	1000
	Complete feeding stuffs except:	150
	— complete feeding stuffs for cattle, sheep and goats — in milk	30

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	— other	50
	— complete feeding stuffs for pigs	100
	— complete feeding stuffs for poultry	350
	— complete feeding stuffs for chicks	250
	Mineral mixtures for cattle, sheep and goats	2000
	Other complementary feeding stuffs	125 (fluorine content per percentage point in the feeding stuff)
Lead	Feed materials except:	10
	— grass meal, lucerne meal or clover meal	40
	— calcium carbonate	20
	— phosphates and calcareous marine algae	15
	— yeast	5
	Complete feeding stuffs	5
	Complementary feeding stuffs except:	10
	— mineral feeding stuffs	15
Aflatoxin B ₁	All feed materials	0.02
	Complete feeding stuffs for cattle, sheep and goats except:	0.02
	— dairy animals	0.005
	— calves and lambs	0.01
	Complete feeding stuffs for pigs and poultry (except piglets and chicks)	0.02
	Other complete feeding stuffs	0.01
	Complementary feeding stuffs for cattle, sheep and goats (except complementary feeding stuffs for dairy animals, calves and lambs)	0.02
	Complementary feeding stuffs for pigs and poultry (except piglets and chicks)	0.02
	Other complementary feeding stuffs	0.005
Free Gossypol	Feed materials except:	20
	— cotton–seed	5000
	— cotton–seed cakes and cotton–seed meal	1200
	Complete feeding stuffs except:	20
	— complete feeding stuffs for cattle, sheep and goats	500
	— complete feeding stuffs for poultry (except laying hens) and calves	100
	— complete feeding stuffs for rabbits and pigs (except piglets)	60

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Endosulphan (sum of alpha- and beta-isomers and of endosulphan sulphate, expressed as endosulphan)	All feeding stuffs except:	0.1
	— maize and products derived from the processing thereof	0.2
	— oilseeds and products derived from the processing thereof	0.5
	— complete feeding stuffs for fish	0.005

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, further amend the Feeding Stuffs Regulations 2000 (S.I. 2000/2481, as already amended), “the 2000 Regulations”. The 2000 Regulations largely apply in relation to England only.

2. These Regulations implement Commission Directive 2003/100/EC (OJ No. L285, 1.11.2003, p.33) amending Directive 2002/32/EC of the European Parliament and of the Council (OJ No. L140, 30.5.2002, p.15) on undesirable substances in animal feed, and also implement Commission Decision 2004/217/EC (OJ No. L67, 5.3.2004, p.31) adopting a list of materials whose circulation or use for animal nutrition purposes is prohibited.

3. Regulation 2 of these Regulations amends the 2000 Regulations by —

- (a) requiring that analysis indicating the level of inorganic arsenic in certain feeding stuffs or feed materials must be provided on request to the competent authority (*paragraph (2)*);
- (b) making detailed amendments to the list of prohibited materials set out in regulation 15 of the 2000 Regulations, and extending to the circulation or use as feed materials the existing prohibition on the circulation or use in connection with compound feeding stuffs (*paragraph (3)*);
- (c) adding to Part IX of Schedule 3 eight new European Commission Regulations authorising new additives or new uses of certain additives in feeding stuffs, or as the case may be making permanent the existing provisional authorisation of an additive (*paragraph (4)*).
- (d) amending the prescribed limits for undesirable substances set out in Schedule 7 of the 2000 Regulations in respect of arsenic, fluorine, lead, aflatoxin B₁, free gossypol and endosulphan (*paragraph (5)*);

4. Regulations 3 to 5 make consequential amendments to references to the Feeding Stuffs Regulations 2000 as they appear in various Regulations and in the Agriculture Act 1970.

5. A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the Library of each House of Parliament together with a Transposition Note setting out how the main elements of Commission Directive 2003/100/EC and Commission Decision 2004/217/EC are transposed into domestic law by these Regulations. Copies may be obtained from the Animal Feed Unit of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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