
STATUTORY INSTRUMENTS

2009 No. 3255

The Official Feed and Food Controls
(England) Regulations 2009

PART 1

PRELIMINARY

Title, commencement and application

1. These Regulations —

- (a) may be cited as the Official Feed and Food Controls (England) Regulations 2009;
- (b) come into force on 25th January 2010; and
- (c) apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990⁽¹⁾;

“the Agency” means the Food Standards Agency;

“authorised officer” —

- (a) in relation to a competent authority, means any person (whether or not an officer of the authority) who is authorised by the authority in writing for the purposes of regulation 14; and
- (b) in relation to a relevant enforcement authority, means any person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specially, to act in matters arising under Part 2 of these Regulations in relation to its enforcement responsibilities under regulation 17;

“competent authority” means, other than in regulations 23 and 24, an authority which, by virtue of regulation 3, is designated for the purposes of any of the provisions of Regulation 882/2004;

“Directive 2004/41”, “Regulation 999/2001”, “Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 1020/2008”, “Regulation 669/2009” and “Regulation 1162/2009” have the meanings respectively given to them in Schedule 1;

“feed authority” means the authority required by section 67(1) of the Agriculture Act 1970⁽²⁾ to enforce that Act within its area or district as the case may be;

(1) 1990 c.16.
(2) 1970 c. 40.

“food authority” has the meaning it bears by virtue of section 5(1) of the Act, except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple);

“the Import Provisions” means Part 3 of these Regulations, Articles 15 to 24 of Regulation 882/2004 and Regulation 669/2009;

“the Official Control Regulations” means these Regulations and Regulation 882/2004;

“premises” includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

“primary production” has the meaning it bears in Regulation 852/2004;

“relevant enforcement authority” means a body which, by virtue of regulation 17, is made responsible for executing and enforcing any provision of Part 2 of these Regulations;

“relevant feed law” has the meaning given to it in Schedule 2; and

“relevant food law” has the meaning given to it in Schedule 3.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Unless the contrary intention appears, any expression used both in these Regulations and in Regulation 178/2002, Regulation 882/2004 or Regulation 669/2009 has the meaning it bears in Regulation 178/2002, Regulation 882/2004 or Regulation 669/2009 as the case may be.

(4) Where any functions under the Act are assigned—

(a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984⁽³⁾, to a port health authority;

(b) by an order under section 6 of the Public Health Act 1936⁽⁴⁾, to a joint board for a united district; or

(c) by an order under paragraph 15(6) of Schedule 8 to the Local Government Act 1985⁽⁵⁾, to a single authority for a metropolitan county,

any reference in these Regulations to a food authority shall be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

(5) In these Regulations, any reference to an EU instrument defined in Schedule 1 is a reference to that instrument as amended from time to time.

PART 2

MAIN PROVISIONS

Competent authorities

3.—(1) Subject to paragraphs (2) and (5), any body specified in Column 1 of Schedule 4 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant feed law.

(2) Where the feed authority is designated as a competent authority pursuant to paragraph (1) the designation shall extend to its area or district only, as the case may be.

(3) 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c.16).

(4) 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

(5) 1985 c.51; paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.

(3) Subject to paragraphs (4) to (6), any body specified in Column 1 of Schedule 5 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant food law.

(4) Where the food authority is designated as a competent authority pursuant to paragraph (3) the designation shall extend to its area only.

(5) Where the Agency is designated as a competent authority pursuant to paragraph (1) or (3) for the purposes of Article 31(1) of Regulation 882/2004, the designation shall extend only to the operations in respect of which the Agency executes and enforces the Food Hygiene (England) Regulations 2006(6) by virtue of regulation 5(1)(a) of those Regulations.

(6) Where the Agency is designated as a competent authority pursuant to paragraph (3) for the purposes of Article 31(2) of Regulation 882/2004, the designation shall extend, as regards Article 31(2)(a) to (e), only to those operations in respect of which the Agency executes and enforces the Food Hygiene (England) Regulations 2006 by virtue of regulation 5(2) of those Regulations.

Exchanging and providing information

4.—(1) For the purposes of enabling competent authorities, other OFFC authorities and member States to fulfil the obligations placed upon them by Regulation 882/2004 competent authorities may exchange among themselves or provide to other OFFC authorities any information received by them in the execution and enforcement of relevant feed law or relevant food law.

(2) For the purpose of executing and enforcing relevant feed law or relevant food law, competent authorities may exchange among themselves any information received by them in the execution and enforcement of such law.

(3) For the purposes of facilitating the execution and enforcement of relevant feed law or relevant food law in Wales, Northern Ireland and Scotland, competent authorities may share information received by them in the execution and enforcement of relevant feed law or relevant food law with the bodies that execute and enforce such law in those countries.

(4) Paragraphs (1), (2) and (3) are without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

(5) For the purposes of this regulation, “other OFFC authorities” means authorities designated in the United Kingdom as competent authorities for the purposes of Regulation 882/2004 other than the competent authorities designated under these Regulations.

Obtaining information

5.—(1) For the purpose of enabling competent authorities and member States to fulfil the obligations placed on them by Regulation 882/2004 and for the purpose of executing and enforcing relevant feed law or relevant food law, a competent authority may require a control body —

- (a) to provide the competent authority with any information which it has reasonable cause to believe the control body is able to give; and
- (b) to make available to the competent authority for inspection by it any records which it has reasonable cause to believe are held by the control body or are otherwise within its control (and, if they are kept in computerised form, to make them available in a legible form).

(2) The competent authority may copy any records made available to it under paragraph (1)(b).

(3) A person who —

(6) [S.I. 2006/14](#), amended by [S.I. 2007/56](#).

- (a) fails without reasonable excuse to comply with any requirement imposed under paragraph (1); or
- (b) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(4) For the purposes of paragraph (1), the term “control body” includes any member, officer or employee of a control body.

Power to issue codes of recommended practice

6.—(1) For the guidance of feed authorities and food authorities the Secretary of State may issue codes of recommended practice as regards —

- (a) functions conferred upon those authorities in their capacity as competent authorities by or under Regulation 882/2004; or
- (b) the execution and enforcement of the Import Provisions;

and any such code shall be laid before Parliament after being issued.

(2) The Agency may, after consulting the Secretary of State, give a feed authority or food authority a direction requiring them to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on them as competent authorities by or under Regulation 882/2004 and in their execution and enforcement of the Import Provisions, every feed authority and food authority —

- (a) shall have regard to any relevant provision of any such code; and
- (b) shall comply with any direction which is given under this regulation and requires them to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by mandatory order.

(5) The Agency shall consult the Secretary of State before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Secretary of State shall have regard to any relevant advice given by the Agency.

Monitoring of enforcement action

7.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing relevant audit legislation.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant audit legislation.

(3) Each annual report of the Agency shall contain a report on its activities during the year in enforcing any relevant audit legislation for which it is the enforcement authority and its performance in respect of —

- (a) any standards under paragraph (2) that apply to those activities; and

- (b) any objectives relating to those activities that are specified in the statement of objectives and practices under section 22 of the Food Standards Act 1999(7).
- (4) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant audit legislation and such a report may include guidance as to action which the Agency considers would improve that performance.
- (5) The Agency may direct an authority to which such a report has been made —
 - (a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report; and
 - (b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.
- (6) Section 19 of the Food Standards Act 1999 shall apply in relation to information obtained through monitoring under this regulation as if it were information obtained through monitoring under section 12 of that Act.

Power to request information relating to enforcement action

- 8.—(1) For the purpose of carrying out its function under regulation 7 in relation to any enforcement authority the Agency may require a person mentioned in paragraph (2) —
- (a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give; or
 - (b) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within his control (and, if they are kept in computerised form, to make them available in a legible form).
- (2) A requirement under paragraph (1) may be imposed on —
- (a) the enforcement authority or any member, officer or employee of the authority; or
 - (b) a person subject to any duty under relevant audit legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.
- (3) The Agency may copy any records made available to it in pursuance of a requirement under paragraph (1)(b).

Power of entry for persons monitoring enforcement action

- 9.—(1) The Agency may authorise any individual (whether a member of its staff or otherwise) to exercise the powers specified in paragraph (4) for the purpose of carrying out its function under regulation 7 in relation to any enforcement authority.
- (2) No authorisation under this regulation shall be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency.
- (3) An authorisation under this regulation shall be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygienic precautions to be taken while exercising powers in pursuance of the authorisation).
- (4) An authorised person may —
- (a) enter any premises mentioned in paragraph (5) at any reasonable hour in order to inspect the premises or anything which may be found on them;
 - (b) take samples of any articles or substances found on such premises;

(7) 1999 c. 28.

- (c) inspect and copy any records found on such premises (and, if they are kept in computerised form, require them to be made available in a legible form);
 - (d) require any person present on such premises to provide him with such facilities, such records or information and such other assistance as he may reasonably request.
- (5) The premises which may be entered by an authorised person are —
- (a) any premises occupied by the enforcement authority;
 - (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation has been carried out for the enforcement authority; and
 - (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.
- (6) The power to enter premises conferred on an authorised person includes power to take with him any other person he may consider appropriate.
- (7) An authorised person shall on request —
- (a) produce his authorisation before exercising any powers under paragraph (4); and
 - (b) provide a document identifying any sample taken, or documents copied, under those powers.
- (8) If a person who enters any premises by virtue of this regulation discloses to any person any information obtained on the premises with regard to any trade secret he is, unless the disclosure is made in the performance of his duty, guilty of an offence.
- (9) Where the Agency is the enforcement authority in relation to relevant audit legislation this regulation applies in relation to the Agency in respect of its performance in enforcing those provisions, with the omission of paragraph (5)(a).
- (10) In this regulation “authorised person” means a person authorised under this regulation.

Meaning of “enforcement authority” and related expressions

10.—(1) In regulations 7 to 9 “relevant audit legislation” means relevant feed law and relevant food law in respect of which the Agency is designated as a competent authority pursuant to paragraphs (1) and (3) respectively of regulation 3 but does not include “relevant legislation” as defined in section 15 of the Food Standards Act 1999.

(2) In regulations 7 to 9 “enforcement authority” means the authority by whom relevant audit legislation is to be enforced and includes the Agency itself if by virtue of that legislation it is the enforcement authority in relation to it but does not include the European Commission; and “enforcement” in relation to relevant audit legislation includes the execution of any provisions of that legislation.

(3) Any reference in regulations 7 to 9 (however expressed) to the performance of an enforcement authority in enforcing any relevant audit legislation includes a reference to the capacity of that authority to enforce it.

Offences relating to regulations 8 and 9

- 11.** A person who —
- (a) intentionally obstructs a person exercising powers under paragraph (4)(a), (b) or (c) of regulation 9;
 - (b) fails without reasonable excuse to comply with any requirement imposed under paragraph (1) of regulation 8 or paragraph (4)(d) of regulation 9; or

- (c) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

Right of appeal

12.—(1) Any person who is aggrieved by a decision of the competent authority taken in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004 pursuant to —

- (a) Article 31(2)(c) of Regulation 882/2004 (approval);
- (b) Article 31(2)(d) of Regulation 882/2004 (conditional approval and full approval); or
- (c) Article 31(2)(e) of Regulation 882/2004 (withdrawal of approval and suspension of approval),

may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980(8) shall apply to the proceedings.

(3) The period within which an appeal under paragraph (1) may be brought shall be one month from the date on which notice of the decision was served on the person desiring to appeal and the making of a complaint for an order shall be 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 competent authority is incorrect, the authority shall give effect to the determination of the court.

(5) Where an approval is refused or withdrawn, the food business operator who, immediately before such refusal or withdrawal, had been using the establishment concerned may continue to use it, subject to any conditions imposed by the competent authority for the protection of public health, unless —

- (a) the time for appealing against the decision to refuse or withdraw the approval has expired without an appeal having been lodged; and
- (b) where an appeal against that decision has been lodged, the appeal has been finally disposed of or abandoned.

(6) Nothing in paragraph (5) shall permit an establishment to be used for a food business if —

- (a) a hygiene prohibition order, a hygiene emergency prohibition notice or a hygiene emergency prohibition order has been imposed in relation to the establishment;
- (b) a prohibition order, an emergency prohibition notice, an emergency prohibition order or an emergency control order has been imposed in relation to the establishment pursuant to section 11, 12 or 13 of the Act;
- (c) the approval of the establishment has been suspended pursuant to Article 31(2)(e) of Regulation 882/2004; or
- (d) the establishment is prevented from operating following the service of a remedial action notice.

(7) In this regulation each of the terms “hygiene prohibition order”, “hygiene emergency prohibition notice”, “hygiene emergency prohibition order” and “remedial action notice” has the meaning that it bears in the Food Hygiene (England) Regulations 2006.

Appeal to Crown Court against dismissal of appeal under regulation 12(1)

13. A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under regulation 12(1) may appeal to the Crown Court.

Staff of competent authority of another member State

14. An authorised officer of a competent authority may take with him a member of staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004.

Commission experts

15.—(1) When an enforcing officer enters premises for the purposes of executing and enforcing official controls he may take with him a Commission expert to enable that expert to carry out functions under Article 45 of Regulation 882/2004.

(2) In paragraph (1) and in paragraph (5)(b) of regulation 17 “enforcing officer” means an authorised officer of any authority which is responsible for executing and enforcing official controls for the verification of compliance with relevant feed law or relevant food law.

Prohibition on disclosure of trade secrets

16. If a person enters any premises by virtue of regulation 14 or 15 and discloses to any person any information obtained on the premises with regard to any trade secret he is, unless the disclosure is made in the performance of his duty, guilty of an offence.

Execution and enforcement

17.—(1) The authority responsible for executing and enforcing paragraph (3) of regulation 5 shall be the competent authority who imposed the requirement on the control body concerned under paragraph (1) of that regulation.

(2) The authority responsible for executing and enforcing paragraph (8) of regulation 9 and regulation 11 shall be the Agency.

(3) The authority responsible for executing and enforcing regulation 16 shall be the authority whose officer took the person who made the disclosure on to the premises concerned.

(4) The authority responsible for executing and enforcing paragraph (8) of regulation 18 shall be the authority who authorised the person who entered the premises and disclosed the information.

(5) The authority responsible for executing and enforcing regulation 19 shall—

- (a) where the offence relates to the execution of regulation 14, be the competent authority whose authorised officer took with him a member of staff of the competent authority of another member State;
- (b) where the offence relates to the execution of regulation 15, be the authority whose enforcing officer took with him a Commission expert; and
- (c) where the offence relates to the execution of regulation 18, be the relevant enforcement authority whose authorised officer exercised powers under that regulation.

Powers of entry

18.—(1) An authorised officer of a relevant enforcement authority other than the Agency shall, on producing, if so required, some duly authenticated document showing his 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 a contravention of any provision of this Part of these Regulations for which that authority has enforcement responsibility pursuant to regulation 17; and
- (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 such a contravention within that area or district,

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

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of —

- (a) ascertaining whether there is or has been on the premises a contravention of any provision of this Part of these Regulations for which the Agency has enforcement responsibility pursuant to regulation 17; and
- (b) ascertaining whether there is on the premises any evidence of such a contravention,

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

(3) 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) or (2) 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 authorise the authorised officer to enter the premises, if need be by reasonable force.

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

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

(6) 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) 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 him such assistance as he may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may —

- (a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Part of these Regulations; 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.

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

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(9), 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.

Obstruction etc. of officers

19.—(1) Any person who —

- (a) intentionally obstructs any person acting in the execution of regulation 14, 15 or 18; or
- (b) without reasonable cause, fails to give to any person acting in the execution of regulation 14, 15 or 18 any assistance or information which that person may reasonably require of him for the performance of his functions under those regulations,

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

shall be guilty of an offence.

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

Penalties

20.—(1) A person guilty of an offence under paragraph (8) of regulation 18 shall 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.

(2) A person guilty of an offence under paragraph (3) of regulation 5, paragraph (8) of regulation 9, regulation 11 or regulation 16 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under regulation 19 shall 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.

Time limit for prosecutions

21. No prosecution for an offence under paragraph (8) of regulation 18 shall 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.

(9) 1981 c.22.

PART 3

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

Interpretation of this Part of these Regulations

22. In this Part of these Regulations —

“authorised officer”, 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” means the Commissioners for Her Majesty’s Revenue and Customs;

“enforcement authority” means the feed authority or the food authority;

“feed” does not include additives of a type mentioned in Article 6(1)(e) of or paragraph 4(d) of Annex I to Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition⁽¹⁰⁾ or any premixture consisting solely of a combination of such additives;

“outside England enforcement authority” means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except England;

“product” means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (official controls on feed and food of non-animal origin not included in the scope of Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries⁽¹¹⁾) and includes those composite products and foodstuffs which are not required to be subject to veterinary checks as provided in Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC⁽¹²⁾;

“the relevant territories” means the territories referred to in Annex I to Regulation 882/2004; and

“specified import provision” means any provision of Regulation 669/2009 that is specified in Column 1 of Schedule 6 and whose subject-matter is described in Column 2 of that Schedule.

Feed enforcement responsibilities and competent authority status

23.—(1) It shall be the responsibility of each feed authority to execute and enforce the Import Provisions in its area or district as the case may be in relation to feed.

(2) The feed authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant feed law.

(3) A feed authority’s designation as a competent authority pursuant to paragraph (2) shall extend to its area or district only as the case may be.

(10) OJNo. L268, 18.10.2003, p.29, 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/EC 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).

(11) OJ No. L24, 30.1.98, p.9, as last amended by Council Directive 2006/104/EC adapting certain Directives in the field of agriculture (veterinary and phytosanitary legislation), by reason of the accession of Bulgaria and Romania (OJ No. L363, 20.12.2006, p.352).

(12) OJ No. L116, 4.5.2007, p.9.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant feed law.

Food enforcement responsibilities and competent authority status

24.—(1) It shall be the responsibility of each food authority to execute and enforce the Import Provisions in its area in relation to food.

(2) The food authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant food law.

(3) A food authority's designation as a competent authority pursuant to paragraph (2) shall extend to its area only.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant food law.

Functions of the Commissioners

25. The Commissioners shall carry out the functions given to customs services under Article 24 of Regulation 882/2004 and Article 10 of Regulation 669/2009, in each case in relation to feed and food.

Exchange of information

26.—(1) The Commissioners, the Agency and any enforcement authority may exchange information for the purposes of the Import Provisions, and may divulge information to the bodies defined as enforcement authorities in the provisions corresponding to Part 3 of these Regulations in Wales, Scotland or Northern Ireland for the purposes of the Import Provisions or the provisions corresponding to the Import Provisions in those jurisdictions.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners, the Agency or any enforcement authority to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (1) if—

- (a) the information relates to a person whose identity—
 - (i) is specified in the disclosure, or
 - (ii) can be deduced from the disclosure;
- (b) the disclosure is for a purpose other than the purposes specified in paragraph (1); and
- (c) the Commissioners have not given their prior consent to the disclosure.

Deferred execution and enforcement

27.—(1) Subject to paragraph (6), where—

- (a) a product from a third country has entered England;
- (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 England, 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 England, shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking shall —

- (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 it is in England or the outside England enforcement authority if the destination is not in England, 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), he shall —

- (a) (if the product's place of destination is within England) 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 England 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 England 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 shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in England.

(5) No person shall breach an undertaking given under paragraph (1)(d).

(6) The deferred execution and enforcement provisions set out in this regulation are subject to any official controls that take place pursuant to Article 15(5) of Regulation 882/2004.

Prohibition on introduction of certain feed and food

28.—(1) The following are prohibited —

- (a) the introduction into England from a third country of specified feed that fails to comply with feed safety requirements;
- (b) the introduction into England from elsewhere in the relevant territories of specified feed that originates in a third country and fails to comply with feed safety requirements;
- (c) the introduction into England from a third country of specified food that fails to comply with —

- (i) food safety requirements, or
- (ii) the requirements of Articles 3 to 6 of Regulation 852/2004; and
- (d) the introduction into England from elsewhere in the relevant territories of specified food that originates in a third country and fails to comply with —
 - (i) food safety requirements, or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004.
- (2) In this regulation —
 - (a) “specified feed” means feed that is a product; and
 - (b) “specified food” means food that is a product.

Checks on products

29.—(1) The person responsible for introducing any product into England shall 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 shall 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 of Regulation 882/2004 he shall be entitled to require that the check takes place at a specified place.

Suspension of designation of points of entry

30.—(1) Where the Agency is satisfied that—

- (a) the continued operation of a designated point of entry presents a serious risk to public or animal health; or
- (b) at a designated point of entry, there has been a serious breach of the minimum requirements for designated points of entry laid down in Article 4 of Regulation 669/2009,

it may suspend the designation of the point of entry either in full or in part by service on the operator of the point of entry of a written notice to that effect.

(2) Upon service of a notice under paragraph (1), the point of entry shall cease to be a designated point of entry to the extent specified in that notice until it is again so designated in accordance with Article 17(1) of Regulation 882/2004.

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

31.—(1) An enforcement authority shall have 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 shall be the competent authority for the purposes of Article 22 of Regulation 882/2004.

Notices pursuant to Articles 18 and 19 of Regulation 882/2004 (imports of feed and food from third countries)

32.—(1) If an authorised officer of an enforcement authority proposes to place a consignment of feed or food under official detention under Article 18 or 19(1) of Regulation 882/2004 he shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

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

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

Right of appeal in respect of notices served under regulation 32

33.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 32 may appeal to a magistrates' court.

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

(3) The period within which an appeal under paragraph (1) may be brought shall be 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 shall be 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 shall give effect to the determination of the court.

Appeal to Crown Court against dismissal of appeal under regulation 33

34. A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under regulation 33(1) may appeal to the Crown Court.

Serious risk to animal or public health

35.—(1) Where the Secretary of State or the Agency learns or has reasonable grounds to suspect that any food or feed that has been or may be introduced into England from a third country is likely to constitute a serious risk to animal or public health, they each have the power to issue a written declaration suspending or imposing conditions on the introduction into England of any product from the whole or any part of that third country.

(2) Such a declaration shall be published in such manner as the person who issued it thinks fit and shall specify the product 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 shall specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person shall introduce that product into England 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 shall introduce that product into England 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.

Costs and fees

36.—(1) The costs incurred by the enforcement authority for which the feed or food business operator or its representative is liable under Article 22 of Regulation 882/2004 shall be payable by the feed or food business operator or its representative on the written demand of the enforcement authority.

(2) The fees required to be collected by a competent authority under Article 14 of Regulation 669/2009 shall be payable by the feed or food business operator subject to the increased level of official controls provided for in that Regulation or its representative on the written demand of the competent authority.

Procurement by authorised officers of samples with regard to food

37. An authorised officer of a food 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 him to be intended for placing on the market or to have been placed on the market, for human consumption, or
 - (ii) is found by him on or in any premises which he is authorised to enter by or under regulation 39;
- (c) take a sample from any food source, or a sample of any contact material, which is found by him on or in any such premises; and
- (d) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

Analysis etc. of samples

38.—(1) An authorised officer of a food authority who has procured a sample under regulation 37 shall —

- (a) if he considers that the sample should be analysed, submit it to be analysed by a public analyst;
- (b) if he 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 shall 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 is for any reason unable to

perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by him to such other food analyst or examiner as he may determine.

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

- (a) he is the public analyst for the area in question; and
- (b) the sample is submitted to him for analysis by an authorised officer of a food authority, demand in advance the payment of such reasonable fee as he may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall 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) shall be signed by him, but the analysis or examination may be made by any person acting under his 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 by the other party as being a copy of such a certificate, shall 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 shall be called as a witness.

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

(10) The Food Safety (Sampling and Qualifications) Regulations 1990(13) shall apply in relation to a sample procured by an authorised officer of a food authority under regulation 37 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) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

Powers of entry of authorised officers of a food authority

39.—(1) An authorised officer of a food authority shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours —

- (a) to enter any premises within the authority's area 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, 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 shall 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

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

- (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 authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation shall 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 such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.

(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 him such assistance as he may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) may —

- (a) seize and detain any records which he 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 person any information obtained by him on the premises with regard to any trade secret, he shall, unless the disclosure was made in the performance of his 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.

Obstruction etc. of officers (imports)

40.—(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 for the performance of his functions under the Import Provisions,

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

shall be guilty of an offence.

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

Offences and penalties

41.—(1) Any person who —

- (a) contravenes or fails to comply with any of the specified import provisions;
- (b) contravenes or fails to comply with paragraph (3) of regulation 26, paragraph (5) of regulation 27 or paragraph (4) or (5) of regulation 35;
- (c) contravenes any of the prohibitions in paragraph (1) of regulation 28;
- (d) to the extent that contravention or failure to comply with regulation 29 does not constitute an offence under regulation 40, contravenes or fails to comply with regulation 29; or
- (e) fails to comply with a notice served upon him under the Import Provisions,

shall be guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under this Part of these Regulations shall 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 40 shall 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.

Time limit for prosecutions (imports)

42. No prosecution for an offence under this Part of these Regulations which is punishable under regulation 41(2) shall 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.

PART 4

RECOVERY OF EXPENSES

Expenses arising from additional official controls

43. Expenses charged by a competent authority to an operator pursuant to Article 28 of Regulation 882/2004 shall be payable by the operator on the written demand of the competent authority.

Expenses arising in respect of co-ordinated assistance and follow-up by the Commission

44. Expenses charged by a competent authority to a feed or food business pursuant to Article 40(4) of Regulation 882/2004 shall be payable by the feed or food business on the written demand of the competent authority.

PART 5

ENFORCEMENT AND SUPPLEMENTARY PROVISIONS

Offences due to fault of another person

45. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Defence of due diligence

46.—(1) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Offences by bodies corporate

47.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Offences by Scottish partnerships

48. Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he, as well as the partnership shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Protection of officers acting in good faith

49.—(1) An officer of a relevant body is not personally liable in respect of any act done by him —

- (a) in the execution or purported execution of the Official Control Regulations; and
- (b) within the scope of his employment,

if he did that act in the honest belief that his duty under the Official Control Regulations required or entitled him to do it.

(2) Nothing in paragraph (1) shall be construed as relieving any relevant body of any liability in respect of the acts of its officers.

(3) Where an action has been brought against an officer of a relevant body in respect of an act done by him —

- (a) in the execution or purported execution of the Official Control Regulations; but
- (b) outside the scope of his employment,

the body may indemnify him against the whole or a part of any damages which he has been ordered to pay or any costs which he may have incurred if it is satisfied that he honestly believed that the act complained of was within the scope of his employment.

(4) In so far as a food authority is a relevant body for the purposes of this regulation, a public analyst appointed by a food authority shall be treated for the purposes of this regulation as being an officer of the authority, whether or not his appointment is a whole-time one.

(5) In this regulation “relevant body” means a body acting as —

- (a) a competent authority;
- (b) an enforcement authority as defined in regulation 22; or
- (c) a relevant enforcement authority.

Service of documents

50.—(1) Any document which is required or authorised to be served on a person under these Regulations may be served on the person concerned —

- (a) by delivering it to that person;
- (b) in the case of a person that is a body corporate other than a limited liability partnership, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary at that office;
- (c) in the case of a person that is a limited liability partnership, by delivering it to a designated member of the partnership at their registered or principal office or by sending it in a prepaid letter addressed to a designated member of the partnership at that office;
- (d) in the case of a person that is a partnership other than a limited liability partnership, by delivering it to the partnership’s principal place of business; or
- (e) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to that person at their usual or last known residence.

(2) Where a document is to be served on the occupier of any premises under these Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises are unoccupied, the document may be served by addressing it to the person concerned in the capacity of “occupier” of the premises (naming them), and —

- (a) by delivering it to some other person at the premises; and
- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

Amendment to the Feed (Hygiene and Enforcement) (England) Regulations 2005

51. For Schedule 1 (Specified Feed Law) to the Feed (Hygiene and Enforcement) (England) Regulations 2005(**14**) there is substituted the Schedule set out in Schedule 7 to these Regulations.

Revocation

52. The following Regulations are revoked —

- (a) the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005(**15**);
- (b) the Official Feed and Food Controls (England) Regulations 2007(**16**).

Signed by authority of the Secretary of State for Health

8th December 2009

Gillian Merron
Minister of State,
Department of Health

(14) S.I.2005/3280, amended by S.I. 2006/15 and S.I. 2006/3120.

(15) S.I. 2005/1442.

(16) S.I. 2007/3185.