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FOOD STANDARDS AGENCY

FOOD STANDARDS AGENCY CONSULTATION

Title: The Official Feed and Food Controls (England) Regulations 2009

CONSULTATION SUMMARY PAGE

Date consultation launched:	Closing date for responses:
14 September 2009	6 November 2009

Who will this consultation be of most interest to?

Feed and Food Business operators

Local and Port Health Authorities in England and Her Majesty's Revenue and Customs

What is the subject of this consultation?

THE DRAFT OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2009

What is the purpose of this consultation?

To seek comments on the draft Official Feed and Food Controls (England) Regulations 2009. This Statutory Instrument (SI) will update and replace the Official Feed and Food Controls (England) Regulations 2007.

Responses to this consultation should be sent to:

Name Rufina Acheampong

Division/Branch Official Controls and Enforcement Policy Team

FOOD STANDARDS AGENCY

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Is an Impact Assessment included with this consultation?	Yes ☒	No ☐ See Annex A for reason.

INVESTOR IN PEOPLE

If you would prefer to receive future FSA consultations by e-mail, or if you no longer wish to receive information on this subject please notify the named person in this consultation.

POSITIVE ABOUT DISABLED PEOPLE

THE DRAFT OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2009

DETAIL OF CONSULTATION

Introduction

1. The Food Standards Agency is seeking your views on the draft Official Feed and Food Controls (England) Regulations 2009. This Statutory Instrument (SI), which is enclosed at Annex B, will update and replace the Official Feed and Food Controls (England) Regulations 2007. The reasons for introducing the new SI are to:

- update the legal powers of the competent (regulatory) authorities to provide for the effective enforcement of EC Regulation 669/2009 implementing EC Regulation 882/2004 as regard the increased level of official controls on imports of certain feed and food of non-animal origin; and
- update the definitions required for interpretation of the SI to reflect changes to Community and national legislation, and update the areas of responsibilities designated to the competent authorities.

2. Your views are also sought on the Impact Assessment (IA) for the SI, attached at Annex C.

3. Finally, your views are sought on the draft summary Guidance to Feed and Food Businesses Operators on the Import Provisions for "High Risk" Feed and Food of Non-Animal Origin (Non-POAO) and on the Guidance Notes for feed and food enforcers. The guidance notes aim to assist feed and food businesses and enforcement authorities with the understanding of the new requirements regarding increased levels of official controls of high-risk feed and food of non-animal origin (non-POAO) imported into England from third countries. These are respectively at Annexes D and E to this letter.

Summary of questions asked in this consultation:

Q1: What are your views on the draft Official Feed and Food Controls (England) Regulations 2009, especially in terms of the likely impact on your business? It would be very helpful if you could provide evidence.

Q2: Do you have any comments on the assumptions made in draft Impact Assessment at Annex C? If you disagree with the estimated figures, please provide evidence.

Q3: What are your views on the draft Guidance at Annexes D and E? Is the guidance clear?

Background

EC Regulation 882/2004 669/2009 on official controls

4. EC Regulation 882/2004 sets out requirements for the authorities in EU Member States that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law (and animal health and animal welfare rules), i.e. the 'competent authorities' responsible for organising and undertaking 'official controls'. These include requirements for official controls of non-POAO feed and food from third countries that is imported into the Community. These are set out at Articles 15 to 25. For products which represent a known or emerging risk ('high-risk'), a framework is established under which importers will be required to pre-notify the relevant authorities of the arrival of such consignments and will have to present these products at specific points that have been designated specially to carry out the necessary controls. Article 15(5) of EC Regulation 882/2004 empowers the Commission to establish the list of these 'high-risk' products and to detail the frequency and nature of the controls that must take place. It also allows for the possibility of establishing a system of fees for these controls. Implementation of this framework will bring arrangements for 'high-risk' non-POAO more into line with those for products of animal origin (POAO).

Commission Regulation (EC) No 669/2009 on an increased level of controls on imports of certain feed and food of non-animal origin

5. The European Commission has now developed rules to implement the provisions of Article 15(5) of EC Regulation 882/2004. These rules will be applied by means of EC Regulation 669/2009 which is directly applicable in the Member States (i.e. its provisions are in themselves the law in Member States). However, some measures are required at national level to give effect to its provisions. EC Regulation 669/2009 was published in the Official Journal of the European Union on 25 July 2009 and will enter into force on 25 January 2010.

The proposed Official Feed and Food Controls (England) Regulations 2009

6. The proposed Official Feed and Food Controls (England) Regulations 2009 gives effect in England to elements of EC Regulation 882/2004 and EC Regulation 669/2009 for which a domestic legal basis is needed. The provisions of the SI will enable the competent authorities to meet their obligations under these Commission Regulations with respect to the organisation and enforcement of new rules on checks (official controls) of feed and food of non-POAO imported from third countries. The proposed Regulations 2009 will update and replace the Official Feed and Food Controls (England) Regulations 2007.

Key Proposals

7. The principal changes introduced by the proposed Official Feed and Food Controls (England) Regulations 2009 (to the 2007 Regulations) are set out below. We would welcome your views on any of these changes.

- ***Feed/Food enforcement responsibilities and competent authority status (regulations 23 and 24)*** - The current regulations 23 and 24, setting out the responsibilities of the feed and food authorities to execute and enforce the import provisions, have been revised to identify the competent authority (feed or food

authority or the Agency), and relevant functions as set out in EC Regulation 669/2009**.**

- ***Exchange of information (regulation 26)*** – This new measure provides for officers of Her Majesty's Revenue and Customs (HMRC) to exchange information with the enforcement authorities (local and port health authorities) responsible for the execution and enforcement of the import provisions. The exchange of information is particularly important in relation to "high-risk" products that are not presented for official controls but are declared for customs purposes. In such instances, HMRC can withhold clearance and bring the consignment to the attention of the relevant local/port health authority. Regulation 26 has been drafted to include a prohibition for the onward disclosure of information received from HMRC other than for the purposes of enforcement and without the consent of HMRC. An offence and penalty for onward disclosure in breach of the provisions in this regulation is provided (see regulation 41(1) (b)).

- ***Suspension of designation of points of entry (regulation 30)*** – EC Regulation 882/2004 requires Member States (in the UK, the Agency) to designate particular points of entry (DPE) in their territory for the purposes of the increased level of official controls. EC Regulation 669/2009 sets out certain minimum requirements for the DPE regarding performance of controls, facilities and equipment provided to undertake increased levels of control for specific high-risk feed and food. It has, therefore, been necessary to provide a measure for the Agency to suspend designation where such points of entry are in serious breach of these requirements or their continued operation presents a serious risk to animal and public health.

- ***Costs and expenses (regulation 36)*** – This new measure requires feed and food business operators to pay the competent authority on demand for expenses arising from the increased level of official controls provided for in EC Regulation 669/2009.

- ***Specified provisions (Schedule 6)*** – This schedule sets out various obligations placed on feed and food business operators by EC Regulation 669/2009.

- ***Definitions*** - The definitions of Community legislation and 'relevant food law' included respectively at Schedules 1 and 3 of the SI have been updated to reflect the changes to Community and national legislation**.** In addition, we are proposing to revise Schedule 2 and carry out the necessary amendments to the definition of "relevant feed law", when the SI is made, in line with the approach adopted for Schedules 1 and 3.

Consultation Process

8. Separate SIs are being made in Scotland, Wales and Northern Ireland and relative guidance for food/feed business operators and enforcement authorities. These are subject to separate consultation exercises in those countries.

Other relevant documents

9. 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 welfare rules. Official Journal L191, 28.5.2004, 1-52. The text of the EU Regulation may be downloaded from the European Commission's website at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0882:20081110:EN:PDF

10. Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC. Official Journal L194, 25.7.2009. The text of the EU Regulation may be downloaded from the European Commission's website at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:194:0011:0021:EN:PDF

Responses

11. **Responses are required by close 6 November 2009.** Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Name: Rufina Acheampong
Branch : Official Controls and Enforcement Policy
Division : Food Safety: Implementation and Delivery

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Official Feed and Food Controls (England) Regulations 2009

Annex C: Impact Assessment

Annex D: Draft: Guidance to Feed and Food Businesses Operators on the Import Provisions for "High Risk" Feed and Food of Non-Animal Origin (Non-POAO)

Annex E: Draft Guidance for enforcement authorities on the application of EC Regulation 669/2009

Annex F: List of interested parties

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

Publication of personal data and confidentiality of responses

2. In accordance with the FSA principle of openness our Information Centre at Aviation House will hold a copy of the completed consultation. Responses will be open to public access upon request. The FSA will also publish a summary of responses, which may include personal data, such as your full name and contact address details. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.

3. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.

4. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

5. A list of interested parties to whom this letter is being sent appears in Annex F. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.

6. Please let us know if you need paper copies of the consultation documents or of anything specified under '**Other relevant documents**'.

7. This consultation has been prepared in accordance with HM Government Code of Practice on Consultation, available at: http://www.berr.gov.uk/files/file47158.pdf The Consultation Criteria are available at http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44458.html

8. Criterion 2 of HM Government Code of Practice on Consultation states Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. This consultation is not being held for a full 12 weeks consultation period because during the course of negotiations with the European Commission, the Agency has frequently conveyed information to interested parties, including industry and enforcement authorities. In particular, the European Commission Working Document setting out implementing rules under Regulation (EC) No. 882/2004 on official controls for "high-risk" feed and food products of non-animal origin (non-POAO) imported from outside the Community was the subject of a full twelve week public consultation exercise, commencing 1 March 2007. Commission Regulation 669/2009 implementing Article 15(5) of Regulation (EC) 882/2004 was published on 25 July 2009.

The Commencement Date for the implementing SI is 25 January 2010. Since 2007 some six Information Updates on applying EU feed and food controls regulation have been posted on the Agency website. [These may be found at: http://www.food.gov.uk/foodindustry/regulation/europeleg/feedandfood/infoupdate/]

9. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. Please see the Impact Assessment at Annex C.

10. For details about the consultation process (not about the content of this consultation) please contact: Food Standards Agency Consultation Co-ordinator, Room 2C, Aviation House, 125 Kingsway, London, WC2B 6NH. Tel: 0207 276 8630.

Comments on the consultation process itself

11. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by using the Consultation Feedback Questionnaire at **http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc**

12. If you would like to be included on future Food Standards Agency consultations on other topics, please advise us of those subject areas that you might be specifically interested in by using the Consultation Feedback Questionnaire at **http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc** The questionnaire can also be used to update us about your existing contact details.

S T A T U T O R Y I N S T R U M E N T S

2009 No.

AGRICULTURE, ENGLAND

FOOD, ENGLAND

The Official Feed and Food Controls (England) Regulations 2009

Made - - - -	*2009*
Laid before Parliament	*2009*
Coming into force - -	*25th January 2010*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972(**a**).

The Secretary of State, has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food–producing animals(**b**), the common agricultural policy of the European Community(**c**) and measures in the veterinary and phytosanitary fields for the protection of public health(**d**).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to a Community instrument defined in Schedule 1 to be construed as a reference to that instrument as amended from time to time.

As required 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(**e**) there has been open and transparent public consultation during the preparation and evaluation of the following Regulations.

(**a**) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51).
(**b**) S.I. 2003/2901.
(**c**) S.I. 1972/1811.
(**d**) S.I. 1999/2027.
(**e**) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/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).

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(**a**);

"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 2076/2005", "Regulation 1020/2008" and "Regulation 669/2009" 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(**b**) to enforce that Act within its area or district as the case may be;

"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.

(**a**) 1990 c.16.
(**b**) 1970 c. 40.

(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(**a**), to a port health authority;

(b) by an order under section 6 of the Public Health Act 1936(**b**), 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(**c**), 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 a Community 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) 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(**d**) 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.

(**a**) 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c.16).
(**b**) 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.
(**c**) 1985 c.51; paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.
(**d**) S.I. 2006/14, amended by S.I. 2007/56.

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 —

(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(**a**).

(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

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(**a**) 1999 c. 28.

(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;

(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(**a**) 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**) 1980 c. 43.

(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(**a**), 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**) 1981 c.22.

(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.

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(**a**) 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(**b**)) 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

(**a**) OJ No. 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).

(**b**) 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).

be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC(**a**);

"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.

(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 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;

(**a**) OJ No. L116, 4.5.2007, p.9.

(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 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 expenses

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) Expenses charged by a competent authority to an operator or its representative under Article 14 of Regulation 669/2009 shall be payable by the operator 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(**a**) shall apply in relation to a sample procured by an authorised officer of a food authority under regulation 35 as if it were a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) 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

(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,

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

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.

Revocation

51. The following Regulations are revoked —

(a) the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005(**a**);

(b) the Official Feed and Food Controls (England) Regulations 2007(**b**).

Signed by authority of the Secretary of State for Health

Parliamentary Under Secretary of State
Department of Health

Date

(**a**) S.I. 2005/1442.
(**b**) S.I. 2007/3185.

SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF COMMUNITY LEGISLATION

"Directive 2004/41" means Directive 2004/41/EC of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(**a**);

"Regulation 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(**b**);

"Regulation 178/2002" means 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;

"Regulation 852/2004" means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(**c**) as read with Regulation 2073/2005;

"Regulation 853/2004" means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(**d**) as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005, Regulation 2076/2005 and Regulation 1020/2008;

"Regulation 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(**e**) as read with Regulation 2074/2005, Regulation 2076/2005 and Regulation 669/2009;

"Regulation 1688/2005" means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(**f**);

"Regulation 2073/2005" means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(**g**);

"Regulation 2074/2005" means 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

(**a**) OJ No. L157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p.12).

(**b**) OJ No. L147, 31.5.2001, p.1, as last amended by Regulation (EC) No. 220/2009 of the European Parliament and of the Council amending Regulation (EC) No. 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, as regards the implementing powers conferred on the Commission (OJ No. L87, 31.3.2009, p.155).

(**c**) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26). Regulation (EC) No. 852/2004 was last amended by Regulation (EC) No. 219/2009 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 Two (OJ No. L87, 31.3.2009, p.109).

(**d**) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26). Regulation (EC) No. 853/2004 was last amended by Regulation (EC) No. 219/2009.

(**e**) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.29). Regulation (EC) No. 882/2004 was last amended by Commission Regulation (EC) No. 1029/2008 amending Regulation (EC) No. 882/2004 of the European Parliament and of the Council to update a reference to certain European Standards (OJ No. L278, 21.10.2008, p.6).

(**f**) OJ No. L271, 15.10.2005, p.17.

(**g**) OJ No. L338, 22.12.2005, p.1, as read with the Corrigenda at OJ No. L278, 10.10.2006, p.32 and OJ No. L283, 14.10.2006, p.62. Regulation (EC) 2073/2005 was amended by Commission Regulation (EC) No. 1441/2007 amending Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (OJ No. L322, 7.12.2007, p.12).

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(**a**);

"Regulation 2076/2005" means 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(**b**);

"Regulation 1020/2008" means Commission Regulation (EC) No. 1020/2008 amending Annexes II and III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No. 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products(**c**); and

"Regulation 669/2009" means Commission Regulation (EC) No. 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC(**d**).".

(**a**) OJ No. L338, 22.12.2005, p.27 as last amended by Commission Regulation (EC) No. 1022/2008 amending Regulation (EC) No. 2074/2005 as regards the total volatile basic nitrogen (TVB-N) limits (OJ No. L277, 18.10.2008, p.18).

(**b**) OJ No. L338, 22.12.2005, p.83, as last amended by Commission Regulation (EC) No. 1020/2008 amending Annexes II and III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No. 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products (OJ No. L277, 18.10.2008, p.8), Commission Regulation (EC) No. 1021/2008 amending Annexes I, II and III to Regulation (EC) No. 854/2008 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption and Regulation (EC) No. 2076/2005 as regards live bivalve molluscs, certain fishery products and staff assisting with official controls in slaughterhouses (OJ No. L277, 18.10.2008, p.15) and Commission Regulation (EC) No. 1023/2008 amending Regulation (EC) No. 2076/2005 as regards the extension of the transitional period granted to food business operators importing fish oil intended for human consumption (OJ No. L277, 18.10.2008, p.21).

(**c**) OJ No. L277, 18.10.2008, p.8.

(**d**) OJ No. L194, 25.7.2009, p.11.

SCHEDULE 2

Regulation 2(1)

DEFINITION OF RELEVANT FEED LAW

"relevant feed law" means —

(a) Part IV of the Agriculture Act 1970(**a**) in so far as it applies in relation to feeding stuffs;

(b) the Feeding Stuffs (Sampling and Analysis) Regulations 1999(**b**);

(c) the Genetically Modified Animal Feed (England) Regulations 2004(**c**);

(d) the Food Hygiene (England) Regulations 2006 in so far as they apply in relation to feed;

(e) the Feed (Hygiene and Enforcement) (England) Regulations 2005(**d**); and

(f) the Feeding Stuffs (England) Regulations 2005 (**e**).

(**a**) 1970 c. 40.
(**b**) S.I. 1999/1663, amended by S.I. 2001/541, S.I. 2002/892, S.I. 2003/1296, S.I. 2003/1503, S.I. 2003/2912, S.I. 2004/1301, S.I. 2004/2146, S.I. 2004/2688, S.I. 2005/3281 and S.I. 2006/113.
(**c**) S.I. 2004/2334, amended by S.I. 2005/1265 and S.I. 2007/3007.
(**d**) S.I. 2005/3280, amended by S.I. 2006/15 and S.I. 2006/3120.
(**e**) S.I. 2005/3281, amended by S.I. 2006/113, S.I. 2006/2808, S.I. 2006/3120, S.I. 2007/3008, S.I. 2008/1523 and S.I. 2009/28.

SCHEDULE 3

Regulation 2(1)

DEFINITION OF RELEVANT FOOD LAW

"relevant food law" means —

(a) food law in so far as it applies in relation to food, except in so far as it involves —

(i) the regulation of residues of veterinary medicines and other substances under the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997(**a**),

(ii) the regulation of residues of pesticides under the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008(**b**),

(iii) the application of the rules under which a traditional speciality guaranteed may be recognised for certain agricultural products and foodstuffs laid down in Council Regulation (EC) No. 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed(**c**),

(iv) the application of the rules on the protection of designations of origin and geographical indications of certain agricultural products and foodstuffs laid down in Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (**d**),

(v) the regulation of organic products under the Organic Products Regulations 2009(**e**),

(vi) the regulation of beef and veal labelling under the Beef and Veal Labelling Regulations 2008(**f**),

(vii) the regulation of the import of and trade in products of animal origin —

(aa) under the Products of Animal Origin (Import and Export) Regulations with the exception of the execution and enforcement of regulation 3 thereof by the Agency,

(bb) under the Products of Animal Origin (Third Country Imports) (England) Regulations 2006(**h**), with the exception of the execution and enforcement of regulation 5 thereof by the Agency;

(viii) the matters regulated under Schedule 2 to the Transmissible Spongiform Encephalopathies (England) Regulations 2008(**i**) in so far as that Schedule applies in in relation to animals slaughtered for human consumption, together with the matters covered under 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; and

(ix) the regulation of spirit drinks under the Spirit Drinks Regulations 2008(**j**);

(b) food law in so far as it applies in relation to materials and articles in contact with food; and

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(**a**) S.I. 1997/1729, amended by S.I. 2001/3590, S.I. 2004/147, and S.I. 2006/755.
(**b**) S.I. 2008/2570.
(**c**) OJ No. L93, 31.3.2006, p.1.
(**d**) OJ No. L93, 31.3.2006, p.12 as last amended by Commission Regulation (EC) No. 417/2008 amending Annexes I and II to Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ No. L125, 9.5.2008, p.27) .
(**e**) S.I. 2009/842.
(**f**) S.I. 2008/3252.
(**g**) S.I. 1996/3124, amended by S.I. 1997/3023, S.I. 1998/994, S.I. 1999/683, S.I. 2000/225, S.I. 2000/656, S.I. 2000/790, S.I. 2000/2215, S.I. 2001/1553, S.I. 2001/1640, S.I. 2001/3399, S.I. 2002/889, S.I. 2003/3003 and S.I. 2003/3177.
(**h**) S.I. 2006/2841, amended by S.I. 2007/1605, S.I 2008/3230 and S.I. 2009/875.
(**i**) S.I. 2008/1881, amended by S.I. 2008/2269 and S.I. 2008/3295.
(**j**) S.I. 2008/3206.

(c) food law in so far as it involves the regulation of primary production and those associated operations listed in point 1 of Part AI of Annex I to Regulation 852/2004 under the Food Hygiene (England) Regulations 2006.

SCHEDULE 4

Regulation 3(1)

COMPETENT AUTHORITIES FOR THE PURPOSES OF CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR AS THEY APPLY IN RELATION TO RELEVANT FEED LAW

Column 1 *Competent authority*	*Column 2* *Provisions of Regulation 882/2004*
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 19(1), (2) and (3), 24, 27, 28, 31(1) and (2)(f), 34, 35(3) and (4), 36, 37(1), 38, 39, 40(2) and (4), 52(1) and 54
The feed authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 27, 28, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54

SCHEDULE 5

Regulation 3(3)

COMPETENT AUTHORITIES FOR THE PURPOSES OF CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR AS THEY APPLY IN RELATION TO RELEVANT FOOD LAW

Column 1 *Competent authority*	*Column 2* *Provisions of Regulation 882/2004*
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 14, 19(1), (2) and (3), 24, 27, 28, 31, 34, 35(3) and (4), 36, 37(1), 38, 39, 40(2) and (4), 52(1) and 54
The food authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 27, 28, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54

SCHEDULE 6 Regulations 22 and 41(1)(a)

SPECIFIED IMPORT PROVISIONS

Column 1 *Provision of Regulation 669/2009*	*Column 2* *Subject - matter*
Article 6, as read with Article 7	Requirement that feed and food business operators or their representatives give adequate prior notification of the estimated date and time of physical arrival of the consignment at the designated point of entry and of the nature of the consignment in the manner indicated in that Article (common entry document to be completed and transmitted at least one working day in advance) and Article 7 (common entry document to be drawn up in the official language of the member State, although the member State may consent to common entry documents being drawn up in another official language of the Community).
Article 11	Requirement that in cases where the special characteristics of the consignment so warrant, feed and food business operators or their representatives make available to the competent authority- (a) sufficient human resources and logistics to unload the consignment, in order that the official controls may take place; and (b) the appropriate equipment for sampling for analysis as regards special transport and/or specific packaging forms, insofar as such sampling cannot be representatively performed with standard sampling equipment.
Article 12 first paragraph	Requirement that consignments must not be split until the increased level of official controls has been completed and the common entry document has been completed by the competent authority.
Article 12 second paragraph	Requirement that in the case of subsequent splitting of the consignment, an authenticated copy of the common entry document must accompany each part of the consignment until it is released for free circulation.

Summary: Intervention & Options

Department /Agency:	Title:	
Food Standards Agency	Impact Assessment of THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2009	
Stage: Consultation	**Version:** 1	**Date:** 14 September 2009

Related Publications: Regulation (EC) 882/2004 on official controls at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:165:0001:01:EN:PDF and annex 1 of Reg 669/2009 at http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:194:0011:0021:EN:PDF

Available to view or download at:

http://www.food.gov.uk/consultations/

Contact for enquiries: Rufina Acheampong **Telephone:** 020 7276 8321

What is the problem under consideration? Why is government intervention necessary?

Certain imported food and feed of non-animal origin represent a known or emerging risk to animal and human health, which consumers are usually unable to observe. Government intervention is necessary to address this unobservable risk to health. In particular, the introduction of European Commission measures to increase the levels of risk-based official controls on these products are required to ensure compliance with Regulation (EC) 882/2004 and protect consumer health.

What are the policy objectives and the intended effects?

The policy objectives are to:

- increase consumer protection through increased levels of risk-based Official Controls on imported products of non-animal origin
- ensure that appropriate legal measures, in line with EU legislation, are put in place for feed and food law enforcement authorities in England

What policy options have been considered? Please justify any preferred option.

1. Do nothing. This would retain the status quo in the UK in terms of the import control arrangements for products of non-animal origin, including the current financing arrangements for such controls.
2. Implement the detailed rules set out in EC Regulation 882/2004.

Option 2 is preferred. This option will ensure that the UK is compliant with EC legislation and will ensure an increased level of protection for consumers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

2013 - envisaged to be part of EU proposed review

Ministerial/CEO Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible ~~Minister/Chief~~ Executive*:

.....Date:

* for Impact Assessments undertaken by non-ministerial departments/agencies and NOT being considered by Parliament

Summary: Analysis & Evidence

Policy Option: 2	Description: Implement the detailed rules set out in EC Regulation 882/2004

COSTS

ANNUAL COSTS	
One-off (Transition)	**Yrs**
£ 15,000	1
Average Annual Cost (excluding one-off)	
£ 2.2m - 4.6m	

Description and scale of **key monetised costs** by 'main affected groups'

Costs of sampling, testing and storage of high risk products of non-animal origin to businesses; Additional administrative costs to businesses and the competent authority; one-off familiarisation costs to competent authority and business.

Total Cost (PV) **£ 10.2m - 21.6m**

Other **key non-monetised costs** by 'main affected groups' Cost of disposed stock damaged during sampling

BENEFITS

ANNUAL BENEFITS	
One-off	**Yrs**
£ 0	
Average Annual Benefit (excluding one-off)	
£ 0.4m - 0.5m	

Description and scale of **key monetised benefits** by 'main affected groups' Savings to Government from no longer paying the current costs of testing. These are mainly transferred directly to business and hence reflected in the costs above, but there is some reduction from lower frequency of tests for Sudan dyes.

Total Benefit (PV) **£ 2.0m - 2.3m**

Other **key non-monetised benefits** by 'main affected groups' Potential reduction in food-borne illness relating to imported products of non-animal origin; Reduction in food safety incidents; Reduction in number of recalls of products of non-animal origin; increased consumer confidence in food produced within the EU and in imported food

Key Assumptions/Sensitivities/Risks The number and contents of consignments of high risk products of non-animal origin imported into the UK in 2008 are assumed to be representative of future years; 2% of consignments are assumed to already be inspected and sampled under 'Do Nothing' option.

Price Base Year 2008	Time Period Years 5	**Net Benefit Range** (NPV) **£ -8.2m to -19.3m**	**NET BENEFIT** (NPV Best estimate) **£ -13.7m**

What is the geographic coverage of the policy/option?				UK
On what date will the policy be implemented?				25 January 2010
Which organisation(s) will enforce the policy?				Local Authorities/PHA
What is the total annual cost of enforcement for these organisations?				£ 399,100
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£ N/A
What is the value of changes in greenhouse gas emissions?				£ N/A
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro **N/K**	Small **N/K**	Medium **N/K**	Large **N/K**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ £153,000 Decrease of £ N/A **Net Impact** **£** £153,000

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

1. Reason for intervention

1.1 Certain imported food and feed of non-animal origin represent a known or emerging risk to animal and human health which consumers are usually unable to observe. Food businesses are unable to credibly inform consumers how far food safety risks have been minimised. This implies a need for government intervention to address this information asymmetry and the unobservable risk to health. In particular, the introduction of European Commission measures to increase the levels of risk-based Official Controls on these products on arrivial at Designated Points of Entry into the UK are required to protect consumer health.

2. Intended effect

2.1 The principal purpose of introducing this SI and replacing SI 2007/3185 is to apply better enforcement of the rules set out in Regulation (EC) 882/2004 and therefore increase consumer protection against risks associated with non-POAO. This will be achieved by giving effect to the provisions in Regulation (EC) 669/2009 implementing Regulation (EC) 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504 EC. This applies from 25 January 2010.

3. Background

3.1 The Statutory Instrument (SI) which is the subject of this Impact Assessment (IA) replaces the Official Feed and Food Controls (England) Regulations 2007 which in turn replaced the Official Feed and Food Controls (England) Regulations 2006 and the Official Feed and Food Controls (England) Regulations 2005. This IA, therefore, focuses only on those measures that are being introduced for the first time in the 2009 Regulations.

EU Regulation 882/2004 669/2009 on official controls

3.2 Regulation 882/2004 sets out requirements for the authorities in EU Member States that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law (and animal health and animal welfare rules), i.e. the 'competent authorities' responsible for organising and undertaking 'official controls'. These include requirements for official controls of non-POAO feed and food from third countries that is imported into the Community. These are set out at Articles 15 to 25. For products which represent a known or emerging risk ('high-risk'), a framework is established under which importers will be required to pre-notify the relevant authorities of the arrival of such consignments and will have to present these products at specific points that have been designated specially to carry out the necessary controls. Article 15(5) of the Regulation empowers the Commission to establish the list of these 'high-risk' products and to detail the frequency and nature of the controls that must take place. It also allows for the possibility of establishing a system of fees for these controls. Implementation of this framework will bring arrangements for 'high-risk' non-POAO more into line with those for products of animal origin (POAO).

3.3 A risk assessment for Regulation 882/2004 as a whole was included in the associated regulatory impact assessment.[1] This concluded that the new arrangements would contribute towards a reduction in food-borne disease, a reduction in contamination incidents and to increased consumer protection, and to a reduction in the costs associated with these. It would also lead, in turn, to increased consumer confidence in food produced within the Community and in imported food. With regard to the provisions on imports of non-POAO, by filling a gap in the current EU harmonised legislation, it was considered that these would help to improve public health protection by ensuring better targeting of controls and more effective management of risks.

Commission Regulation (EC) No 669/2009 on an increased level of controls on imports of certain feed and food of non-animal origin

[1] The RIA developed during negotiations of the EU Regulation is available at: www.food.gov.uk/multimedia/pdfs/offcriaapr04.pdf

3.4 The European Commission has now developed rules to implement the provisions of Article 15(5) of Regulation 882/2004. These rules will be applied by means of Commission Regulation (EC) 669/2009 which is directly applicable in the Member States (i.e. its provisions are in themselves the law in Member States). Regulation 669/2009 was published in the Official Journal of the European Union on 25 July and will enter into force on 25 January 2010.
The Regulation is available at:

http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:194:0011:0021:EN:PDF

The Regulation introduces new obligations for both feed and food business operators and the competent authorities in Member States. The main elements are:

- **List of 'high-risk' products** – Annex I of the Regulation lists the 'high-risk' non-POAO that will be subject to an increased level of import controls. It also specifies the frequency and nature of the checks that must be carried out. The list will be compiled with regard to sources of information including on RASFF notifications, reports and information received from third countries and scientific assessments. The list will be reviewed on a quarterly basis.
- **Standard documentation for prior notification** – Feed and food business operators responsible for importing products listed in Annex I will be required to pre-notify the enforcement ('competent') authorities of the arrival of by means of standard documentation using a Common Entry Document (CED). This will bring procedures into line with those for POAO imports for which a Common Veterinary Entry Document (CVED) is used.
- **Designated points at which controls should be undertaken** – It a requirement that 'high-risk' non-POAO must be imported via points of entry designated by Member States. These designated points must meet minimum requirements as regards facilities and equipment for unloading and storing consignments and for the competent authority carrying out the controls.
- **Controls at designated points of entry** – The appropriate documentary, identity and physical checks may be carried out at the designated point of entry before release into free circulation.
- **Fees** – The Regulation includes mandatory fees for official controls of 'high-risk' non-POAO. The relevant competent authority may recover up to full costs of the checks carried out from the feed or food business operator. Again, this is in line with the system of fees for POAO imports.

The draft Official Feed and Food Controls (England) Regulations 2009

3.5 The draft SI gives effect in England to those elements of both EU Regulation 882/2004 and EC Regulation 669/2009 for which a domestic legal basis is needed. The provisions of the SI will enable the competent authorities to meet their obligations under these Regulations with respect to the organisation and enforcement of new rules on checks (official controls) and set out the obligation for feed and food businesses under the new legislation. An explanation of the provisions of the 2009 Regulations is outlined in the consultation letter. The draft SI is at Appendix 1 of the consultation package.

3.6 The draft SI revokes and replaces the Official Feed and Food Controls (England) Regulations 2007 (SI 2007/3185) which, in turn, revoked and replaced the Official Feed and Food Controls (England) Regulations 2006 (SI 2006/15) which, in turn, revoked and replaced the Official Feed and Food Controls (England) Regulations 2005 (SI 2005/2626). These previous SIs gave effect, in England, to aspects of the feed and food elements of 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 welfare rules (Official Journal L191, 28.5.2004, 1-52) that applied from 1 January 2007 and from 1 January 2006 respectively.

3.7 The Regulations apply to England only. Scotland, Wales and Northern Ireland are making separate but parallel legislation.

4. Options

4.1 Two options have been considered.

- **Option 1** - Do nothing. This would retain the status quo in the UK in terms of the import control arrangements for non-POAO,

- **Option 2** – Introduce the Official Feed and Food Controls (England) Regulations 2009 to give effect in England to the increased level of official controls on imports of certain feed and food of non-animal origin set out in Regulation (EC) 882/2004 and implemented by Commission Regulation (EC) 669/2009.

5. Costs and benefits of options

Sectors and groups affected

Competent authorities

5.1 The draft Regulation is concerned with the role of the enforcement (competent) authorities responsible for organising and undertaking official feed and food controls on non-POAO imported from outside the Community. In the UK, this responsibility is held centrally but, in practice, day to day responsibility for the official control function is divided between central and local Government. In Great Britain, feed and food law enforcement services of local and port health authorities undertake such controls. In Northern Ireland, district councils are responsible for import controls of non-POAO food whilst the Department of Agriculture and Rural Development has responsibility as regards non-POAO feed.

Feed and food businesses

5.2 There are approximately 140,000 feed businesses in the UK. This includes importers as well as producers of feed materials, manufacturers of additives and premixtures, manufacturers of compound feedingstuffs, distributors, retailers and farms. With regard to food, there are approximately 600,000 establishments which again includes importers but also slaughterhouses, cutting plants, manufacturers, processors, packers, distributors and wholesalers, retailers, and restaurants and caterers. As regards these specific proposals it is estimated that approximately 600 importers may be directly affected (this is based on the number of businesses that imported feed and food from outside the Community during 2006 that was subject to emergency safeguard measures under Regulation 178/2002[2]).

Consumers

5.3 The measures proposed in the draft Regulations will contribute towards the overall expected benefits of the application of Regulation 882/2004, i.e. a reduction in food-borne disease, a reduction in contamination incidents and increased consumer protection. In addition, the costs for undertaking official controls for non-POAO that present a known or emerging risk to public or animal health that, in effect, currently fall to the taxpayer will fall in future to the feed and food industry and, potentially, the consumer of the particular food.

Analysis of costs and benefits

Benefits

Option 1

5.4 This option will maintain the *status quo* and will, therefore, not generate any incremental benefit.

Option 2

5.5 The UK supported the establishment of a new framework for import controls on 'high-risk' non-POAO imports during the negotiations on Regulation 882/2004 as it was considered that this would help to improve public health protection by ensuring better targeting of controls and more effective management of risks. The implementing rules will give effect to this framework.

5.6 In addition, it is anticipated that this option will contribute towards a more harmonised EC market - the introduction of mandatory fees across the Community for these controls will help to ensure some consistency with import controls for POAO towards ensuring that trade is less distorted by variations in practices between Member States. The costs of official controls carried out on non-POAO that may be

[2] Source: HM Revenue & Customs uktradeinfo website www.uktradeinfo.com

included on the list of 'high-risk' products under the Commission Regulation are currently funded through general and local taxation. Under the new measures, these costs will be transferred to the feed and food industry.

5.7 This option will also be of benefit to industry in that it will introduce some transparency to the process of presenting consignments for official control through the ports. For example, in planning delivery schedules for trade, food business operators will be able to consider their obligations and the likely period required for carrying out controls on Annex I products before release for free circulation.

5.8 Table 1 below details the number of incidents recorded on the Food Standards Agency Incidents database relating to products listed in Annex I of Commission Regulation (EC) 669/2009.[3] There is uncertainty over the scale and type of food-borne illness caused by imported non-POAO in the UK. It is expected that the increased level of official controls under this option will reduce the number of incidents in future years, but it is not possible to estimate by what proportion and the scale of any associated cost savings. Similarly, the number of recalls of contaminated non-POAO and associated costs are also uncertain, and therefore it is not possible to quantify the potential benefits from any reduction. However, it is acknowledged that the costs associated with large scale recalls can be significant and therefore any reduction in recalls of this nature is likely to result in substantial cost savings.[4]

Table 1. Incidents Relating to High Risk Non-POAO Products in the UK in 2008

Feed and food	Country of Origin	Hazard	Number of Incidents	Other Details
Groundnuts	Argentina	Aflatoxins		No incidents
Groundnuts	Brazil	Aflatoxins	1	
Trace elements	China	Cadmium and lead		No incidents
Groundnuts	Ghana	Aflatoxins	5	
Spices	India	Aflatoxins	3	
Groundnuts	India	Aflatoxins	11	
Melon seeds	Nigeria	Aflatoxins	3	
Dried fruit	Uzbekistan	Ochratoxin A		No incidents
Chilli	All third countries	Sudan dyes	5	
Groundnuts	Vietnam	Aflatoxins		No incidents
Basmati rice	Pakistan	Aflatoxins		No incidents
Mangos	Dominican Republic	Pesticide residues		No incidents
Bananas	Dominican Republic	Pesticide residues		No incidents
Vegetables	Turkey	Pesticide residues		No incidents
Pears	Turkey	Pesticide residues		No incidents
Vegetables	Thailand	Pesticide residues		No incidents
		Total:	**28**	

Source: FSA Incidents Database

There will also be a saving to competent authorities from no longer funding the current level of testing. Under the new Regulation the costs of controls will be charged to business, which is a transfer of the costs from government to business. There will also be a reduced level of testing for Sudan dyes compared to the current situation where 100% of relevant consignments are tested. Data from the FSA's Imported Food Survey indicates that around 2% of non-POAO imports were subject to physical checks at port in 2007/08. Therefore to estimate these savings, 2% of the total number of consignments for most products, and 100% for those tested for Sudan dyes, are multiplied by the cost of official controls

[3] Table 1 identifies only those incidents where a country of origin was recorded in addition to the hazard and type of product. Therefore incidents that may have been a result of high risk non-POAO but where the country of origin was not identified at the time of recording are not included in the table. As a result the figures in the table may be an underestimate.

[4] For example see Jaffee (2005, p. 34) on the cost of destroyed stock from the Sudan I recall in the UK in February 2005 (http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/IndiaSpices.pdf)

(calculated in the same way as the costs, which is explained in detail in the section below) and the results are shown in table 2 below.

Table 2. Summary of Quantified Annual Benefits			
Costs / Hazards / Products	**Upper Bound**	**Lower Bound**	**Best Estimate**
Savings to Competent Authority			
Total Sample Cost (Preparation, Sampling and Analysis)			
Aflatoxins			
Groundnuts for food	£8,186	£7,430	£7,808
Groundnuts for feed	£9,368	£8,961	£9,164
Melon seeds and derived products	-	-	-
Spices	£10,423	£7,401	£8,912
Cadmium & Lead			
Trace Elements	£6,429	£4,565	£5,497
Ochratoxin A			
Dried vine fruit	-	-	-
Pesticide Residues			
Peppers, courgettes and tomatoes	£33,102	£19,526	£26,314
Mangos, yard long beans, melon bitter, lauki, peppers and aubergines	£1,911	£1,303	£1,607
Pears	-	-	-
Sudan Dyes		-	
Chilli, chilli products, curcuma and palm oil	£416,287	£368,973	£392,630
TOTAL ANNUAL COST	**£485,705**	**£418,158**	**£485,705**

Note that the precise figures are shown in the table to enable the calculations to be replicated, but these are estimates and should be treated as indicative only. Products where 2% would be less than one consignment are omitted and a '-' is displayed.

Costs

Option 1

5.9 There are no incremental costs to the do nothing option. However, doing nothing would not increase the level of consumer protection for 'high-risk' products as sought and would leave the UK in breach of an EU obligation to fully apply a directly applicable Commission Regulation. There is also a risk of challenge from the European Commission following inspection by its Food and Veterinary Office of UK enforcement arrangements and their compliance with the requirements of Regulation 882/2004. In view of this, the FSA considers Option 1 non-viable.

Option 2

5.10 The requirement for feed and food businesses to pre-notify the relevant authorities of the arrival of non-POAO identified as presenting a known or emerging risk will be made using a Common Entry Document (CED). Completion of the CED and complying with the resulting inspections will represent an information (administrative) obligation for industry. In addition, this new Regulation requires feed and food business operators to pay the competent authority on demand for expenses arising from the increased level of official controls provided for in Commission Regulation 669/2009. It is important to note, however, that this will apply only in cases where there is a known or emerging risk to public health i.e. for 'high-risk' products.

Table 3. Summary of Quantified Annual Costs			
Costs / Hazards / Products	**Upper Bound**	**Lower Bound**	**Best Estimate**
Costs to Industry			
Total Sample Cost (Preparation, Sampling and Analysis)			
Aflatoxins			
Groundnuts for food	£97,385	£88,393	£92,889
Groundnuts for feed	£111,448	£106,606	£109,027
Melon seeds and derived products	£618	£439	£529
Spices	£260,872	£185,236	£223,054
Cadmium & Lead			
Trace Elements	£161,963	£115,004	£138,484
Ochratoxin A			
Dried vine fruit	£1,236	£878	£1,057
Pesticide Residues			
Peppers, courgettes and tomatoes	£778,402	£463,511	£620,956
Mangos, yard long beans, melon bitter, lauki, peppers and aubergines	£39,942	£27,231	£33,587
Pears	£633	£184	£409
Sudan Dyes			
Chilli, chilli products, curcuma and palm oil	£83,171	£73,718	£78,444
Container Storage Costs			
Ambient containers storage cost	£194,549	£46,286	£120,417
Refrigerated container storage cost	£2,649,243	£820,902	£1,735,073
Administrative Costs			
Completion of Part 1 of Common Entry Document (including presentation to Competent Authority)	£169,550	£169,550	£169,550
One-off familiarisation costs	£18,080	£9,040	£13,560
Total Annual Cost to Industry	£4,549,013	£2,097,938	£3,323,475
Costs to Competent Authority			
Administrative Costs			
Reporting number and size of consignments to EC	£67,820	£67,820	£67,820
Cost of updating list of designated Points of Entry	£48	£32	£40
One-off familiarisation costs	£2,236	£1,118	£1,677
Total Annual Cost to Competent Authority	£67,868	£67,852	£67,860
TOTAL ANNUAL COST	**£4,616,882**	**£2,165,790**	**£3,391,336**

Note that the precise figures are shown in the table to enable the calculations to be replicated, but these are estimates and should be treated as indicative only.

5.11 The costs associated with Option 2 that have been possible to quantify are summarised in Table 3 above. There is uncertainty regarding a number of factors that influence the cost estimates, therefore all figures are presented using ranges with an 'upper bound' indicating the maximum value a cost is estimated as likely to be, and a 'lower bound' indicating the minimum value anticipated. A best estimate of each cost is obtained by taking the mid-point of the range. Overall annual costs are estimated to fall in the range of £2.2m to £4.6m, with a best estimate of £3.4m. In addition there will be one-off familiarisation costs to competent authorities and businesses of between £10,000 and £20,000. Details of the calculations are given in paragraphs 5.12 – 5.31.

Annual Costs

Costs to competent authorities

5.12 Mandatory levels of testing for high risk non-POAO will increase the overall level of official controls for products listed in Annex I of Commission Regulation (EC) 669/2009. The cost of these official controls will, however, be charged to the relevant businesses and therefore will not represent an on-going cost increase to competent authorities.

Costs to businesses

5.13 It is estimated that businesses importing high risk non-POAO will face three on-going annual costs. The first relates to charges levied by competent authorities for official controls. The second is a result of additional storage costs at the Designated Point of Entry for consignments that are detained in order to carry out official controls. The third refers to the cost of stock that is damaged during the official control sampling process, and would therefore have to be disposed of as a result.

Charges for official controls

5.14 Charges for official controls per consignment consist of three components – additional document checks and administering charges required by the regulations, the time and logistical costs of sampling the contents of consignments, and the cost of laboratory analysis. Stakeholder consultation responses suggest that it would take competent authorities 1 hour on average per consignment to record the receipt and details of additional documents (including the CED), process data for quarterly returns, and administer accounts and invoices in relation to charging businesses for official controls. Applying an hourly wage for a Port Health Official (PHO), the estimated cost of additional document checks and administering official control charges is around £19.50 per consignment.[5]

5.15 Stakeholder consultation responses indicate that it would take a PHO on average a total of 45 minutes per sample to determine the correct method of sampling required and notify the appropriate laboratory, identify and examine the consignment in question, issue a detention notice, and prepare the sample paperwork. Depending on the size and nature of the consignment it is estimated that it would take on average 1 – 3 hours per consignment to conduct the physical sample. Applying a PHO hourly wage to these times results in estimated time costs of sampling in the range of £35 - £75 per sample. In addition, stakeholder consultation suggests that transporting each sample to a relevant laboratory would on average incur a cost of £20, as well as costs of consumables of £10 to £20 per sample. In total the time and logistical costs of sampling are estimated to be in the range of £65 - £115 per consignment.

5.16 Costs of laboratory analysis per sample vary depending on the nature of the hazard being tested for, and also the turnaround time of the results. The range of average analytical cost estimates obtained through stakeholder consultation are detailed in Table 4 below. No specific analytical costs were obtained in relation to testing melon seeds and derived products (aflatoxins), spices (aflatoxins), trace elements (cadmium and lead) and dried vine fruit (ochratoxin A), therefore we assign the average of the ranges of testing costs given in Table 4 to consignments of these specific products.

[5] Wage rate obtained from the Annual Survey of Household Earnings 2008 (http://www.statistics.gov.uk/statbase/product.asp?vlnk=15187). Average hourly wage for an Environmental Health Officer (used as a proxy for a Port Health Official) is £19.62 (including 30% uplift for overheads).

Table 4. Average Analytical Testing Costs Per Sample		
Product / Hazard	**Lower Bound**	**Upper Bound**
Chilli and chilli products (Sudan dyes)	£300	-
Groundnuts for food (Aflatoxins)	£400	-
Groundnuts for feed (Aflatoxins)	£1,000	-
Pesticide residues (General)	£100	£500
Pesticide Residues: Multiresidue methods based on CG-MS and LC-MS	£450	£650
Pesticide Residues: Methomyl and oxamyl	£147	£325
Pesticide Residues: Amitraz	£205	£285
Pesticide Residues: Organophosphorus	£234	£400
Average overall	£355	£485

Notes: Where a ' - ' is displayed, the lower bound value was used in both upper and lower bound estimates of the overall cost of analytical testing.

5.17 The number and contents of future consignments imported in to the UK are uncertain; therefore we assume that imports of high risk non-POAO in 2008 remain unchanged in future years. Based on this assumption Table 5 summarises the estimated proportion of consignments of high risk non-POAO that will be subject to official controls under Option 2. These figures are obtained by applying the proportion of consignments that are required to be tested according to Annex I of Commission Regulation (EC) 669/2009 to the total number of consignments of high risk non-POAO imported into the UK in 2008 (see Table 6 below for totals).

Table 5. Estimated Number of High Risk Non-POAO Consignments To Be Tested		
Hazard	**Type of Imported non-POAO**	**Estimated Number To Be Tested**
Aflatoxins	Groundnuts for food	183
	Groundnuts for feed	98
	Melon seeds and derived products	1
	Spices	422
Cadmium & Lead	Trace Elements	262
Ochratoxin A	Dried vine fruit	2
Pesticide Residues	Peppers, courgettes and tomatoes	1,464
	Mangos, yard long beans, melon bitter, lauki, peppers and aubergines	51
	Pears	1
Sudan Dyes	Chilli, chilli products, curcuma and palm oil	192
Total		**2,676**

Source: HM Revenue & Customs

5.18 Total estimates of the additional costs of official control charges to businesses are obtained by multiplying the overall costs per consignment explained in paragraphs 5.13 – 5.16 by the estimated number of consignments to be tested in Table 5. In total it is estimated that the costs of official controls would be in the region of £1m - £1.5m.

5.19 A sample that returns a laboratory analysis which deems a consignment to be non-compliant with Regulation (EC) 882/2004 will incur additional official control charges relating to costs incurred by the competent authority in terms of serving notice and the associated administrative burden. Whilst it is not possible to estimate the number of non-compliant consignments in future years, it is possible to estimate an average cost per non-compliant consignment. Consultation responses indicate that it would take a PHO 3 hours and 15 minutes to carry the necessary duties per non-compliant consignment. Applying an hourly PHO wage rate results in a cost of around £65 per consignment.[6]

[6] Wage rate obtained from the Annual Survey of Household Earnings 2008 (http://www.statistics.gov.uk/statbase/product.asp?vlnk=15187). Average hourly wage for an Environmental Health Officer (used as a proxy for a Port Health Official) is £19.62 (including 30% uplift for overheads).

5.20 The DPE, or in cases where any sampling for testing checks were carried out outside the DPE, the competent authority responsible will charge for the costs of official controls. Options for how fees will be charged to feed and food businesses importing products on Annex I will be determined by local/port heath authorities.

Costs of storage

5.21 Whilst consignments are detained for physical checks and awaiting laboratory results, the containers remain under official control and must therefore be stored at the DPE until the laboratory results are received. Stakeholder consultation responses indicate that, depending on the size of the container, the average cost of ambient (non-refrigerated) storage per container is £11 - £22 per day for the first 12 days, and £33 - £66 per day thereafter. Containers requiring refrigeration are estimated to cost £15.70 per day in addition to the cost per ambient container.

5.22 Consultation responses suggest that consignments under official control are likely to be detained for an additional 10 – 15 days on average than if no controls were carried out. Applying the costs discussed in paragraph 5.20 to these time frames, the estimated average cost per container ranges from £110 - £462 for ambient storage, and £277 - £713 for refrigerated storage.

5.23 For official control sampling to be carried out businesses will need to unload, palletise and reload part or all of the contents of each container. The number of containers per consignment of non-POAO can vary, it is therefore assumed that on average each consignment consists of 1.5 – 2 containers. It is assumed that the costs associated with unloading, palletising and reloading are in the region of £100 - £200 per container. Applying this cost to the number of containers per consignment results in a cost per consignment in the range of £150 - £400. The Agency would welcome information on the costs of unloading, palletising and reloading the contents of containers.

5.24 Applying the storage and unloading costs per container detailed in paragraphs 5.21 – 5.23 to the number of consignments in Table 5 results in total estimated additional storage costs in the range of £0.05m - £0.2m for consignments requiring ambient storage (this takes into account expected savings compared to the current position for consignments being tested for Sudan dyes, which are currently detained at a rate of 100% under emergency controls), and £0.8m - £2.7m for consignments requiring refrigerated storage.[7]

Cost of damaged stock

5.25 There is uncertainty concerning the scale and value of stock that would potentially be damaged during the sampling process for official control and therefore require to be disposed of. Therefore this cost is non-quantified in this IA. The Agency would welcome information on the amounts of stock damaged through sampling and the associated costs.

Designated points of entry

5.26 It is not envisaged that the designation of specific ports for 'high-risk' non-POAO will impose additional costs on businesses. The requirement for importers to present non-POAO for mandatory checks at designated ports (with adequate examination facilities) is already established, and there is a good geographical spread of such seaports in the UK. For example 20 points of entry are currently designated for importation of certain foodstuffs where there is a risk of contamination by aflatoxins. It seems likely that the existing designated points of entry will be appropriate for those non-POAO deemed to be 'high-risk' and there should be no need for shippers to re-route consignments.

Note for consultation

Stakeholders are invited to comment on this if they disagree with the Agency's assessment. In doing so, please quantify any costs and benefits in as much detail as possible; as well as providing details of the particular issues of concern and of the potential impact of these.

[7] It is assumed that the following non-POAO products require refrigerated storage: dried vine fruit, mangos, yard long beans, melon bitter, lauki, peppers and aubergines, and fresh, chilled or frozen vegetables.

Administrative burden costs

Costs to businesses

5.27 The proposed Regulation will introduce a new administrative burden on businesses through the requirement to complete a CED. Consultation responses suggest that the cost per consignment of completing the CED and passing it to the competent authority is around £25. This will be a requirement for all consignments of non-POAO, not only the proportion that will be subject to official controls. The number of non-POAO consignments to be imported in to the UK in future is uncertain, therefore we assume that imports of high risk non-POAO in 2008 remain unchanged in future years, as summarised in Table 6 below. Applying the cost per consignment to the number of consignments in Table 6 results in an on-going annual administrative cost to businesses of around £170,000. To estimate the impact on the Admin Burdens Baseline in 2005 prices we assume that the major component of this ongoing cost is staff time and deflate in line with wage growth over the period 2005 to 2008, as measured by the ONS Annual Survey of Hours and Earnings.[8] This gives an impact on the Admin Burden Baseline of approximately £153,000.

Table 6. High Risk Non-POAO Consignments Imported into the UK in 2008

Hazard	Type of Imported non-POAO Product	Number Imported to UK in 2008
Aflatoxins	Groundnuts for food	768
	Groundnuts for feed	413
	Melons	1
	Spices	843
Cadmium & Lead	Trace Elements	520
Ochratoxin A	Dried vine fruit	3
Pesticide Residues	Peppers, courgettes and tomatoes	3,143
	Mangos, yard long beans, melon bitter, lauki, peppers and aubergines	122
	Pears	8
Sudan Dyes	Chilli, chilli products, curcuma and palm oil	961
Total		**6,782**

Costs to competent authorities

5.28 The proposed Regulation will introduce two new administrative obligations on competent authorities. The first relates to the obligation to report the number and size of high risk non-POAO consignments entering the UK, the cost of which is likely to fall to Port Health Authorities (PHAs). The second refers to the time cost of updating the list of high risk non-POAO on a quarterly basis, which will fall to the Food Standards Agency. In addition there will be a one-off cost to PHAs in terms of the time required to familiarise themselves with the Official Feed and Food Controls (England) Regulations 2009.

5.29 Previous stakeholder consultation responses suggest that it costs competent authorities around £10 per consignment to report the number and size of high risk non-POAO consignments arriving in the UK to the EC. The cost of reporting the number and size of consignments to the EC is therefore estimated by multiplying the number of consignments in Table 6 by £10, which equals around £68,000.

5.30 It is anticipated that it will take the FSA 30 – 45 minutes to update the list of Designated Points of Entry every quarter, or 2 – 3 hours per year. Applying a Civil Service Executive Officer hourly wage results in costs of £32 - £48 per annum.[9]

[8] Median pay for all employees in 2005 was £9.49 and in 2008 was £10.53. To adjust the ongoing administrative cost we take (9.49-10.53)/10.53 which gives 9.9%, and multiply the ongoing costs by (1-9.9%)

[9] Wage rate obtained from the Annual Survey of Household Earnings 2008 (http://www.statistics.gov.uk/statbase/product.asp?vlnk=15187). Average hourly wage for a Civil Service Executive Officer is £16.13 (including 30% uplift for overheads).

One-off Costs

5.31 In order to enforce Option 2, competent authorities (PHAs) will have to familiarise themselves with the Official Feed and Food Controls (England) Regulations 2009. It is estimated that it will take one PHO 1 – 2 hours to read and understand the Regulations per PHA. At present there are 57 PHAs in the UK. Applying an hourly wage for a PHO results in familiarisation costs in the range of £1,100 - £2,200.[10]

5. 32 The precise number of businesses importing high risk non-POAO at present is uncertain, therefore it is assumed that the 600 businesses described in paragraph 5.2 is representative. It is also assumed that a manager from each business will require 1 – 2 hours to read and understand the Regulations. Applying an hourly managerial wage results in familiarisation costs to businesses in the range of £9,000 - £18,000.[11] Overall the best estimate of total familiarisation costs to businesses and competent authorities is around £15,000, which is obtained by summing the mid-points of the two ranges.

6. Consultation

Within Government

6.1 Consultation at official level with Her Majesty's Revenue and Customs has been on-going since the discussions on the Commissions proposals for a Regulation began in 2006.

Public Consultation

6.2 Following the initial discussions at EU level on the implementing rules, the Agency wrote to over 100 interested parties, including trade associations, enforcement bodies and consumer organisations, seeking initial views on the main issues. The responses from this exercise helped to inform the UK negotiating position during subsequent discussions at EU level. Enforcement stakeholders were, in general terms, very supportive of the proposals whilst industry stakeholders highlighted the need to ensure that proper risk assessments are undertaken and that consideration is given to the economic implications for the trade.

6.3 A full 12 week public consultation on a draft Commission Regulation and this RIA was undertaken between 1 March and 24 May 2007. However, it should be noted that at this time a proposed list of 'high risk' products had not been made available.

6.4 A summary of the responses on the specific issues on which views were sought is provided at www.food.gov.uk/multimedia/pdfs/consultationresponse/highriskimportresponse.pdf. Stakeholders supported using the proposed sources of information as the basis for identifying 'high-risk' products and the level of official controls, but cautioned that the mechanism to add or remove products from the list should be transparent and flexible to avoid creating barriers to trade. The majority of respondents supported use of the Common Entry Document (CED) to facilitate prior notification and for the notification to be provided before the physical arrival of consignments into the Community. Views on the application of mandatory fees varied; some stakeholders supported the adoption of a minimum fee whilst others felt that any fees should be restricted to the actual cost incurred from the controls undertaken.

6.5 The FSA has also engaged with stakeholders throughout the development of the Commission Regulation. This included publication of regular briefings and updates on the Agency's website; consultation using the Agency's Rapidly Developing Policy system (a web-based consultation tool that can be accessed from the link below), writing to interested parties seeking their views and participation in relevant meetings and seminars.
www.food.gov.uk/foodindustry/regulation/europeleg/euupdates/

[10] Wage rate obtained from the Annual Survey of Household Earnings 2008 (http://www.statistics.gov.uk/statbase/product.asp?vlnk=15187). Average hourly wage for an Environmental Health Officer (used as a proxy for a Port Health Official) is £19.62 (including 30% uplift for overheads).
[11] Wage rate obtained from the Annual Survey of Household Earnings 2008 (http://www.statistics.gov.uk/statbase/product.asp?vlnk=15187). Average hourly wage for a Manager in Distribution, Storage and Retail is £15.07 (including 30% uplift for overheads).

7. Enforcement sanctions and monitoring

7.1 The new provisions in the SI relate to the recovery of charges made to businesses by the competent authorities for official controls and related activities. These do not represent penalties as such, and there are no criminal law sanctions for non-payment. Bad debts will be pursued via normal channels and businesses that fail to pay will be sued via the courts.

8. Simplification

8.1 Import controls on 'high-risk' feed and food of non-animal origin across the EC will move towards ensuring that trade is less distorted.

9. Summary and Recommendation

9.1 The proposed measures will contribute to the protection of public and animal health in relation to feed and food. They will help to deliver a more proportionate and consistent enforcement, to improve the transparency of enforcement arrangements for stakeholders, through the wider implementation of a risk-based system and reduce the level of illegal imports. In particular the proposed measures will increase consistency and effectiveness of enforcement across the Community for businesses.

9.2 The cost to feed/food businesses will be off-set by savings for the competent authorities (and indirectly to the taxpayer). Table 2 above shows a summary of estimated savings and table 3 shows a summary of estimated costs.

10. Implementation and Review

Implementation

10.1 The measures in the Commission Regulation are directly applicable. This will be given effect, in England, through the SI which is the subject of this IA. It is intended that the measures will come into force on or before 25 January 2010.

Review

10.2 The European Commission will undertake a review of the application of Regulation 882/2004. It is not yet clear when this will take place but it will cover the official controls of non-POAO imports. The UK will feed into this and will review the application measures as part of that.

10.3 It is a requirement under Regulation 882/2004 for each Member State to prepare a multi-annual national control plan setting out the national control structure and the work that the enforcement authorities will undertake, including import controls for ‘high-risk’ non-POAO, and report annually to the Commission on its implementation. These reports will also provide a more formal means of monitoring the effectiveness of the measures proposed in the draft Regulation.

Specific Impact Tests: Checklist

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	Yes
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Competition Assessment

In terms of the domestic market the competition effects of Option 2 depend partly on how charges for official controls are distributed among businesses importing non-POAO. If the costs of official controls are charged to only those businesses whose high risk non-POAO consignments are selected for testing, these firms will be competitively disadvantaged in the short run compared to similar businesses whose consignments of high risk non-POAO are not selected for testing. However, in the longer run this should average out across businesses because, if each consignment has an equal chance of selection, over time each business will experience approximately the same level of testing and therefore costs. This also applies to the other costs of Option 2, such as storage costs and destroyed stock.

If charges are distributed equally among businesses importing non-POAO based on the number of consignments, then this part of the proposal will affect each business proportionately and therefore not affect competition between importers of high risk non-POAO.

Internationally, Option 2 is likely to increase the cost of importing high risk non-POAO in to the UK from 'Annex I' countries, which may in turn competitively disadvantage these countries relative to other countries that export non-POAO. However, this may in turn produce an incentive for 'Annex I' countries to reduce the risks associated with their non-POAO exports in an attempt to be removed from Annex I.

Small Firms Impact Test

The costs associated with Option 2 are on a per consignment basis and will therefore be proportionate to the number of consignments imported by businesses. Assuming small businesses import fewer consignments of non-POAO than large businesses, the costs of official controls will not be disproportionate for small firms.

The Small Business Service has been and will continue to be involved in the development of this Impact Assessment.

Sustainable development

Impacts under the three pillars of sustainable development (environmental, economic and social) have been considered in the preparation of this Impact Assessment. The Agency considers Option 2 is the most sustainable of the two options because it is more proportionate to the actual risks to animal and human health.

Race equality issues

The proposed Regulation does not have an impact on race equality.

Gender equality issues

The proposed Regulation does not have an impact on gender equality.

Disability equality issues

The proposed Regulation does not have an impact on disability equality.

Guidance Notes for Feed and Food Business Operators on the Import Provisions for "High Risk" Feed and Food of Non-Animal Origin (Non-POAO)

Regulation (EC) No. 669/2009

If you require this information in an alternative format – such as audio, large print, Braille – please contact us.

CONTACT TELEPHONE [NUMBER]

Summary

Intended audience:	This Guidance is intended for feed and food business operators, who import feed and/or food of non-animal origin that is regarded by the EU Commission to be high-risk.
Regional coverage:	This Guidance is applicable in England. Similar Guidance has been prepared for the Devolved Administrations.
Purpose:	The intention is to provide information to relevant feed and food business operators regarding the increased level of controls of high-risk feed and food imported into England from certain Third Countries.
Legal status:	This Guidance is intended to assist relevant importers of high-risk food and feed of non-animal origin, to understand the import requirements.
Essential actions to comply with regulation(s):	Relevant importers should ensure that they become familiar with the requirements and, liaise with the relevant local authority, when appropriate.

REVISION HISTORY

This guidance follows the Government Code of Practice on Guidance. If you believe this guidance breaches the Code for any reason, please contact us using the number on the front sheet. If you have any comments on the guidance, again please contact us on the number on the front sheet.

Revision No.	Revision date	Purpose of revision	Revised by
1			
2			
3			
4			

CONTENTS

INTRODUCTION

Regulation (EC) No 882/2004 establishes a harmonised framework of general rules for the organisation of official controls to ensure compliance with feed and food law, and animal health and animal welfare rules. The Official Feed and Food Controls (England) Regulations 2007 implemented Regulation 882/2004 in England.

Regulation 882/2004 includes requirements for the official control of feed and food of non-animal origin (non-POAO) being imported from third countries. Article 15(5) of Regulation 882/2004 provides that a list of certain feed and food products be drawn up on the basis of known or emerging risk and be subject to increased controls at points of entry into the EU, and that fees related to these controls should be established. On 25 July 2009 Regulation (EC) No 669/2009 was published which sets out rules for the increased level of official controls for products which represent a known or emerging risk ('high-risk') under Article 15(5) of Regulation 882/2004. This has been applied in England by national regulations. Similar legislation has been introduced in the Devolved Administrations.

INTENDED AUDIENCE

To assist feed and food business operators (FBOs) and their representatives we have produced this Guidance, using a question and answer format, to explain the purpose and the legal requirements applicable to UK businesses importing "high risk" products from certain non-EU countries as listed in Annex I of Regulation 669/2009, and the enforcement arrangements in place. It should be read together with the Regulations.

PURPOSE OF GUIDANCE

Regulation 669/2009 requires an increased level of controls on imports of certain feed and food at designated points of entry into England. These controls will be reviewed by the Commission based on the outcome of these controls. To assist feed and food business operators (FBOs) and their representatives we have produced this Guidance, using a question and answer format, to explain the purpose and the legal requirements applicable to businesses importing "high risk" products from non-EU countries as listed in Annex I of Regulation 669/2009, and the enforcement arrangements in place.

GUIDANCE ON REGULATION

This Q & A guidance has been produced to provide informal, non-binding advice on the legal requirements of Regulation (EC) No 669/2009 regarding the increased level of official controls on imports of certain feed and food on non-animal origin and amending Decision 2006/504 and should be read in conjunction with the legislation itself. The answers should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Every effort has been made to ensure that the Q & As are as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law. Businesses with specific queries may wish to seek the advice of their local enforcement agency, which will usually be the trading standards/environmental health department of the local authority

GLOSSARY

The following terms are used in the guidance:

FBOs - feed and food business operators and/or their representatives

FSA – Food Standards Agency

DPE – Designated Point of Entry

CED – Common Entry Document

EU – European Union

Authorised Officer – any person authorised by a competent authority designated for the provisions of Regulation (EC) No 882/2004.

Q & A Guidance

What is the purpose of Regulation (EC) No 669/2009?

The purpose of the Regulation is to provide a list of feed and food of non-animal origin imported from non-EU countries (known as “third” countries) that based on known or emerging risk to public health are subject to an increased level of official controls at points of entry to the EU. The increased controls are intended to enable the risk from these “high risk” products to be controlled more effectively to protect animal and public health.

The results of the controls will also assist the European Commission to assess whether additional controls should be applied. Such further controls may be applied either by increasing the level of identity and physical checks under the Regulation, or by applying emergency safeguard measures under Article 53 of Regulation (EC) No 178/2002. If the controls under Regulation 669/2009 indicate that there is a lower risk to public health, the frequency of identity and physical checks may be reduced. Alternatively, the products may be removed from the list at Annex I of the Regulation in which case the products would be subject to routine checks based on risk under Articles 15 to 25 of Regulation 882/2004.

What does this new legislation do?

The new Regulation comes into effect from 25 January 2010. FBOs will be required to pre-notify the relevant competent authorities of the arrival of "high-risk" consignments and will have to present these products at specific designated points of entry (DPE) in order that the necessary official controls can be undertaken. Annex I of Regulation 669/2009 contains the list of these "high-risk" products and sets out the frequency and nature of the controls that must take place. It also establishes a system of fees for these controls. Implementation of this framework will provide controls for the protection of animal and public health based on the risks of the products. This will provide arrangements for "high-risk" products of non-animal origin (non-POAO) similar to those for products of animal origin, which are considered "high risk" products.

Will the existing controls under Article 53 of Regulation (EC) No 178/2002 still apply?

Yes.

What is a "high risk" product?

A "high risk" product is feed or food that is either known to be, or is an emerging risk to animal or public health. This may be due to the presence of contaminants/undesirable substances or other feed and food safety hazards such as aflatoxins, Sudan dyes, heavy metals or pesticides.

Why are increased controls required for "high risk" products?

Increased levels of controls will enable Member States to more easily identify potentially non-compliant products and prevent them from entering the feed

and food chain, and facilitate the collection of accurate monitoring data in order to assess the risks to animal or public health of such products.

When do these increased controls apply?

These new controls come into force from 25 January 2010.

On what basis was it decided what should be on the list of "high risk" products?

Data from the Rapid Alert System for Food and Feed (RASFF); reports from the Commission's Food and Veterinary Office on feed and food safety procedures in non-EU countries; exchanges of information between the Commission, Member States and the European Food Safety Authority, and scientific assessments were considered when the European Commission drew up the list.

Where can the list of "high risk" products be found?

The list can be found in Annex I of Regulation 669/2009.

Does it apply to products from certain countries?

Details of the countries are given in Annex I of Regulation 669/2009.

Will the list of "high risk" products be reviewed?

Yes. Using the criteria and information above, the European Commission will be responsible for reviewing on a regular basis, at least quarterly, the list of "high risk" products. They will publish any updates and the FSA will ensure that any updates are made publicly available.

Does the list cover both feed and food?

Yes. The list will cover any "high risk" feed and food of non-animal origin. Annex I of Regulation 669/2009 specifies whether a product has been listed for feed or food.

Will any "high risk" products be taken off the list?

One aim of Regulation 669/2009 is to provide the Commission with information on the official controls carried out at DPEs on the listed products. The Commission can take the results of these controls into account when assessing whether changes should be made to the list of products in Annex I

of the Regulation, including the risks to animal or public health. Based on the Commission's assessment further additional controls may be applied to the products, or the existing controls may be retained or reduced. If, following consideration by the Commission, any product is no longer considered to represent a known or emerging risk then it may be removed from the list at the next available review. The frequency of physical and identity checks may be changed for products on the list based on the assessment of risk. If controls show that a product on the list poses a serious risk to animal or public health, the Commission may issue an emergency safeguard measure under Article 53 of Regulation 178/2002.

What is an "emergency safeguard measure"?

Where food or feed imported from a third country is likely to constitute a serious risk to animal or public health, or the environment, then imports of the food or feed in question can be suspended from the third country concerned, and/or special conditions can be applied.

What do FBOs need to do to comply with these new increased controls?

FBOs responsible for the importation into the EU of a consignment of "high risk" feed or food must give prior notification to the relevant feed or food authority at the DPE at which the product will first enter make entry into the EU. The information required to be supplied to the relevant authority is the estimated date and time of arrival of the consignment. Part I of the Common Entry Document (CED) should also be completed by the FBO and sent to the DPE at least one working day prior to the physical arrival of the consignment. A model CED is available in Annex II of Regulation 669/2009. Products must be subject to import checks at a DPE at UK / EU borders.

What is a consignment?

A consignment is a quantity of feed or food of the same class or description, covered by the same document(s), conveyed by the same means of transport and coming from the same third country.

What is a DPE?

The DPE is a UK port (airport or seaport) which has access to the appropriate control facilities and is approved to handle the feed and food products listed in Annex I of Regulation 669/2009. Each DPE is required to

have sufficient numbers of appropriately qualified staff, and checking and storage facilities, appropriate equipment for unloading and sampling for analysis, and access to designated laboratories.

Who approves (i.e. designates) a DPE?

The FSA, in the UK.

Where can the list of DPEs for the UK be found?

The FSA is responsible for maintaining and making publicly available the list of DPEs for the UK, which can be found at: [insert link]

Can all products listed in Annex I of Regulation 669/2009 be imported through any designated DPEs?

A DPE can be designated for some or all products listed in Annex I. Details will be given on the list of DPEs on the FSA's website.

Who completes the CED?

Part I of the CED should be completed by the FBO and sent to the DPE at least one working day prior to the physical arrival of the consignment at the DPE.

Part II of the CED will be completed by the authorised officer at the relevant feed/food authority (normally the Port Health Authority unless the product is for feed use in which case it will be the local authority responsible for the DPE) present at the DPE setting out whether the checks showed the product was compliant or non compliant.

Part III of the CED is only completed by the DPE if the consignment is non-compliant.

Can the CED be transmitted electronically?

Yes, the CED can be sent electronically.

What language should be used for the CED?

The CED must be completed in English for UK DPEs because it must be in the official language of the Member State (the UK) where the DPE in located.

What checks will be carried out on consignments and by whom?

Enforcement officers at the DPE will carry out controls on consignments of "high risk" products.

The Regulation requires documentary checks to be completed within 2 working days from the time of arrival at the DPE, unless exceptional and unavoidable circumstances arise.

Identity and physical (including sampling for testing) checks will be carried out at the frequencies specified in Annex I of Regulation 669/2009 which are according to the particular feed and food product and country of origin. Results of physical checks should be available as soon as possible.

Where are these checks carried out?

Documentary, identity and physical checks will be carried out at the DPE.

Will consignments be sampled for analysis?

The physical check will include sampling for laboratory analysis in order to test for the hazard listed in Annex I of Regulation 669/2009.

Will consignments be held at the port until the checks are completed?

Article 8(2) of Regulation 669/2009 provides that the DPE may decide whether to authorise a consignment to be transported to the point of destination pending the results of the physical test. Therefore, the decision is one for the DPE. As the Regulation concerns products, where there is evidence of a known or emerging risk to animal and public health, DPEs may usually consider that the appropriate measure is to control the product at the DPE. Where the consignment is authorised to be transported to the destination there should be arrangements to ensure that the consignment remains under the continuous control of the competent (enforcement) authority for the place of destination, including clear separation from other products and maintaining the security of the product to prevent any tampering until the results of the physical checks are known.

Some imports of fresh produce have a short shelf life. Can checks on such a consignment take place at the food business?

In some exceptional cases, when a product is listed in Annex I of Regulation 669/2009, the controls set down in Annex I may permit consignments of the product to leave the DPE and undergo the identity and physical checks at the point of destination shown on the CED. Such cases may include where the

product is highly perishable. Where such authorisation is possible, there will be liaison between the DPE and the competent authority at the point of destination (usually the Local Authority) which will undertake the identity and physical checks. Liaison will include ensuring that the point of destination meets the relevant minimum requirements for a DPE set out in Article 4 of Regulation 669/2009 and appropriate arrangements are made to ensure the consignment remains under continuous control of the competent authority until the results of the physical checks are available. The documentary check will take place at the DPE.

Similar controls may be specified in exceptional cases when a product is added to Annex I, where the nature of the packaging is such that the product cannot be sampled at the DPE without causing a serious risk to food safety or damaging the product to an unacceptable extent.

There is also provision in Article 9(1) of Regulation 669/2009 under which the Commission may allow certain DPEs operating under specific geographical constraints to carry out physical checks at the premises of FBOs, as long as specific conditions are met.

What are the "specific geographical constraints" referred to in Article 9(1)?

This is to allow small DPEs for example at land borders with third countries to carry out checks at business premises subject to the premises meeting certain conditions. Such cases can only be authorised by the Commission. These provisions are not expected to apply in the UK.

What assistance do FBOs have to provide feed and food authorities to assist official controls at the DPE?

In some cases equipment at a DPE, which is otherwise sufficient for routine unloading or sampling of products, may not be sufficient due to special characteristics of a consignment. In such circumstances, FBOs may need to provide the DPE with sufficient human resources and logistics to unload consignments, and appropriate sampling equipment.

What happens once the checks are successfully completed?

If a consignment is compliant, the authorities at the DPE will complete Part II, and stamp and sign, the CED. A copy will be retained by the DPE. The

original CED must accompany the consignment on its onward transportation to its final destination.

Where a consignment has been released to a secure place, subject to onward transportation pending the results of physical checks, a certified copy of the CED will have been issued to accompany the consignment. On receipt of satisfactory results of the physical checks, the competent (enforcement) authority (i.e. the local authority) at the place of destination will complete and authorise the CED.

A consignment is due to go to several destinations, when can it be split?

Consignments of "high risk" products cannot be split until all the increased levels of controls have been completed, and the competent (enforcement) authorities, at either the DPE or the final destination of the consignment, have completed the CED. There is no provision in the legislation for mixed container loads.

When can the FBO request that the consignment be released for free circulation by Customs?

Once the CED has been completed to indicate the favourable completion of all checks, the FBO can present the CED or its electronic equivalent to Customs to seek release for free circulation

What is the transitional period and what does it mean for FBOs?

Article 19 of Regulation 669/2009 provides for a transitional period of five years from the coming into force of the Regulation. This is to allow DPEs in an EU Member State not equipped with the necessary facilities for carrying out physical checks (including sampling for testing), to arrange for the checks to be carried out at another point of control, which meets the minimum requirements in Article 4 of the Regulation, in the same Member State. However, it is not expected that any DPEs in the UK will be affected.

Do fees have to be paid?

Yes. Under Article 14 of Regulation 669/2009 Member States must ensure that fees are collected to cover the costs incurred by carrying out the official controls provided for in the Regulation.

How much will the fees be?

Under Article 27(4) of Regulation 882/2004 the fees collected for the purposes of official controls must not be higher that the costs borne by the responsible competent authority, taking into consideration staff salaries, costs of facilities, tools, equipment, training, travel, and associated costs, and laboratory analysis and sampling costs.

To whom are the fees paid?

Fees should be paid to the DPE, or in cases where any sampling for testing checks were carried out outside the DPE, to the competent authority responsible.

What happens if a consignment fails the import checks?

If a consignment fails the import checks then the enforcement officer of the DPE will complete Part II of the CED and detain the goods to decide what appropriate enforcement action will be taken in accordance with Articles 19, 20 and 21 of Regulation 882/2004. These Articles allow the goods to be destroyed, subjected to special treatment, re-dispatched outside the Community or other appropriate measures. The enforcement officer at the DPE will discuss with the FBO the options available. FBOs will also be liable for any costs incurred by the DPE in respect of the actions taken as above.

What can I do if I disagree with action taken by the authorities at the DPE or elsewhere?

The competent authority will provide information on rights of appeal in accordance with Article 54 (3) of Regulation 882/2004.

REFERENCES

- Commission Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
- Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 as regards the increased level of official controls on imports of certain feed and food of non-animal origin and, amending Decision 2006/504/EC.

- The current list of “High Risk” FNAO in Annex I of this Regulation may be accessed at:

  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:194:0011:0021:EN:PDF

- The Official Feed and Food Controls (England) Regulations 2009.

CONTACTS

- Imported Food contact:

XXXXXXXXXXXXXXX

- Imported Feed contact:

XXXXXXXXXXX

DRAFT VERSION

GUIDANCE FOR ENFORCEMENT OFFICERS ON REGULATION (EC) No 669/2009 REGARDING THE INCREASED LEVELS OF OFFICIAL CONTROLS ON IMPORTS OF CERTAIN FEED AND FOOD OF NON-ANIMAL ORIGIN AND AMENDING DECISION 2006/504/EC.

Summary

Intended audience:	This Guidance is intended for Port Health Authorities and Local Authorities, particularly those with Designated Points of Entry (DPEs) within their administrative areas.
Regional coverage:	This Guidance is applicable in England. Similar Guidance has been prepared in the Devolved Administrations.
Purpose:	The Guidance explains safeguard measures and, the enforcement of Regulation (EC) No 669/2009 concerning the increased level of official controls on imports of certain feed and food of non-animal origin (FNAO). The intention is that there will be a clear understanding of the requirements regarding the increased level of controls of high-risk feed and food products imported into England from Third Countries.
Legal status:	This Guidance is intended: • to explain the regulations and, • to outline best practice.
Essential actions to comply with regulation(s):	• Officers enforcing the Regulation must be appropriately authorised. • Import/sampling areas to be Designated Points of Entry and meet the relevant requirements. • Officers should understand and be familiar with the Regulations and keep up-to-date with any amendments to the list of high-risk foods.

REVISION HISTORY

Revision No.	Revision date	Purpose of revision	Revised by

CONTENTS

Introduction

This Guidance, intended for food and feed law enforcement officers, covers import controls at designated points of entry into England of specific food and feed not of animal origin, (FNAO) that are regarded as “high-risk”, under European law. Onward transmission of consignments is permitted in certain circumstances, when the “control” of the consignment will fall to another Authority.

The Official Feed and Food Controls (England) Regulations 2009 (and parallel legislation in Scotland, Wales and Northern Ireland) and Regulation (EC) No 882/2004 provide the main controls for FNAO entering the UK from third countries to protect public and animal health. However, Regulation (EC) No 669/2009 covers an increased level of controls for imported feed and food from certain Third Countries, subject to known or emerging risks. This Regulation, introduced in terms of implementing the requirements of Article 15 (5) of Regulation (EC) No 882/2004, currently covers risks associated with aflatoxins, ochratoxin A, Sudan dyes, cadmium, lead and, various pesticide residues. This EU Regulation has been implemented in England by The Official Feed and Food Controls (England) Regulations 2009, which come into effect on 25 January 2010 and revoke The Official Feed and Food Controls (England) Regulations 2007.

Purpose and Legal Status

This Guidance has been produced to provide informal, non-binding advice on:

- existing safeguard measures.
- the legal requirements of Commission Regulation (EC) No 669/2009 and,
- best practice in this area.

This Guidance should be read in conjunction with the relevant legislation itself. Moreover, the information provided on legal requirements should not be taken as an authoritative statement or interpretation of the law, as only the Courts have this power. It is ultimately the responsibility of individual food and feed business operators (importers) (FBOs) to ensure they comply with the law. Food and feed law does not require compliance with advice on best practice.

FBOs with specific queries may wish to seek the advice of their local enforcement authority, which will be the Authority responsible for enforcement at the relevant

Designated Point of Entry (DPE) or, other Authorities in certain cases (see below) Hence, relevant Authorities need to keep up-to-date with the requirements.

Background

Enforcement powers for EU law are contained in the national implementing Regulations, hence authorisation is required for enforcement officers under the implementing legislation. The Official Feed and Food Controls (England) Regulations 2009 allow examinations to be deferred in exceptional cases [at the discretion of the Port Health Authority (PHA)] to the point of destination, if a written undertaking, regarding specific precautionary measures, is obtained from the importer. Hence, all Local Authorities (LAs) should ensure they correctly authorise their enforcement officers.

These aforementioned national implementing Regulations also allow Declarations to be issued, when there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly. In particular, they may be used to ensure that Emergency Control Decisions (safeguard measures) made at EU level may be implemented in the UK without any delay. Emergency Control Decisions may either suspend imports altogether or specify conditions of import. In the UK implementation is by Declarations made under the aforementioned implementing Regulations, or by product specific Emergency Control Regulations, e.g. The Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005, which will be revoked when Regulation (EC) No 669/2009 takes effect.

Emergency Control Regulations are made under The European Communities Act 1972 or under Article 53 of the EU General Food Law [Regulation (EC) No 178/2002]. The Agency publicises Declarations and/or product specific Emergency Control Regulations, when they are made.

On occasions, authorised officers may need to check relevant emergency control legislation / Declarations to determine whether suspect products, which are on sale, are subject to conditions or restrictions and therefore whether they have been legally imported.

However, Regulation (EC) No 669/2009 has amended Decision 2006/504/EC and repealed Commission Decision 2005/402/EC, on emergency measures regarding chilli, chilli products, curcuma and palm oil, which was implemented by the aforementioned national Emergency Control Regulations. The repeal of this Decision arose because, since the adoption of the relevant measures, there has been a significant improvement in the situation regarding Sudan dyes in relevant products and, the controls are now included in this latest EU Regulation on imports of

high-risk products. Notwithstanding this new Regulation, Declarations may still be issued in the future, subject to risk associated with any particular feed or food.

The new legislation provides for official controls and for products to be detained pending the results of any examination associated with the official controls. They offer, though the use of Regulation (EC) No 882/2004, options for re-dispatch, destruction, reprocessing or alternative use for food, which fails to meet food safety requirements, i.e. is unsafe [as described in Article 14 of Regulation (EC) No 178/2002] or, fails the requirements of Articles 3 to 6 of Regulation (EC) No 852/2004 on the hygiene of foodstuffs.

These products are subject to Documentary, Identity, and Physical checks at the DPE and, if found to be satisfactory, a Common Entry Document (CED) is completed.

Officers inspecting retailers, importers, wholesalers, distributors and manufacturers should look out for large consignments of high risk FNAO (see below) and, where found, should make enquiries in relation to their origin. Officers should enquire about the DPE of the feed or food and request to see copies of CED/official documents, whilst recognising that these are not legally required to be present at the point of retail where much of this feed or food may be found.

Amended and New Legislation on Imports of High-Risk FNAO

Commission Decision 2006/504/EC (as amended) on special conditions governing certain foodstuffs imported from certain third countries due to contamination risks of these products by aflatoxins, required that specified FNAO from third countries, can only be imported into the EU via “designated points of import”.

The specified products in Commission Decision 2006/504/EC (as amended) from certain Third Countries must be accompanied on import by the results of sampling and analysis for aflatoxins and, a health certificate, in accordance with the model certificate set out in Annex I of this Decision.

However, owing to the decrease in the number of notifications of aflatoxins in peanuts from Brazil, the new Regulation (EC) No 669/2009 discontinues the existing measures for these particular products in Decision 2006/504/EC. Instead, the new Regulation sets out the controls for such products.

In addition to the above and pursuant to Article 15(5) of Regulation (EC) No 882/2004, the Commission issued a proposal for rules to implement these measures in March 2007. This has come into effect through the aforementioned Regulation

(EC) No 669/2009 concerning an increased level of official controls on imports of certain high-risk FNAO. The new Regulation covers an increased level of controls for feed and food from a number of Third Countries, subject to a known or emerging risk currently relating to aflatoxins, ochratoxin A, Sudan dyes, cadmium and lead and, pesticide residues.

Similarly, in this new Regulation specified products from certain Third Countries must enter the EU through "designated points of entry" (DPEs).

The import of products listed in Annex I of Regulation (EC) No 669/2009 may be permitted only through a DPE that has appropriate control facilities for different types of food and feed.

The current list of "High Risk" FNAO in Annex I of this Regulation may be accessed at:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:194:0011:0021:EN:PDF

The Annex 1 list in the Regulations will be updated on a regular basis. This will follow receipt of relevant information (at least quarterly) by the Commission from the following sources:

- Information obtained through RASFF.
- FVO Reports.
- Reports and information from Third Countries.
- Information exchanged between the Commission, Member States and the European Food Safety Authority (EFSA).
- Scientific assessments.

Minimum Facilities at DPEs

Article 4 sets out the minimum requirements for DPE(at least quarterly). s to undertake increased levels of control for specific high-risk foods and feed. DPEs must also be designated by the Agency. These minimum requirements for DPEs are to ensure a degree of uniformity in the effectiveness of the controls. Relevant Authorities should work with port operators to ensure that the minimum facilities are provided for DPEs.

There shall be a sufficient number of suitably qualified and experienced staff to perform the prescribed checks and officers must be appropriately authorised.

The facilities provided must be suitable for the necessary checks.

Detailed instructions must be available regarding sampling and, the dispatch of the samples to a designated laboratory.

There should be suitable and sufficient storage facilities for a consignment(s) during detention, whilst awaiting the laboratory results. This includes cold stores, in cases where such storage is necessary owing to the nature of the consignment.

Suitable unloading and sampling equipment, with the possibility to perform unloading of the consignment and sampling for analysis, in a sheltered area, where appropriate.

There should be a designated laboratory situated in a location that allows samples to arrive at the laboratory in a short period.

The Agency will maintain and make publicly available an up-to-date list of DPEs for each of the products listed in Annex I and advise the Commission accordingly.

When the Agency is concerned that the continuing operation of a DPE could present a serious risk to animal or public health and/or there is a serious breach in respect of the above requirements, it may suspend the designation of the point of entry, either in full or part, by serving a written notice to that effect on the port operator.

Importers' Responsibilities

The relevant FBOs (importers) of high-risk food and/or feed (or their representatives) who have responsibility for the consignments must give adequate prior notification to the DPE of the time and date of arrival of consignments at the DPE and, their specific nature.

This notification must be undertaken through completion of Part 1 of a Common Entry Document (CED) by the importer (in English) at least one working day prior to the physical arrival of the consignment at the DPE. The CED is provided in Annex II of the Regulation.

Failure of an FBO to pre-notify relevant consignments, which are subsequently revealed elsewhere e.g. by UKBA staff in a transit shed, should result in action to recall the consignment(s) without delay and place it under official detention, and that it be either destroyed or re-dispatched. [Articles 19 (2) (b) and 21 of Regulation (EC) No 882/2004]. Where a consignment has "special characteristics", e.g. highly perishable and/or specific packaging features, and there is a need, FBOs shall

provide human resources and assist with logistics to unload the consignment to allow official controls to take place and provide the appropriate sampling equipment/assistance, if the sampling cannot be representatively performed with standard sampling equipment.

With the increased level of official controls, FBOs are responsible for the payment of fees to the relevant Authority, which shall not be higher than the costs borne by the Authority as laid down in Annex VI of Regulation (EC) No 882/2004.

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Actions Required by Authorised Officers

When appropriate, application for DPE status should be made to the Agency after liaison with the port operator to arrange relevant facilities to be provided or upgraded, if necessary. Where two Authorities might be involved, e.g. one for food and the other for feed, appropriate cooperation arrangements regarding respective responsibilities should be established.

In order for the relevant imported FNAO to undergo appropriate enhanced checks, it must enter through DPEs that meet minimum requirements. However, for a transitional period of five years from the date of entry into force of Regulation (EC) No 669/2009, DPEs that are not fully equipped with the relevant facilities required to undertake physical checks, the checks may be carried out at another authorised point of control. However, this alternative authorised point of control must meet the minimum requirements for a DPE for the Agency to authorise it.

The official controls including the sampling of feed or food covered by this Regulation are set out in Article 8.

The relevant authorised officer must undertake documentary checks on all consignments within two working days from the time the consignments arrive at the DPE.

Annex I of the Regulation sets out the frequency of identity and physical checks and the particular hazards associated with different feed/food. The consignment must remain under the control of the authority until the results of the physical checks, including sampling and analyses for the relevant hazard(s), are known. Such results should be made available as soon as technically possible. FBO’s or their

representatives should not be able to predict whether any particular consignment will be subject to such checks as laid down in Annex I.

However, if an authorised officer has concern that some listed products may require more frequent checks than set out in Annex I, owing to previous samples of particular products from certain countries consistently failing to meet requirements, then action under Article 18 of Regulation (EC) No 882/2004 should be considered.

It should be borne in mind that unless very carefully controlled, sampling large numbers of bags of product at the DPE may disrupt the integrity of the packaging and lead to possible food safety issues including potential:

- foreign body contamination
- pest ingress
- microbiological contamination
- allergen cross-contamination.

It is possible that significant quantities of product will need to be destroyed as a result. Therefore, care should be exercised when sampling and then re-sealing bags, sacks and other containers after sampling.

Following completion of the checks, which should be undertaken without undue delay (Article 8) and the consignment is found to be satisfactory, the authorised officer should complete Part II of the CED, and stamp, sign and date it. A copy of this completed CED should be retained, whilst the original CED should accompany the consignment to the place of destination indicated on the CED following the FBO presenting to the Custom Authorities the completed CED, or an electronic equivalent.

In order to facilitate matters, a FBO may request the authorised officer to “represent” him/her and notify the HMRC National Clearance Hub (including electronically) to confirm that the CED has been presented and endorsed, and that the consignment(s) can be released from customs control.

The timeframe for undertaking documentary, identity and physical checks should be as short as possible, particularly when perishable commodities are involved. Should there be any FBO queries in relation to the official controls, please refer to Article 2 of Regulation (EC) No 882/2004 regarding the definitions of “documentary check”; “identity check” and “physical check”, which in this situation includes sampling for analysis and laboratory testing.

If the results of the checks indicate non-compliance, the authorised officer should complete Parts II and III of the CED and take action in terms Regulation (EC) No 882/2004, viz. Article 19 – Action following official controls on feed and food from third countries; Article 20 – Special treatment, and/or Article 21 - Re-dispatch of

consignments. The authorised officer should discuss with the FBO the options available. FBOs will also be liable for any costs incurred by the DPE concerning the actions taken as outlined above.

Fees charged to the FBO should be in accordance with Article 27(4) of Regulation (EC) No 882/2004. Hence, the fees collected for the purposes of official controls shall not be higher than the costs borne by the responsible competent authority in relation to the following items (Annex VI of Regulation (EC) No 882/2004), i.e. the criteria to consider for the calculation of fees are:

1. the salaries of the staff involved in the official controls;
2. the costs for the staff involved in the official controls, including facilities, tools, equipment, training, travel and associated costs;
3. the laboratory analysis and sampling costs.

Regarding Article 8(2) of Regulation (EC) No 669/2009, in the unlikely event that onward transmission of a consignment is authorised by the Officer, pending the results of physical checks of these high-risk products, consideration should be given to the possible consequences of known or emerging risks. However, the Officer must liaise with the Authority at the place of destination, so that appropriate arrangements can be implemented to ensure that the consignment remains under the control of the second (receiving) Authority and cannot be tampered with pending the results of the physical checks. If onward transmission is permitted, a certified copy of the original CED should accompany the consignment and the Custom Authorities advised and kept updated, in respect of whether the consignment subsequently enters free circulation. Article 24 (1) - (3) of Regulation (EC) No 882/2004 is also relevant, i.e. there should be close co-operation between customs services and authorities.

- customs services shall not allow the entry or handling of the high-risk products in free zones or free warehouses without the agreement of the authority.

- when samples are taken, the authority should notify the customs services and indicate whether the consignment is to be transported to another destination to be under the control of another authority pending the results of the physical checks.

Should a consignment be unintentionally released by the DPE prior to undertaking full official controls, the authority at the point of destination should be contacted and the consignment detained and returned to the relevant DPE under appropriate controls, until the official controls have been completed.

Regarding Article 9 (2) identity and physical controls may be undertaken at the point of destination, but only in exceptional cases and where Annex I provides a derogation

to that effect. Examples that may apply are where the product is highly perishable and/or where the nature of the packaging is such that the product cannot be sampled at the DPE, without causing a serious risk to food safety or damaging the product to an unacceptable extent.

There is a requirement for Member States to report to the Commission on a quarterly basis the results of the checks. The information required is as follows:

a) details of each consignment, including the size in terms of net weight of the consignment and the country of origin;

b) the number of consignments subjected to sampling for analysis and,

c) the results of the documentary, identity and physical checks.

Member States may request the Commission to authorise the relevant Authority at DPEs, where there are specific geographical constraints, to carry out physical checks at the FBO's establishment, under the control of the relevant Authority. This needs to be approved for that purpose by the Commission provided the efficiency of the controls undertaken at the DPE is not adversely affected and, the establishment fulfils relevant requirements of an "approved" DPE, e.g. suitable facilities to allow the checks to be carried out, appropriate amenities for storage, unloading equipment, etc.

Officers should ensure that consignments are not split until completion of the increased level of official controls, and until the CED is completed. Should the consignment(s) be subsequently split, an authenticated copy of the CED should accompany each part of the split consignment until it is released for free circulation.

However, when there are mixed container loads, i.e. containers that have a product that is listed in Annex I, together with a product which is not so listed, then the product not subject to additional checks, may be released for free circulation, when appropriate.

When a consignment contains various high risk products listed in Annex I, with the possibility of different hazards and analyses, the consignment may be split to allow the different parts to be subsequently released, subject to the analytical results. This should avoid unnecessary delay with the release of any particular product(s). The

CED should be copied, and appropriately completed to cover each different part of the consignment.

Once all controls have been undertaken and there have been satisfactory results of all the necessary official controls, the FBO should present the completed CED to the Customs authorities to allow the release of the consignment into free circulation.

References

- Commission Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
- Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC.
- The Official Feed and Food Controls (England) Regulations 2009.

Contacts

- Imported Food contact:

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- Imported Feed contact:

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LIST OF INTERESTED PARTIES

Heads of Service at English Local Authorities
ADAS Wolverhampton
Agricultural Industries Confederation
Airport Operators Association
Alliance of Independent Retailers
Allied Bakeries
Allied Domecq PLC
American Peanut Council
Anglian Poultry Processors Action Group
Animal Health Distributors Association (UK) Ltd
Animal Medicines Inspectorate
Arla Foods UK
ASDA Stores Limited
Ashbourne Biscuits
Associated British Foods PLC
Association of Bakery Ingredients Manufacturers
Association of Cereal Food Manufacturers
Association of Cheese Processors
Association of Convenience Stores
Association of Independent Meat Suppliers
Association of Meat Inspectors
Association of Port Health Authorities
Association of Public Analysts
Association of Sea Fisheries Committee of England and Wales
Association of Unpasteurised Milk Producers and Consumers
Assured British Meat
Assured Food Standards
BAFSAM
BBSRC
Bacardi Martini
Barbour Index PLC
Barefields Ltd
Bayer PLC
Bee Farmers Association
Bernard Matthews Foods Ltd
Berry Ottaway Associates Ltd
Bio Dynamic Agricultural Association
Birds Eye Walls Ltd
Biscuit, Cake, Chocolate & Confectionery Alliance
Bokomo Foods
Boots PLC
Bourne Salads
Brakes
Brewers and Licensed Retailers Association
British Bakeries Ltd
British Beekeepers Association
British Beer & Pub Association
British Cattle Veterinary Association
British Chambers of Commerce
British Coffee Association
British Deer Farmers Association
British Egg Industry Council
British Equestrian Trade Association
British Frozen Food Federation
British Goat Society
British Hospitality Association
British Importers Association Ltd
British Independent Fruit Growers Association
British Institute of Agricultural Consultants
British International Freight Association
British Meat Processors Association
British Medical Association
British Peanut Council
British Pig Association
British Ports Association
British Potato Council
British Poultry Council
British Refrigeration Association
British Retail Consortium
British Sandwich Association
British Soft Drinks Association Ltd
British Sugar PLC
British Trout Association
British Veterinary Association
Britvic Soft Drinks Ltd
Budgens Stores Ltd
Buss Foods Ltd
Cabinet Office
Cadbury Schweppes
Campden & Chorleywood Food Research Association
Carp Society
CBI Small & Medium Enterprise Council
CEFAS
Central Public Health Laboratory
Central Science Laboratory
Cereal Ingredient Manufacturers Association (CIMA)
Chamber of Shipping
Chartered Institute of Environmental Health
Chilled Food Association Ltd
Christian Salvessen Distribution Ltd
Coca-Cola Company
COCERAL
Coffee Trade Federation Ltd
Cold Storage & Distribution Federation
Compassion In World Farming
CONBA
Confederation of British Industry
Co-op
Co-operative Group (CWS) Ltd
Corporation of London
Country Landowners & Business Association
Courage Ltd
Crop Protection Association
Dairy Council
Dairy Crest
Dairy Hygiene Inspectorate
Dairy Industry Federation
Dairy UK Ltd

Danisco Ingredients UK Ltd
Danish Bacon Co Plc
DEFRA
Del Monte Foods (UK) Ltd
Department of Health
Diageo
DPWorld Southampton
Environment Agency
Farley Health Products (Heinz UK)
Farm Animal Welfare Council (FAWC)
Farming and Countryside Education UK
Federation of Agricultural Co-operatives UK
Federation of City Farms and Community
Federation of Oils, Seeds & Fats Association Ltd
Federation of Small Businesses
Federation of Wholesale Distributors
Feed Fat Association
Findus Ltd
Food & Drink Federation
Food Commission (UK) Ltd
Food Processors Association
Food Safety Promotion Board
Foodaware
Forum of Private Business
Freedom Food Limited
Fresh Produce Consortium
Fruit & Vegetable Canners Association
Fruit Preparation Manufacturers Association
Gafta (Grain & Feed Trade Association)
Games Conservancy Trust
Geest Limited
General Consumer Council
Greencore Grocery
H J Heinz Company Ltd
Haemolytic Uraemic Syndrome Help (HUSH)
Halal Food Authority
Health and Safety Executive
Health Food Manufacturers Association
Health Protection Agency
HM Revenue & Customs
HM Treasury
Holland & Barrett
Home Grown Cereals Authority
Horticultural Trades Association
Human BSE Foundation
Humane Slaughter Association & Council of Justice
Iceland Frozen Foods PLC
Imperial College
Independent Food Retailers Confederation
Infant & Dietetic Foods Association (IDFA)
Institute of Agricultural Management
Institute of Arable Crops Research
Institute of Brewing
Institute of British Bakers
Institute of Food Science and Technology
International Meat Trade Association
Isotron
Ivy House Farm
J Sainsbury PLC
John Lewis Partnership
John West Foods Ltd
Kellogg Company (GB) Ltd
Kerry Foods UK
Kettle Foods Ltd
KP Foods
Kraft Foods UK Ltd
L & M Food Group Ltd
Laboratory of the Government Chemist (LGC)
LACORS
Leatherhead Food International
Lidl UK Gmbh
Linking Environment and Farming
Livestock Auctioneers Association
Local Government Association
London Chamber of Commerce
Lyons Tetley Ltd
Maltsters Association of Great Britain
Marks & Spencer PLC
McCain Foods
McCormack Foods
McDonald's Restaurants Ltd
Meat & Livestock Commission
Meat Training Council
Meridian Foods
Milk Development Council
MNGP
Muslim Council of Britain
National Association of Agricultural Contractors
National Association of British & Irish Millers
National Association of Catering Butchers
National Association of Cider Makers
National Association of Health Stores
National Beef Association
National Consumer Council
National Consumer Federation (NCF)
National Council of Schechita Board
National Council of Women of Great Britain
National Dairy Council
National Dried Fruit Trade Association
National Edible Oil Distributers Association
National Farmers Union
National Federation of Fishermen's Organisations
National Federation of Fishmongers Ltd
National Federation of Meat & Food Traders
National Federation of Women's Institutes
National Market Traders Federation
National Office of Animal Health
National Physical Laboratory
National Pig Association
National Sheep Association
Nestle UK Ltd
Northern Foods PLC
Oddbins
Organic Farmers and Growers Ltd
Organic Food Federation
Organic Mushroom Committee
Organic Trust

P & O Nedlloyd Ltd
Patak's Foods LTd
Penta Foods
People 1st
Pepsico
Pet Food Manufacturers Association
Port of Dover
Port of Felixstowe
Potato Processors Association
Provision Trade Federation
Rank Hovis Ltd
Rank Hovis McDougall
Rare Breeds Survival Trust
Rice Association
Road Haulage Association Ltd
Romford Wholesale Meats Ltd
Rowntree Mackintosh Plc
Royal Agricultural Society of England
Royal College of Veterinary Surgeons
Royal College of Physicians of the UK
Royal Pharmaceutical Society of Great Britain
Royal Society for the Prevention of Cruelty to Animals
Royal Society of Chemistry
Rural Payments Agency
Ryvita Co Ltd
Salmon and Trout Association
Seafish Industry Authority
Seafood Laboratories Ltd
Seafood Marketing International PLC
Seed Crushers & Oil Producers Association
Seven Seas Ltd
Shellfish Association of Great Britain
SITPRO
Small Abattoir Federation
Small Business Service
Smithfield Tenants' Association
Snack, Nut & Crisp Manufacturers Association
Society of Independent Brewers
Soil Association
Somerfield Stores LTD
Sovereign Food Group Ltd
Specialist Cheese Makers Association
St. Ivel Ltd
State Veterinary Service
Stilton Cheese Makers Association
Sustain
Tate & Lyle PLC
Tenant Farmers Association
Tesco Stores PLC
The Audit Commission
The Hospital Caterers Association
The Institute of Refrigeration
The National Audit Office
Thorntons PLC
Townswomen's Guild
Trading Standards Institute
Traditional Farm Fresh
Transport & General Workers Union
UK Association of Frozen Food Producers
UK Maize Millers' Association
UK Major Ports Group Ltd
Unilever UK Limited
Unison
United Biscuits (UK) Ltd
Van Den Bergh Foods Ltd
Vandermoortele (UK) Ltd
Vegan Society
Vegetable Protein Association (VPA)
Vegetarian Economy & Green Agriculture
Veterinary Laboratory Agency
Veterinary Medicines Directorate
Waitrose Ltd
Walker & Sons (Leicester) Ltd
WCF Ltd
Weetabix Limited
Which?
Whitbread PLC
Whitby Seafoods Ltd
Whitworths Foods Group Ltd
William Morrison Supermarket PLC
Wine & Spirits Association
Women's Food and Farming Union
Yorkshire & Lincolnshire Fish Farmers