

EXPLANATORY MEMORANDUM TO

The Feed (Hygiene and Enforcement) and the Animal Feed (Wales) (Amendment) Regulations 2013

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Feed (Hygiene and Enforcement) and the Animal Feed (Wales) (Amendment) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM

Minister for Health and Social Services, one of the Welsh Ministers

18 December 2013

EXPLANATORY MEMORANDUM TO
The Feed (Hygiene and Enforcement) and the Animal Feed (Wales)
(Amendment) Regulations 2013

1. Description

The Feed (Hygiene and Enforcement) and the Animal Feed (Wales) (Amendment) Regulations 2013 will implement in Wales Commission Regulation 225/2012 on the approval of establishments placing on the market certain oils and fats for feed use and other specific requirements relating to their testing and production.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative Background

The Regulations are made in exercise of the powers conferred on the Welsh Ministers by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972. For the purposes of that section, the Welsh Ministers have been designated under section 2(2) in relation to the following matters which fall within the Regulations:

- (a) the common agricultural policy of the European Union (the European Communities (Designation)(No.5) Order 2010),
 - (b) measures in the veterinary and phytosanitary fields in relation to public health (the European Communities (Designation)(No.2) Order 2008), and
 - (c) measures relating to feed produced or fed to food-producing animals (the European Communities (Designation)(No.2) Order 2005).
- (b) the Welsh Ministers were designated in relation to the veterinary and phytosanitary fields for the protection of public health by the European Communities (Designation)(No.2) Order 2008.

This instrument is subject to the negative procedure.

4. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to ensure public health protection through certain measures in respect of animal feed. These are:

- Closer monitoring of feed business operators engaged in production and processing of certain fats and oils for use in animal feed, through approval rather than the registration of their establishments;
- A requirement for businesses to maintain the physical separation of certain fats and oils intended for feed use from those intended for other uses and to label them accordingly;
- A risk-based programme of testing of fats and oils, and finished feeds which contain certain of them, for the potential presence of dioxins and dioxin-like PCBs; and
- A requirement for the reporting by laboratories of results showing non-compliance with the maximum permitted levels for dioxins and dioxin-like man-made compounds such as Polychlorinated Biphenyls (PCBs).

5. Consultation

A 12-week consultation was held from 5 July 2013 to 27 September 2013.

- One response was received from the Laboratory of the Government Chemist indicating some of the potential complexity of the testing and reporting of dioxin levels in feed.

6. Regulatory Impact Assessment

Sectors Affected

Current information suggests there are no producers or processors of fats and oils of vegetable and marine origin, or compound feed manufacturers using such oils in Wales. There was no information provided in response to the public consultation to amend that information.

Costs

It is not expected that costs will accrue in Wales. However, UK information is as follows.

The costs of the dioxin monitoring requirements of Regulation (EU) 225/2012 will fall mainly on the producers and processors of the higher-risk fats and oils, and to a lesser extent on the feed compounders who incorporate these fats and oils in their finished feeds.

The producers and processors of fats and oils had calculated that the annual costs to them, i.e. the fees they would pay the laboratories contracted to undertake the testing, of the 100% testing of all fats and oils originally proposed by the Commission would be around £300,000 to the fat blending sector, with an additional annual cost of £67,500 to the suppliers of crude (unblended, unprocessed) oils. The producers and processors have since calculated that because sampling will be necessary only for materials they are sourcing (incoming consignments), and not for materials they are despatching to other users (outgoing consignments), the annual costs to them are around half of their original estimate, i.e. £150,000 to the fat blending sector, and £33,750 to the suppliers of crude (unblended, unprocessed) oils.

UK feed compounders undertook a similar calculation of the possible costs to them of the Commission's original proposal for testing finished feed which incorporates fats and oils, irrespective of whether these fats and oils had previously been tested and found to be compliant. This resulted in an estimated cost to feed compounders - again from the fees payable to the laboratories undertaking the testing -- of around £3 million a year, based on the following assumptions:

- retail feed sales of 12.5 million tonnes of which around 80% may contain added fats and oils;
- a size of 15 tonnes for each batch of finished feed sampled; and
- a charge of £450 for each analysis undertaken by a laboratory.

UK feed compounders subsequently calculated that a risk-based approach to sampling and analysis would generate much lower costs figures for them -- around £47,000 annually for the testing of vegetable fats and oils and around £11,000 for the testing of fats and oils of marine origin. The total cost to the compound feed industry is therefore around £58,000 a year.

As context for this calculation, UK feed production statistics are as follows:

- annual UK production of compound feed is around 14 million tonnes;
- the total UK feed market -- which includes direct sales of feed materials to livestock farmers -- amounts to around 20 million tonnes; and
- the annual usage of fats and oils in the manufacture of compound feed is around 256,000 tonnes (split between crude oils (mainly soya oil) of around 150,000 tonnes and processed oils of around 106,000 tonnes).

There are also direct sales of feed materials to livestock farmers which are thought to include fats and oils in flaked (i.e., solid) form, but information on the volume of these transactions is not collected and it is not therefore possible to quantify it (although it is thought to be small). In any case, farmers are exempt from the requirement to test the materials they receive, in part because they lack the equipment and expertise to undertake such work.

Benefits

The benefits to the feed industry, to national and local government authorities, and to animal and public health are difficult to monetise, although they can be weighed against the potentially very large costs which could result from a future dioxin contamination incident. There are two recent such incidents which can be cited as illustrative of these potential costs, in Ireland in December 2008, and in Germany in 2010-11.

The Irish incident arose from the use of contaminated oils as a source of heat to dry surplus bread products prior to their entry to the animal feed chain, and resulted in the recall of all pork and pork products produced in the four months September 2008-December 2008.

According to the Irish authorities' subsequent report, the incident "cost the Irish taxpayer in excess of €100 million (£83.4m) from the financial assistance facility made available to the industry ... not to mention the cost to industry of providing contingency supplies to their customers, the costs of lost business, and the consequent damage to reputations" -- *Report of the Inter-Agency Review Group on the Dioxin Contamination Incident in Ireland in December 2008*, Department of Agriculture, Food and the Marine, December 2009, available online at

<http://www.agriculture.gov.ie/media/migration/publications/2010/DioxinReport211209revised190110.pdf>

A feed contamination incident in Germany occurred in December 2010-January 2011, in which fatty acids of vegetable origin (a type of processed oil) for use in pig and poultry feed were found to have been mixed with fats derived from an industrial use which contained high levels of dioxins. The incident, which is thought to have been attributable to fraud or negligence, led to the temporary quarantine of several hundred farms in Germany and the recall of many pork and egg products, some of which had been sent to other Member States.

The final costs of the German dioxin incident are not available, although in January 2011 the president of the German Farmers' Association (Deutscher Bauernverband), Gerd Sonnleitner, was reported as claiming that these could also amount to €100 million (£83.4m). Avoidance of such costs is of clear benefit to the industry, enforcement authorities, and the wider public.