
STATUTORY INSTRUMENTS

2007 No.

AGRICULTURE, ENGLAND

FOOD, ENGLAND

**The Official Feed and Food Controls (England)
Regulations 2007**

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CONTENTS

PART 1

PRELIMINARY

1. Title, commencement and application
2. Interpretation

PART 2

MAIN PROVISIONS

3. Competent authorities
4. Exchanging and providing information
5. Obtaining information
6. Power to issue codes of recommended practice
7. Monitoring of enforcement action
8. Power to request information relating to enforcement action
9. Power of entry for persons monitoring enforcement action
10. Meaning of “enforcement authority” and related expressions
11. Offences relating to regulations 8 and 9
12. Right of appeal
13. Appeal to Crown Court against dismissal of appeal under regulation 12(1)
14. Staff of competent authority of another member State
15. Commission experts
16. Prohibition on disclosure of trade secrets
17. Execution and enforcement
18. Powers of entry
19. Obstruction etc. of officers

20. Penalties
21. Time limit for prosecutions

PART 3

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

22. Interpretation of this Part of these Regulations
23. Feed enforcement responsibilities
24. Food enforcement responsibilities
25. Functions of the Commissioners
26. Deferred execution and enforcement
27. Prohibition on introduction of certain feed and food
28. Checks on products
29. Detention, destruction, special treatment, re-dispatch and other appropriate measures and costs
30. Notices pursuant to Articles 18 and 19 of Regulation 882/2004 (imports of feed and food from third countries)
31. Right of appeal in respect of notices served under regulation 30
32. Appeal to Crown Court against dismissal of appeal under regulation 31
33. Serious risk to animal or public health
34. Costs
35. Procurement by authorised officers of samples with regard to food
36. Analysis etc. of samples
37. Powers of entry of authorised officers of a food authority
38. Obstruction etc. of officers (imports)
39. Offences and penalties
40. Time limit for prosecutions (imports)

PART 4

RECOVERY OF EXPENSES

41. Expenses arising from additional official controls
42. Expenses arising in respect of co-ordinated assistance and follow-up by the Commission

PART 5

ENFORCEMENT AND SUPPLEMENTARY PROVISIONS

43. Offences due to fault of another person
 44. Defence of due diligence
 45. Offences by bodies corporate
 46. Offences by Scottish partnerships
 47. Protection of officers acting in good faith
 48. Service of documents
 49. Revocation
-

- SCHEDULE 1 — DEFINITIONS OF COMMUNITY LEGISLATION
- SCHEDULE 2 — DEFINITION OF RELEVANT FEED LAW
- SCHEDULE 3 — DEFINITION OF RELEVANT FOOD LAW
- SCHEDULE 4 — COMPETENT AUTHORITIES FOR THE PURPOSES OF CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR AS THEY APPLY IN RELATION TO RELEVANT FEED LAW
- SCHEDULE 5 — COMPETENT AUTHORITIES FOR THE PURPOSES OF CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR AS THEY APPLY IN RELATION TO RELEVANT FOOD LAW

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by section 2(2) of 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).

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 of the following Regulations.

PART 1

PRELIMINARY

Title, commencement and application

1. These Regulations —
 - (a) may be cited as the Official Feed and Food Controls (England) Regulations 2007;
 - (b) come into force on [] 2007; and
 - (c) apply in relation to England only.

Interpretation

- 2.—(1) In these Regulations —
 - “the Act” means the Food Safety Act 1990(f);
 - “the Agency” means the Food Standards Agency;
 - “authorised officer” —

(a) 1972 c.68
 (b) S.I. 2003/2901.
 (c) S.I. 1972/1811, amended by S.I. 2002/794.
 (d) S.I. 1999/2027.
 (e) OJ No. L31, 1.2.2002, p.1, as last amended as at the making of this instrument by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L100, 8.4.2006, p.3).
 (f) 1990 c.16.

- (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 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 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005” and “Regulation 2076/2005” 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(a) 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 and Articles 15 to 24 of Regulation 882/2004;

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

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

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

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

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

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

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

(3) Unless the contrary intention appears, any expression used both in these Regulations and in Regulation 178/2002 or Regulation 882/2004 has the meaning it bears in Regulation 178/2002 or Regulation 882/2004, 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(b), to a port health authority;
- (b) by an order under section 6 of the Public Health Act 1936(c), 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(d), 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.

(a) 1970 c. 40.

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

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

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

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^(a) by virtue of regulation 5(1)(a) of those Regulations.

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

Exchanging and providing information

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

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

(3) 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 relevant feed law or relevant food law in Wales, Northern Ireland and Scotland for the purposes of facilitating the execution and enforcement of relevant feed law or relevant food 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

(a) S.I. 2006/14, amended by S.I. 2007/56.

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
- (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;

(a) 1999 c. 28.

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

Meaning of “enforcement authority” and related expressions

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

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

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

Offences relating to regulations 8 and 9

11. A person who —

- (a) intentionally obstructs a person exercising powers under paragraph (4)(a), (b) or (c) of regulation 9;
- (b) fails without reasonable excuse to comply with any requirement imposed under paragraph (1) of regulation 8 or paragraph (4)(d) of regulation 9; or
- (c) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

Right of appeal

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

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

may appeal to a magistrates' court.

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

(a) 1980 c. 43.

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) 1981 c.22.

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

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

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

shall be guilty of an offence.

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

Penalties

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

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

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

(3) A person guilty of an offence under regulation 19 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Time limit for prosecutions

21. No prosecution for an offence under paragraph (8) of regulation 18 shall be begun after the expiry of —

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecutor,

whichever is the earlier.

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/[]/EC concerning lists of animals and products subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC^(c); and

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

Feed enforcement responsibilities

23. 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.

Food enforcement responsibilities

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

Functions of the Commissioners

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

Deferred execution and enforcement

26.—(1) 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.

(a) OJ No. L268, 18.10.2003, p.29.

(b) OJ No. L24, 30.1.98, p.9, as last amended as at the making of this instrument 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).

(c) OJ No. [].

- (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).

Prohibition on introduction of certain feed and food

- 27.—(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

28.—(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.

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

29.—(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)

30.—(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 30

31.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 30 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 31

32. A person who is aggrieved by the dismissal by a magistrates' court of an appeal to it under regulation 31(1) may appeal to the Crown Court.

Serious risk to animal or public health

33.—(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, she or as the case may be it may by written declaration suspend, or impose 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 Secretary of State or the Agency, as the case may be, 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

34. 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.

Procurement by authorised officers of samples with regard to food

35. 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 37;
- (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

36.—(1) An authorised officer of a food authority who has procured a sample under regulation 35 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

- 37.**—(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

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

- (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,

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)

38.—(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

39.—(1) Any person who —

- (a) contravenes or fails to comply with paragraph (5) of regulation 26 or paragraph (4) or (5) of regulation 33;
- (b) contravenes any of the prohibitions in paragraph (1) of regulation 27;
- (c) to the extent that contravention or failure to comply with regulation 28 does not constitute an offence under regulation 38, contravenes or fails to comply with regulation 28; or
- (d) 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 38 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)

40. No prosecution for an offence under this Part of these Regulations which is punishable under regulation 39(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

41. 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

42. 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

43. 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

44.—(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

45.—(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

46. 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

47.—(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

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

- (a) by delivering it to that person;
- (b) in the case of an incorporated company or body, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office; or
- (c) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to him at his 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

49. The Official Feed and Food Controls (England) Regulations 2006^(a) are revoked.

Signed by authority of the Secretary of State for Health

(a) S.I. 2006/15.

2007

Parliamentary Under Secretary of State
Department of Health

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 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(b) 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(c) as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2076/2005;

“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(d) as read with Regulation 2074/2005 and Regulation 2076/2005;

“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(e);

“Regulation 2073/2005” means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(f);

“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 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(g); and

“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.

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- (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. 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).
- (c) 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). Regulation (EC) No. 853/2004 was last amended as at the making of this instrument by Council Regulation (EC) No. 1791/2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania (OJ No. L363, 20.12.2006, p.1).
- (d) 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.). Regulation (EC) No. 882/2004 was last amended as at the making of this instrument by Council Regulation (EC) No. 1791/2006.
- (e) OJ No. L271, 15.10.2005, p.17.
- (f) 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.
- (g) OJ No. L338, 22.12.2005, p.27, as last amended as at the making of this instrument by Commission Regulation (EC) No. 1664/2006 amending Regulation (EC) No. 2074/2005 as regards implementing measures for certain products of animal origin intended for human consumption and repealing certain implementing measures (OJ No. L320, 18.11.2006, p.13).

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^(a).

(a) OJ No. L338, 22.12.2005, p.83, as last amended as at the making of this instrument by Commission Regulation (EC) No. 1666/2006 amending Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulation (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council (OJ No. L320, 18.11.2006, p.47).

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 Stuff (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 Stuff (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 and S.I. 2005/3281.

(c) S.I. 2004/2334, amended by S.I. 2005/1265.

(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 and S.I. 2006/3120.

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 in Crops, Food and Feeding Stuff) (England and Wales) Regulations 2005(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 (Imports from Third Countries) Regulations 2003(e) and the Organic Products Regulations 2004(f),
 - (vi) the regulation of beef labelling under the Beef Labelling (Enforcement) (England) Regulations 2000(g),
 - (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 1996(h), 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(i), with the exception of the execution and enforcement of regulation 5 thereof by the Agency; and
 - (viii) the matters regulated under Schedule 2 to the Transmissible Spongiform Encephalopathies (England) (No. 2) Regulations 2006(j) in so far as that Schedule applies 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 (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

(a) S.I. 1997/1729, amended by S.I. 2001/3590, S.I. 2004/147, and S.I. 2006/755.

(b) S.I. 2005/3286, amended by S.I. 2006/985, S.I. 2006/1742 and S.I. 2006/2922.

(c) OJ No. L93, 31.3.2006, p.1.

(d) OJ No. L93, 31.3.2006, p.12.

(e) S.I. 2003/2821.

(f) S.I. 2004/1604, amended by S.I. 2005/2003 and S.I. 2006/2075.

(g) S.I. 2000/3047, amended by S.I. 2002/2315.

(h) 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.

(i) S.I. 2006/2841.

(j) S.I. 2006/1228.

encephalopathies(a) in so far as that point applies in relation to animals slaughtered for human consumption;

- (b) food law in so far as it applies in relation to materials and articles in contact with food; and
- (c) food law in so far as it involves the regulation of primary production and those associated operations listed in paragraph 1 of Part AI of Annex I to Regulation 852/2004 under the Food Hygiene (England) Regulations 2006.

(a) OJ No. L147, 31.5.2001, p.1, as last amended as at the making of this instrument by Regulation (EC) No. 1929/2006 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 (OJ No. L404, 30.12.2006, p.1).

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

<i>Column 1</i> <i>Competent authority</i>	<i>Column 2</i> <i>Provisions of Regulation 882/2004</i>
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

<i>Column 1</i> <i>Competent authority</i>	<i>Column 2</i> <i>Provisions of Regulation 882/2004</i>
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

EXPLANATORY NOTE

(This note is not part of the Regulations)

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APPENDIX 2

PARTIAL REGULATORY IMPACT ASSESSMENT - THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2007

Important note - The Statutory Instrument (SI) which is the subject of this partial Regulatory Impact Assessment (RIA) replaces the Official Feed and Food Controls (England) Regulations 2006 which in turn replaced the Official Feed and Food Controls (England) Regulations 2005. This RIA, therefore, focuses only on those measures that are being introduced for the first time in the 2007 Regulations. It should be read together with the RIA that was prepared for the 2005 Regulations as this, in effect, covers all the other provisions in the 2007 Regulations (a separate RIA was not prepared for the 2006 Regulations as only minor amendments to references to legislation were made). That RIA concluded that the measures provided do not introduce any new or significant costs for the competent authorities or for feed and food businesses. It is available on the website of the Food Standards Agency at <http://www.food.gov.uk/multimedia/pdfs/foodfeedsiria2005.pdf>.

1. Title of proposal

1.1 The proposal is for an SI with the title: the Official Feed and Food Controls (England) Regulations 2007.

2. Purpose and intended effect

Objectives

2.1 The SI revokes and replaces 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 on official controls¹ that applied from 1 January 2006. The principal purpose of replacing the current SI is to give effect to a provision in Regulation 882/2004 that applied from 1 January 2007. It will also give effect to a provision that applied from 1 January 2006 that was not covered by the preceding SIs. Some other minor amendments are also being made. The overall objective of the replacement SI remains the same, i.e. to contribute to delivering the anticipated benefits of a more effective and consistent enforcement system and, consequently, raise standards of food safety and consumer protection.

Devolution

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

Background

Regulation (EC) No 882/2004 on official controls

2.3 Regulation 882/2004 on official feed and food, animal health and animal welfare controls (which is the subject of a separate RIA²) was adopted in April 2004. Most of its provisions applied from 1 January 2006 and others from 1 January 2007. Detailed

¹ 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.

² The RIA for Regulation 882/2004 on official controls is available on the FSA website at: <http://www.food.gov.uk/multimedia/pdfs/offcriaapr04.pdf>

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information on the feed and food elements of the Regulation is provided in the RIA for SI 2005/2626 and in Q&A Notes published by the Food Standards Agency (FSA).³ As regards this RIA, the following detailed information is relevant.

Expenses arising from additional official controls

2.4 Regulation 882/2004 includes provisions on financing of official controls. These place a general obligation on Member States (MSs) to ensure that controls are properly funded but, in broad terms, it is left to the MS to decide how. In doing so, however, the MS must operate within a defined framework and must take account of certain principles in calculating fees where these are imposed. The framework requires mandatory fees for certain control activities. This includes a requirement for the competent authorities to charge feed/food businesses for the expenses arising from control activities which are undertaken following the detection of non-compliance (with feed or food law) and that exceed the competent authority's normal control activities - i.e. 'additional official controls'. Further information about this requirement is provided at Annex A of this RIA.

2.5 'Additional official controls' are those that exceed an authority's 'normal control activities' which are those required by Community and national legislation and, in particular, those described in the 'multi-annual national control plan' (NCP) for the MS. Regulation 882/2004 requires that such a plan be in place from 1 January 2007 and Commission Guidance⁴ suggests that it should cover a period of three to five years. It should detail the roles and responsibilities of the competent authorities involved in official controls and set out their planned control activities for the period of the plan. The NCP for the UK was published in December 2006 and is available on the FSA website at the link below.

<http://www.food.gov.uk/foodindustry/regulation/europeleg/feedandfood/ncpuk>

2.6 As regards policy in applying this provision, the Commission indicated during the negotiations that liability to pay a charge under the provision was likely to arise only in serious or significant cases as these would not be foreseen in the NCP (e.g. major dioxin incidents). This means that, in practice, it is expected that the provision will apply only infrequently (a very small number of cases annually). The Agency is developing, in parallel to the SI, guidance for applying the provision based on this policy approach (see Appendix 3 of the consultation package).

2.7 Clearly, the NCP is key to applying this provision. Preparation of the first UK NCP was a major exercise and although it was in place on time, it has delayed the work on applying the charging provision. In addition, the Agency also delayed initiating work on this in the expectation that the Commission would establish more detailed implementing rules with the aim of ensuring a harmonised approach across all MSs (the Commission is empowered to do this under Regulation 882/2004). In the event, the Commission has not yet started work on developing these rules.

Co-ordinated assistance and follow-up by the Commission

2.8 The Regulation includes provisions concerning arrangements for the competent authorities of the different MSs to work together and with the Commission where the results of official controls indicate that action is needed in more than one MS. It is understood that this does not relate to those issues which must be reported using the Rapid Alert System for

³ 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 - Q&A Notes for enforcement authorities on the feed and food elements (Revision 1, January 2006) - available on the FSA website at: <http://www.food.gov.uk/multimedia/pdfs/offcqaquidancenotes.pdf>

⁴ Draft Commission Decision (EN 660005) setting out guidelines to assist Member States in preparing the single integrated multi-annual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council.

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Feed and Food (RASFF)⁵ but rather only to intra-Community trade and where the issues that have arisen do not impose a serious risk to human or animal health or to consumer interests. It would include more minor issues such as mislabelling of food. In such cases and where official controls indicate repeated non-compliance or other risks, MSs are required to charge feed/food businesses for expenses arising from: (a) the administrative actions required to inform the Commission and the competent authorities of the other MSs and (b) the costs incurred by the Commission if it sends an inspection team to investigate (the provision is not concerned with the costs of the controls themselves). Again, further detail is provided at Annex A of this RIA.

Application of EU Regulation 882/2004 in the UK

2.9 Regulation 882/2004 is directly applicable in the MSs (i.e. its provisions are in themselves the law in MSs) but some measures are required at national level to give effect to its provisions. For the most part, responsibility for applying the feed and food elements of Regulation 882/2004 in the UK lies with the FSA. The Department for Environment, Food and Rural Affairs (Defra) and the Agriculture/Rural Affairs Departments in the Devolved Administrations⁶ have responsibility between them for those feed and food elements that fall outside the FSA's remit (e.g. beef labelling, standards for organic products, protected food names; residues of pesticides and veterinary drugs, medicated feed etc.). Arrangements are in place for joint working across the Departments with a view to ensuring consistency of approach.

2.10 As regards FSA areas of responsibility, most of the provisions of Regulation 882/2004 which applied from 1 January 2006 are given effect by the Official Feed and Food Controls (England) Regulations 2006 (2006/15). This SI is now being updated and amended.

The Official Feed and Food Controls (England) Regulations 2007

2.11 An explanation of the provisions of the 2007 Regulations is given at Annex B. The draft SI is at Appendix 1 of the consultation package.

2.12 The principal purpose of introducing this SI and replacing SI 2006/15 is to give effect to the provision in Regulation 882/2004 on expenses arising from additional official controls (see paras 2.4 to 2.7 above). This applied from 1 January 2007.

2.13 The SI will also introduce a new measure to allow the competent authorities to recover certain expenses where assistance and co-operation between the Member States and the Commission (see para 2.8) has been necessary. This measure applied from 1 January 2006 but was missed when the original 2005 SI was introduced.

2.14 In addition, some of the definitions required for interpretation of the SI are being amended to reflect recent changes (and changes expected during the consultation period) to Community and other national legislation. Also, the schedules which set out the responsibilities of the designated competent authorities are being updated to include reference to those provisions in Regulation 882/2004 that applied from 1 January 2007 ***These particular amendments have no cost implications and are not, therefore, considered further in this RIA.***

2.15 Finally, some of the measures relating to controls of feed and food of non-animal origin from outside the EU are also being amended to: (a) help ensure more effective application and enforcement by the competent authorities and by officials of Her Majesty's

⁵ More information on RASFF is available at: http://ec.europa.eu/food/food/rapidalert/index_en.htm

⁶ Scottish Executive Environment and Rural Affairs Department, the Welsh Assembly Government Environment, Planning and Countryside Department, and the Department of Agriculture and Rural Development for Northern Ireland.

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Revenue and Customs; and (b) to reformulate the provision on liability for charges such that it is consistent with the new provisions on expenses (see Annex B of this RIA). ***These particular amendments to the imports provisions are cost neutral to enforcement and industry stakeholders and are not, therefore, considered further in this RIA.***

Rationale for Government intervention

2.16 A risk assessment for Regulation 882/2004 as a whole was included in the associated RIA (see footnote 2). 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.

2.17 As regards expenses arising from additional official controls, the RIA for Regulation 882/2004 concluded that there will be some transfer of costs from the competent authorities to businesses as MSs will be required to charge in these cases. It was considered that incidents where charges would apply (serious or significant cases only) will occur only infrequently or uniquely and concluded that it was not possible to quantify what the costs may be.

2.18 The new measures included in the Official Feed and Food Controls (England) Regulations 2007 will also contribute to delivering the anticipated benefits of a more effective and consistent enforcement system. If there is no Government intervention, Regulation 882/2004 will not be applied fully in the UK. There would then be a risk of challenge from the European Commission following inspection by its Food and Veterinary Office of UK arrangements and their compliance with the requirements of Regulation 882/2004.

3 Consultation

Within Government

3.1 Consultation at official level has been ongoing throughout the drafting of the SI and RIA and, in particular, with Defra, the Agriculture/Rural Affairs Departments in the Devolved Administrations. These Departments are responsible for applying the relevant provisions in respect of feed and food law for which they are responsible. This will continue as the RIA develops further.

Public Consultation

3.2 A full 12 week public consultation is being undertaken on the draft SI and on the guidance on expenses arising from additional official controls. During this time, the Agency also proposes to engage with stakeholders on a less formal basis. This will include discussion with the Agency's Enforcement Liaison Group,⁷ as well as participation in relevant seminars and training courses etc., and publication of regular briefings and updates on the Agency's website.

3.3 All responses received as part of the consultation exercise will be given careful consideration. These will be summarised as an Annex to this RIA when it is finalised, and will be published on the Agency's website in due course.

⁷ The Enforcement Liaison Group is a stakeholder group which was established to strengthen and develop links between the FSA and local authority food law enforcement services. As well as representatives from enforcement authorities, membership comprises representatives from consumer, professional and industry bodies. The Group provides a forum for discussion of strategic food law enforcement issues.

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4 Options

4.1 A legal basis in domestic legislation is required to give effect in England to the particular elements of Regulation 882/2004 that this RIA covers. The policy options are, therefore, limited to the following:

- **Option 1** - Do nothing. This would mean that it would not be possible to apply these particular elements of Regulation 882/2004 in England as the competent authorities would not have the necessary legal powers.
- **Option 2** - Adopt the SI to ensure that the competent authorities for England may fulfil their obligations under Regulation 882/2004 and that provision is made for them to charge for: expenses arising from additional official controls; and, expenses associated with cases where co-ordinated assistance with the other MSs and follow-up by the Commission has been necessary. As regards expenses arising from additional official controls, application of this must be linked to the UK's NCP which aims to describe all the 'normal control activities' of the relevant authorities. Guidance on what constitutes these 'additional control activities' is being developed in parallel with the SI (see [Appendix 3](#) of the consultation package).

5. Costs and Benefits

Sectors and groups affected

Competent authorities

5.1 The provisions that this RIA covers relate to charging by the competent authorities. These are the authorities that are responsible for organising and undertaking official feed and food controls. In the UK, this responsibility is held centrally but, in practice, day to day responsibility for official control functions is divided between central and local Government. This is illustrated in the figures at [Annex C](#) of this RIA. The scope of the SI which is the subject of this RIA is restricted to those areas of feed and food law for which the FSA is responsible at central level and to England only. The relevant competent authorities are: the FSA (including the Meat Hygiene Service, and other Government Agencies that undertake official control functions on behalf of the Agency), and feed and food law enforcement services of local and port health authorities.

Feed and food businesses

5.2 The charges will be levied against feed and food businesses. There are approximately 91,000 feed business establishments in the UK (breakdown figures for each country of the UK are not available). This includes producers of feed materials, manufacturers of additives and premixtures, manufacturers of compound feedingstuffs, importers, distributors, retailers and farms. With regard to food there are approximately 477,000 establishments in England which include slaughterhouses, cutting plants, manufacturers, processors, packers, importers, distributors and wholesalers, retailers, and restaurants and caterers. There are also approximately 119,000 holdings making up the primary food production sector in England.

Consumers

5.3 The proposed measures will contribute towards the overall expected benefits of application of Regulation 882/2004, i.e. a reduction in food-borne disease, a reduction in contamination incidents, and to increased consumer protection. In addition, relevant costs that, indirectly, currently fall to the taxpayer will fall in future to the feed and food industry.

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Social and environmental impacts

5.4 The Agency believes that the SI will not have any impact on racial equality or on social or environmental sustainability issues.

Note for consultation

Stakeholders are invited to comment on this if they disagree with the Agency's assessment. In doing so, please provide details of the particular issues of concern and of the potential impact on these.

Administrative burdens

5.5 This SI does not include any new information obligations on businesses and the Agency considers that there are no new administrative costs arising from it.

Note for consultation

If businesses consider that there are new administrative costs arising from the SI, we would welcome evidence of costs that would be incurred and which are over and above those that a business would incur commercially.

Analysis of costs and benefits

Benefits

Option 1

5.6 This option will maintain the *status quo* and so will not generate any incremental benefit.

Option 2

5.7 Expenses arising from 'additional official control activities' - Costs arising from additional controls currently fall to the tax payer but will, in future, fall to businesses. This follows the 'polluter pays' principle thereby creating an additional incentive for complying with legal requirements. Although it is not possible to quantify the effect, and albeit that this is not likely to be significant, this in turn may contribute towards a reduction in contamination incidents and food-borne disease and the costs associated in dealing with these. As relevant costs currently fall to the competent authority, but will fall in future to the feed and food industry, there will be a saving. This saving is, indirectly, a saving to taxpayers. This is estimated at £11 million - an explanation is provided at paragraph 5.15 below.

5.8 Co-ordinated assistance and follow-up by the Commission - This relates to administrative costs of informing the other MSs and of travel and subsistence costs associated with the Commission sending an inspection team to investigate cases where repeated non-compliance has been found. Businesses will only be subject to charges where they have not complied with feed/food law such that this too follows the 'polluter pays' principle.

Costs

Option 1

5.9 As there would be no change to current arrangements for financing of official controls, there would be no compliance costs for the competent authorities or for businesses. However, to do nothing would leave the UK in breach of an EU obligation to apply Regulation 882/2004. There is also a risk of challenge from the European

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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 that Option 1 is not viable.

Option 2

Costs for the competent authorities

5.10 In relation to both expenses arising from additional official control activities and co-ordinated assistance and follow-up by the Commission, there may be new administrative costs for the competent authorities in terms of collection of monies, including: (a) invoicing and general administrative costs; and (b) costs for pursuing unpaid monies through the courts. As regards (a), such costs should not be significant as competent authorities will already have procedures in place and the number of cases per year is expected to be very small. Similarly, in relation to (b), overall costs are not anticipated to be significant given the number of cases per year is expected to be very small.

Note for consultation

Views and comments on the above assessment of costs to the competent authorities are welcome, particularly from enforcement stakeholders. Any detailed information that can be provided on the administrative and other costs associated with charging businesses would be very helpful.

Costs for businesses - expenses arising from additional official controls

5.11 Where feed/food businesses have operated in compliance with feed/food law, the proposed measures have no implications.

5.12 In terms of total potential costs where non-compliance is detected and 'additional controls' are necessary, annual costs may be estimated on the basis of the typical amount that businesses would be charged per incident and the expected annual number of incidents to occur. However, as highlighted previously, this is extremely difficult to do as it is not possible to predict the number, nature or extent of serious or significant incidents that may occur and where charges will be appropriate. It is also important to recognise that the cost of an incident may vary widely from case to case depending on the type of additional control activities undertaken and the volume of such controls that are required. The variations include costs for:

- Enforcement or inspection visits: costs vary depending on the degree and nature of activity that the enforcement officer must undertake.
- Sampling activities - the average cost lies between £25 and £100 per sample depending on the type of product being sampled.⁸
- Chemical analysis or microbiological examination - costs range between £50 and £400 per sample.⁹

5.13 Notwithstanding these points, an indication of annual costs to all competent authorities in England has been estimated as described below.

5.14 With regard to labour costs (officer time) associated with feed/food incidents, it can be estimated that in the order of 20 officer days per year may be allocated to dealing with incidents by each of the 388 local authorities in England.¹⁰ This suggests a total annual cost of £1.4 million to local authorities handling incidents in England.

⁸ Source: Data provided to the FSA in relation to its imported food sampling programme.

⁹ Source: Data provided to the FSA in relation to its imported food sampling programme.

¹⁰ Source: Estimate of resource allocated in a cross section of local authority service plans.

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5.15 In 2006, the total number of incidents reported to the Agency by local authorities (under the provisions of the Food Law Code of Practice) was 1342, of which 11 were classified as 'high' in accordance with the Agency's Incident Response Protocol,¹¹ giving an average labour cost of around £1,000 per incident. Taking into account that a serious or significant incident may require a much greater allocation of officer time it may be concluded that such incidents represent a labour cost of £10,000.

5.16 In addition to labour costs, however, there will be costs for sampling and analysis, and depending on the nature of the incident, these may represent a significant proportion of the total charges made. It may be suggested that in dealing with a serious or significant incident, the competent authority may need to take an additional 2,000 samples at a cost of £100 each and have these analysed at a cost of up to £400 per sample. Based on the frequency of 11 serious incidents occurring annually (this was the number that occurred in 2006), this would represent an upper bound estimate of the annual cost in England of £11.1 million.

Note for consultation

Feed and food businesses and enforcement stakeholders are asked to comment on this point and provide any cost information that may help to estimate the level of annual costs for 'additional official controls'.

Costs for businesses - expenses associated with co-coordinated assistance with the other MSs and follow-up by the Commission

5.17 The costs incurred here are likely to be insignificant. As regards informing the other MSs and the Commission of a problem where there is repeated non-compliance, this would be achieved via a single email. As regards follow-up by the Commission, costs relate to travel and subsistence expenses associated with a visit to a MS to investigate issues where repeated non-compliance is found. Such visits are expected to take place only very infrequently.

5.18 Annual total costs for this are estimated at approximately £10,000. This is based on the assumption that there would be two visits of four days duration, and with a Team of three inspectors. Costs are based on travel and subsistence costs for officials of the Commission's Inspection Services (the Food and Veterinary Office).¹²

Summary of costs and benefits

5.19 The measures being proposed are, in effect, cost neutral as the cost to businesses is off-set by an equivalent saving to the competent authorities (and indirectly to the taxpayer).

6. Small Firms' Impact Test

6.1 The provisions on charging will apply to all feed/food businesses including small businesses. As with feed and business more generally, the charging provisions are expected to affect only a few small businesses annually. Where charges are being levied for expenses arising from additional official controls, Regulation 882/2004 requires that consideration be given, amongst other things, to the interests of feed/food businesses with a low throughput. It does not, however, specify the degree to which a reduction in charges should be made. As the potential effect of charging will vary widely from sector to sector,

¹¹ Classification 'high' describes severe incidents that are complex and widespread. More information on the Incident Response Protocol is at: <http://www.food.gov.uk/consultations/ukwideconsults/2006/prevrespfood>

¹² Staff Regulations of Officials of the European Communities (Annex VII: Remuneration and reimbursement of expenses (European Community website at: http://ec.europa.eu/civil_service/docs/toc100_en.pdf).

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depending on the nature of the incident, the control activities that are needed, and on local factors etc. case by case consideration is the most appropriate option.

6.2 The Small Business Service (SBS) was involved in the development of the RIA for Regulation 882/2004 where the impact of the transfer of costs was first considered. It has also been involved in the development of this RIA, and this will continue as matters proceed.

6.3 As regards consulting with small businesses, the Association of Convenience Stores was invited to comment on the relevant issue in advance of consultation. For the consultation itself, trade associations representing small businesses will be targeted. In addition, it is proposed that individual businesses will be identified and asked for their views.

7. Competition Assessment

7.1 On the basis of a Competition Filter Test, the provisions in the SI that affect businesses are unlikely to have a negative impact on competition. These provisions apply to all new and existing feed/food businesses but are expected to affect only a very small number of businesses annually. In view of this, any effect on competition will be negligible.

8. Enforcement, sanctions and monitoring

8.1 The new provisions in the SI relate to 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.

8.2 The effectiveness of the new provisions in the SI will be monitored via feedback from stakeholders as part of the ongoing policy process. The arrangements for engaging with stakeholders are described in para 9.3 below.

8.3 It is also a requirement under Regulation 882/2004 for each MS to report annually to the Commission on its NCP. These reports will also provide a more formal means of monitoring the effectiveness of the proposed measures.

9. Implementation and delivery plan

Implementation of the SI

9.1 [This section will be expanded as the SI is developed to indicate when the SI will be laid before Parliament and its coming into force date.]

Delivery plan

Guidance for businesses and for enforcers

9.2 Guidance on applying the provision in the SI on expenses arising from additional official controls is being developed by the Agency and stakeholders are being consulted on this at the same time as on the SI and this RIA. The responses received will be taken into consideration before the Guidance is finalised and published on the FSA website.

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Engagement with stakeholders

9.3 The Agency has developed a strategy for engaging with stakeholders regarding Regulation 882/2004 and its application in England (and elsewhere in the UK). This includes on-going FSA website updates on all aspects of application of the Regulation and a website log of frequently asked questions. In addition, the Agency's Enforcement Liaison Group is regularly updated and provided with information. The Agency will also participate in key external events and conferences etc.

10. Post implementation review

10.1 The SI and associated guidance will be kept under review and any feedback received from stakeholders will be considered.

10.2 Regulation 882/2004 empowers the Commission to develop detailed implementing rules regarding the provision on charges for expenses arising from additional official controls with a view to ensuring uniform application. Such rules are unlikely to impact on the legal measure included in the SI for England but they may impact on the associated guidance. The SI and Guidance will be reviewed if and when the Commission introduces implementing rules.

10.3 In addition, the European Commission is required under the provisions of Regulation 882/2004 to undertake during 2007 a review of its application. This will cover the provisions on financing of official controls. The UK will feed into this and will review the SI and any other application measures as part of that.

10.4 The annual reports on implementation of the UK National Control Plan - see above - will also provide the basis to review the effectiveness of the application measures put in place in England (and throughout the UK).

11. Summary and Recommendation

11.1 The proposed SI will ensure the provisions on charges for expenses arising from additional official controls and expenses associated with cases where co-ordinated assistance with the other MSs and follow-up by the Commission has been necessary are applied in England. The cost to feed/food businesses will be off-set by savings for the competent authorities (and indirectly to the taxpayer). The provisions will apply only where there is non-compliance with feed/food law. The charges may, therefore, provide an incentive to businesses to comply with legal requirements. This may result in a reduction in food-borne disease and in contamination incidents and to increased consumer protection but such an effect is unlikely to be significant.

11.2 [Recommendations will be made on the points above following the consultation and taking account of stakeholder comments.]

11.3 [A table summarising costs will be included as the RIA is developed further.]

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List of Annexes

- Annex A: Recovery of expenses
- Annex B: The Official Feed and Food Controls (England) Regulations 2007 – summary of provisions
- Annex C: Division of responsibility for feed and food controls in the UK

ANNEX A

RECOVERY OF EXPENSES

Expenses arising from additional official controls

Legal requirement

1. Rules on the financing of official controls are set out in Regulation 882/2004 at Articles 26 to 29. These place a general obligation on MSs to ensure that official controls are properly financed but, in broad terms, it is left to the MS to decide how. In doing so, however, the MS must operate within a defined framework and should take account of certain principles in calculating fees or charges where these are imposed. The framework requires mandatory fees for certain control activities and this includes a requirement to charge for the expenses arising from control activities which are undertaken following the detection of non-compliance and that exceed the competent authority's normal control activities - i.e. 'additional official controls'. This requirement is at Article 28.

2. Article 28 must be read with Article 29 which requires that in setting the level of expenses, account is taken of the principles laid down in Article 27. Those that are relevant are set out at Article 27(4)(a) and 27(5). In practice, this means that the level of expenses charged for 'additional official controls' should not exceed the actual costs of the competent authority for the controls undertaken. In addition, MSs should consider the interests of businesses with a low throughput, and the needs of businesses located in regions subject to particular geographical constraints.

Relevant definitions

3. In interpreting the legal requirement, the following definitions are relevant:

- **'Official controls'** are defined for the purposes of Regulation 882/2004 at Article 2(1). In effect, these are any form of check carried out by the competent authorities in the Member States to verify whether or not feed/food business operators are complying with the requirements set out in 'feed law'/'food law' (and animal health and welfare rules). Such checks include, for example, inspections, audits, surveillance, sampling and analysis etc. Enforcement measures (formal enforcement actions taken in order to address or correct any non-compliances found, e.g. issuing of improvement notices, detention or destruction of feed/food, or taking prosecutions etc.) instituted by the competent authorities following these checks do not constitute 'official controls'.
- **'Competent authorities'** are defined for the purposes of Regulation 882/2004 at Article 2(4). In effect, these are the central authority or authorities of a MS that are responsible for national official control arrangements as well as other authorities that have responsibility for monitoring compliance with, and enforcement of the law.
- **'Operators'** means 'feed business operators' and 'food business operators' as defined in Regulation (EC) No 178/2002 on General Food Law.¹³
- **'Non-compliance'** is defined for the purposes of Regulation 882/2004 at Article 2(10) as 'non-compliance with feed or food law' (and with the rules for the protection of animal health and welfare).
- **'Normal control activities'** are the routine control activities required under Community or national law (this includes emergency safeguard measures adopted, for example, under Regulation 178/2002) and, in particular, are those described in the single integrated national control plan of the Member State. The requirement to have such a plan in place is also set out in Regulation 882/2004. The UK National Control Plan for

¹³ 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. Official Journal L31, 1.2.2002, 1-24.

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the period from January 2007 to March 2011 is published on the FSA website at the link below. As well as describing the roles and responsibilities of the different authorities and associated bodies that are involved with official feed and food controls and how these authorities and other bodies work together, it sets out the planned routine official control activities during the period of the plan. For local authority feed and food law regulatory services, these planned control activities are set out in more detail in each authority's Service Delivery Plan which must be in place under the terms of the *Framework Agreement on Local Authority Food Law Enforcement*.¹⁴

<http://www.food.gov.uk/foodindustry/regulation/europeleg/feedandfood/ncpuk>

- **'Additional official controls'** are those undertaken following the detection of non-compliance and which exceed the routine activities of the competent authority. The additional controls are required to check the extent of a problem, to verify whether corrective action has been taken, and to detect and/or substantiate non-compliance. The *type (nature) and range* of control activities that may be undertaken is the same as for routine controls, e.g. sampling and analysis. It is the *level* of such activities, i.e. a level over and above that which applies routinely, that characterises 'additional official controls'.
- **'Actual costs'** should be calculated by reference to Annex VI of Regulation 882/2004. This lists the criteria that should be taken into account. These are the salaries and costs (facilities, tools, equipment, training, travel and associated costs) of staff involved in carrying out official controls, and costs of sampling and laboratory analysis.

Co-ordinated assistance and follow-up by the Commission

Legal requirement

4. Detailed requirements for the provision of administrative assistance and co-operation are set out at Articles 34 to 40 of Regulation 882/2004. These provisions aim to continue and improve previous arrangements whereby the competent authorities of the different Member States may work together and with the Commission where the results of official controls indicate that action is needed in more than one country. To facilitate assistance, each Member State is required to designate a 'liaison body' but this does not preclude direct contacts by individual authorities. The provisions relate to intra-Community trade issues and require the competent authorities of a MS on request to provide information and documentation to the competent authority in another MS where this will assist with investigations within its jurisdiction. In addition, where a competent authority in one MS becomes aware of a problem that may have implications in another MS(s), it should pass on relevant information to the other MS(s) without request.

5. Where an issue may have a particular relevance at Community level, the Commission will become involved and will co-ordinate any action needed (Article 40). In particular, where repeated non-compliance is found, the relevant competent authority must inform the other MSs and the Commission. The Commission may then send an Inspection Team (in collaboration with the MS reporting the non-compliance) to investigate (carry out an on-the-spot check) in the MS in which the feed or food originates and may request the competent authority of that MS to intensify official controls and report on the action and measures taken.

6. Article 40(4) requires the competent authority to charge feed/food business operators for (a) administrative expenses incurred in informing the Commission and the competent authorities of the other MSs where repeated non-compliance has been found and (b) the costs incurred by the Commission if it sends an inspection team to carry out an 'on-the-spot' check.

¹⁴ More information is available at: <http://www.food.gov.uk/multimedia/pdfs/frameworkjuly04.pdf>.

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ANNEX B

THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2007 – SUMMARY OF PROVISIONS

Important note - the following summary has been prepared solely for the purposes of this RIA and aims to explain only the principal elements of the SI. The SI revokes and replaces the Official Feed and Food Controls (England) Regulations 2006 (SI2006/15). *Where provisions have been amended or new provisions have been included, this is highlighted using red italicised text.*

Preliminary (Part 1)

These measures provide for the following:

- **Title, commencement and application (regulation 1)** - This will specify the date on which the SI will come into force and that it applies in England only. *The 'coming into force date' etc. will be completed following consultation. The aim will be to have the same 'coming into force date' as those for the SIs in Scotland, Wales and Northern Ireland.*
- **Interpretation (regulation 2, and schedules 1 to 3)** - This provides definitions that are relevant to interpretation of the SI. This includes definitions of Community legislation, 'relevant feed law', and 'relevant food law'. *These are being updated to reflect recent changes/changes expected during the consultation period to Community and national legislation.*

Main provisions (Part 2)

These measures provide for the following:

- **Competent authorities (regulation 3 and schedules 4 and 5)** - The Food Standards Agency, local authorities and port health authorities are designated as having responsibility with regard to official controls relating to feed and food. This covers areas of feed/food law for which the Agency has responsibility at central level only. Those areas of feed/food law for which Defra has responsibility at central level do not fall within the scope of this SI. *Schedules 4 and 5 are being updated to make reference to the provisions in Regulation 882/2004 on financing of official controls - these applied from 1 January 2007.*
- **Exchanging and providing information (regulation 4)** - This provides a mechanism for the competent authorities to share information on enforcement activity. This includes, for example, information or data that may be required for the national control plans that the UK must prepare and for the annual reports on implementation of these plans which the UK must submit to the European Commission.
- **Obtaining information (regulation 5)** - This gives powers to the competent authorities to require 'control bodies' (i.e. private bodies or companies undertaking official control tasks on behalf of a competent authority) to make available to them any information and records associated with the carrying out of official controls. Again, for example, this includes information that may be needed to ensure that obligations in the EU Regulation for monitoring and reporting enforcement activity may be met.
- **Powers to issue codes of recommended practice (regulation 6)** - This provides a power to the Secretary of State to issue codes of practice for local and port health authorities providing direction with regard to the manner in which their duties to enforce feed and food law should be carried out.

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- **Extension of the Agency's function to monitor the performance of enforcement authorities (regulations 7 to 10)** - The existing function is set out in the Food Standards Act 1999. The provisions in the 1999 Act give the Agency the function of monitoring, setting standards for, and auditing the performance of enforcement authorities. The provisions restrict this function to the enforcement of: the Food Safety Act 1990 and regulations made under it; Part IV of the Agriculture Act 1970 and regulations made under that part of the Act that are concerned with animal feed; and some, but not all, feed and food legislation made under the European Communities Act 1972. The SI includes parallel provisions to those in the 1999 Act to cover other areas of 'feed law'¹⁵ and 'food law'¹⁶ for which the Agency has responsibility and which fall within the scope of EU Regulation 882/2004.
- **Right of appeal for food businesses dissatisfied with decisions relating to the approval of food establishments (regulations 12 and 13)** - The requirements for establishments to be approved is set out in EU legislation on food hygiene.¹⁷ However, the procedures to be followed by the authorities responsible for granting approvals are set out in Regulation 882/2004.
- **Staff of the competent authorities of other MSs to accompany staff of the competent authorities in England when they undertake official controls (regulation 14)** - This applies when the authorities in England are carrying out investigations as a follow-up to the results of enforcement checks in the other MS. This ensures that an obligation in Regulation 882/2004 to provide administrative assistance and co-operation to other MSs is fulfilled in England.
- **Enforcement officers entering premises for the purposes of executing and enforcing official controls to take European Commission Experts with them (regulation 15)** - This means that Commission experts may enter those premises for the purposes of Article 45 of EU Regulation 882/2004 (this is concerned with Commission audits of the enforcement arrangements in MSs). This includes premises of competent authorities and of businesses etc.

This part of the SI also includes associated offences and penalties and, where appropriate, identifies the authorities that will enforce the various requirements and provides them with the necessary enforcement powers.

Provisions on official controls on feed and food of non-animal origin from third countries (Part 3)

These measures provide for the following:

- **Interpretation of this part of the Regulations (regulation 22)** - This provides definitions that are relevant to interpretation of this part of the SI. *The definition of 'product' is being amended to reflect a change in Community legislation. The relevant Commission Decision has been adopted by the Standing Committee on the Food Chain and Animal Health and is expected to have been published in the Official Journal by the time that the new SI is made.*

¹⁵ 'Feed law' means the laws, regulations and administrative provisions governing feed in general, and feed safety in particular, whether at Community or national level; it covers all stages of production, processing and distribution of feed and the use of feed.

¹⁶ 'Food law' means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers all stages of production, processing and distribution of food.

¹⁷ Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. Official Journal L226, 25.6.2004, 22-82.

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- **Designation of the ‘enforcement authorities’ for this part of the SI (regulations 23 and 24)** - These authorities are responsible for enforcing the requirements for businesses relating to non-POAO feed and food imported from outside the Community. These are local authorities and port health authorities.
- **Functions of the Commissioners (regulation 25)** - This specifies that Her Majesty's Revenue and Customs (HMRC) will carry out the functions of the customs services in relation to import controls for feed and food of non-animal origin.
- **Local and port health authorities at English borders may defer enforcement to inland local authorities in the UK (regulation 26)** - This flexibility may be needed for practical reasons, for example where special facilities are needed in order to undertake any checks and which may not be available at ports.
- **Prohibition on introduction of certain feed and food (regulation 27)** - *This regulation has also been revised such that there is a prohibition on feed and food being imported into the Community if it does not comply with the feed and food safety requirements (as set out at Articles 14 and 15 of the General Food Law Regulation 178/2002).¹⁸ This change is being made such that officers of Her Majesty's Revenue and Customs may withhold clearance of consignments pending official control by the competent authorities. A consequential amendment has also been made to regulation 39 such that it is still an offence if any person introduces prohibited feed or food into England.*
- **Importers to provide facilities for the enforcement authorities to carry out checks on their products (regulation 28)** - This requires businesses to ensure that there are appropriate facilities for the enforcement authorities to carry out official controls on their products.
- Powers for the enforcement authorities to take action in case of non-compliance or suspicion of non-compliance (regulations 29 and 30) - These include powers to put consignments under official detention, to order destruction of the feed or food, to order recall or withdrawal of products, to order re-dispatch of consignments etc. *Regulation 30 is being amended such that an authorised officer of an enforcement authority will be required to serve a notice where he proposes to place a consignment under official detention because of suspicion of non-compliance and until the results of official controls are known. Some other minor technical revisions to regulation 30 are also being made.*
- **Right of appeal for feed and food businesses (regulations 31 and 32)** - This provides for businesses that are dissatisfied with decisions taken by the enforcement authority with regard to action in case of non-compliance to appeal against these.
- **Emergency declarations (regulation 33)** - This provides a mechanism for the Agency and Defra (the Secretary of State) to make declarations suspending or imposing conditions on the import of any product where there is a serious risk to animal or public health. The suspension or conditions will apply with immediate effect. In particular, it may be used to ensure that Emergency Decisions made at EU level under Article 53 of the General Food Law Regulation (178/2002) may be implemented in England without delay.

¹⁸ 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. Official Journal L31, 1.2.2002, 1-24.

DRAFT

- **Costs (regulation 34)** - This provision allows local and port health authorities to recover costs associated with enforcement measures that have been taken in cases of non-compliance and suspected non-compliance. This includes, for example, costs associated with detention or destruction etc. It does not include costs for official control activities. *The formulation of this regulation has been updated to ensure consistency with the new provisions at regulations 41 and 42.*
- **Enforcement powers for food authorities (regulations 35 to 37)** - These provide powers to officers of food enforcement authorities to take samples and specify conditions for analysis of these. They also provide relevant powers of entry. Equivalent provisions for feed enforcement authorities are set out in the Feed (Hygiene and Enforcement) (England) Regulations 2005 which came into force on 1 January 2006.
- **Obstruction etc. of officers (regulation 38)** - This makes it an offence to obstruct an officer of the competent authorities in undertaking their duties.
- **Offences and penalties (regulation 39)** - This sets out offences and penalties for businesses that fail to comply with the requirements set out on imports in the SI. *Regulation 39(1)(c) makes it an offence if the person responsible for introducing any product into England fails to provide adequate facilities for the enforcement officer to carry out checks on products (as required by regulation 28.*

Recovery of expenses (Part 4)

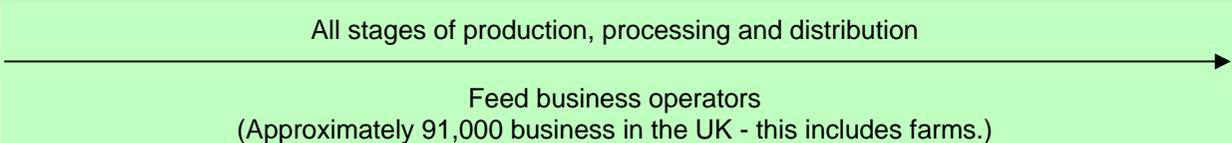
- ***Expenses arising from additional official controls (regulation 41)** – This new measure provides a power to the competent authorities to recover the costs arising from 'additional official controls' carried out following the detection of non-compliance and that exceed the competent authority's 'normal control activities'.*
- ***Expenses arising in respect of co-ordinated assistance and follow-up by the Commission (regulation 42)** - This new measure provides a power for the competent authorities to recover costs associated with the administrative actions required to inform the Commission and the competent authorities of the other MSs where repeated non-compliance is found and where the issue may have implications in other MSs, and for the costs incurred by the Commission if it sends an inspection team to investigate such cases.*

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ANNEX C

DIVISION OF RESPONSIBILITY FOR OFFICIAL FEED AND FOOD CONTROLS IN THE UK¹⁹

Division of responsibility for official feed controls - at a glance

Developing and Implementing feed law	FSA <ul style="list-style-type: none"> • General - traceability, rapid alert system (RASFF), official controls • Import controls • Labelling • Composition and standards • Biological safety - e.g. feed hygiene • Chemical safety - prohibited and undesirable substances • Biotechnology - Genetically modified feed 			Defra (and its agencies), SEERAD, EPC and DARD <ul style="list-style-type: none"> • Animal by-products - feed ban, <i>Salmonellas</i> etc. • Medicated feed • Chemical safety - specified feed additives 		
Ensuring that feed satisfies the requirements of feed law	Farm	All stages of production, processing and distribution 			Fork	
Official controls in respect of feed law	Central level			Local level		
	VMD <ul style="list-style-type: none"> • Medicated feed • Specified feed additives • Veterinary medicine drug residue surveillance 	PSD <ul style="list-style-type: none"> • Pesticide residue monitoring & enforcement 	SVS <ul style="list-style-type: none"> • Animal protein in feed ban 	DARD <ul style="list-style-type: none"> • All feed law controls in Northern Ireland 	Local authorities in England and Wales <ul style="list-style-type: none"> • Official controls and enforcement of the main body of feed law, including imported feed (all feed law not enforced by Defra and its Agencies) 	Local authorities in Scotland <ul style="list-style-type: none"> • Official controls and enforcement of the main body of feed law, including imported feed (all feed law not enforced by Defra and its Agencies)

¹⁹ Key to abbreviations: FSA - Food Standards Agency; Defra - Department for the Environment, Food and Rural Affairs; SEERAD - Scottish Executive Environment and Rural Affairs Department; EPC - Welsh Assembly Government Environment, Planning and Countryside Department; DARD - Department of Agriculture and Rural Development for Northern Ireland; VMD - Veterinary Medicines Directorate; PSD - Pesticide Safety Directorate; SVS - State Veterinary Service; TSEs - transmissible spongiform encephalopathies; MHS - Meat Hygiene Service; SRM - specified risk material; OTM - over thirty months; DHI - Dairy Hygiene Inspectorate; EMI - Egg Marketing Inspectorate; RPA - Rural Payments Agency.

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Division of responsibility for official food controls - at a glance

Developing and Implementing food law	FSA		Defra (and its agencies), SEERAD, EPC and DARD				
	<ul style="list-style-type: none"> • General - traceability, rapid alert system (RASFF), official controls • Import controls - public health aspects, fish/fishery products and products of non-animal origin • Labelling - general, nutritional, health claims • Composition and standards - e.g. mineral waters, fat spreads, chocolate, foods for particular nutritional use • Biological safety - e.g. food hygiene, TSEs • Chemical safety - e.g. additives, contaminants, food contact materials, irradiation • Biotechnology - genetically modified food 		<ul style="list-style-type: none"> • Imports controls - animal health aspects for products of animal origin • Labelling - beef labelling and protected food names • Composition and standards - organic produce • Biological safety - certain rules relating to TSEs • Residues of pesticides (PSD) • Residues of veterinary products (VMD) 				
Ensuring that food satisfies the requirements of food law	Farm	All stages of production, processing and distribution					Fork
	<p style="text-align: center;">Food business operators (Approximately 600,000 establishments, plus approximately 195,000 holdings at primary production level.)</p>						
Official controls in respect of food law	Central level			Local level			
	FSA <ul style="list-style-type: none"> • Inspection and approval of food irradiation facilities • Approval of fresh meat premises • Classification of shellfish harvesting areas MHS <ul style="list-style-type: none"> • Hygiene controls - fresh meat • SRM controls • OTM controls DHI (on behalf of the FSA) <ul style="list-style-type: none"> • Hygiene controls - milk production holdings EMI/Egg and Poultry Unit (on behalf of the FSA) <ul style="list-style-type: none"> • Hygiene controls - egg production units 	Defra (on UK-wide basis) <ul style="list-style-type: none"> • Organisation of protected food names scheme • Overseeing system for certification of organic produce • Organisation of beef labelling scheme VMD <ul style="list-style-type: none"> • Veterinary medicine drug residue surveillance PSD <ul style="list-style-type: none"> • Pesticide residue monitoring & enforcement RPA <ul style="list-style-type: none"> • Beef labelling 	DARD <ul style="list-style-type: none"> • Hygiene controls - fresh meat, milk production holdings/liquid milk premises, egg production units/packing stations • SRM controls • OTM controls • Beef labelling 	SEERAD <ul style="list-style-type: none"> • Beef labelling 	Local authorities in England and Wales <ul style="list-style-type: none"> • Official controls and enforcement of the main body of food law, including imported food controls (all food law except that enforced by the central Departments and their Agencies) 	Local authorities in Scotland <ul style="list-style-type: none"> • Official controls and enforcement of the main body of food law, including imported food controls (all food law except that enforced by the central Departments and their Agencies) • DHI role - hygiene controls at milk production holdings 	District Councils in Northern Ireland <ul style="list-style-type: none"> • Official controls and enforcement of the main body of food law (all food law except that enforced by DARD)

Official Feed and Food Controls (England) Regulations 2007

DRAFT Guidance notes on expenses arising from 'additional official controls'

Note for consultation

This guidance is being developed in order to help ensure that the legal requirement in Regulation (EC) No 882/2004 on official controls to charge feed and food business operators for expenses arising from 'additional official controls' (and given effect in England by regulation 41 of the Official Feed and Food Controls (England) Regulations 2007) is applied in a fair and consistent manner. Before the advice contained in the guidance may be finalised, there are a number of important issues and questions on which stakeholders' views are requested - these are highlighted at the relevant sections of the draft document.

A copy of the Draft Official Feed and Food Controls (England) Regulations 2007 is enclosed as Appendix 1 of the consultation package.

(April, 2007)

CONTENTS

	Page
Important note	3
Introduction	3
Legal requirements and definitions	4
Q1. What is the legal basis for the requirement to charge for expenses arising from additional official controls?	4
Q2. What are the principles that must be taken account of in calculating the level of expenses arising from 'additional official controls'?.....	4
Q3. What constitutes 'actual costs'?	5
Q4. How are the provisions in Regulation 882/2004 implemented at national level?	5
Q5. What are 'competent authorities'?	6
Q6. What are 'official controls'?	6
Q7. What are 'enforcement measures'?	6
Q8. What are 'normal control activities'?	6
Q9. Does the UK have a national control plan in place?	6
Q10. What are 'additional official controls'?	7
Q11. What constitutes 'non-compliance'?	7
Circumstances in which charges will be made	7
Q12. When will charges be levied?	7
Q13. Does the UK National Control Plan specify the levels of 'normal control activities' that take place?	7
Q14. Do official controls carried out in relation to emergency safeguard measures automatically constitute 'additional control activities'?	8
Q15. How will the competent authorities determine if 'normal control activities' have been exceeded?	8
Q16. What are these indicative factors?	9
Q17. Are there any examples of when charges will be levied?	9
Competent authorities that can levy charges	10
Q18. Which competent authorities can charge?	10
Q19. Where other Government Departments or Agencies are undertaking official control functions on behalf of the Agency (see Q18 above) will it be the Agency or the other body that makes the charge?	10
Feed and food business operators subject to charges	10
Q20. Who can the competent authorities charge?	11
Q21. Which option is provided for in the Official Feed and Food Controls (England) Regulations 2007?	11
Q22. What is meant by 'operators'?	11

	Page
Q23. Who should be charged in what circumstances?	11
Q24. Who should be charged in the case of feed and food imported from outside the Community?	11
Q25. In the case of local authorities, how will charging work where more than one local authority is involved?	12
Activities subject to charges	12
Q26. What can the competent authorities charge for?	12
Q27. What types of activities constitute 'additional official controls'?	12
Q28. Does it include formal enforcement actions (e.g. issuing of notices, detention or destruction of feed/food, taking prosecutions)?	13
Level of charges	13
Q29. What level of charges will be made?	13
Q30. How will such costs be calculated?	14
Q31. What factors have to apply before a reduction in the level of charge is considered?	14
Q32. For operators with a low throughput, what level of reduction will be applied?	14
Q33. Will the level of charges levied against all operators located in regions subject to particular geographical constraints be reduced?	14
Q34. Where operators are geographically remote, what level of reduction will be applied?	14
Q35. Will feed and food business operators have a right of appeal against the charges?	14

Important note

This Guidance aims to provide informal, non-statutory advice in relation to regulation 41 of the Official Feed and Food Controls (England) Regulations 2007. It should be read in conjunction with those Regulations and with Regulation (EC) No 882/2004 on official controls.¹

The Guidance should not be taken as an authoritative statement or interpretation of the legislation as only the courts have this power.

Introduction

From 1 January 2007, Regulation (EC) No 882/2004 on official controls established a framework for the financing of official feed and food controls, and Member States must operate within this. Under the framework, the competent authorities are required to charge for the expenses arising from additional official controls that have been carried out following the detection of non-compliance and where they exceed the competent authority's normal control activities as described in the single integrated multi-annual national control plan. Regulation 882/2004 requires that such a plan be in place from 1 January 2007 and Commission Guidance² suggests that it should cover a period of three to five years. It should detail the roles and responsibilities of the competent authorities involved in official feed and food controls (and also animal health & animal welfare and plant health controls) and set out their planned control activities for the period of the plan.

The text of Regulation (EC) No 882/2004 is available on the European Commission's website at:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_191/l_19120040528en00010052.pdf

The UK Multi-annual National Control Plan for January 2007 to March 2011 is available on the Food Standards Agency's (FSA) website at:

<http://www.food.gov.uk/foodindustry/regulation/europeleg/feedandfood/ncpuk>

The provisions in Regulation 882/2004 on expenses arising from additional official controls, as far as this relates to those areas of feed and food law for which the FSA is responsible, are given effect in England by regulation 41 of the Official Feed and Food Controls (England) Regulations 2007 (similar provisions are included in the parallel legislation in Scotland, Wales and Northern Ireland). This Guidance has been prepared in relation to this implementing legislation so its scope extends only to the FSA's areas of responsibility.³ Copies of the Regulations may be downloaded from the website of the Office of Public Information at:

¹ 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.

² Draft Commission Decision (EN 660005) setting out guidelines to assist Member States in preparing the single integrated multi-annual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council.

³ The FSA has responsibility at central Government level for the main body of feed and food law. The Department for Environment, Food and Rural Affairs (Defra) and the Agriculture/Rural Affairs Departments in the Devolved Administrations have responsibility between them for those feed and food elements that fall outside the FSA's remit (e.g. beef labelling, standards for organic products, protected food names; residues of pesticides and veterinary drugs, medicated feed etc.). As regards most of these areas, the provisions in

[Note - a link will be included once the 2007 Regulations are in place.]

The Guidance (which is in Q&A format) is divided into six sections. The first aims to explain the background to the requirement to levy charges for 'additional official controls'. The remaining parts aim to clarify the circumstances in which charges will be made, which competent authorities can levy charges, who the charges can be levied against, what activities the charges can be levied for, and the level of charges that can be levied.

Legal requirements and definitions

The Q&A in this section aims to explain the background to the requirement for competent authorities to charge for expenses arising from additional official controls, and to put the remaining sections of the Guidance into context.

Note for consultation

- **Does this section provide sufficient background information?**
- **Are any parts of it unclear?**
- **Is there a need to define any other terms?**

Q1. What is the legal basis for the requirement to charge for expenses arising from additional official controls?

A1. Rules on the financing of official controls are set out in Regulation 882/2004 at Articles 26 to 29. These place a general obligation on Member States to ensure that official controls are properly financed but, in broad terms, it is left to the Member State to decide how. In doing so, however, the Member State must operate within a defined framework and should take account of certain principles in calculating fees or charges where these are imposed. The framework requires mandatory fees for certain control activities and this includes a requirement to charge for the expenses arising from control activities which are undertaken following the detection of non-compliance and that exceed the competent authority's 'normal control activities' - i.e. 'additional official controls'. This requirement is at Article 28.

Q2. What are the principles that must be taken account of in calculating the level of expenses arising from 'additional official controls'?

A2. The principles are the same as those that should be taken into account in setting fees for other official control activities where these are imposed - this is required by Article 29. The principles are set out at Articles 27(4)(a) and 27(5). In practice, these principles mean that the level of expenses charged for 'additional official controls' should not exceed the actual costs of the competent authority for the controls undertaken. In addition, Member States

Regulation 882/2004 on expenses arising from additional official controls have been given effect at national level by including a measures in the Official Controls (Animals, Feed and Food) (England) Regulations 2006 (SI 2006/3472). Again, similar measures are included in the parallel legislation for Scotland, Wales and Northern Ireland. Measures relating to fees for official controls included in the Veterinary Medicines Regulations 2007 will ensure that the relevant provisions are applied as regards medicated feed and specified feed additives.

should consider a) the type of business concerned and relevant risk factors, b) the interests of businesses with a low throughput, c) traditional methods used for production, processing and distribution, and d) the needs of businesses located in regions subject to particular geographical constraints. It is considered that, in practice, only b) and d) could impact on the level of expenses charged (see section on 'level of charges').

Q3. What constitutes 'actual costs'?

A3. Actual costs should be calculated by reference to Annex VI of Regulation 882/2004. This lists the criteria that should be taken into account. These are the salaries and costs (facilities, tools, equipment, training, travel and associated costs) of staff involved in carrying out official controls, and costs of sampling and laboratory analysis. This does not include costs of any associated formal enforcement actions, e.g. issuing of improvement notices, detention or destruction of feed/food, or costs related to taking prosecutions.

Q4. How are the provisions in Regulation 882/2004 implemented at national level?

A4. The provisions in Regulation 882/2004 are directly applicable (i.e. they automatically have the force of law in the UK with effect from the same date that the relevant provisions in the Regulation apply) but measures are required to give effect to these at national level. As regards the feed and food law for which the Food Standards Agency has responsibility at central Government level (see para below), these are given effect in England by means of regulation 41 of the Official Feed and Food Controls (England) Regulations 2007. This simply requires that expenses pursuant to Article 28 shall be payable by the feed/food business operator on written demand by the competent authority. Similar provisions are made in the parallel legislation in Scotland, Wales and Northern Ireland.

The FSA has responsibility for the main body of feed and food law (both domestic and EU), particularly as it relates to feed and food *per se*. The scope of these responsibilities is defined in the Official Feed and Food Controls Regulations (England) 2007 at Schedules 2 and 3 which define respectively 'relevant feed law' and 'relevant food law'. In effect, this includes rules on hygiene, additives, contaminants, labelling and composition, public health issues relating to TSE⁴ rules, genetically modified feed and food, and food contact materials, and feed and food of non-animal origin imported from outside the Community.

The UK Agriculture/Rural Affairs Departments have responsibility at central level for feed and food law that falls outside the Agency's remit but still falls within the scope of Regulation 882/2004. This includes, beef labelling, standards for organic products, protected food names; animal by-products (in relation to feed); animal health and animal feed aspects of TSE rules; imports from third countries of products of animal origin as regards the animal health requirements; medicated feed⁵ and specified feed additives;⁶ and, residues of pesticides and veterinary drugs. As regards most of these areas, the

⁴ Transmissible Spongiform Encephalopathies.

⁵ A medicated feedingstuff is an animal feedingstuff which contains a veterinary medicinal product which can only be supplied to a keeper of animals on receipt of a prescription.

⁶ A specified feed additive is a substance which is added to animal feedingstuffs routinely, without prescription, for the prevention of coccidiosis or histomonosis, or to favourably affect the growth of animals.

provisions in Regulation 882/2004 on expenses arising from 'additional official controls' are given effect by the inclusion in the Official Controls (Animals, Feed and Food) (England) Regulations 2006 (SI 2006/3472) of a similar measure to that included in the FSA legislation. Again, similar measures are included in the parallel legislation for Scotland, Wales and Northern Ireland. As regards medicated feed and specified feed additives, measures included in the Veterinary Medicines Regulations 2007 [SI number to be included when the Regulations have been made] on fees for official controls will ensure that Article 28 expenses are recovered.

Q5. What are 'competent authorities'?

A5. 'Competent authorities' are defined for the purposes of Regulation 882/2004 at Article 2(4). In effect, these are the central authority or authorities of a Member State that are responsible for national official control arrangements as well as other authorities that have responsibility for monitoring compliance with, and enforcement of, the law.

Q6. What are 'official controls'?

A6. 'Official controls' are defined for the purposes of Regulation 882/2004 at Article 2(1). In effect, these are any form of check carried out by the competent authorities in the Member States to verify whether or not feed/food business operators are complying with the requirements set out in 'feed law'/'food law' (and animal health and animal welfare rules). Such checks include, for example, inspections, audits, surveillance, sampling and analysis etc. Enforcement measures instituted by the competent authorities following these checks do not constitute 'official controls'.

Q7. What are 'enforcement measures'?

A7. The term 'enforcement measures' is not specifically defined in Regulation 882/2004 but, in effect, these may be described as the formal enforcement actions taken by the competent authorities following official controls in order to address or correct any non-compliances found, e.g. issuing of improvement notices, detention or destruction of feed/food, or taking prosecutions etc. Costs falling to the competent authorities for these measures where they are taken in relation to Part 3 of the Official Feed and Food Controls (England) Regulations 2007 in relation to feed and food of non-animal origin from third countries may be recovered using the provision at regulation 34.

Q8. What are 'normal control activities'?

A8. 'Normal control activities' are the routine control activities required under Community or national law (this includes controls carried out in relation to emergency safeguard measures, for example, those made under Article 53 of Regulation 178/2002 - see Q14) and, in particular, are those described in the single integrated multi-annual national control plan of the Member State. The requirement to have such a plan in place is also set out in Regulation 882/2004.

Q9. Does the UK have a national control plan in place?

A9. Yes, and this is key to defining 'normal control activities' in the UK and, in turn, in determining when charges should be levied for 'additional official controls'.

The UK National Control Plan for the period from January 2007 to March 2011 is published on the FSA website at the link below.

<http://www.food.gov.uk/foodindustry/regulation/europeleg/feedandfood/ncpuk>

As well as describing the roles and responsibilities of the different authorities and associated bodies that are involved with official feed and food controls and how these authorities and other bodies work together, it sets out the planned routine official control activities during the period of the plan. For local authority feed and food law regulatory services, these planned control activities are set out in more detail in each authority's Service Delivery Plan which must be in place under the terms of the *Framework Agreement on Local Authority Food Law Enforcement*.⁷

Q10. What are 'additional official controls'?

A10. 'Additional official controls' are those undertaken following the detection of non-compliance and which exceed the routine activities of the competent authority. The additional controls are required to check the extent of a problem, to verify whether corrective action has been taken, and to detect and/or substantiate non-compliance. The *type (nature) and range* of control activities that may be undertaken is the same as for routine controls, e.g. sampling and analysis. It is the *level* of such activities, i.e. a level over and above that which applies routinely, that characterises 'additional official controls'.

Q11. What constitutes 'non-compliance'?

A11. 'Non-compliance' is defined at Article 2(10) of Regulation 882/2004 as 'non-compliance with feed or food law' (and with the rules for the protection of animal health and welfare). Within the context of the Official Feed and Food Controls (England) Regulations 2007, in effect, it means non-compliance with the requirements of feed and food law for which the Food Standards Agency has responsibility at central Government level.

Circumstances in which charges will be made

The Q&A in this section aims to clarify when the competent authority can charge for expenses arising from additional official controls.

Q12. When will charges be levied?

A12. Charges will be levied only where non-compliance has been established and where this has resulted in 'additional official control' activities being carried out at a level that exceeds the competent authority's 'normal control activities' i.e. those required under Community or national law and, in particular, those described in the National Control Plan.

Q13. Does the UK National Control Plan specify the levels of 'normal control activities' that take place?

Q13. Responsibility for official feed and food controls in England is divided between central Government Agencies and local authorities. The National Control Plan

⁷ More information is available at: <http://www.food.gov.uk/multimedia/pdfs/frameworkjuly04.pdf>.

provides general information on the planned control activities of these different authorities. However, given the number of authorities involved, it does not provide details of projected levels of control activities for each of these. Instead, it cross-refers to local business plans, service delivery agreements etc. which provide relevant information.

In the case of local authorities, for example, the National Control Plan cross-refers to the requirement in the *Framework Agreement of Local authority Food Law Enforcement* to have a Service Delivery Plan in place (see Q8). This Plan must take account of requirements in the *Feed Law Code of Practice*⁸ and *Food Law Code of Practice for England*⁹ to plan enforcement activities on a risk-basis and taking account of local priorities such that a comprehensive service is provided. Such Plans should include estimates of the type and level of 'normal control activities' that will be carried out.

It should be noted that these local business plans, service delivery agreements etc. already include a degree of follow-up action, e.g. routine revisits following inspections to ensure that corrective actions have been carried out, and also estimates on the demands on the service for dealing with feed/food incidents.

Q14. Do official controls carried out in relation to emergency safeguard measures automatically constitute 'additional control activities'?

A14. No. Such measures, for example those made under Article 53 of Regulation 178/2002, are part of Community law. The issue of fees for these official controls is considered by the Commission and the Member States when the safeguard measures are put in place.

As with non-emergency measures, however, non-compliance with an emergency measure *may* result in 'additional official controls' being necessary and hence in a charge being made.

Q15. How will the competent authorities determine if 'normal control activities' have been exceeded?

A15. The activities described in the UK National Control Plan and local service delivery plans etc. are key to this. When these are considered together, 'normal control activities' are likely to be exceeded only infrequently. It is considered that, in general, such situations are likely to arise only in those cases where unless corrective action is undertaken, there is an imminent and/or serious risk to public health, or a significant risk to consumer interests (e.g. food fraud, mislabelling or misdescription, consistent and recurring breaches of food law), or where the resources required to manage the activities fall outside the authority's planned activities and, therefore, normal budgetary provisions. In practice, each situation will need to be judged on a case by case basis but in order to help ensure consistency of approach, a number of indicative factors may be used to assist in determining whether additional official controls have been carried out.

⁸ More information is available at: <http://www.food.gov.uk/enforcement/foodlaw/feedlawcop/>

⁹ More information is available at: <http://www.food.gov.uk/enforcement/foodlaw/foodlawcop/copengland>

Q16. What are these indicative factors?

A16. These factors are the *severity* and *complexity* of the non-compliance, and the *nature/extent (number)* of the control activities.

- *Severity* - in determining this, consideration should be given to the nature of the risk either to public or animal health or to consumer interests, and to numbers and/or groups of consumers that are potentially affected.
- *Complexity* - in determining this, consideration should be given to the number of non-compliances detected/being detected in relation to the particular issue, the numbers of products/locations potentially affected, the number of authorities involved, and the extent of withdrawal/recall i.e. traceability.
- *Nature/extent (number) of the control activities* - in determining this, consideration should be given to the resources required to manage the activities, and to whether such activities are considered to fall within the authority's planned activities and, therefore, within normal budgetary provisions.

Where precedents for charging have been set by previous similar cases (including by other authorities), charges should be made and they should be calculated on the same basis.

Q17. Are there any examples of when charges will be levied?

A17. Examples of situations where it is likely that there will have been non-compliance and that 'normal control activities' will have been exceeded, and hence charges, include:

- Major chemical contamination incidents posing an immediate risk to public health, e.g. dioxin contamination of animal feed, which involves local authorities in prolonged investigations, including costly analyses of samples, to establish the extent of the problem and to ensure that all affected animals, animal products and animal feed are taken out of the feed and food chain.
- Major food poisoning incidents involving a number of different local authorities, and necessitating a significant number of audits of food safety management systems, and sampling and analysis of food products.
- Investigations regarding the provenance of animals as required by food hygiene legislation¹⁰ - where the competent authority discovers that the accompanying records, documentation or other information do not correspond with the true situation on the holding of provenance or the true condition of animals or where the official veterinarian has been deliberately misled, and additional controls (e.g. inspections at the farm of origin to check records and assess the health and welfare of animals on the farm) are needed to investigate this.

¹⁰ Regulation 854/2004, Annex I, Section II, Chapter II, para 5.

Competent authorities that can levy charges

The Q&A in this section aims to clarify which competent authorities can levy charges for expenses arising from additional official controls.

Note for consultation

- **Does this section provide sufficient clarification regarding which competent authorities can charge?**
- **If not, what is missing?**

Q18. Which competent authorities can charge?

A18. The Official Feed and Food Controls (England) Regulations 2007 designate the competent authorities responsible for official controls in England in respect of feed and food law for which the FSA is responsible at central level. The provisions made to give effect to Article 28 are available to these authorities which are:

- the Agency - this covers the official control functions that FSA (including the Meat Hygiene Service) officials undertake and those undertaken on behalf of the FSA by the Dairy Hygiene Inspectorate, and the Egg Marketing Inspectorate; and
- local and port health authorities in England - feed authorities and food authorities.

Q19. Where other Government Departments or Agencies are undertaking official control functions on behalf of the Agency (see Q18 above) will it be the Agency or the other body that makes the charge?

A19. In such cases, the Agency remains the competent authority in respect of the control activities. The other Departments/Agencies are acting as the Agency's agents and, in practice, it will be these agents that make and collect the charges.

Feed and food business operators subject to charges

The Q&A in this section aims to clarify who the charges can be levied against for expenses arising from additional official controls.

Note for consultation

- **Do you agree with the approach suggested in the answers for each of the questions below?**
- **If not, what alternative approaches do you think should be adopted?**

Q20. Who can the competent authorities charge?

A20. Article 28 of Regulation 882/2004 specifies that the 'competent authority shall charge the operators responsible for the non-compliance, or may charge the operator owning or keeping the goods at the time when the additional official controls are carried out'. In effect, this provides the UK with an option for the provisions in the domestic legislation: these may be restricted to charging the operator responsible for the non-compliance; or, these may provide for charging either the operator responsible for the non-compliance or the operator owning or keeping goods at the time the non-compliance is detected depending on the circumstances.

Q21. Which option is provided for in the Official Feed and Food Controls (England) Regulations 2007?

A21. These Regulations do not *specifically* apply either of the above options as this is legally unnecessary and inappropriate. However, they leave scope for charging either the operator responsible for the non-compliance or the operator owning or keeping goods at the time the non-compliance is detected depending on the circumstances.

Q22. What is meant by 'operators'?

A22. In the context of the Official Feed and Food Controls (England) Regulations 2007 this means 'feed business operators' and 'food business operators' as defined in Regulation (EC) No 178/2002 on General Food Law.¹¹ These definitions are drawn broadly and some guidance on what they encompass is included in Guidance on Regulation 178/2002 and the associated implementing legislation.¹² This is available on the FSA website at:

<http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/generalfoodsafetyguide>

Q23. Who should be charged in what circumstances?

A23. The operator responsible for the non-compliance should be charged wherever possible. In cases where the cost and time involved in ascertaining who has been at fault as regards the non-compliance is disproportionate to the charges being made, the competent authority should consider charging the operator owning or keeping the goods at the time the non-compliance is detected and the additional controls are carried out. In such cases, that operator must pay the costs to the competent authority.

Q24. Who should be charged in the case of feed and food imported from outside the Community?

A24. Regulation 178/2002 on General Food Law requires that feed and food imported from outside the Community must meet the requirements of Community law or meet other standards which are recognised as being equivalent to this. The Regulation also places responsibility for ensuring that these requirements are met with feed/food business operators. Importers fall within the definition of 'feed/food business operators' so the competent

¹¹ Regulation EC 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. Official Journal L31, 1.2.2002, 1-24.

¹² FSA Guidance Notes are due to be published in May 2007 and will be cited here instead of the EC guidance.

authority should charge the importer (or the importer's representative) for the expenses arising from additional official controls.

Q25. In the case of local authorities, how will charging work where more than one local authority is involved?

A25. In such cases, each local authority undertaking 'additional official controls' should levy charges for these and these will be payable to that authority. The local authorities involved should liaise with the Home Authority (if there is one) and other relevant authorities as appropriate.

Activities subject to charges

The Q&A in this section aims to clarify what the competent authorities can charge for as regards expenses arising from additional official controls.

Note for consultation

- Does this section provide sufficient clarification on what the competent authorities can charge for?
- If not, what is missing?

Q26. What can the competent authorities charge for?

A26. The competent authorities can charge for those expenses that arise from 'additional official control activities' (i.e. those controls that are carried out where non-compliance has been detected and which exceed the routine activities of the competent authority.

Q27. What types of activities constitute 'additional official controls'?

A27. The *type and range* of activities that this includes is the same as that for 'normal official controls' that are carried out routinely. These are any form of check undertaken by the competent authority to verify whether or not feed and food business operators are complying with feed and food law. The methods and techniques that are used to do so include monitoring, surveillance, verification, audit, inspection, and sampling and analysis. Examples of the control activities that might be undertaken include:

- examination of any control systems that a feed or food business operator has put in place;
- checks on the hygiene conditions in feed and food business establishments;
- assessment of procedures on good manufacturing practices, good hygiene practices, good farming practices etc.;
- examination of written material and other records;
- interviews with feed and food business operators and with their staff;
- reading of values recorded by feed or food business measuring instruments;

- controls carried out with the competent authority's own instruments to verify measurements taken by feed and food business operators; and
- any other activity required to ensure that feed or food law requirements have been met.

It is the *level* of the above activities (and non-compliance must have been detected) that determines if Article 28 applies or not. This must exceed that of the authority's 'normal control activities' (see Q13 to Q15).

Q28. Does it include formal enforcement actions (e.g. issuing of notices, detention or destruction of feed/food, taking prosecutions)?

A28. No. Such activities do not constitute 'official controls' as they are plainly not checks for compliance with feed/food law so charges cannot be levied under regulation 41 of the Official Feed and Food Controls (England) Regulations 2007 in respect of expenses arising from these activities or arising from similar activities.

Level of charges

The Q&A in this section aims to clarify how much the competent authority can charge as regards expenses arising from additional official controls.

Note for consultation

- **As read with Article 27, charges levied under Article 28 should take account of certain factors. These include: a) the type of business concerned and the relevant risk factor; b) the interests of businesses with a low throughput; c) traditional methods used for production, processing and distribution; and d) the needs of businesses subject to geographical constraints. In drafting the section below, it has been concluded that, in practice, only factors b) and d) are likely to alter the Article 28 charge that would otherwise be imposed. Do you agree with this view?**
- **If not, please outline your reasons and provide examples of when such factors would be relevant?**
- **As regards Q35 on rights of appeal, we have considered this in detail and have concluded that the most appropriate forum for challenging whether charges are reasonable or not is the civil courts. This is in line with the approach that has been taken by Defra in respect of applying Article 28 charges in respect of feed and food law that falls outside the Agency's remit. We would value your views on this point.**

Q29. What level of charges will be made?

A29. The charge will be set at the level of the actual costs to the competent authority of undertaking the additional official control activities. The only exceptions will be where certain specific factors apply and the level of charges may be reduced below the level of actual costs (see Q31 below).

Q30. How will such costs be calculated?

A30. These costs will be calculated on the basis of the criteria listed in Annex VI of Regulation 882/2004:

- the salaries of the staff involved in the official controls;
- the costs of the staff involved in the official controls (facilities, tools, equipment, training, travel and associated costs); and,
- costs of sampling and laboratory analysis.

This will ensure consistency in approach though it must be recognised that there will be a degree of variation to reflect differences in costs at the local level.

Q31. What factors have to apply before a reduction in the level of charge is considered?

A31. As noted above, it appears that two factors are relevant: the interests of businesses with low throughputs; and the needs of businesses located in regions subject to particular geographical constraints.

Q32. For operators with a low throughput, what level of reduction will be applied?

A32. Given the wide range of sectors and types of operators covered, and differences in local circumstances, it is not possible to specify a percentage reduction that will apply in all cases and this will need to be considered by the relevant competent authority on a case by case basis.

Q33. Will the level of charges levied against all operators located in regions subject to particular geographical constraints be reduced?

A33. No. This category of operator encompasses those that are geographically remote and those where landscape features impact on production in a disadvantageous manner. As regards the former, transport costs for the competent authority may be disproportionately high and this should be taken into account. As regards the latter, it is not considered that any such features exist that could have an impact as regards situations where charges are required so a reduction would not be appropriate.

Q34. Where operators are geographically remote, what level of reduction will be applied?

A34. When calculating charges due from operators in geographically remote areas, an average transport overhead per official control as an overhead on top of other elements should be applied.

Q35. Will feed and food business operators have a right of appeal against the charges?

A35. The Official Feed and Food Controls (England) Regulations 2007 do not include a formal right of appeal. However, the legality of a charge may be disputed in a civil court.

APPENDIX 4

COMMUNITY AND NATIONAL LEGISLATION

New Community legislation

Council Regulation (EC) No 1791/2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions by reason of the accession of Bulgaria and Romania which amends Annex I of Regulation 882/2004. Official Journal L363, 20.12.2006, 1-80.

Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. Official Journal L93, 31.3.2006, 12-25.

Council Regulation (EC) No 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed. Official Journal L93, 31.3.2006, 1-11.

Commission Regulation (EC) No 1666/2006 amending 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. Official Journal L320 18.11.2006, 47-49.

Commission Regulation (EC) No 1664/2006 amending Regulation (EC) No 2074/2005 as regards implementing measures for certain products of animal origin intended for human consumption and repealing certain implementing measures. Official Journal L320, 18.11.2006, 13-45.

Commission Regulation (EC) No 1662/2006 amending Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. Official Journal L 320, 18.11. 2006, 1-10.

Corrigendum to Commission Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs. Official Journal L278, 10.10.2006, 32.

Corrigendum to Commission Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs. Official Journal L283, 14.10.2006, 62-63.

Commission Regulation (EC) No 776/2006 amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards Community reference laboratories. Official Journal L136, 23.5.2006, 3-8.

Commission Regulation (EC) No 575/2006 amending Regulation (EC) No 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority. Official Journal L100, 7.4.2006, 3.

New national legislation

The Food Hygiene (England) (Amendment) Regulations 2007 (SI 2007/56)

The Feed (Specified Undesirable Substances) (England) Regulations 2006 (SI 2006/3120)

The Products of Animal Origin (Third Country Imports) (England) Regulations 2006 (SI 2006/2841)

The Feeding Stuffs and the Feeding Stuffs (Sampling and Analysis) (Amendment) (England) Regulations 2006 (SI 2006/113)

The Feeding Stuffs (England) (Amendment) Regulations 2006 (SI 2006/2808)

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Amendment) Regulations 2006 (SI 2006/755)

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) Regulations 2005 (SI 2005/3286)

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) (Amendment) Regulations 2006 (SI 2006/985)

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) (Amendment) (No. 2) Regulations 2006 (SI 2006/1742)

The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (England and Wales) (Amendment) (No. 3) Regulations 2006 (SI 2006/2922)

The Environmental Stewardship (England) and Organic Products (Amendment) Regulations 2006 (SI 2006/2075)

Revocations of national legislation

The Feeding Stuffs Regulations 2000 (SI 2000/2481)

The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 (SI 2005/1265) (Note: These Regulations are due to be revoked - the timing has not yet been confirmed but is likely to be in advance of the making of the Official Feed and Food Control (England) Regulations 2007)

APPENDIX 6

LIST OF INTERESTED PARTIES

Heads of Service at English Local Authorities
ADAS Wolverhampton
Agricultural Industries Confederation
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 British Abattoir Owners
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
Belso's (UK) Cereals Ltd
Bernard Matthews Foods Ltd
Berry Ottaway Associates Ltd
Bio Dynamic Agricultural Association
Birds Eye Walls Ltd
Biscuit, Cake, Chocolate & Confectionery
Alliance
Boots PLC
Bourne Salads
Bowyers (Wiltshire) Ltd
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 Fishermen's 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 Organic Farmers
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
Colmans of Norwich
Compassion In World Farming
CONBA
Confederation of British Industry
Consumers in Europe
Co-op
Co-operative Group (CWS) Ltd
Corporation of London
Country Landowners & Business Association

Courage Ltd
 Crop Protection Association
 Dairy Council
 Dairy Hygiene Inspectorate
 Dairy Industry Federation
 Dairy UK Ltd
 Danisco Ingredients UK Ltd
 Danish Bacon Co Plc
 DEFRA
 Del Monte Foods (UK) Ltd
 Department for Health
 Diageo
 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
 Freight Transport Association Ltd
 Fresh Produce Consortium
 Fruit & Vegetable Canners Association
 Fruit Importers 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 Chemical Industries PLC
 Imperial College
 Independent Food Retailers Confederation
 Infant & Dietetic Foods Association (IDFA)
 Institute of Grocery Distribution
 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
 Lovering Food PLC
 Lyons Tetley Ltd
 Majestic Trading Co Ltd
 Maltsters Association of Great Britain
 Marks & Spencer PLC
 McCain Foods
 McCormack Foods
 McDonald's Restaurants Ltd
 McKey Food Services Ltd
 Meat & Livestock Commission
 Meat Training Council
 Meridian Foods
 Milk Development Council
 MNGP
 Mushroom Growers Association
 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 Association of Poultry Suppliers
 National Association of Speciality Food & Drink
 Producers
 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 Distributors 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
 Orangina Group
 Organic Farmers and Growers Ltd
 Organic Food Federation
 Organic Trust
 P & O Nedlloyd Ltd
 Patak's Foods LTD
 Penta Foods
 People 1st
 Pet Food Manufacturers Association
 Port of Dover
 Port of Felixstowe
 Potato Processors Association
 Provision Trade Federation
 Quaker Trading Ltd
 Rank Hovis Ltd
 Rank Hovis McDougall
 Rare Breeds Survival Trust
 RHM Grocery
 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
 Samuel Smith Brewery
 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
 Southampton Container Terminals
 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
 Trebor Bassett Ltd
 Transport & General Workers Union
 UK Association of Frozen Food Producers
 UK Maize Millers' Association
 UK Major Ports Group Ltd
 Unigate Dairy Group
 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