

2005 No. 2626

FOOD, ENGLAND

**The Official Feed and Food Controls (England)
Regulations 2005**

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The Secretary of State, in exercise (as respects regulation 41 of the following Regulations) of the powers conferred by sections 16(1), 17(2) and 48(1) of the Food Safety Act 1990(a) and now vested in her(b), and having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency;

And the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(c) 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(d), the common agricultural policy of the European Community(e) and measures in the veterinary and phytosanitary fields for the protection of public health(f), in exercise (as respects the following Regulations apart from regulation 41) of the powers conferred on her by the said section 2(2);

And after consultation 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(g);

Makes the following Regulations:

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- (a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), Schedule 6 to the Food Standards Act 1999 (1999 c. 28) and S.I. 2004/2990.
- (b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c.28) and paragraphs 12 and 21 of that Schedule amend respectively sections 17(2) and 48 of the 1990 Act. Section 48 was also amended by S.I. 2004/2990. Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act and those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c.46) as read with section 40(2) of the 1999 Act.
- (c) 1972 c. 68.
- (d) S.I. 2003/2901.
- (e) S.I. 1972/1811, amended by S.I. 2002/794.
- (f) S.I. 1999/2027.
- (g) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

PART 1

PRELIMINARY

Title, commencement and application

1. These Regulations —

- (a) may be cited as the Official Feed and Food Controls (England) Regulations 2005;
- (b) come into force on 1st January 2006; and
- (c) apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990;

“the Agency” means the Food Standards Agency;

“authorised officer” —

- (a) in relation to a competent authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Official Control Regulations; and
- (b) in relation to a relevant 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 Part 2 of these Regulations in relation to their execution and enforcement of regulation 16;

“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;

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

“port health authority” means —

- (c) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984(b) by section 7(1) of that Act), the Common Council of the City of London; and
- (d) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act;

“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;

“Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 882/2004” and “Directive 2004/41” have the meanings respectively given to them in Schedule 1;

“relevant enforcement authority” means a body which, by virtue of regulation 17, is made responsible for executing and enforcing paragraph (3) of regulation 5, paragraph (8) of regulation 9 and regulations 11 and 16;

(a) 1970 c. 40.
(b) 1984 c. 22.

“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) 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) Any reference in these Regulations to a food authority includes a reference to a port health authority and in the context of such a reference any reference to a food authority’s area includes a reference to a port health authority’s district.

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 in relation to primary production and the associated operations in respect of which the Agency executes and enforces the Food Hygiene (England) Regulations 2005^(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), in relation to those establishments and activities in respect of which the Agency executes and enforces the Food Hygiene (England) Regulations 2005 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.

(a) S.I. 2005/2059.

(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 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 Part 3 of these Regulations,

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, 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).

(a) 1999 c. 28.

Power of entry for persons monitoring enforcement action

9.—(1) The Agency may authorise any individual (whether a member of its staff or otherwise) to exercise the powers specified in paragraph (4) for the purpose of carrying out its function under regulation 7 in relation to any enforcement authority.

(2) No authorisation under this regulation shall be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency.

(3) An authorisation under this regulation shall be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygienic precautions to be taken while exercising powers in pursuance of the authorisation).

(4) An authorised person may —

- (a) enter any premises mentioned in paragraph (5) at any reasonable hour in order to inspect the premises or anything which may be found on them;
- (b) take samples of any articles or substances found on such premises;
- (c) inspect and copy any records found on such premises (and, if they are kept in computerised form, require them to be made available in a legible form);
- (d) require any person present on such premises to provide him with such facilities, such records or information and such other assistance as he may reasonably request.

(5) The premises which may be entered by an authorised person are —

- (a) any premises occupied by the enforcement authority;
- (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation has been carried out for the enforcement authority; and
- (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(6) The power to enter premises conferred on an authorised person includes power to take with him any other person he may consider appropriate.

(7) An authorised person shall on request —

- (a) produce his authorisation before exercising any powers under paragraph (4); and
- (b) provide a document identifying any sample taken, or documents copied, under those powers.

(8) If a person who enters any premises by virtue of this section 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 withdrawn, the food business operator who, immediately before such 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 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

(a) 1980 c. 43.

(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 same meaning that it bears in the Food Hygiene (England) Regulations 2005.

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 the staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004.

Commission experts

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

(2) In this Regulation “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.

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 any contravention of paragraph (3) of regulation 5 or regulation 16 for which that authority has enforcement responsibility pursuant to paragraph (1) or as the case may be (3) of 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 any such 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 any contravention of paragraph (8) of regulation 9 or regulation 11, or any contravention of paragraph (3) of regulation 5 or regulation 16 for which the Agency has enforcement responsibility pursuant to paragraph (1) or as the case may be (3) of regulation 17; and
- (b) ascertaining whether there is on the premises any evidence of any such 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 the 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) 1981 c. 22.

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Obstruction etc. of officers

19.—(1) Any person who —

- (a) intentionally obstructs any person acting in the execution of this Part of these Regulations; or
- (b) without reasonable cause, fails to give to any person acting in the execution of this Part of these Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under this Part of these 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) Subject to paragraph (2), 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.

(2) A person guilty of an offence under paragraph (3) of regulation 5, paragraph (8) of regulation 9 or regulation 11 or 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 this Part of these Regulations which is punishable under paragraph (1) of regulation 20 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;

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

“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 (feed and food of non-animal origin not included in the scope of Directive 97/78/EC) and includes those composite food products listed in the Annex to Commission Decision 2002/349/EC laying down the list of products to be examined at border inspection posts under Council Directive 97/78/EC(a) which include only a limited percentage of products of animal origin and which are thereby excluded from the provisions of Directive 97/78/EC by Article 3(1) of that Decision; 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 —

(a) OJ No. L121, 8.5.2002, p.6.

- (i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in England, or
 - (ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and
- (d) a person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in England, shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking shall —

- (a) state the destination of the product; and
- (b) confirm that —
 - (i) the container containing the product has been sealed and will not be opened until it has reached that destination,
 - (ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if it is in England or the outside England enforcement authority if the destination is not in England, and
 - (iii) the container will be available at that destination for examination under the Import Provisions or, as the case may be, legislation with respect to imported products in force elsewhere in the United Kingdom.

(3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), he shall —

- (a) (if the product's place of destination is within England) notify the enforcement authority for that place or (if the product's place of destination is in any other part of the United Kingdom) notify the outside England enforcement authority —
 - (i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions, and
 - (ii) if customs examination of the product has been deferred, of that fact; and
- (b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).

(4) Where a product has been sent to a destination in England from another part of the British Islands and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in England.

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

Prohibition on introduction of certain feed and food

27.—(1) No person shall —

- (a) introduce into England from a third country specified feed which fails to comply with feed safety requirements; or
- (b) introduce into England from elsewhere in the relevant territories specified feed originating in a third country which fails to comply with feed safety requirements.

(2) No person shall —

- (a) introduce into England from a third country specified food which fails to comply with —
 - (i) food safety requirements, or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004; or

- (b) introduce into England from elsewhere in the relevant territories specified food originating in a third country which fails to comply with —
 - (i) food safety requirements, or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004.
- (3) 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 Article 19 of Regulation 882/2004 (imports of feed and food from third countries)

30.—(1) If an authorised officer of an enforcement authority wishes to take any of the measures referred to in Article 19(1)(a) and (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.

(2) If an authorised officer of an enforcement authority wishes to exercise any of the powers 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.

Liability for charges

34.—(1) The enforcement authority shall notify the person responsible for a consignment of the charge falling to be paid for the controls carried out on it by the authority.

(2) Any charge notified to a person by the enforcement authority under paragraph (1) shall be payable by that person to the enforcement authority on demand.

(3) The charge referred to in paragraph (1) is the aggregate of the costs incurred in relation to the consignment by the enforcement authority acting as the competent authority for the purposes of Article 22 of Regulation 882/2004 by virtue of regulation 29(2).

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 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.

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

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
- (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, regulation 27 or paragraph (4) or (5) of regulation 33; or
- (b) 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

AMENDMENTS TO THE GENERAL FOOD REGULATIONS 2004

Amendments to the General Food Regulations 2004

41.—(1) The General Food Regulations 2004^(a) shall be amended in accordance with paragraphs (2) to (5) in so far as they apply in relation to England.

(2) For regulation 4 (requirements under Regulation (EC) No. 178/2002 : offences) there shall be substituted the following Regulation —

“**4.** Any person who contravenes or fails to comply with any of the following provisions of Regulation (EC) No. 178/2002 shall be guilty of an offence —

- (a) Article 12 (food and feed exported from the Community) in so far as it relates to food;
- (b) Article 14(1) (food safety requirements);
- (c) Article 16 (presentation) in so far as it relates to food;
- (d) Article 18(2) or (3) (traceability) in so far as it relates to food business operators;
- (e) Article 19 (responsibilities for food : food business operators).”

(3) For paragraph (2)(a) of regulation 5 (punishment of offences) there shall be substituted the following provision —

“(a) in the case of an offence under regulation 4(b), £20,000;”

(4) For paragraph (1) of regulation 6 (enforcement) there shall be substituted the following paragraph —

“(1) Subject to paragraph (2), each food authority shall enforce and execute the following provisions of Regulation (EC) No. 178/2002 and these Regulations in its area —

- (a) Article 12 in so far as it relates to food;
- (b) Article 14;
- (c) Article 16 in so far as it relates to food;
- (d) Article 18 in so far as it relates to food business operators; and
- (e) Article 19.”

(5) Immediately after regulation 6 (enforcement) there shall be inserted the following regulation —

“Defence for exports

6A. In any proceedings for an offence of contravening or failing to comply with food law it shall be a defence for the accused to prove —

- (a) that the item in respect of which the offence is alleged to have been committed was intended for export to a country that is not a member State and that the item could lawfully be exported there under Article 12 of Regulation (EC) No. 178/2002; or
- (b) that the item in respect of which the offence is alleged to have been committed was intended for export to a member State and that —
 - (i) the legislation applicable to that item in that member State is compatible with the applicable provisions of food law (except in so far as it relates to feed produced for or fed to food producing animals) at Community level, and
 - (ii) the item complies with that legislation.”

(a) S.I. 2004/3279.

PART 5

ENFORCEMENT AND SUPPLEMENTARY PROVISIONS

Offences due to fault of another person

42. 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

43.—(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

44.—(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

45. 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

46.—(1) An officer of a competent authority is not personally liable in respect of any act done by him —

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

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

(2) Nothing in paragraph (1) shall be construed as relieving any competent authority of any liability in respect of the acts of their officers.

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

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

the authority 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) 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.

Service of documents

47.—(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.

Revocations

48.—(1) In so far as they apply in relation to England, the instruments specified in Column 1 of Part 1 of Schedule 6 are revoked to the extent specified in Column 3 of that Part.

(2) The instruments specified in Column 1 of Part 2 of Schedule 6 are revoked to the extent specified in Column 3 of that Part.

Signed by authority of the Secretary of State for Health

Caroline Flint
Parliamentary Under Secretary of State,
Department of Health

21st September 2005

DEFINITIONS OF COMMUNITY LEGISLATION

“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^(a) as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 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^(b);

“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs^(c);

“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin^(d) as read with Directive 2004/41;

“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules^(e); and

“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^(f).

(a) OJ No. L31, 1.2.2002, p.1.

(b) OJ No. L245, 29.9.2003, p.4.

(c) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3).

(d) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22).

(e) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1).

(f) 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).

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 Feeding Stuff (Establishments and Intermediaries) Regulations 1999(c);
- (d) the Feeding Stuff (Enforcement) Regulations 1999(d) except in so far as they involve the checking of products for compliance with any Community provision covered by the first indent of Article 2.1(a) of Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition(e) as last amended by Directive 2001/46/EC(f), in so far as that Community provision is implemented in the Feedingstuffs (Zootechnical Products) Regulations 1999(g);
- (e) the Feeding Stuff Regulations 2000(h);
- (f) the Genetically Modified Animal Feed (England) Regulations 2004(i);
- (g) the Feeding Stuff (Safety Requirements for Feed for Food-Producing Animals) Regulations 2000(j); and
- (h) the Food Hygiene (England) Regulations 2005 in so far as they apply in relation to feed(k).

(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 and S.I. 2004/2688.

(c) S.I. 1999/1872, amended by S.I. 2001/541, S.I. 2002/892, S.I. 2003/1026, S.I. 2003/1296 and S.I. 2005/557.

(d) S.I. 1999/2325, amended by S.I. 2001/541, S.I. 2001/3389, S.I. 2002/892, S.I. 2003/1026, S.I. 2003/1296, S.I. 2003/1503, S.I. 2003/2912, S.I. 2004/1301 and S.I. 2004/2688.

(e) OJ No. L265, 8.11.95, p.17.

(f) OJ No. L234, 1.9.2001, p.55.

(g) S.I. 1999/1871.

(h) S.I. 2000/2481, amended by S.I. 2001/541, S.I. 2001/3389, S.I. 2002/892, S.I. 2003/1026, S.I. 2003/1503, S.I. 2003/2912, S.I. 2004/1301 and S.I. 2004/2688.

(i) S.I. 2004/2334.

(j) S.I. 2004/3254.

(k) S.I. 2005/2059.

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 1999(b),
 - (iii) the application of the rules laid down for the protection of designations of origin and geographical indications of agricultural products and foodstuffs in Council Regulation (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs(c) as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(d),
 - (iv) the application of the rules laid down for Community certificates of specific character which may be obtained for certain agricultural products and foodstuffs in Council Regulation (EEC) No. 2082/92 on certificates of specific character for agricultural products and foodstuffs(e) as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded,
 - (v) the regulation of organic products under the Organic Products (Imports from Third Countries) Regulations 2003(f) and the Organic Products Regulations 2004(g),
 - (vi) the regulation of beef labelling under the Beef Labelling (Enforcement) (England) Regulations 2000(h), and
 - (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(i), with the exception of the execution and enforcement of regulation 3 thereof by the Agency, and

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

(b) S.I. 1999/3483, amended by S.I. 2001/1113, S.I. 2001/2420, S.I. 2001/3834, S.I. 2002/1767, S.I. 2002/2723, 2003/661, 2003/2591, 2004/676, 2004/1393, 2004/2559, 2005/432 and 2005/1725.

(c) OJ No. L208, 24.7.92, p.1.

(d) OJ No. L236, 23.9.2003, p.346.

(e) OJ No. L208, 24.7.92, p.9.

(f) S.I. 2003/2821.

(g) S.I. 2004/1604, amended by S.I. 2005/2003.

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

(i) 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.

- (bb) under the Products of Animal Origin (Third Country Imports) (England) (No. 4) Regulations 2004**(a)**, with the exception of the execution and enforcement of regulation 5 thereof by the Agency;
- (b) food law in so far as it applies in relation to materials and articles in contact with food except in so far as it involves the regulation of food contact materials under the Ceramic Ware (Safety) Regulations 1988**(b)**; 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 2005.

(a) S.I. 2004/3388.
(b) S.I. 1988/1647.

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, 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, 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, 31(1) and (2), 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, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54 |

SCHEDULE 6

Regulation 48

REVOCATIONS

PART 1

REVOCATION OF INSTRUMENTS THAT APPLY IN RELATION TO
ENGLAND AND OTHER PARTS OF GREAT BRITAIN

| <i>Column 1 Instruments</i> | <i>Column 2 Reference</i> | <i>Column 3 Extent of revocation</i> |
|--|-------------------------------|--|
| The Arsenic in Food Regulations 1959 | S.I. 1959/831 | Regulation 6(a) |
| The Mineral Hydrocarbons in Food Regulations 1966 | S.I. 1966/1073 | Regulation 10(a) |
| The Erucic Acid in Food Regulations 1977 | S.I. 1977/691 | Regulation 6(a) |
| The Chloroform in Food Regulations 1980 | S.I. 1980/36 | Regulation 7(a) |
| The Caseins and Caseinates Regulations 1985 | S.I. 1985/2026 | Regulation 11(a) |
| The Imported Food Regulations 1984 | S.I. 1984/1918 | The whole Regulations |
| The Food (Control of Irradiation) Regulations 1990 | S.I. 1990/2490 | Regulation 8 |
| The Food Safety (Exports) Regulations 1991 | S.I. 1991/1476 | The whole Regulations |
| The Flavourings in Food Regulations 1992 | S.I. 1992/1971 | Regulation 8 |
| The Food Additives Labelling Regulations 1992 | S.I. 1992/1978 | Regulation 6 |
| The Extraction Solvents in Food Regulations 1993 | S.I. 1993/1658 | Regulation 6 |
| The Infant Formula and Follow-on Formula Regulations 1995 | S.I. 1995/77 | Regulations 5(2) and 6(2) |
| The Sweeteners in Food Regulations 1995 | S.I. 1995/3123 | Regulation 8 |
| The Colours in Food Regulations 1995 | S.I. 1995/3124 | Regulation 10 |
| The Miscellaneous Food Additives Regulations 1995 | S.I. 1995/3187 | Regulation 8 |
| The Food Labelling Regulations 1996 | S.I. 1996/1499 | Regulation 47 |
| The Imported Food Regulations 1997 | S.I. 1997/2537 | The whole Regulations |
| The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 | S.I. 1997/1729 | Regulation 29 |
| The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 | S.I. 1997/2182 | Regulation 8 |
| The Bread and Flour Regulations 1998 | S.I. 1998/141 | Regulation 9 |
| The Plastic Materials and Articles in Contact with Food Regulations 1998 | S.I. 1998/1376 | Regulation 3(2) |
| The Drinking Milk Regulations 1998 | S.I. 1998/2424 | Regulation 7 |
| The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999 | S.I. 1999/1540 | Regulation 18(1) and (3) |

PART 2

REVOCATION OF INSTRUMENTS THAT APPLY IN RELATION TO ENGLAND ONLY

| <i>Column 1 Instruments</i> | <i>Column 2 Reference</i> | <i>Column 3 Extent of revocation</i> |
|--|-------------------------------|--|
| The Spreadable Fats (Marketing Standards) (England) Regulations 1999 | S.I. 1999/2457 | Regulation 7 |
| The Medical Food (England) Regulations 2000 | S.I. 2000/845 | Regulation 6 |
| The Coffee Extracts and Chicory Extracts (England) Regulations 2000 | S.I. 2000/3323 | Regulation 9 |
| The Food For Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2002 | S.I. 2002/1817 | Regulation 8 |
| The Food Supplements (England) Regulations 2003 | S.I. 2003/1387 | Regulation 10 |
| The Specified Sugar Products (England) Regulations 2003 | S.I. 2003/1563 | Regulation 8 |
| The Fruit Juices and Fruit Nectars (England) Regulations 2003 | S.I. 2003/1564 | Regulation 8 |
| The Condensed Milk and Dried Milk (England) Regulations 2003 | S.I. 2003/1596 | Regulation 8 |
| The Cocoa and Chocolate Products (England) Regulations 2003 | S.I. 2003/1659 | Regulation 9 |
| The Meat Products (England) Regulations 2003 | S.I. 2003/2075 | Regulation 10(b) |
| The Honey (England) Regulations 2003 | S.I. 2003/2243 | Regulation 8 |
| The Jam and Similar Products (England) Regulations 2003 | S.I. 2003/3120 | Regulation 8 |
| The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003 | S.I. 2003/3207 | Regulation 11 |
| The Contaminants in Food (England) Regulations 2004 | S.I. 2004/3062 | Regulation 6 |
| The Food with Added Phytosterols or Phytosteranols (Labelling) (England) Regulations 2004 | S.I. 2004/3344 | Regulation 9 |
| The Materials and Articles in Contact with Food (England) Regulations 2005 | S.I. 2005/898 | Regulation 10(3) |

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, provide for the execution and enforcement there of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ No. L165, 30.4.2004, p.1) in relation to “relevant feed law” and “relevant food law”, each defined in regulation 2(1) thereof. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1).

2. These Regulations also impose prohibitions on the introduction of certain feed and food into England in the light of Article 11 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 (OJ No. L31, 1.2.2002, p.1), as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4) and as read with Article 10 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L139, 30.4.2004, p.1; the revised text of that Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.3).

3. These Regulations also amend the General Food Regulations 2004 (S.I. 2004/3279) in so far as they apply in relation to England, to provide for the execution and enforcement there of Article 12 of Regulation (EC) No. 178/2002, which imposes conditions on the export and re-export of food and feed from the Community for placing on the market of third countries, in so far as that Article relates to food. These Regulations also insert a new regulation, 6A, into the General Food Regulations 2004 in so far as they apply in relation to England. That new regulation provides a defence in relation to exports in the case of prosecutions for contravening or failing to comply with food law. The defence applies both in relation to items intended for export to a third country and to items intended for export to a member State.

4. These Regulations cite as enabling powers both section 2(2) of the European Communities Act 1972 (1972 c.68) and certain sections of the Food Safety Act 1990 (1990 c.16). The Food Safety Act powers have been exercised to enact regulation 41(2) of these Regulations, which inserts a revised regulation 4 into the General Food Regulations 2004 to provide for the execution and enforcement of Article 12 of Regulation (EC) No. 178/2002 in so far as it relates to food, as described in paragraph 3 above.

5. These Regulations —

- (a) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation (EC) No. 882/2004 (*regulation 3*);
- (b) provide for the exchange and provision of information by competent authorities (*regulation 4*);
- (c) enable a competent authority to require a control body to provide information and make records available and provide that a person who —
 - (i) fails to comply with a requirement to provide information or make records available, or
 - (ii) in purported compliance with such a requirement furnishes false or misleading information,is guilty of an offence (*regulation 5*);
- (d) enable the Secretary of State to issue codes of recommended practice to feed authorities and food authorities (*regulation 6*);
- (e) give the Food Standards Agency the function of monitoring the performance of enforcement authorities in enforcing certain legislation (*regulation 7*);
- (f) give the Food Standards Agency the power, for the purpose of carrying out the function referred to in sub-paragraph (e) of this paragraph —

- (i) to require information to be provided and records to be made available (*regulation 8*), and
 - (ii) to authorise individuals (who may thereby exercise certain powers, including a power of entry) (*regulation 9*);
- (g) define certain terms used in regulations 7 to 9 thereof (*regulation 10*);
- (h) provide that a person who —
 - (i) obstructs a person exercising a power to enter premises, take samples or inspect and copy records,
 - (ii) fails to comply with a requirement to provide information, make records available or provide facilities, records, information or other assistance, or
 - (iii) in purported compliance with such a requirement furnishes false or misleading information,
 is guilty of an offence (*regulation 11*);
- (i) provide a right of appeal in respect of a decision of the competent authority concerning the approval of certain establishments taken under Article 31 of Regulation (EC) No. 882/2004 (*regulations 12 and 13*);
- (j) provide that an authorised officer of a competent authority may take with him the staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation (EC) No. 882/2004 (*regulation 14*);
- (k) provide that when an “enforcing officer”, defined in regulation 15(2) thereof, enters premises for the purpose 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 (EC) No. 882/2004 (*regulation 15*);
- (l) provide that a person who enters premises under the powers referred to in sub-paragraph (j) or (k) of this paragraph and discloses any information obtained on the premises with regard to any trade secret is guilty of an offence unless he does so in the performance of his duty (*regulation 16*);
- (m) specify which authorities are responsible for executing and enforcing regulations 5(3), 9(8), 11 and 16 thereof (*regulation 17*);
- (n) give powers of entry to authorised officers of the authorities referred to in sub-paragraph (m) of this paragraph (*regulation 18*);
- (o) create the offence of obstructing an officer acting in the execution of Part 2 thereof (*regulation 19*);
- (p) provide penalties for offences under that Part (*regulation 20*);
- (q) provide a time limit for bringing prosecutions for offences under that Part (*regulation 21*);
- (r) make provision for the execution and enforcement of Part 3 of these Regulations (*regulations 23 and 24*);
- (s) provide that the Commissioners for Her Majesty’s Revenue and Customs are to carry out the functions given to customs services under Article 24 of Regulation (EC) No. 882/2004 (*regulation 25*).
- (t) make provision for the execution and enforcement thereof to be deferred until a product reaches its destination (*regulation 26*);
- (u) in the light of Article 11 of Regulation (EC) No. 178/2002 as read with Article 10 of Regulation (EC) No. 852/2004 (as described in paragraph 2 above) prohibit the introduction into England of certain feed and food unless specified conditions are met (*regulation 27*);
- (v) provide for the checking of products that are introduced into England (*regulation 28*);
- (w) provide that an enforcement authority, first, has the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation (EC)

No. 882/2004 and, second, is the competent authority for the purposes of Article 22 of that Regulation (*regulation 29*);

- (x) provide for the service of notices by an authorised officer of an enforcement authority when he wishes to take certain measures or exercise certain powers under Article 19 of Regulation (EC) No. 882/2004 (imports of feed and food from third countries) (*regulation 30*);
- (y) provide a right of appeal in respect of the service of notices under regulation 30 (*regulations 31 and 32*);
- (z) enable the Secretary of State or the Agency by written declaration to suspend, or impose conditions on, the introduction into England of any product from a third country where she or it learns or reasonably suspects that any food or feed that has been or may be introduced into England from that third country is likely to constitute a serious risk to animal or public health (*regulation 33*);
- (aa) provide for charges to be payable in relation to controls carried out on consignments (*regulation 34*);
- (bb) provide for the procurement and analysis of samples of food for the purposes of the execution and enforcement of “the Import Provisions”, defined in regulation 22 thereof (*regulations 35 and 36*);
- (cc) provide powers of entry for authorised officers of food authorities in relation to the execution and enforcement of the Import Provisions (*regulation 37*);
- (dd) create the offence of obstructing an officer acting in the execution of the Import Provisions (*regulation 38*);
- (ee) create offences consisting of contravening or failing to comply with specified regulations and failing to comply with a notice served under the Import Provisions and provide penalties for offences under Part 3 thereof (*regulation 39*);
- (ff) provide a time limit for bringing prosecutions for offences under Part 3 thereof (*regulation 40*);
- (gg) amend the General Food Regulations 2004 in so far as they apply in relation to England, as described in paragraph 3 above (*regulation 41*);
- (hh) provide that where the commission of an offence thereunder is due to the act or default of some other person that other person is guilty of the offence (*regulation 42*);
- (ii) provide that in proceedings for an offence thereunder it is 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 (*regulation 43*);
- (jj) provide that where an offence thereunder 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, an officer of the body corporate or a person purporting to act as such he as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 44*);
- (kk) provide that where an offence thereunder 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 is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 45*);
- (ll) provide for the protection of officers acting in good faith (*regulation 46*);
- (mm) provide for the service of documents (*regulation 47*); and
- (nn) provide for the revocation of specified instruments to the extent specified (*regulation 48*).

6. A full Regulatory Impact Assessment on the effect that these Regulations will have on the costs of business has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Food Hygiene Implementation Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.