

2004 No. 2334

AGRICULTURE, ENGLAND

**The Genetically Modified Animal Feed (England)
Regulations 2004**

<i>Made</i>	- - - -	<i>1st September 2004</i>
<i>Laid before Parliament</i>		<i>13th September 2004</i>
<i>Coming into force</i>		<i>4th October 2004</i>

The Secretary of State for Health, being designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the control and regulation of genetically modified organisms, in exercise of the powers conferred by that section, makes the following Regulations:

Title, commencement and application

1. These Regulations —

- (a) may be cited as the Genetically Modified Animal Feed (England) Regulations 2004;
- (b) shall come into force on 4th October 2004; and
- (c) shall apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Agriculture Act 1970^(c);

“enforcement authority” means the council of a county, metropolitan district, or London borough, the Common Council of the City of London, and the health authority of the Port of London which, for the purposes of these Regulations, shall be treated as not forming part of the area of any of those councils;

“inspector” means a person appointed by an enforcement authority under section 67(3) of the Act;

“Regulation 1829/2003” means Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed^(d);

“specified community provision” means a provision of Regulation 1829/2003 specified in Column 1 and described in Column 2 of the Schedule to these Regulations.

(2) In these Regulations —

^(a) S.I. 1991/755.

^(b) 1972 c. 68.

^(c) 1970 c. 40.

^(d) OJ No. L268, 18.10.2003, p.1.

- (a) any reference to a numbered article is a reference to the article so numbered in Regulation 1829/2003;
 - (b) any reference to a numbered regulation is, unless the contrary is indicated, a reference to the regulation so numbered in these Regulations;
 - (c) any reference to a Schedule is a reference to the Schedule to these Regulations.
- (3) Other expressions used in these Regulations and in Regulation 1829/2003 have the same meaning in these Regulations as in Regulation 1829/2003.

Submission of applications for authorisation to market products

3. The national competent authority for the purposes of Chapter III of Regulation 1829/2003 shall be the Food Standards Agency^(a).

Enforcement

4. Each enforcement authority shall, within its area, enforce and execute the provisions of these Regulations and Chapter III of Regulation 1829/2003.

Offences and Penalties

5.—(1) Any person who, after the date on which these Regulations come into force, contravenes or fails to comply with the specified Community provision referred to in Part I of the Schedule shall be guilty of an offence and liable —

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

(2) Any person who, after the date on which these Regulations come into force, contravenes or fails to comply with any of the specified Community provisions referred to in Part II of the Schedule shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

(3) Any person guilty of an offence under regulation 8(2) shall be liable on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

Application of various provisions of the Act

6.—(1) The provisions of the Act listed in paragraph (2) below shall apply for the purposes of these Regulations and Regulation 1829/2003 subject to the modification set out in paragraph (2) (a) and as if —

- (a) any reference in those provisions to a feeding stuff were a reference to feed;
- (b) any reference in those provisions to the Act or any Part of it were a reference to these Regulations and Regulation 1829/2003;
- (c) any reference in those provisions to samples taken in a prescribed manner were a reference to samples taken in a manner prescribed in Part II of Schedule 1 of the Feeding Stuffs (Sampling and Analysis) Regulations 1999^(b);
- (d) any reference in those provisions to a prescribed manner of analysis were a reference to—

^(a) Whose address in England is Aviation House, 125 Kingsway, London WC2B 6NH.

^(b) S.I. 1999/1663; the relevant amending instrument is S.I. 2002/892.

- (i) in relation to detecting the use of a particular authorised genetically modified organism, the method described in Article 17(3)(i) of Regulation 1829/2003 for detection and identification of the transformation event, or
 - (ii) where no such method exists, or where the particular genetically modified organism is unauthorised, any method that satisfies regulation 6(4)(b) of the Feeding Stuffs (Sampling and Analysis) Regulations 1999(a).
- (2) The provisions referred to in paragraph (1) are—
- (a) section 76 (inspector’s power to enter premises and take samples), which shall apply as if paragraph (b) of subsection (2) of that section included power to require production of and to take copies of any documentation relating to the feed;
 - (b) section 77 (division of samples and analysis by agricultural analyst);
 - (c) section 78(2), (3), (4), (5), (6), (7), (8) and (10) (further analysis by the Government Chemist);
 - (d) section 79(4), (5), (6), (8) and (10) (supplementary provisions relating to samples and analysis);
 - (e) section 80 (institution of prosecutions);
 - (f) section 81 (offences due to fault of other person);
 - (g) section 82 (defence of mistake, accident, etc.);
 - (h) section 83 (exercise of powers by inspectors);
 - (i) section 110 (offences by bodies corporate).

Application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999

7.—(1) The provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999(b) listed in paragraph (2) shall apply for the purposes of these Regulations and Regulation 1829/2003 subject to the modifications set out in that paragraph and as if any reference in those provisions to a feeding stuff were a reference to feed.

- (2) The provisions referred to in paragraph (1) are—
- (a) regulation 3(a) (manner of taking and sealing samples);
 - (b) regulation 4 (method of sending samples), which shall apply as if the reference to “subsection (1)(b) or (2) of section 77 of the Act” were a reference to these Regulations and Regulation 1829/2003;
 - (c) regulation 5 (qualifications of agricultural analyst), which shall apply as if the reference to “the prescribed qualifications for an agricultural analyst or a deputy agricultural analyst for the purposes of section 67(5) of the Act insofar as it relates to feeding stuffs” were a reference to the qualifications required by a person analysing feed for the purposes of these Regulations and Regulation 1829/2003;
 - (d) regulation 6(4) (methods of analysis), which shall apply as if the reference to “the Act” were a reference to these Regulations and Regulation 1829/2003;
 - (e) regulation 7 (certificate to be used for results of analysis), which shall apply as if the reference to “section 77(4) of the Act” were a reference to section 77(4) of the Act as applied by these Regulations;
 - (f) regulation 8 (time limit for analysis of oil content of feed) which shall apply as if the reference to a sample taken in “the prescribed manner” were a reference to a sample taken in accordance with these Regulations;
 - (g) Schedule 1 (detailed rules for sampling);

(a) S.I. 1999/1663.

(b) S.I. 1999/1663; relevant amendments are S.I. 2002/892 and S.I. 2003/1296.

- (h) Schedule 3 (standard form of certificate to be used for results of analysis) which shall apply as if the reference to “Part IV of the Agriculture Act 1970” were a reference to the Genetically Modified Animal Feed (England) Regulations 2004.

Inspection, seizure and detention of suspected animal feed

8.—(1) An inspector may at all reasonable times inspect any material intended for use as feed which —

- (a) has been placed on the market;
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing on the market or of preparation for placing on the market,

and paragraphs (2) to (9) below shall apply where, taking account of all the information available to him, it appears to the inspector that the material may fail to comply with a specified Community provision.

(2) The inspector may either —

- (a) give notice to the person in charge of the material that, until the notice is withdrawn, the material or any specified portion of it —
 - (i) is not to be used as feed; and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the material and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) above shall be guilty of an offence.

(3) Where the inspector exercises the powers conferred by paragraph 2(a) above, he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the material complies with the specified Community provisions and —

- (a) if he is so satisfied, shall forthwith withdraw the notice;
- (b) if he is not so satisfied shall seize the material and remove it in order to have it dealt with by a justice of the peace.

(4) Where the inspector exercises the powers conferred by paragraphs 2(b) or 3(b) above, he shall inform the person in charge of the material of his intention to have it dealt with by a justice of the peace and —

- (a) any person who under regulation 5 might be liable to a prosecution in respect of the material shall, if he attends before the justice of the peace by whom the material falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence in relation to that material.

(5) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any material falling to be dealt with by him under this regulation fails to comply with a specified Community provision then subject to paragraph (6) below he shall condemn the material and order —

- (a) the material to be destroyed or to be so disposed of as to prevent it from being used for human consumption, or for animal feed; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the operator.

(6) In the case of material referred to in Article 15.1 which is the subject of an authorisation granted under Regulation 1829/2003 and has been produced in accordance with any conditions relating to that authorisation but does not bear the appropriate labelling as required by Article 25, the justice of the peace may, at his discretion, order —

- (a) that the material be labelled properly as soon as is reasonably practicable and at the expense of the operator; and

(b) the release of the material into the custody of the operator.

(7) If a notice under paragraph 2(a) above is withdrawn, or the justice of the peace by whom any material falls to be dealt with under this regulation refuses to condemn it or to make an order for the proper labelling of the material, the enforcement authority shall compensate the owner of the material for any depreciation in its value resulting from the action taken by the inspector.

(8) Where any material which fails to comply with a specified Community provision is part of a batch, lot or consignment of feed of the same class or description, it shall be presumed for the purposes of this regulation, until the contrary is proved, that all of the feed in that batch, lot or consignment fails to comply with that specified Community provision.

(9) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by arbitration.

9. Any notice to be given under regulation 8 —

- (a) must be signed by an inspector acting on behalf of the enforcement authority;
- (b) if purporting to bear the signature (which includes a facsimile of a signature by whatever means reproduced) of an officer who is expressed to be an inspector, shall be deemed, unless the contrary is proven, to have been duly issued by the inspector;
- (c) shall be given to the person in charge of the material by either —
 - (i) delivering it to that person;
 - (ii) by leaving it, or sending it in a prepaid letter addressed to him at his office;
 - (iii) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office;
 - (iv) 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;
 - (v) where it is not practicable after reasonable enquiry to ascertain the name and address of the person on whom the notice should be served, or where the premises in which feed are kept are unoccupied, the notice may be addressed to the “owner” or “occupier” of the premises in which the feed is situated, and delivered to some person on those premises, or if there is no person on the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

Time Limit for prosecutions

10. No prosecution for an offence under these Regulations 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.

Signed by authority of the Secretary of State for Health

1st September 2004

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

THE SCHEDULE

Regulations 2 and 5

SPECIFIED COMMUNITY PROVISIONS

PART I

<i>Provision of Regulation 1829 /2003</i>	<i>Subject Matter</i>
Article 16.2	Prohibition on placing on the market, using or processing a product referred to in Article 15.1 unless it is covered by an authorisation and satisfies relevant conditions of the authorisation.

PART II

<i>Provision of Regulation 1829/2003</i>	<i>Subject Matter</i>
Article 20.6	Requirement that products in respect of which the Commission have adopted a measure under Article 20.6 shall be withdrawn from the market.
Article 21.1	Requirement that the authorisation holder and the parties concerned must comply with conditions or restrictions imposed on an authorisation for that product, and the authorisation holder must comply with post-market monitoring requirements
Article 21.3	Requirement that an authorisation holder inform the Commission of any new scientific or technical information relating to a product, which might influence the evaluation of the safety in use of the feed, or of any prohibition or restriction on the feed in a third country.
Article 25	Requirement for certain labelling indications.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to England, provide for the enforcement and execution of certain specified provisions (relating to animal feed) of Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed (OJ No. L268, 18.10.2003, p.1). Separate Regulations make provision for the enforcement of that part of Regulation (EC) No. 1829/2003 relating to food.

In particular these Regulations —

- (a) formally designate the Food Standards Agency as the national competent authority to receive applications for the authorisation of new genetically modified organisms for feed use, feed containing or consisting of genetically modified organisms, or feed produced from genetically modified organisms (*regulation 3*);
- (b) provide for enforcement authorities to enforce the provisions of these Regulations and Chapter III of Regulation (EC) No. 1829/2003 (*regulation 4*);
- (c) establish penalties for failing to comply with certain specified provisions of Regulation (EC) No. 1829/2003 (*regulation 5 and the Schedule*);
- (d) apply various provisions of the Agriculture Act 1970 with modification for the purposes of these Regulations (*regulation 6*);
- (e) apply various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (*regulation 7*);
- (f) provide powers and a procedure for the inspection, seizure and detention of suspected feed and for its destruction or disposal by order of a justice of the peace where it does not comply with specified provisions of Regulation (EC) No. 1829/2003 (*regulations 8 and 9*);
- (g) provide a time limit of three years from commission of the offence or one year from its discovery by the prosecutor, within which prosecutions for offences under the Regulations must be begun (*regulation 10*).

A Regulatory Impact Assessment has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Animal Feed Unit, Primary Production Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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**The Genetically Modified Animal Feed (England)
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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1240 9/2004 141240T 19585

ISBN 0-11-049798-8



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