

EXPLANATORY MEMORANDUM TO THE FEEDING STUFFS (WALES) (AMENDMENT) REGULATIONS 2009

This explanatory memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

1. This instrument transposes into national law in Wales two EC measures relating to animal feeding stuffs. Commission Directive 2008/76/EC of 25 July 2008 makes minor amendments to existing maximum permitted levels (MPLs) for certain undesirable substances (fluorine, weed seeds and DDT) as set out in Commission Directive 2002/32/EC on undesirable substances in animal feed. Commission Directive 2008/82/EC of 30 July 2008 concerns an amendment to an existing entry for feeding stuffs for particular nutritional purposes (also known as dietetic feeds) for the support of renal function in case of chronic renal insufficiency for adult cats.

Matters of special interest to the Subordinate Legislative Committee

2. None.

Legislative Background

3. The powers enabling this instrument to be made are contained in sections 66(1), 68(1), 69(1), 74A and 84 of the Agriculture Act 1970. Section 66(1) contains a definition of the expression “the Ministers”, which was amended by paragraph 1 of Schedule 5 to the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272). Functions of “the Ministers”, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006(c.32).

Purpose and Intended Effect of the Legislation

4. These Regulations amend in Wales both Schedule 5 and Schedule 7 to The Feeding Stuffs (Wales) Regulations 2006.

EC Directive 2008/76

5. Directive 2008/76/EC introduces a number of minor amendments which are being made on the advice of a scientific panel of the European Food Safety Authority (EFSA). These amendments are:
 - the introduction of a new MPL of 350mg per kg for fluorine in feed for fish. At present, there is a range of levels for fluorine in different feed products for a variety of animal species, but no entry specifically for feed for fish. This additional MPL will allow the use of a greater range of feed materials without compromising consumer safety and animal welfare;
 - the deletion of entries for apricots, bitter almond and *Camelina*, from the existing list of undesirable substances, as these controls are regarded as disproportionate to the risk to livestock or consumers, following an EFSA assessment;
 - the deletion of entries for two named plant species (*Lolium temulentum* L and *Lolium remotum* Schrank), from the existing list of undesirable substances, as they are rarely

found in Europe or are already controlled by other more general measures or have an alternative use in oilseed production; and

- a minor change to the existing entry for DDT to reflect an alternative means of expressing one of the possible components in DDT. This is procedural and has no impact on consumer or animal safety, and is in line with current chemical nomenclature usage.

EC Directive 2008/82

6. Commission Directive 2008/82/EC of 30 July 2008 concerns an amendment to an existing entry for feeding stuffs for particular nutritional purposes (also known as dietetic feeds) for the support of renal function in case of chronic renal insufficiency for adult cats.
7. Feeding stuffs for particular nutritional purposes are non-medicinal feeds intended to meet the nutritional requirements of animals whose metabolism may be permanently or temporarily impaired. Examples of particular nutritional purposes include reduction of the risk of milk fever in dairy cows and compensation for malabsorption of nutrients in poultry.
8. Directive 2008/82 amends an existing entry in the list of nutritional purposes, which includes feed with a low level of phosphorus for the particular nutritional purpose of the support of renal function in case of chronic renal insufficiency for adult cats. Chronic renal insufficiency results from deterioration of the kidneys resulting in a partial loss of the ability to remove waste products from the blood stream. The amendment concerns the inclusion of a new essential nutritional characteristic, which has been made following advice from the EFSA. This permits certain compound feeds containing the specific authorised feed additive, lanthanum carbonate octahydrate, to claim a use in the support of renal function in the case of renal insufficiency for adult cats.

Implementation

9. It is intended these Regulations will come into force on 20 February 2009. Separate but parallel legislation are being made in Scotland, England and Northern Ireland.
10. This relatively short deadline was specified by the EC so that businesses can take advantage of the revised provisions as soon as possible. Implementation of these Regulations would fulfil the UK's obligations under the EC Treaty. Failure to implement these Regulations in Wales by the coming into force date of 20 February 2009 would lead to inconsistency in UK law.

Consultation

11. The public consultation ran for a period of six weeks between 20 March and 28 November 2008. This shortened period of consultation was set to enable the UK to meet the EC deadline for transposition of 20 February 2008. The consultation involved a range of stakeholders including industry trade associations, enforcement bodies, professional associations, consumer groups and others. No responses were received in Wales. Three responses were received to the consultation in England.

Two respondents specifically commented on Directive 2008/76/EC, particularly the revised MPL for fluorine in fish feed. One of those respondents, representing the feed manufacturing industry, said that the revised limit reflected an increase in the use of marine crustaceans (such as marine krill in fish feed) and the fish feed sector welcomed this development. The other of these two respondents, a professional association representing Trading Standards professionals in the UK, said that it welcomed the revised level as it reflected current practice and controls used by feed businesses. A third body, that is responsible for overseeing local authority enforcement and related services in the UK, confirmed that the measures would not create a significant increase in enforcement costs. No changes to the draft Regulations were therefore considered necessary. The lack of response from stakeholders in Wales would indicate that these Regulations do not significantly impact the feed industry or feed purchasers in Wales.

Regulatory Impact Assessment

12. A Regulatory Impact Assessment is not considered necessary as the regulations will impose no additional costs on the feed industry or feed purchasers.
13. The amendments to Directive 2008/76 will be of benefit to (a) the manufacturers of fish feed, who will be assured that their products meet the new, scientifically verified limits; and (b) those growing arable crops for feed use and feed manufacturers, who will no longer be required to undertake testing for the possible presence of the named species of weeds. These amendments should also benefit the purchasers and users of feed, who will be assured that the products they use are formulated in line with current scientific knowledge.
14. The amendment introduced by Directive 2008/82/EC will be of benefit to pet food manufacturers, who will be able to market an increased range of products making appropriate claims for the management of renal insufficiency, and pet owners who will have access to new products containing an authorised feed additive. It will also have animal health benefits for adult cats. Pet owners may also benefit because they may not have to use more expensive veterinary products and/or veterinary procedures for the management of renal insufficiency. This point was raised with stakeholders as part of the public consultation on the measure, and none disagreed.