



**Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules**

**Q&A Notes for enforcement authorities on the feed and food elements**

**(Revision 2, February 2008)**

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## Important note

These Q&A Notes seek to explain the requirements of **Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules** and to provide informal, non-statutory advice. They should not be taken as an authoritative statement or interpretation of the Regulation as only the courts have this power. The Q&A Notes should be read in conjunction with the EU Regulation<sup>1</sup> and, where appropriate, with other enforcement or operational instructions (see Appendix).

## Introduction

These Q&A Notes aim to cover the main elements of Regulation 882/2004. The text of the Regulation is available on the European Commission's website at:

[http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l\\_191/l\\_19120040528en00010052.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_191/l_19120040528en00010052.pdf)

The scope of the Notes is restricted to those aspects of the Regulation relating to official controls in respect of **feed** and **food**. They do **not** relate to the **animal health** and **animal welfare** elements of the Regulation for which the Department for Environment, Food and Rural Affairs (Defra) and the Agriculture/Rural Affairs Departments in the Devolved Administrations have responsibility.

As the Regulation places obligations on those authorities responsible for monitoring and enforcing feed and food law, the Q&A Notes are aimed primarily at these authorities. However, the Notes may also provide useful information for the feed and food industries, and for consumers.

The Notes are published on the enforcement portal of the Food Standards Agency website and will be updated as necessary and to reflect any feedback received.

## General information

### Q1. What is Regulation 882/2004 about?

A1. It is about arrangements for the monitoring and enforcement of feed and food law requirements (as well as animal health and animal welfare rules). It sets out the general approach that must be taken, and the principles that must be adopted, by the authorities in EU Member States that have responsibility for monitoring and enforcing feed and food law i.e. for the 'competent authorities' (see Q4 and Q5) organising and undertaking 'official controls' (see Q6). It also provides the legal basis for the European Commission to assess the effectiveness of national arrangements for official controls.

<sup>1</sup> Official Journal L191, 28.5.2004, 1-52.

**Q2. Why was the Regulation introduced?**

A2. It was introduced to address the findings of the European Commission that there was a wide variation in the manner in which Community legislation was being implemented and enforced in the different Member States. It was also needed to consolidate and extend requirements set out in existing EU sector-specific legislation in order to remove inconsistencies and to fill gaps.

**Q3. What are the aims and objectives of the Regulation?**

A3. The aim is to create a more comprehensive, integrated, risk-based, EU-wide, 'farm to fork' approach to official controls. The objective is to improve the consistency and effectiveness of controls across the EU and, as a consequence, raise standards of food safety and consumer protection. It also aims to provide a greater degree of transparency for consumers about official controls and enforcement arrangements.

**Q4. What are 'competent authorities'?**

A4. 'Competent authorities' are defined specifically for the purposes of the Regulation at [Article 2\(4\)](#). In effect, these are the central authority or authorities of a Member State that are responsible for national official control and enforcement arrangements as well as other authorities that have responsibility for monitoring and enforcing the law (i.e. carrying out official controls).

**Q5. Who are the competent authorities in the UK?**

A5. Responsibility for official feed and food controls is held centrally. In practice, execution of this responsibility is divided between central and local authorities. The central authorities are the Food Standards Agency, Defra and the devolved Agriculture/Rural Affairs Departments<sup>2</sup> and their agencies (e.g. the Meat Hygiene Service, the Veterinary Medicines Directorate, the Pesticides Safety Directorate, and Animal Health (Dairy Hygiene)). At the local level, in Great Britain, much of the enforcement of feed and food law is carried out by Environmental Health and Trading Standards Services in local authorities. This includes port health authorities which have specific responsibilities in relation to import controls. Similarly, in Northern Ireland, responsibility for food law enforcement lies with district councils, though feed law is enforced by the Department of Agriculture and Rural Development for Northern Ireland (DARD).

**Q6. What are official controls?**

A6. 'Official controls' are specifically defined for the purposes of the Regulation at [Article 2\(1\)](#). In effect, these are:

- Regulatory checks carried out by the competent authorities in the Member States to monitor compliance by feed and food businesses with the requirements set out in 'feed law' and 'food law'. Such checks include, for example, inspections, audits, surveillance, sampling and analysis etc.
- Checks carried out by the European Commission's Inspection Services, generally by its Food and Veterinary Office (FVO), to evaluate the performance of national control authorities and national control systems.

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<sup>2</sup> Welsh Assembly Government Department for Rural Affairs, Scottish Government - Directorate General Environment, and the Department of Agriculture and Rural Development for Northern Ireland (DARD).

**Q7. What feed law is covered by the Regulation?**

A7. 'Feed law' is specifically defined for the purposes of the Regulation at Article 2(3). In effect, this includes EU and national rules on feed hygiene, feed composition, feed additives, medicated feed, feed labelling, and veterinary medicine, pesticide residues in feed and Transmissible Spongiform Encephalopathies (TSE) controls in relation to the prohibition on feed containing meat and bone meal (MBM) etc. It covers not only feed for food-producing animals but also feed for horses, pets and fish.

**Q8. What food law is covered by the Regulation?**

A8. The definition of 'food law' for the purposes of the Regulation is the one used in the EU General Food Law Regulation 178/2002.<sup>3</sup> In effect, this includes EU and national rules on food hygiene, food composition, food labelling, additives, TSEs and contaminants, veterinary medicine and pesticide residues, standards for organic foods, protected names etc. Regulation 882/2004, however, specifically excludes marketing standards that have been developed under the Common Agricultural Market e.g. those for wine, olive oil, fruit and vegetables and honey etc.

**Q9. What is the scope of the Regulation as regards the feed and food elements?**

A9. It covers controls at all stages of production, processing and distribution. It covers controls on feed and food produced within the EU and that exported to or imported from outside the Community, i.e. third countries. Existing specific rules for controls for particular areas of concern, e.g. BSE controls and food hygiene controls for products of animal origin, continue to apply without prejudice to this overarching Regulation.

**Q10. What are the main elements of the Regulation?**

A10. These are:

- General principles for official control arrangements in the Member States – see Q12;
- Requirements for the competent authorities – see Q13 to Q29;
- Requirements for sampling and analysis and for official laboratories – see Q30-Q33);
- Official controls of imports of feed and food from outside the EU (i.e. from third countries) – see Q34 to Q45;
- Financing of official controls – see Q46 to Q51;
- Administrative assistance and co-operation with other Member States and with the Commission – see Q52 to Q54;
- National control plans and annual reports to the Commission – see Q55 to Q58;
- Community controls in the Member States and in third countries – see Q59 to Q62.

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<sup>3</sup> Regulation EC 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Official Journal L31, 1.2.2002, 1-24.

### **Q11. When did the provisions of the Regulation apply?**

A11. Most of the provisions in the Regulation applied from 1 January 2006 but the provisions on financing of official controls (Articles 27 and 28) applied from 1 January 2007. In addition, the requirement to have a national control plan (see Q55) in place applied from 1 January 2007.

## **General principles for official control arrangements in the Member States**

### **Q12. What are these principles?**

A12. These are included at Article 3 of the Regulation and require that the national control system should be set up such that controls are carried out:

- regularly and in accordance with a risk-based approach;
- unless necessary, without prior warning to the business concerned;
- at all stages of production, processing and distribution; and
- on feed and food produced and sold within the EU, as well as feed and food for export and feed and food imports.

## **Requirements for the competent authorities**

### **Q13. What are these requirements?**

A13. The main ones, which are set out at Articles 4 to 9, 31 and 54 of the Regulation, are that the competent authority should:

- meet certain operational criteria – such as, having a sufficient number of suitably qualified and experienced staff, ensuring that staff are free from conflict of interest, having contingency plans for emergencies, having appropriate legal powers, having suitable facilities and equipment etc.
- carry out internal audits or have external audits undertaken;
- ensure specific conditions are met if any control task is delegated to an independent third party i.e. a 'control body' (see Q17);
- ensure that staff receive appropriate and on-going training;
- be transparent about its monitoring and enforcement activity;
- prepare reports of individual controls and provide copies to businesses;
- have, use and update, as necessary, documented procedures for carrying out controls;
- ensure effective and efficient co-ordination with other competent authorities or between different units of a single authority;
- have procedures in place for the registration/approval of premises; and
- take appropriate action where businesses do not comply with the law.

**Q14. Has this meant any changes to the monitoring and enforcement arrangements in the UK in relation to food?**

A14. Most of the provisions of Regulation 882/2004 consolidated requirements in previous Community legislation such that monitoring and enforcement arrangements in the UK in relation to food were generally already consistent with these. Some updating has, however been needed in some areas. Where appropriate, this has been achieved by revising enforcement or operational instructions etc. listed in the Appendix. Some requirements were new at EU level, notably, those on audit, those on delegating tasks to control bodies, and those on transparency.

**Q15. Has this meant any changes to the monitoring and enforcement arrangements in the UK in relation to feed?**

A15. The EU Regulation replaced Directive 95/53/EC<sup>4</sup> which provided a framework for the enforcement of EC animal feed legislation. In many cases, Regulation 882/2004 maintains the provisions that applied under 95/53/EC - for example, it preserves the need for checks to be made at all stages of the feed chain. However, some provisions were new, e.g. there is a need to link national feed inspection plans with those covering food.

**Q16. What do the audit requirements mean for UK competent authorities?**

A16. UK local authorities/district councils are audited by the Food Standards Agency, as is the Meat Hygiene Service and the Veterinary Service of DARD (which carries out the MHS function in Northern Ireland). These authorities also undertake a certain amount of internal monitoring and local authorities and district councils may in addition participate in inter-authority auditing schemes. These arrangements are being reviewed in the light of Regulation 882/2004 and to take account of guidelines on criteria for audit established by the Commission.<sup>5</sup> The Agency will consult with stakeholders, particularly with enforcement stakeholders, on any changes that may be needed. With regard to Defra and its various agencies, such as Animal Health (Dairy Hygiene), consideration is currently being given to the audit arrangements that are needed.

**Q17. What is a 'control body'?**

A17. The term 'control body' is defined for the purposes of the Regulation at Article 2(5). In effect, control bodies are independent organisations to which the competent authority has delegated specific tasks. This includes, for example, privately-owned laboratories used by a competent authority to undertake chemical analysis or microbiological examination (see also Q18). In delegating the task, the competent authority retains ultimate responsibility for the work.

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<sup>4</sup> Council Directive 95/53/EC fixing the principles governing the organization of official inspections in the field of animal nutrition. Official Journal L 265 , 8.11.1995, 17-22.

<sup>5</sup> Commission Decision 2006/677 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules. Official Journal L 278, 10.10.2006, 15-23.

**Q18. Are there any control bodies in the UK?**

A18. Yes. These include, for example, privately-owned Public Analyst and Agricultural Analyst laboratories undertaking analytical work for local authorities/district councils and also local authority/district council run laboratories undertaking private work for other authorities. Consultant Environmental Health Officers contracted by local authorities are not, however, considered to be 'control bodies' as they are working under the supervision of that authority.

**Q19. What sort of tasks may be delegated?**

A19. Any tasks relating to the monitoring of compliance of businesses with feed and food law may, for now, be delegated e.g. inspections, sampling and analysis etc. However, responsibility for taking formal enforcement action where non-compliance with the law is found (e.g. issuing of an emergency prohibition notice) may not be delegated. Such action may only be taken by the relevant competent authority. The Commission may, at a future date, restrict further the types of tasks that may be delegated.

**Q20. What are the specific conditions for delegating tasks?**

A20. These are set out in detail at [Article 5](#) of the Regulation. In summary, there must be an accurate description of the task and proof that the control body has the necessary expertise etc., and that it is impartial and free from conflict of interest in respect of the particular task. Control bodies must meet appropriate and specified European Standards and there must be procedures in place to ensure that results of any controls are communicated to the competent authority. In addition, the competent authority must arrange audit or inspection of the control body and, if it finds that the control body is not meeting the specified conditions, the delegation must be withdrawn.

**Q21. How are the audit/inspection requirements for UK control bodies met?**

Q21. Any laboratories that undertake analysis for official control purposes must meet (be accredited to) certain standards. In the UK, accreditation is undertaken by the United Kingdom Accreditation Service (UKAS). Although audit of the laboratory is already generally part of the accreditation process, this does not cover performance against the requirements of specific legislation with respect to the official food control laboratory function. The Food Standards Agency has worked closely with the Association of Public Analysts and UKAS to incorporate this aspect into an extended accreditation audit. The changes agreed will be reflected in a revision of the formal agreement that has been made between the Food Standards Agency and UKAS regarding accreditation of official food control laboratories.

**Q22. What are the requirements on transparency?**

A22. These are set out at [Article 7](#) of the Regulation. The competent authorities of Member States must publish information on official controls that are carried out and on the effectiveness of these, i.e. details of enforcement activity and the results of this. In doing so, authorities should not disclose information that is covered by professional secrecy. The European Commission is also required by the Regulation ([Article 44](#)) to produce and publish an annual report on the overall operation of monitoring and enforcement arrangements in the Member States.

**Q23. How is this obligation for competent authorities met in the UK?**

A23. Much information is published in the UK on monitoring and enforcement activity in relation to feed and food. This includes, for example, publication of enforcement policies, service delivery plans and performance reviews by local authorities and district councils. In addition, the Food Standards Agency publishes monitoring data that it collects on local authority and MHS enforcement activity and audit reports etc. Much of this information is available on the enforcement portal of the Agency's website at: <http://www.food.gov.uk/enforcement/>

Defra and its Agencies also publish extensive information on their websites. This includes, for example,

- reports on approvals and inspections relating to standards for organic feed and food which is available at: <http://www.defra.gov.uk/farm/organic/>
- information on programmes that monitor residues of veterinary medicines in food which is available at: [www.vmd.gov.uk](http://www.vmd.gov.uk) and [www.vet-residues-committee.gov.uk](http://www.vet-residues-committee.gov.uk)
- monitoring of pesticide residues in feed and food which is available at: [http://www.pesticides.gov.uk/prc\\_home.asp](http://www.pesticides.gov.uk/prc_home.asp)

In addition, the UK national control plan has been published - see link below - and it is proposed that summaries of the annual reports on implementation of this plan will be published when they are produced (see Q55 to 58).

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

**Q24. Do individual inspection reports need to be published?**

A24. No. The Regulation requires only that reports must be provided to the business concerned and only where non-compliance has been found (though they *may* also be provided on a routine basis).

**Q25. How is effective and efficient co-ordination between authorities ensured in the UK?**

A25. The Agency acknowledges the importance of co-ordination and co-operation between authorities in its strategic plan for the period to 2010 and recognises the need for partnership working to achieve this. The plan emphasises that the Agency will continue to work with local authorities and their representative and professional bodies to improve consistency and effectiveness of enforcement. In particular, the Agency will continue to work closely with Her Majesty's Revenue & Customs, the four UK Agriculture/Rural Affairs Departments and with local and port health authorities to ensure that imported food controls are in place at borders and inland. This will build on and aim to strengthen existing avenues of communication and co-operation which are already well developed (e.g. the 'Step change' project on improving the co-ordination and delivery of imported food controls). Details of the mechanisms in place for facilitating co-ordination between authorities are provided in the UK's National Control Plan (see Q55).

**Q26. What are the requirements relating to registration and approvals?**

A26. The requirements for feed and food business establishments to be registered or approved are set out in the EU Feed Hygiene Regulation<sup>6</sup> and EU Food Hygiene legislation.<sup>7,8</sup> Regulation 882/2004 sets out at Article 31 the responsibilities of the competent authorities in undertaking the registration or approval process. Local authorities and the Food Standards Agency are responsible for approvals in GB while in Northern Ireland, responsibility for food establishments lies with district councils and with DARD for feed establishments. Specific guidance on approval and registration requirements is included in enforcement instructions for these authorities (see Appendix). Guidance for feed and food businesses on the registration and approval requirements is available on the Food Standards Agency website at:

<http://www.food.gov.uk/foodindustry/guidancenotes/hygguid/approvregfeedguidance>

<http://www.food.gov.uk/multimedia/pdfs/fsaguidefoodhygleg.pdf>

**Q27. What are the responsibilities with regard to registration?**

A27. These are set out in detail at Article 31(1) of Regulation 882/2004. In summary, these are:

- to establish a procedure for feed and food business operators to follow when applying for registration; and,
- to keep an up-to-date list of registered establishments.

In the UK, each local authority, district council (in Northern Ireland) or other authority responsible for registration, will maintain a list of registered premises in their area. Where available, existing lists of establishments may be used, e.g. data from the Rural Payments Agency on primary production premises has been made available to individual local authorities.

**Q28. What are the responsibilities with regard to approvals?**

A28. These are set out in detail at Article 31(2) of Regulation 882/2004. In summary, these are:

- to establish a procedure for feed and food business operators to follow when applying for approval;
- to grant approval, after an on-the-spot visit, only if the necessary requirements are met; or,
- to grant conditional approval if infrastructure and equipment requirements are met, but only for a maximum of six months;
- to keep approval under review and suspend or withdraw if necessary; and,
- to keep an up-to-date list of approved establishments.

In the UK, lists of approved premises will be kept centrally by the Food Standards Agency.

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<sup>6</sup> Regulation (EC) No 1831/2003 of the European Parliament and of the Council laying down requirements for feed hygiene. Official Journal L 35, 8.2.2005, 1-22.

<sup>7</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council on the hygiene of foodstuffs. Official Journal L 226, 25.6.2004, 3-21.

<sup>8</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. Official Journal L226, 25.6.2004, 22-82.

**Q29. Are the lists of registered and approved establishments published and, if so, who publishes the list?**

A29. Lists of establishments that have been approved under the EU Feed Hygiene Regulation and the EU Food Hygiene legislation must be published. The Commission has developed detailed rules on publication which specify the information to be included and that the lists be made available via a link to the Commission website. It is not necessary to publish lists of food establishments that only require to be registered. However, lists of premises registered by local authorities under the Feed Hygiene Regulation need to be made publicly available.

Lists of approved feed/food premises in the UK are available at

<http://www.food.gov.uk/enforcement/applicense/feedpremisesregister>

<http://www.food.gov.uk/foodindustry/meat/meatplantsprems/meatpremlcence>

<http://www.food.gov.uk/foodindustry/meat/meatplantsprems/meatplants>

<http://www.food.gov.uk/foodindustry/farmingfood/milkandairy>

## Requirements for sampling and analysis and for official laboratories

**Q30. What are the requirements for sampling and analysis?**

A30. The requirements are set out at Article 11 and Annex III of the Regulation. The methods of sampling and methods of chemical analysis and microbiological examination that are used for official control purposes should be those set out in Community legislation. Where no Community methods exist, then internationally recognised rules or protocols should be used wherever possible.

**Q31. What are official laboratories?**

A31. These are laboratories that are appointed by the competent authorities to undertake chemical analysis or microbiological examination of samples that have been taken for official control purposes. In the UK, these include Public and Agricultural Analysts, and Health Protection Agency and hospital trust laboratories that undertake work for local authorities or district councils. It also includes other laboratories that undertake work for the central authorities e.g. for the Pesticides Safety Directorate and the Veterinary Medicines Directorate.

**Q32. What are the requirements for official laboratories?**

A32. These are set out at Article 12 of the Regulation. Official laboratories must be designated as such by the competent authorities. Designation may only be given if the laboratory meets certain specified standards (i.e. is accredited to the European Standards specified in Regulation 882/2004). In the UK, accreditation is undertaken by the United Kingdom Accreditation Service (UKAS). This is a new requirement for official laboratories analysing feed and brings them into line with existing requirements for those analysing food. There is, however, a transitional period until 31 December 2009 to allow feed laboratories to gain accreditation.

**Q33. Which UK laboratories are official laboratories?**

A33. A list of official feed and food laboratories that undertake chemical analysis or microbiological examination of samples on behalf of local authorities and district councils is published on the Food Standards Agency website at:

<http://www.food.gov.uk/enforcement/foodsampling/foodcontrollabs>

**Official controls of imports of feed and food from outside the EU (i.e. from third countries)**

**Q34. What are the arrangements for checking feed and food products of animal origin (POAO)?**

A34. The rules set out for POAO in Council Directive 97/78/EC<sup>9</sup> (see [Article 14](#) of the Regulation) apply. These rules are implemented in England by the Products of Animal Origin (Third Country Imports) (England) Regulations 2006.<sup>10</sup> There is parallel legislation in Scotland, Wales, and Northern Ireland.<sup>11</sup> Checks are carried out at Border Inspection Posts, where all consignments are subject to documentary and identity checks and to prescribed levels of physical checks.

**Q35. Who is responsible for carrying out these checks?**

A35. Local authorities and port health authorities (DARD Veterinary Service and district councils in Northern Ireland) at sea and air ports with relevant designated Border Inspection Posts.

**Q36. Are any other checks on POAO required?**

A36. The Regulation requires that the authorities undertaking veterinary checks on POAO under Council Directive 97/78/EC also check that other requirements of feed and food law are met. These include, for example, checks on contaminants, pesticide and veterinary medicines residues and additives, many of which are already effectively part of the veterinary checks regime in the UK. The Products of Animal Origin (Third Country Imports) legislation has been amended to reflect the changes in respect of POAO checks. Guidance on these changes has been incorporated into a revision of the Border Inspection Post Manual (see Appendix).

<sup>9</sup> Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries. Official Journal L24, 30.1.98, 9-30.

<sup>10</sup> Statutory Instrument 2006, No 2841 (as amended by SI 2007/1605).

<sup>11</sup> The Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2007 - Scottish Statutory Instrument 2007, No 1 (as amended by 2007/304). The Products of Animal Origin (Third Country Imports) (Wales) Regulations 2007 - Welsh Statutory Instrument 2007, No 376 (W.36) (as amended by SI 2007/1710 (W. 148)). The Products of Animal Origin (Third Country Imports) Regulations (Northern Ireland) 2007 - Statutory Rule 2007, No 199 (as amended by SR 2007/314).

**Q37. What are the arrangements for checking feed and food products of non-animal origin (non-POAO)?**

A37. The rules for non-POAO checks are included at Articles 15 to 25 of the Regulation and require that checks are organised on the basis of the national control plan (see Q55 to Q58). In general, there should be systematic checks of documentation with additional random identity and physical checks. The frequency of physical checks should take into account the risks associated with the product, the history of compliance, controls applied by the importer, and any guarantees given by the competent authority of the third country (i.e. information about the organisation and management of control systems operated by that country and assessed by the Commission). These checks may take place at any appropriate place but will usually be at the point of entry to the UK. The Regulation also provides a framework for checks on 'high-risk' non-POAO and new implementing rules are being established to give this effect (see Q39).

**Q38. What are the arrangements for controls of non-POAO feed and food originating from countries that joined the EU in May 2004?**

A38. The Regulation defines the terms 'import' and 'introduction' with reference to a list of Community territories (see Annex 1 to the Regulation). This includes the 15 Member States that made up the Community when the Regulation was adopted in April 2004. Since then, an amendment has been made to Bulgaria and Romania but the Annex has not been amended to include the ten Member States that joined the EU in May 2004. As a result, products from these Member States entering the rest of the Community could be considered to be third country imports. However, the European Commission has recently issued a proposal for a Council and European Parliament Regulation to adapt Annex I in order to address this anomaly. In the meantime, Agency advice is that non-POAO feed and food entering the UK from these ten Member States should be considered as intra-Community trade.

**Q39 What is the framework for checks on 'high-risk' non-POAO?**

A39. The framework brings the requirements for 'high-risk' products (see also Qs 41 to 44), more into line with those for POAO. It requires that importers will have to pre-notify the relevant authorities of the arrival of 'high--risk' non-POAO. In addition, they will have to present these products at specific ports that have been designated specially to deal with particular 'high-risk' products. The products themselves will be subject to an increased level of checks in much the same way as products covered by Commission Emergency Safeguard measures are at present.

**Q40. Who is responsible for carrying out checks on non-POAO?**

A40. Local authorities (other than district councils for animal feed) and port health authorities (including the City of London Port Health Authority for animal feed) are responsible in GB and, in Northern Ireland, district councils are responsible for food non-POAO and DARD for feed non-POAO.

**Q41. What are 'high-risk' non-POAO feed and food?**

A41. These are products where there is a known or an emerging risk to human or animal health. They are to be identified by means of a list that is to be drawn up at EU level and which will be kept under review. The list will be made effective (and amended, as necessary) by means of Commission Regulations. The list is likely to include, for example, peanuts or pistachio nuts from areas where there have been problems with aflatoxin contamination.

**Q42. How will ports be designated for the import of 'high-risk' non-POAO feed and food?**

A42. These ports will be designated by Member States (in the case of the UK, this will be the Food Standards Agency) as and when a product is identified at EU level. They will be designated on the basis of their ability to handle the particular type of commodity and the specific checks and testing required.

**Q43. What level of checks will these products be subject to?**

A43. The frequency and nature of the checks to be carried out will depend on the commodity and food safety issue and will be specified at the same time as products are included on the 'high-risk' list (see Qs 41 and 44).

**Q44. When will the list of 'high-risk' products be drawn up?**

A44. The Commission issued proposals for implementing rules to give effect to the framework established by Regulation 882/2004, including drawing up the list of 'high-risk' products, in early 2007. Discussions are on-going at EU level and the Commission hopes that the rules will be agreed during the first half of 2008. In the meantime, current safeguard measures will continue to apply and further measures may be introduced under the provisions of the EU General Food Law Regulation (178/2002) such that public and animal health protection will not be compromised.

**Q45. What enforcement powers will local authorities and district councils have with regard to the new import provisions for non-POAO imports?**

A45. Provisions for the enforcement of these requirements are made in the Official Feed and Food Controls (England) Regulations 2007<sup>12</sup> (and parallel legislation in Scotland, Wales and Northern Ireland). As the list of 'high-risk' non-POAO has not yet been agreed, it is not possible, at this stage to legislate for these products at a national level. The legislation will, however, be amended once the implementing rules have been agreed at EU level. Guidance for enforcers on imported food controls has been produced by the Agency and is included in the updated Practice Guidance associated with the Codes of Practice on Food Law Enforcement for local authorities, port health authorities and district councils. Similarly, guidance on the rules in relation to imported feed has been included in the proposed Practice Guidance associated with the Code of Practice on Feed Law Enforcement in Great Britain and the Feed Law Enforcement Guidance in Northern Ireland for DARD.

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<sup>12</sup> Statutory Instrument 2007/3185 (this revoked and replaced the Official Feed Food Controls (England) Regulations 2006, SI 2006/15, which were in force from 11 Jan 2006 to 14 Dec 2007.).

### **Q46. What are the requirements for financing of controls?**

A46. These are set out in detail at Articles 26 to 29 of the Regulation. These place a general obligation on Member States to ensure that official controls are properly financed but, in broad terms, it is left to the Member State to decide how. In doing so, however, the Member State must operate within a certain framework. This requires mandatory fees in some sectors with an option to charge in other sectors.

### **Q47. In which sectors are fees mandatory?**

A47. Fees are mandatory in those sectors where this is already required under existing EU legislation. These are for:

- checks on products of animal origin, both those produced within the EU and those from third countries, e.g. hygiene inspections of meat and fish, for which charging arrangements are currently set out in Directive 85/73/EEC;<sup>13</sup> and,
- approvals of feed establishments (currently required under Council Decision 98/728/EC<sup>14</sup>);

They are also required for 'additional official controls' (see Q49).

### **Q48. How are fees calculated?**

A48. Where charges are made (either mandatory or optional), full cost recovery is permitted but is not obligatory, and certain general principles must be followed to take account of the effects on small businesses etc. For meat and fish hygiene inspections, flat rate minimum fees are specified. These rates will be updated every two years to take account of inflationary increases in the costs incurred by the enforcement authorities. In the case of intra-Community checks, transitional arrangements are included such that minimum charges under the current legislation applied until 1 January 2008. Notwithstanding the flat rates, Member States may recover up to and including full costs or may reduce fees below the minimum rates where actual costs are less.

### **Q49. What are 'additional official controls'?**

A49. These are extra checks that are needed following detection of infringements or non-compliance with feed or food law requirements (see Article 28). However, our understanding is that not all such 'additional controls' should be the subject of fees but rather that this applies only in the case of major and significant incidents. More information on this is provided in: *Official Feed and Food Controls (England) Regulations 2007 - regulation 41 on expenses arising from 'additional official controls' - Guidance Notes*. This is available at:

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

<sup>13</sup> Council Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat. Official Journal L32, 5.2.1985, 14-15.

<sup>14</sup> Council Decision 98/728/EC concerning a Community system of fees in the animal feed sector. Official Journal L346, 22.12.1998, 51-53.

**Q50. Are there fees for third country imports checks of non-POAO?**

A50. For 'high-risk' non-POAO, mandatory fees *may* be introduced when these products are included on the Community list (see Q41). The UK will continue to press for fees for these checks as this is in line with the arrangements for POAO which are similarly considered to be 'high-risk' and for these to be mandatory across the EU to ensure that trade is not distorted by variations in charging practices.

**Q51. Have these provisions resulted in changes to UK funding arrangements?**

A51. The provisions on financing came into effect on 1 January 2007. At that time the EU Regulation became the legal basis for any charges or fees that are imposed in the UK. To date, fees/charges are made only in those sectors where fees/charges were made prior to the introduction of Regulation 882/2004. The only exception is as regards 'additional official controls' where national legislation has now been introduced (see Q49 above).

**Administrative assistance and co-operation with other Member States and with the Commission**

**Q52. What arrangements are there for liaising with the competent authorities in other Member States and with the Commission?**

A52. Detailed arrangements are set out in Articles 34 to 40 of Regulation 882/2004. These aim to continue and improve existing arrangements whereby the competent authorities of the different Member States may work together and with the Commission where the results of official controls indicate that action is needed in more than one country. To facilitate assistance, each Member State is required to designate a 'liaison body' but this does not preclude direct contacts by individual authorities.

**Q53. What is the role of the 'liaison body' and which body performs this function in the UK?**

A53. This body will function as the first point of communication for transmission and reception of requests for assistance. In the UK, the Food Standards Agency performs this role.

**Q54. Are the competent authorities of other Member States able to undertake investigations in the UK or take action against UK businesses?**

A54. No. Any investigation or action taken will be by officials of the UK authorities. Officials of other competent authorities may, however, accompany UK officials in undertaking any enquiries.

## National Control Plans and annual reports to the Commission

### **Q55. What are the requirements for control plans and reports?**

A55. Each Member State is required to prepare a 'multi-annual' national control plan (Articles 41 to 43 of the Regulation are relevant). This is essentially a strategic plan setting out the national monitoring and enforcement arrangements, objectives and priorities. It should describe the roles and responsibilities of the various competent authorities, and provide details of how the various requirements of the Regulation are being met. This must be a single integrated plan covering arrangements for monitoring and enforcement not only of feed and food law but also animal health and animal welfare rules, as well as plant health controls. The first plan had to be in place by 1 January 2007, and must be updated regularly thereafter. In addition, Member States are required to report annually to the Commission on implementation of the plan (see Article 44 of the Regulation).

### **Q56. Who is responsible for preparing UK plans and reports and who contributes to these?**

A56. Responsibility for preparing UK plans and reports lies with the central authorities – the Food Standards Agency, Defra and its agencies and the devolved Agriculture/Rural Affairs Departments. Information about the official control activities of local authorities, port health authorities and district councils is incorporated.

### **Q57. What information must be included in the plan and annual reports?**

A57. The Commission has established guidelines on what information should be included in the national control plan<sup>15</sup> and on the preparation of annual reports<sup>16</sup> and Member States are required to take account of these guidelines.

### **Q58. Has the UK plan been published?**

A58. Yes. The UK plan has been published on the Food Standard Agency's website at:

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

It is proposed that a summary of the annual reports on the implementation of the plan will also be published for UK consumers and other stakeholders on the Agency's website.

## Community controls in the Member States and in third countries

### **Q59. How will the European Commission ensure that national monitoring and enforcement arrangements in Member States are effective?**

<sup>15</sup> Commission Decision 2007/336 setting out guidelines to assist Member States in preparing the single integrated multi-annual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council. Official Journal L 278, 10.10.2006,15.

<sup>16</sup> Draft Commission decision on guidelines (F6 (2007) D660105) to assist Member States in preparing the annual report on the single integrated multi-annual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council

- A59. The Commission's Inspection Services, the FVO, will undertake two types of assessment as set out at [Article 45](#) of the Regulation. These are:
- general audits of the national control plans and annual reports; and, where necessary,
  - supplementary or specific audits, e.g. where there appears to be emerging or recurring problems.

**Q60. What are the arrangements for FVO missions/audits?**

A60. The FVO publishes its inspection programmes in advance. The central authorities are responsible for making arrangements and drawing up the itineraries. Missions may include on-site visits to local authorities/district councils and to businesses. Reports of missions include recommendations for the Member State concerned and finalised reports are published on the Commission's website.

**Q61. What about assessment of third countries exporting to the EU?**

A61. Third countries exporting to the EU will have to supply similar information to that which contained in the national plans and reports of Member States. This information will be used by the FVO as the basis of auditing the arrangements in these countries (see [Articles 46 and 47](#) of the Regulation).

**Q62. Does the Commission produce lists of approved countries and approved establishments?**

A62. If the Commission believe that specific conditions must apply for certain feed or food products, depending on risk, lists of approved third countries and approved establishments will be drawn up (see [Article 48](#) of the Regulation). These may be for non-POAO as well as POAO.

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## Impact on businesses

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**Q63. Are there any requirements for businesses in the Regulation?**

A63. No. The Regulation is about monitoring and enforcement arrangements and the responsibilities of authorities responsible for checking that businesses comply with the requirements for them that are set out in feed and food law. The Regulation does not require increased levels of checks or enforcement. However, some businesses may be affected by the rules on imports of non-POAO (see Q34 to Q45) and by the financing provisions (see Q46 to Q51).

**Q64. Does the Regulation provide any benefit to businesses?**

A64. The requirements aim to ensure proportionate, risk based and consistent enforcement across the Community which should, in turn, help to ensure that businesses are not unfairly disadvantaged by the enforcement arrangements in their countries.

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## Impact on Consumers

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**Q65. Are the rules of any benefit to consumers?**

A65. The requirements aim to improve the effectiveness of enforcement throughout the Community and at its borders. This should contribute to improved standards for public health and consumer protection. In addition, the provisions on transparency and publication of information on official controls should ensure that consumers have access to information about enforcement activity and its effectiveness both within the UK and across the Community.

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**Further information**

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**Q66. Who should I contact if I have any enquiries?**

A66. In the first instance, please contact: David Millis of the Agency's Official Control Regulation Implementation Team at:

Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH

Tel: +44 (0) 20 7276 8424

Fax: +44 (0) 20 7276 8447

Email: [david.millis@foodstandards.gsi.gov.uk](mailto:david.millis@foodstandards.gsi.gov.uk)

## Appendix – Enforcement instructions

The requirements of Regulation 882/2004 will be reflected in specific enforcement instructions used by particular enforcement authorities. These include:

- Statutory Codes of Practice for food law enforcement and associated Practice Guidance for local authorities, port health authorities in Great Britain, and district councils in Northern Ireland (these incorporate guidance on imported food controls);

These are available on the Enforcement Portal of the Food Standards Agency website by following the links at:

<http://www.food.gov.uk/enforcement/foodlaw/foodlawcop/copengland>

<http://www.food.gov.uk/enforcement/foodlaw/foodlawcop/copni>

<http://www.food.gov.uk/enforcement/foodlaw/foodlawcop/copscotland>

<http://www.food.gov.uk/enforcement/foodlaw/foodlawcop/copwales>

- Local Authority Imported Food Control Resource Pack

This is available on the Food Standards Agency website at

[http://www.food.gov.uk/foodindustry/imports/enforce\\_authorities/resourcepack](http://www.food.gov.uk/foodindustry/imports/enforce_authorities/resourcepack)

- Code of Practice on Animal Feeding Stuffs Law Enforcement in Great Britain, and Feed Law Enforcement Guidance for Northern Ireland

These are available on the Enforcement Portal of the Food Standards Agency website by following the links at:

<http://www.food.gov.uk/enforcement/foodlaw/feedlawcop/>

<http://www.food.gov.uk/multimedia/pdfs/feedlawguideni.pdf>

- Framework Agreement on Local Authority Food Law Enforcement

This is available on the Food Standards Agency website at:

<http://www.food.gov.uk/enforcement/foodlaw/frameagree/>

- Border Inspection Post Manual – veterinary checks on third country imports of feed and food of animal origin;

This is available on the Defra website at:

<http://www.defra.gov.uk/animalh/int-trde/imports/bips/pdf/bipmanual.pdf>

- Meat Hygiene Service Manual for Official Controls and DARD Veterinary Service Manual of Official Controls

This is available on the Food Standards Agency website at

<http://www.food.gov.uk/foodindustry/meat/mhservice/mhsmanual2006/>

- Animal Health (Dairy Hygiene) Operational Instructions (plus DARD equivalent)

This is available on the Defra website at:

<http://www.defra.gov.uk/animalhealth/publications/Dairy/DHIPcedures.pdf>