

Post Implementation Review Summary

The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015

The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015

The Animal Feed (Basic Safety Standards) (England) Regulations 2019

Post Implementation Review – Summary and Report

Food Standards Agency

<p>Title: Post Implementation Review of the Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015, The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 and Animal Feed Basic Safety Standards (England) Regulations 2019</p> <p>PIR No: FSA-PIR-008</p> <p>Original IA/RPC No: 0148</p> <p>Lead department or agency: Food Standard Agency</p> <p>Other departments or agencies:</p> <p>Contact for enquiries: Alison Asquith</p>	Post Implementation Review
	Date: 11/10/2023
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 06/04/2015 & 17/04/2019
	Recommendation: Keep
RPC Opinion: Choose an item.	

1. What were the policy objectives of the measure? (Maximum 5 lines)

The objective of these regulations was to simplify animal feed legislation in England, consolidating five separate animal feed statutory instruments (SIs) under the Red Tape Challenge Initiative to make it easier for stakeholders to access relevant information about the legal requirements for animal feed. The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 also introduced safeguards for officers exercising their powers under these Regulations. The Animal Feed (Basic Safety Standards) (England) Regulations 2019 is a safety measure to prevent the addition of radioactive substances to animal feed.

2. What evidence has informed the PIR? (Maximum 5 lines)

The level of evidence sourced is commensurate to the scale of the Regulations and associated impacts. Evidence has been collated of the views and experiences of key stakeholders and an assessment made of the baseline costs and benefits outlined in the associated impact assessment. This light touch assessment is based on the low impact identified in the regulatory impact assessment of these Regulations

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

Our analysis is that these SIs continue to deliver reduced administrative burdens through the simplified presentation of animal feed hygiene and enforcement provisions. The SIs implement the enforcement of Retained European Union Legislation and our view is that this remains necessary, fully effective and fit for purpose, without these measures animal feed may be less safe. Since the Regulations came into force, changes to working practices in the feed industry have created new challenges for enforcement bodies who have highlighted the possible need for amendments to update the enforcement provisions. While there may be a need for amendments, clarification around the use of wider powers may address this issue.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Willem Roelofs**

Date: 11/03/2023

Andrea Leadson

25/01/2024

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? (Maximum 5 lines)

The consolidation exercise would succeed in reducing the burden on animal feed businesses by simplifying these SIs whose main purpose is to make sure all feed is safe. As the SIs would be in two documents, the consolidated SIs would be easier to follow than having five separate SIs (documents). Businesses would need to spend less time locating and reading the information they required.

5. Were there any unintended consequences? (Maximum 5 lines)

No unintended consequences were identified by stakeholders during the post implementation review. The FSA did not identify any significant impacts when consolidating the 2015 SIs, or with the provisions in the SIs. No significant impacts were identified by respondents during the 2014 public consultation. No significant impacts have been identified during this review of the regulations, which included engagement with key stakeholders.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

The objective of the consolidation exercise to move five SIs into two SIs was part of the Red Tape Challenge to reduce the burden on animal feed businesses. Industry comments during the review of this legislation are that the consolidation simplified the system and made it easier for businesses to gain information about the existing legal provisions, which made them much easier to follow. No further opportunities for reducing the burden on industry were identified by businesses.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

These regulations contain national measures necessary to implement and make REUL enforceable in England. There are similar provisions in other UK nations. EU legislation will form the basis of Regulation in MS who will have their own national measures to provide a functional legal framework. The three animal feed SIs for which this post implementation review covers, continue to provide for the execution of powers and enforcement in England for retained EU law.

Post Implementation Review Report

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Post Implementation Review

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Food Standards Agency

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Executive Summary

The UK exited the EU on 31 January 2020 and directly applicable EU feed law was converted into retained EU law. The three animal feed SIs for which this post implementation review covers, continue to provide for the execution of powers and enforcement in England for the retained EU law.

The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 (SI 2015 No 255) and The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015 (SI 2015 No. 454) came into force on 6 April 2015. The Animal Feed (Basic Safety Standards) (England) Regulations 2019 (SI 2019 No.683) came into force on 17 April 2019.

The first two Regulations revoked and re-enacted, in whole or in part, the following Regulations into two Statutory Instruments.

Regulation	Revoked by Regulation
The Genetically Modified Animal Feed (England) Regulations 2004 (S.I. 2004 No 2334)	The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 (SI 2015 No 255)
The Feed (Hygiene and Enforcement) (England) Regulations 2005 (S.I 2005 No 3280)	
The Animal Feed (England) Regulations 2010 (S.I 2010 No 2503)	
The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010 (S.I 2010 No 2280)	The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 (S.I 2015 No 454)
The Feed (Hygiene and Enforcement) (England) Regulations 2005 (S.I 2005 No 3280) as amended	

This routine Post Implementation Review (PIR) fulfils the statutory review requirements of the legislation. It reviews the objectives of the consolidation exercise; the extent to which those objectives have been achieved; and, whether they could be achieved by means that impose less regulatory burden. The PIR also considers evidence provided by interested parties on the effectiveness of the regulations and the extent to which they remain relevant.

The FSA has collated evidence from key stakeholders based on their views and experiences, including any costs and benefits arising from their implementation in undertaking this PIR.

A light touch review was considered proportionate for this combined PIR due to the low impact identified in the regulatory impact assessments and based on routine FSA engagement and monitoring of UK official controls and enforcement including animal feed legislation. The level of evidence sourced is therefore commensurate to the scale of the Regulations and associated impacts.

The FSA review did not identify any unintended consequences of the legislation and no immediate need for regulatory reform was identified in relation to unnecessary burden or barriers on business. The policy objective of the legislation also remains relevant and is being met through its implementation. The findings of the PIR therefore are that the SIs remain fit for purpose and should be retained. However, the FSA intends to explore further opportunities for reforming feed law as part of the FSA's wider review of feed and food law reforms planned under the Retained EU Law (Revocation and Reform) Bill.

Introduction and background

The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 (SI 2015 No 255) and The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015 (SI 2015 No. 454) came into force on 6 April 2015, and consolidated feed hygiene and safety provisions from five Regulations into two Statutory Instruments.

The aims of the consolidation exercise were as follows:

- To introduce a simplified system of feed legislation, in line with the aims of the UK Government's Red Tape Challenge (RTC) initiative²
- The introduction of new safeguards for feed officers exercising their powers under the Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015.

The PIR included a review of an amendment to domestic animal feed legislation which restated the list of undesirable substances and categories of feed materials used for labelling pet food from EU Directives to schedules in the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015. It also included a review of the Animal Feed (Basic Safety Standards) (England) Regulations 2019 which lays down basic safety standards for protection against the dangers arising from exposure to radioactive substances .

The FSA conducted a formal 11-week public consultation from 24 September 2014 to 10 December 2014, seeking comments on the draft 2015 statutory instruments and the changes in sanctions and powers. The consultation was published on the FSA website and stakeholders were emailed with the link to the site. Stakeholders contacted included major industry and Local Authority representatives, 11 responses were received.

Stakeholders were asked to comment on the FSA's preliminary analysis of the costs and/or benefits of:

- the effectiveness of the regulations and the extent to which they remain relevant

- the consolidation of the five SIs into The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 and The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015
- rationalisation of the offences and penalties

No significant impacts were identified resulting from the consolidation, including the rationalisation of the offences and penalties.

Scope

As part of the Government's commitment to review provisions in secondary legislation that regulate businesses, the SIs, require the FSA to undertake a statutory review and set out the conclusions in a report within five years of the measure coming into force.

A combined, light-touch, review was considered proportionate for these SIs, reflecting the low impact identified in the regulatory impact assessments and the FSA's view on the continued need and effectiveness of the SIs.

The bulk of the 2015 Regulations are concerned with providing enforcement provisions for the former directly applicable EU legislation that was retained when the UK exited the EU on 31 January 2020. The directly applicable EU legislation was routinely reviewed and updated by the EU Commission - with input and agreement from the UK whilst an EU Member State up to the point that it was retained in UK law. Amendments which have been made to the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 following reviews in Europe included an amendment to Regulation 2020/354 which established a list of uses of feed intended for particular nutritional purposes and repealed a EU Directive. This amendment enabled the UK to establish and maintain a UK list of feed intended for particular nutritional purposes. An operational fix to domestic legislation following the UK's exit of the EU moved a list of undesirable substances from a EU Directive to the Animal Feed (Composition, Marketing and Use) Regulations. This enabled the UK to establish and maintain a UK list of undesirable substances. The FSA continues to monitor feed law implementation and enforcement and to review the statutory requirements which are necessary for the protection of public health, animal health and consumers' interests.

Objectives

The PIR considered whether the objectives of the Regulations have been achieved, and whether they could be achieved by means that impose less regulatory burden. The Review also considers evidence provided by interested parties on the effectiveness of the regulations and the extent to which they remain relevant.

Impact

No significant impacts were identified by the FSA and no significant impacts were highlighted by respondents during the formal consultation which took place in 2014 before the Regulations were made. This PIR of the Regulations, which includes comments received through our

engagement with key stakeholders, has not highlighted any significant impacts of the Regulations..It was anticipated that stakeholders should benefit from having regulations on feed hygiene and feed safety contained in two SIs, instead of having to refer to five separate domestic regulations. This assumption was supported by comments made by respondents to the initial consultation in 2015.

The 'Economic Analysis'¹ undertaken has determined that no substantial costs to businesses, enforcement bodies or consumers have been identified. During a consultation supporting this PIR, feed businesses were specifically asked for information on any significant impacts, including economic impacts (costs/savings). Businesses confirmed there had been no impacts.

Questions asked and collated responses

In the development of this report, an informal consultation was carried out by the FSA which included all the main animal feed industry trade bodies, consumer interest groups, farming representatives and local government representatives. 3 responses were received. The questions asked, and the responses received are detailed in Annex 1.

Industry Perspective

The FSA carried out an informal targeted consultation to support this PIR . This confirmed that the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 and The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015 had met the objectives and simplified the legislation. No comments were made on the effectiveness of the regulations and the extent to which they are still relevant.

Consumer Perspective

1 response was received from an organisation representing consumer interests in relation to the Consolidated SIs in 2014. This organisation was included in the informal consultation to support the PIR but did not respond. This is not unexpected as the Regulations focus on reducing the impact on businesses. This response supported the consolidation exercise as it would make it easier for businesses to comply with the Regulations and feed officers to enforce them and they supported the strengthening of sanctions to provide a greater deterrent to non-compliance of feed law.

Enforcement

The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 introduced new safeguards for officers exercising their powers under these Regulations, as well as increasing the penalty for offences available on summary conviction. The safeguards:

1) Make clear in Regulation 30(1) that officers using their powers of entry must produce, if requested to do so, some duly authenticated documentation showing the officer's identity and authority.

- 2) Require in Regulation 30(2) for officers to provide the occupier with no less than 48 hours' notice where prior notice of entry is necessary.
- 3) Make clear in Regulation 30(3) that premises used wholly or mainly as a dwelling are excluded from an officer's normal powers of entry.
- 4) Require in Regulation 30(6) that officers using their powers of entry ensure that premises are left in as close a condition as is practicable to that in which they were found by the officer at the time of entry.
- 5) Require in Regulation 30(15) that officers must provide the occupier with a description of any records seized and a statement of how long seized records will be detained as evidence in proceedings under feed law.
- 6) Make clear in Regulation 38(3) requirements on serving notices, including that the notice must be in writing and signed by an authorised officer acting on behalf of the enforcement authority.

Trading Standards Officers have raised concerns that since The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 came into force, changes to working practices in the feed industry have created new challenges for enforcement bodies. The FSA will continue to work with enforcement authorities to ensure they have the necessary powers and enforcement tools.

Conclusion

Our analysis is that the Regulations continue to deliver reduced administrative burdens through the simplified presentation of feed safety and hygiene provisions. The review does not indicate there is a significant benefit in pursuing a further consolidation at this time. The SIs have the main function of implementing the enforcement of retained EU regulations and this remains necessary.

Recommendations

The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015, The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015 and the Animal Feed (Basic Safety Standards) (England) Regulations 2019 should be retained. The regulations should be considered further as part of the wider FSA review of retained EU food and feed law, to identify potential reform opportunities now that the UK has exited the EU.

Annex

Responses Received from the Consultation Exercise on the Post Implementation Review of The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 and The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015.

Q1. Has the consolidated legislation achieved its main objective of making it easier for stakeholders to identify and access relevant animal feed requirements on composition, marketing and use, hygiene, sampling and enforcement?

Q2. Have there been any significant impacts, including economic impacts (costs/savings), or other advantages and disadvantages following the introduction of the consolidated legislation?

Q3. Are enforcement powers and criminal sanctions appropriate and proportionate?

Q4. Are you aware of any other one-off or ongoing costs/benefits as a direct result of the Regulations that were not identified in our Impact Assessment? Please provide evidence where available to support your response.

Q5. Do you have any additional comments?

Specific questions for:

Industry

- Can you give examples of where the Regulations are providing benefits or set any overly burdensome obligations on businesses, including SMEs? If yes please elaborate.

Local Authorities

Has the introduction of new safeguards for officers exercising their powers under The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015,

a) provided adequate animal health and consumer protection?

b) resulted in any additional costs or savings?

c) introduced any other advantages and/or disadvantages?

- Do the regulations enable you to take the necessary enforcement actions to protect consumers? If there are deficiencies, please provide evidence.
- Are the powers of entry provided by the Regulation sufficient? Do you have evidence of any specific challenges/problems with entry powers?

Summary of comments of the informal consultation.

Comments on consolidation and success of Red Tape Challenge

Respondent	Comment	Response
Agricultural Industries Confederation (AIC)	<p>Has the consolidated legislation achieved its main objective of making it easier for stakeholders to identify and access relevant animal feed requirements on composition, marketing and use, hygiene, sampling and enforcement?</p> <p>The changes had minimal effect as the original EU regulations remained the main reference for the requirements. The English SI use is limited to identifying the Competent Authority, offences and penalties.</p>	Noted
PFMA	<p>In 2014, PFMA wrote to the FSA to support the principal objective to reduce the regulatory burdens on business, as part of the FSA's commitment towards the Government's Red Tape Challenge and welcomed the proposals which simplified the current system for animal feed legislation in England.</p> <p>The consolidated legislation we have today uses appropriate language in a logical order and structure and therefore makes it easier for businesses and enforcement authorities to gain information about the existing legal requirements. By reducing the number of references to the provisions this has made them much simpler to follow.</p> <p>With the exception of the safeguard measures for enforcement officers, duly supported by PFMA, the</p>	Noted

PFMA	<p>made more pressing or relevant because the UK is no longer a member of the EU.</p> <p>Following the UK exit from the EU we support the continuation of appropriate legislation, risk-based enforcement practices and recognition of industry Codes of Practice.</p>	Noted
AIC	<p>Do you have any additional comments?</p> <p>The SI online database and search tool is not as intuitive as EUR-LEX. This may be a familiarity issue as we have been used to the EU system for so long but the answer given in Q2 remains relevant.</p>	Noted
NAP and NAFPP	<p>You may wish to be aware that NAFPP have discussed the requirement for an export certificate when moving of High-Risk Feed of Non-Animal Origin from GB to Northern Ireland and whether a more risk-based approach might be developed in future.</p>	Noted

Comments from Enforcement Officers.

Respondent	Comment	Response
NAP and NAFPP	<p>Q3. Are enforcement powers and criminal sanctions appropriate and proportionate?</p> <p>Enforcement powers and sanctions Members of NAP and NAFPP have raised a number of suggestions where powers and sanctions under the 2015 legislation could usefully be improved.</p> <p>Power of entry and inspection available to local authorities under Article 30 of The Animal Feed (Hygiene, Sampling etc. and Enforcement)</p>	

(England) Regulations 2015 should be reviewed. Modern working practices have produced new challenges for enforcement officers which need to be addressed in the Regulations at the earliest opportunity.

1.Supporting remote work with feed businesses

The COVID-19 pandemic has introduced new ways of working for businesses and regulators therefore we recommend that the FSA review the powers available to local authorities, so they more explicitly support remote working with feed businesses and ensure that there is the legal power for such interaction. Remote interaction with businesses has started to become integrated as standard working practice and this is likely to grow, therefore introducing these powers would future proof the legislation.

2.Supporting imported feed work at ports

It is recommended that the FSA review the powers that have been transposed into UK legislation under the Official Controls Regulation (OCR) to ensure that they provide the flexibility required to respond to emerging lessons and risks from the EU Exit in relation to imported feed.

3.Sampling flexibility

Regulation 30(8) of The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 currently allows for formal samples to be taken of any material “appearing to be a feed manufactured, produced, placed on the market or intended to be placed on the market or to be material used, or intended to be used, as feed”.

However, Regulation 30(9) restricts informal sampling to “any material which has been sold for use as feed or which the officer has reasonable cause to believe to be intended for sale as such.”

It is recommended that this power in Regulation 30(9) is amended, or the two Regulations are combined to allow both

formal and informal sampling of any material etc used or potentially to be used as feed. This would allow informal samples to be taken of feed ingredients as well as the final product that is to be placed on the market and would provide local authorities with the flexibility to respond to all potential risks and target their activities more effectively.

Local authorities often rely on informal samples to carry out risk-based surveillance work under national projects or where there are logistical or physical issues hindering formal samples being taken. Informal samples often present the least disruption for the feed business.

4.Improvements to sanctions

Article 8(e) of The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 limits the timescales for formal revocation of a suspended licence to a year. It is recommended that more flexibility is provided to enable the officer to tailor the timescales to the risk from the issue being addressed and compliance history at the premises.

It is recommended that Article 24 of The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 is amended to allow flexibility in the timescales set for a feed business to respond to the requirements in an Improvement Notice. Giving a feed officer flexibility means the timescales can be tailored specifically to the risk, issue and history of compliance that the unique situation presents.

Improving flexibility

The very specific 'feed legislation' listed in the regulations may have unforeseen circumstances, it is very FSA focused and prevents flexibility. For example, the previous legislation referred to 'all EU feed related requirements', which ensures that feed authorities can respond flexibly to all the needs of a feed business and any new legal requirements. It also means that other feed related areas, such as organic

	<p>imported feed, can be covered by consistent powers.</p> <p>Financial Impact Local authorities have not raised any significant costs or savings associated with the legislative changes in 2015, however, it has been highlighted that it would be timely to update the cost of approvals under Schedule 3 of The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015 having last been altered in 2010 and in consideration of the in depth approach now taken to audits of this type.</p> <p>The FSA may want to consider introducing flexibility for local authorities to set their own approval fee based on the established cost recovery approach used in local government based on Local Government Association (LGA) principles. This approach ensures that local authorities can cover their costs, which will vary around the country, and would also prevent the need to change national legislation every time the fee becomes outdated. If the FSA are to consider a flat national fee then consultation would need to take place to ensure this covers all costs and there is a transparent and easy way to update this.</p>	<p>Noted. We are sympathetic with LA's and are reviewing our approach to approval fees.</p>
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Summary of responses about costs/benefits (for Review of Impact Assessment)

No significant impacts, including economic impacts (costs/savings), or other advantages and disadvantages have been identified by feed businesses following the introduction of the consolidated legislation. Costs were considered to be negligible.

List of respondents

1. Agricultural Industries Confederation (AIC)
2. Pet Food Manufacturers Association (PFMA)
3. National Agricultural Panel (NAP) and National Animal Feed at Ports Panel (NAFPP)