

The Animal Feed (Basic Safety Standards) (England) Regulations 2018

CONSULTATION SUMMARY PAGE

Date launched:	27 September 2017	Closing date:	8 November 2017
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Who will this consultation be of most interest to?
Producers and users of animal feedingstuffs in England.
Enforcement officers responsible for the enforcement of the Regulations in this sector.

What is the subject of this consultation?
The making of Regulations to transpose into English law the provisions of a revised EU Basic Safety Standards Directive laying down basic safety standards for the protection against the dangers arising from exposure to ionising radiation as it applies to animal feed. In particular

- prohibit the intentional addition of radioactive substances in the production of animal feedingstuffs;
- prohibit the import or export of animal feedingstuffs to which radioactive substances have been intentionally added during production; and
- provide the accompanying enforcement powers to deal with non-compliance.

What is the purpose of this consultation?
To give stakeholders the opportunity to comment on the draft Regulations and to ascertain whether our assumption that the introduction of the Regulations will be cost-neutral is correct.

Responses to this consultation should be sent to:

Mandy Jumnoodo Division/Branch Animal Feed, TSEs and Animal By-products Branch FOOD STANDARDS AGENCY Tel: 020 7276 8468	1 st Floor Aviation House 125 Kingsway, London, WC2 6NH Email: mandy.jumnoodo@foodstandards.gsi.gov.uk
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Impact Assessment included?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/> See Annex A for reason.
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The Animal Feed (Basic Safety Standards) (England) Regulations 2018

DETAIL OF CONSULTATION

Key proposal(s):

- To prohibit the intentional addition of radioactive substances in the production of animal feedingstuffs.
- To prohibit the import or export of animal feedingstuffs to which radioactive substances have, during production, been intentionally added.
- To refer to existing enforcement mechanisms providing appropriate sanctions for breach of the Regulations.

Details

1. Directive 2013/59/EURATOM lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation. The provision relating to animal feed is Article 21(1) which states:

“Member States shall prohibit the deliberate addition of radioactive substances in the production of foodstuffs, animal feedingstuffs, and cosmetics, and shall prohibit the import or export of such products.”

2. The proposed regulation provides for the transposition of the requirement as it relates to animal feedingstuffs into law in England and includes reference to existing enforcement mechanisms and provisions.

Background

3. The 2013 Basic Safety Standards Directive (2013 BSSD) consolidates and updates existing Euratom radiation safety legislation. The new Directive takes account of developments in the recommendations and standards issued by the International Commission on Radiological Protection and the International Atomic Energy Agency. Its scope includes medical, occupational and public radiation exposures and it provides for three different types of exposure situation:

- Existing public exposure situations, including the management of legacy radioactive contaminated land and exposure to naturally occurring radon gas in homes;
- Planned exposure situations, in relation to authorised activities involving radioactive substances, for example for power generation or healthcare; and
- Emergency exposure situations that could arise for example following an accident.

4. Within these sections the Directive also includes a requirement specifically prohibiting the addition of radioactive substances in the production of foodstuffs, animal feedingstuffs and cosmetics.

5. Consideration of the need to amend food law to implement this Article concluded that there was already adequate protection afforded by the Food Safety Act 1990 - in particular sections 7 (rendering food injurious to health) and 14 (selling food not of the

nature or substance or quality demanded). However, it was considered that a transposition of the Directive was required for animal feedingstuffs.

Impact Assessment

6. The FSA is not aware that the feed industry currently adds radioactive materials to animal feedingstuffs at any stage and therefore does not consider that there will be any costs incurred in the implementation of the Regulations, either by Government, enforcement authorities or the feed industry.
7. Enforcement sanctions will be consistent with those provided to enforcement authorities by existing animal feed Regulations.
8. Therefore it is considered that an Impact Assessment will not be required.

Information we are seeking in this consultation:

Q1. We would welcome your comments on the proposal to specifically prohibit the intentional addition of radioactive substances to animal feedingstuffs during their production and prohibit the import or export of animal feedingstuffs to which radioactive substances have been intentionally added during their production

Q2. We would welcome any comments on the proposed enforcement provisions.

Q3. We would welcome your comments on the conclusion that the proposals will not cause additional costs to the feed industry or to enforcement authorities.

Consultation Process

9. The purpose of this consultation is to provide interested parties with the opportunity to comment on, and express their opinions on the proposed new legislation as it relates to animal feed and to ensure our assumption that the Regulations will be cost-neutral is correct.

Consumer engagement

10. A Consumer representative is included on the list of interested parties.

Groups affected

11. All producers of animal feed may potentially be affected by the proposed change. The proposal will also affect enforcement bodies and others with an interest in animal feed.

Responses

12. **Responses are required by close** 8 November 2017. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Mandy Jumnoodoo
Branch Animal Feed, TSEs and Animal By-products
Division Food Policy

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Statutory Instrument

Annex C: List of interested parties

Publication of personal data and confidentiality of responses

1. In accordance with the FSA principle of openness we shall keep a copy of the completed consultation and responses, to be made available to the public on receipt of a request to the [FSA Consultation Coordinator](#) (020 7276 8308). The FSA will publish a summary of responses, which may include your full name. Disclosure of any other personal data would be made only upon request for the full consultation responses. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at <http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc> Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
3. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
4. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

5. A list of interested parties to whom this letter is being sent appears in Annex C. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
6. Please contact us if you require this consultation in an alternative format such as Braille or large print.
7. This consultation has been prepared in accordance with HM Government consultation principles¹.

¹ <http://www.bis.gov.uk/policies/bre/consultation-guidance>

 STATUTORY INSTRUMENTS

2018 No.

AGRICULTURE, ENGLAND

The Animal Feed (Basic Safety Standards) (England) Regulations 2018

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>Date 2018</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 66(1), 74A(1) and 84 of the Agriculture Act 1970⁽²⁾, as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000⁽³⁾.

In so far as these Regulations cannot be made under the powers in the Agriculture Act 1970 specified above, the Secretary of State makes these Regulations in exercise of his powers as a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽⁴⁾ in relation to the common agricultural policy of the European Union⁽⁵⁾, the control and regulation of genetically modified organisms⁽⁶⁾, measures in the veterinary and phytosanitary fields for the protection of public health⁽⁷⁾ and measures relating to feed produced for or fed to food-producing animals⁽⁸⁾.

There has been open and transparent public consultation during the preparation of these Regulations in accordance with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the

⁽²⁾ 1970 c.40. Section 66(1) contains definitions of the expressions “the Ministers”, “prescribed” and “regulations”. The definition of “the Ministers” was amended by the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), Schedule 5, paragraph 1. 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 subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46). By virtue of S.I. 1999/3141, functions of the Secretaries of State for Wales and Scotland previously exercisable in relation to England ceased to be so exercisable and were transferred to the Minister of Agriculture, Fisheries and Food. Functions of the Minister of Agriculture were transferred to the Secretary of State by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794). Section 74A was inserted by the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6. Sections 66(1) and 84 were amended by S.I. 2004/3254. Section 66(1) was also amended by S.I. 2010/2280.

⁽³⁾ S.I. 2000/656.

⁽⁴⁾ 1972 c.68.

⁽⁵⁾ S.I. 1972/1811, amended by S.I. 2202/794.

⁽⁶⁾ S.I. 1991/755.

⁽⁷⁾ S.I. 1999/2027.

⁽⁸⁾ S.I. 2003/2901.

European Food Safety Authority and laying down procedures in matters of food safety⁽⁹⁾ or, in the case of provisions relating to feed for food-producing animals, of section 84 of the Agriculture Act 1970.

Title, application and commencement

These Regulations may be cited as the Animal Feed (Basic Safety Standards) (England) Regulations 2018, apply in relation to England only, and come into force on [XXXX 2018].

Interpretation

—(1) In these Regulations—

“the Directive” means Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom⁽¹⁰⁾;

“feed authority” means an authority identified in section 67(1) of the Agriculture Act 1970 as having the duty to enforce Part IV of that Act within its area or district as the case may be;

“radioactive substance” means any substance that contains one or more radionuclides the activity or activity concentration of which cannot be disregarded from a radiation protection point of view;

“Regulation 178/ 2002” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety; and

“ Regulation 767/2009” means Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC⁽¹¹⁾.

For the purpose of these Regulations, “importation” and “exportation” have the same meanings as they have for the purposes of the Customs and Excise Management Act 1979⁽¹²⁾, and “import” and “export” shall be construed accordingly.

Except to the extent that paragraph (1) and (2) provide otherwise, any expression used in these Regulations, Regulation 178/2002, Regulation 767/2009 and in the Directive has the meaning in these Regulations that it bears in Regulation 178/2002, Regulation 767/2009 and in the Directive, as the case may be.

Prohibition of practices

No person shall intentionally add a radioactive substance in the production of animal feed.

No person shall import or export any animal feed in respect of which a radioactive substance has been intentionally added in the production of that feed.

Offences and penalties

Any person who contravenes regulation 3 or regulation 4 is guilty of an offence and liable to the penalties referred to in section 74A(3) of the Agriculture Act 1970⁽¹³⁾.

Enforcement

It is the duty of a feed authority within its area to enforce these Regulations.

Amendment of the Animal Feed (Hygiene, Sampling etc. and Enforcement)(England) Regulations 2015

—(2) The Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015⁽¹⁴⁾ are amended in accordance with paragraph (2).

⁽⁹⁾ OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 652/2014 of the European Parliament and of the Council (OJ No. L189, 27.6.2014, p.1).

⁽¹⁰⁾ OJ No. L13, 17.1.2014, p. 1.

⁽¹¹⁾ OJ No. L229, 1.9.2009, p. 1. This Regulation was last amended by Commission Regulation (EC) No. 939/2010 (OJ No. L277, 21.10.2010, p. 4).

⁽¹²⁾ 1979 c. 2.

⁽¹³⁾ 1970 c. 40. Section 74A(3) was inserted by section 4 of, and paragraph 6 of Schedule 4 to, the European Communities Act 1972.

In Schedule 1 (specified feed law), after the entry for “The Animal Feed (Hygiene, Sampling etc. and Enforcement)(England) Regulations 2015”, insert—

“The Animal Feed (Basic Safety Standards) (England) Regulations 2018”.

Amendment of the Official Feed and Food Controls (England) Regulations 2009

—(3) The Official Feed and Food Controls (England) Regulations 2009⁽¹⁵⁾ are amended in accordance with paragraph (2).

In Schedule 2 (definition of relevant feed law), after paragraph (f), insert the following paragraph—

“(g) the Animal Feed (Basic Safety Standards) (England) Regulations 2018.”.

Review

—(4) The Food Standards Agency must from time to time —
carry out a review of the operation and effect of regulations 3 to 6 inclusive;
set out the conclusions of the review in a report; and
publish the report.

In carrying out the review the Food Standards Agency must, so far as is reasonable, have regard to how the EU instruments implemented or enforced and executed by these Regulations are implemented or executed and enforced in other Member States.

The report must in particular—

set out the objectives intended to be achieved by the regulatory system established by these Regulations;
assess the extent to which those objectives are achieved; and
assess whether those objectives remain appropriate and, if they do, the extent to which they could be achieved with a system that imposes less regulation.

The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Health

Minister's name
Parliamentary Under-Secretary of State
Department of Health

Date

⁽¹⁴⁾ S.I. 2015/454

⁽¹⁵⁾ S.I. 2009/3255, amended by S.I. 2010/2280, S.I. 2010/2503, S.I. 2011/136, S.I. 2013/264, S.I. 2013/2996, S.I. 2014/2748 and S.I. 2015/454.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for [..]

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Animal Feed Branch of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

Annex C

Interested Parties

Organisation

Red Tractor Assured Food Standards
Agricultural Industries Confederation
British Equestrian Trade Association
British Association of Feed
Supplement and Additive
Manufacturers
Brewing, Food & Beverage Industry
Association
British Poultry Council
Dairy UK
British Egg Industry Council
Diageo
Food and Drink Federation
Purina Nestle
Nestle UK
UK Fats and Oils Association
Grain and Feed Trade Association
National Association of Agricultural
Contractors
National Association of British and Irish
Millers
Royal Association of British Dairy
Farmers
NFU
NOAH
AHDA
National Pig Association
Kiwa PAI
SAI Global
Pet Food Manufacturers Association
Mars Petcare
The Seed Crushers and Oil
Processors Association
UKFFPA
Adams and Green
British Retailer Consortium
AC Shropshire
RC Feed
AB Agri
Public Analyst Services
FABRAUK

Consumer Representative on ACAF

Government Bodies

VMD

APHA

FERA