

**Title: The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018**

**CONSULTATION SUMMARY PAGE**

<b>Date launched:</b>	<b>23 August 2017</b>	<b>Closing date:</b>	<b>04 October 2017</b>
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<p><b>Who will this consultation be of most interest to?</b>  <b>Producers and users of animal feedingstuffs.</b>  <b>Enforcement officers responsible for the enforcement of the Regulations in this sector.</b></p>
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<p><b>What is the subject of this consultation?</b></p> <p>The making of Regulations to:</p> <ul style="list-style-type: none"> <li>· prohibit the intentional addition of radioactive substances to animal feedingstuffs</li> <li>· prohibit the import or export of animal feedingstuffs to which radioactive substances have been intentionally added</li> <li>· provide the accompanying enforcement powers to deal with non-compliance.</li> </ul>
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<p><b>What is the purpose of this consultation?</b></p> <p>To give stakeholders the opportunity to comment on the draft Regulations and to find out if our assumption that the Regulations will be cost-neutral is correct.</p>
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<p><b>Responses to this consultation should be sent to:</b></p>	
<p><b>John Hirst</b>  <b>Regulatory Policy Team (Wales)</b></p> <p><b>FOOD STANDARDS AGENCY</b>  <b>Tel: 02920 678940</b></p>	<p><b>11<sup>th</sup> Floor, Southgate House</b>  <b>Wood Street</b>  <b>Cardiff</b>  <b>CF10 1EW</b>  <b>Email: <a href="mailto:Food.Policy.Wales@foodstandards.gsi.gov.uk">Food.Policy.Wales@foodstandards.gsi.gov.uk</a></b></p>

<b>Impact Assessment included?</b>	<b>No</b>	<b>Regulations are considered to be cost-neutral</b>
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# The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

## Key proposals:

- **Prohibit the intentional addition of radioactive substances to animal feedingstuffs**
- **Prohibit the import or export of animal feedingstuffs to which radioactive substances have been intentionally added**
- **Allow the use of Improvement Notices for non-compliance**
- **Allow for direct prosecution, where appropriate, for non-compliance**
- **Allow for seizure and detention of affected animal feedingstuffs**
- **Allow for powers of entry to commercial premises for enforcement officers**

**Prohibit the intentional addition of radioactive substances to animal feedingstuffs  
and**

**Prohibit the import or export of animal feedingstuffs to which radioactive substances  
have been intentionally added**

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 feeding stuffs, and cosmetics, and shall prohibit the import or export of such products.”*

2. Earlier 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 feeding stuffs.

Q1. Do you agree with the proposals to prohibit the intentional addition of radioactive substances to animal feedingstuffs and prohibit the import or export of animal feedingstuffs to which radioactive substances have been intentionally added?

**Allow the use of Improvement Notices for non-compliance**

3. The general approach to the enforcement of food and feed law is risk-based and consistent with good practice. Where there is not a significant risk to human health, enforcement officers work with businesses in their area to ensure compliance with

regulatory requirements. They do this through visits the timing of which is determined on a risk basis as well as through collaborative relationships under the primary authority principles<sup>1</sup>. Generally, enforcement action is only pursued where informal action has been unsuccessful or in the case of serious and/or persistent breaches of the statutory requirements.

4. In the food and feed sector, the use of Improvement Notices is a key enforcement tool and the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 contain provision for Improvement Notices. This means that, where an Authorised Officer has reasonable grounds for believing that a person has not complied with particular regulations, he or she may serve an Improvement Notice.
5. The notice should:
  - state the officer's grounds for believing that a person is failing to comply with the regulations;
  - specify the matters which constitute a person's failure so to comply;
  - specify the measures which, in the officer's opinion, a person must take in order to secure compliance;
  - require a person to take those measures, or measures which are at least equivalent to them, within such period as may be specified in the notice.
6. Appeals against the content of an Improvement Notice in Wales are heard by the Magistrates' Court.
7. It is proposed to allow the issuing of improvement notices for non-compliance with these Regulations.
8. The improvement notices would be used as part of the hierarchy of enforcement when informal measures are no longer appropriate and the contravention or issue should be elevated to formal enforcement action.
9. However, to ensure an effective, proportionate and dissuasive enforcement system, any failure to comply with an Improvement Notice within a specified time period (where there has been no successful appeal) is a criminal offence.

Q2. Do you agree with the proposals to allow for Improvement Notices for non-compliance?
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**Allow for direct prosecution, where appropriate, for non-compliance.**

10. Radioactive substances in animal feed have the potential to severely affect animal health and, if not detected when the animal is slaughtered and they get into the food chain, have a serious effect on human health.
11. Due to the possibility of serious harm either to animals or humans, as well as the deliberate nature of any non-compliance, it is felt that direct prosecution for non-compliance may be appropriate, depending on the circumstances of the particular non-compliance.

<sup>1</sup> <http://www.food.gov.uk/enforcement/enforcework/compliance/primary-auth>

Q3. Do you agree with the proposals to allow for direct prosecution for non-compliance?

### **Allow for seizure and detention of affected animal feedingstuffs.**

12. It is important that, where it has been identified that the Regulations have been breached, any product to which radioactive material has been intentionally added is prevented from being placed on the market.
13. For this reason, it is considered that a power is required to allow enforcement officers to seize and detain affected animal feedingstuffs.

Q4. Do you agree with the proposals to allow seizure and detention of affected animal feedingstuffs?

### **Allow for powers of entry to commercial premises for enforcement officers**

14. Due to the potentially harmful nature of any animal feedingstuffs to which radioactive material has been intentionally added, it is considered that enforcement officers should have the power to enter premises in order to ensure compliance with the Regulations, and to act on any non-compliances.

Q5. Do you agree with the proposals to allow powers of entry for enforcement officers?

### **Impact Assessment**

15. The FSA 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.
16. We do not believe that the feed industry currently adds radioactive materials to animal feeding stuff at any stage.
17. We recently wrote to key stakeholders, both enforcement and industry requesting information on any activity that would be affected by the proposed Regulations, and this engagement has not provided any information to challenge our belief.
18. Enforcement sanctions will be consistent with those provided to enforcement authorities by existing animal feed Regulations.
19. Therefore it is considered that an Impact Assessment will not be required.

Q6. Do you agree that the proposals will not cause additional costs to enforcement authorities or the feed industry?

### **Responses**

20. Responses are required by close 04 October 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).

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

Yours Sincerely,

John Hirst  
Regulatory Policy Team  
Food Standards Agency Wales

Enclosed

Annex A: Standard Consultation Information  
Annex B: Draft Statutory Instrument  
Annex C: List of interested parties

**Questions asked in this consultation:**

**Q1. Do you agree with the proposals to prohibit the intentional addition of radioactive substances to animal feedingstuffs and prohibit the import or export of animal feedingstuffs to which radioactive substances have been intentionally added?**

**Q2. Do you agree with the proposals to allow for Improvement Notices for non-compliance?**

**Q3. Do you agree with the proposals to allow for direct prosecution for non-compliance?**

**Q4. Do you agree with the proposals to allow seizure and detention of affected animal feedingstuffs?**

**Q5. Do you agree with the proposals to allow powers of entry for enforcement officers?**

**Q6. Do you agree that the proposals will not cause additional costs to enforcement authorities or the feed industry?**

**Q7: Do you consider that the policy/proposed Regulations will have an effect on opportunities for use of the Welsh language?**

**Q8: We would like to know your views on the effects that the proposed Regulations would have on the Welsh language, specifically on:**

- i. opportunities for people to use Welsh and**
- ii. on treating the Welsh language no less favourably than English.**

**Q12: What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?**

## **Annex A – 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. A Welsh version of the consultation package can be found at [www.food.gov.uk](http://www.food.gov.uk)

7. Please contact us if you require this consultation in an alternative format such as Braille or large print.

8. This consultation has been prepared in accordance with HM Government consultation principles<sup>2</sup>.

<sup>2</sup> <http://www.bis.gov.uk/policies/bre/consultation-guidance>

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2017 No. (W.)**

**AGRICULTURE, WALES**

**The Animal Feed (Basic Safety  
Standards) (Wales) Regulations  
2018**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

**2017 No. (W.)**

**AGRICULTURE, WALES**

**The Animal Feed (Basic Safety  
Standards) (Wales) Regulations  
2018**

*Made* \*\*\*

*Laid before the National Assembly for Wales*  
\*\*\*

*Coming into force* \*\*\*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 66(1), 74A(1), 79 and 84 of the Agriculture Act 1970(1) and section 2(2) of the European Communities Act 1972(2).

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to feed produced for or fed to food-producing animals(3), measures in the veterinary and phytosanitary fields for the protection of public health(4) and measures in

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- (1) 1970 c. 40. Functions formerly exercisable by “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 section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 74A was inserted by paragraph 6 of Schedule 4 to the European Communities Act 1972 (c. 68). Section 84 was amended by S.I. 2004/3254.
- (2) 1972 c. 68.
- (3) S.I. 2005/1971. The functions conferred on the National Assembly for Wales by this designation are transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006. The designation does not extend to measures concerning feed containing medicinal products (including growth regulators) or medicinal products when destined for use in feed except provision concerning digestibility enhancers, gut flora stabilisers, or substances which favourably affect the environment.
- (4) S.I. 2008/1792.



relation to the common agricultural policy of the European Union<sup>(1)</sup>.

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 of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(2)</sup> or, in the case of provisions relating to feed for non food-producing animals, of section 84(1) of the Agriculture Act 1970.

### **Title, application and commencement**

**1.**—(1) The title of these Regulations is the Animal Feed (Basic Safety Standards) (Wales) Regulations 2018.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on \*\*\*.

### **Interpretation**

**2.**—(1) In these Regulations—

“feed authority” (*“awdurdod bwyd anifeiliaid”*) 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” (*“XX”*) means any substance that contains one or more radionuclides the activity concentration of which cannot be disregarded from a radiation protection point of view;

“Regulation 178/2002” (*“Rheoliad 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” (*“Rheoliad 767/2009”*) means Regulation (EC) No. 767/2009 of the

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- (1) S.I. 2010/2690. The designation does not extend to making provision in respect of feed that contains medicinal products destined for use in feed, except provision concerning substances that favourably affect the environment, digestibility enhancers, or gut flora stabilisers.
- (2) OJ No L 31, 1.2.2002, p 1, as last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ No L 189, 27.6.2014, p 1).

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/t4/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC(1).

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

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

### **Prohibition of practices**

**3.** No person may intentionally add a radioactive substance in the production of animal feed.

**4.** No person may 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**

**5.** Any person who contravenes regulation 3 or regulation 4 is guilty of an offence and liable on summary conviction to a fine or to imprisonment for a term not exceeding 3 month, or both.

### **Enforcement**

**6.** 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) (Wales) Regulations 2016**

**7.—(1)** The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016(2) are amended in accordance with paragraph (2).

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(1) OJ No L 229, 1.9.2009, p 1. This Regulation was last amended by Commission Regulation (EC) No 939/2010 (OJ No L 277, 21.10.2010, p 4).

(2) S.I. 2016/387 (W. 121).

(2) In Schedule 1 (specified feed law), after the entry for “The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016”, insert—

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

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

**8.**—(1) The Official Feed and Food Controls (Wales) Regulations 2009<sup>(1)</sup> are amended in accordance with paragraph (2).

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

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

*Name*

Minister for Social Services and Public Health under authority of the Cabinet Secretary for Health, Well-being and Sport, one of the Welsh Ministers

Date

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(1) S.I. 2009/3376 (W. 298).

# The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

## **List of consultees**

ADAS

Black Welsh Mountain Sheep Breeders' Association

Chuckling Goat

Dee Dairy

Dunbia

Farmers For Action

Farmers Union of Wales

Federation of Small Businesses

Hibu Cig Cymru

Innovis

Minton Treherne and Davies

National Farmers Union Wales

National Sheep Association

Welsh Food Alliance

Welsh Lamb and Beef Producers Ltd