

# **Feed Law**

## **Code of Practice (England)**

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**(Issued April 2014)**



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**Presented to Parliament pursuant to regulation 6(1) of the Official Feed and Food Controls (England) Regulations 2009**



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## Chapter 1 – Introduction

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This Code of Practice is issued under regulation 6 of the Official Feed and Food Controls Regulations<sup>1</sup> which empowers the Secretary of State to issue codes of practice concerning the execution and enforcement of feed law by Competent Authorities. The Code is directed at local authorities (Competent Authorities) responsible for the delivery of official controls for feed as specified in the Feed (Hygiene and Enforcement) (England) Regulations 2005, known in this document as the Hygiene Regulations.

European Regulation (EC) No 882/2004<sup>2</sup> on the official controls to ensure the verification of compliance with feed and food law sets out requirements with which Member States must comply when delivering feed controls. This Code explains how these requirements apply to Competent Authorities.

Competent Authorities must also have regard to the *Framework Agreement on Local Authority Food Law Enforcement*<sup>3</sup> (Framework Agreement), which reflects the requirements of this Code. The Framework Agreement is also consistent with the principles of the Enforcement Concordat and the Regulators Code under the Legislative and Regulatory Reform Act 2006.

Competent Authorities are required under the relevant official feed and food controls legislation to have regard to this Code when discharging their duties.

Competent Authorities that do not have regard to relevant provisions of this Code could find their decisions or actions challenged, and evidence gathered during a criminal investigation potentially being ruled inadmissible by a court.

In addition, the Food Standards Agency (FSA) can, after consulting with the Secretary of State, give a Competent Authority a direction requiring them to take any specified steps in order to comply with this Code.

If by complying with this Code, a Competent Authority considers that public health or food or feed safety is likely to be compromised, it must discuss the matter with the FSA at the earliest opportunity and before any decision is taken.

Competent Authorities have a statutory duty to enforce European harmonised legislation relating to feed throughout the feed chain, including controls on hygiene<sup>4</sup>, composition and labelling<sup>5</sup>, the presence of undesirable substances (contaminants<sup>6</sup>), and the use of additives<sup>7</sup>.

It is for individual feed business operators to ensure they comply with the requirements of feed law. The purpose of enforcement is to monitor compliance by feed business operators and ensure they comply with feed legislation. Every Competent Authority must discharge its duty to enforce feed legislation as effectively as possible.

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<sup>1</sup> The Official Feed and Food Controls (England) Regulations 2009 (with the equivalent in Scotland, Wales and Northern Ireland)

<sup>2</sup> Regulation (EC) No 882/2004 on the Official Controls to ensure verification of compliance with food and feed law

<sup>3</sup> The Framework Agreement on Official Feed and Food Controls by Local Authorities (April 2010).

<sup>4</sup> Requirements for Feed Hygiene – Regulation (EC) No. 1831/2003

<sup>5</sup> Composition and Labelling – Regulation (EC) No. 767/2009

<sup>6</sup> Controls on the Presence of Undesirable Substances in Feed – Directive (EC) No. 2002/32.

<sup>7</sup> The Use of Additives in Feed – Regulation (EC) No. 1831/2003



The effective discharge of this duty relies on authorised officers being familiar with the law they are appointed to enforce, this Code and other guidance, and seeking clarification when they are unclear.

The FSA will issue practice guidance and update existing guidance. Competent Authorities should take account of the content of such guidance, as well as any guidance issued by the European Commission.

This Code explains the approach to be taken by Competent Authorities in co-ordinating their delivery of official controls with other government agencies including the Veterinary Medicines Directorate and the Animal Health Veterinary Laboratory Agency.

The Code includes summaries of statutory provisions. The summaries must therefore be read in conjunction with, not as a substitute for the relevant legislation.

References to Chapters and Annexes are to the relevant parts of this Code unless stated otherwise. There will also be mention made throughout this Code to a separate Feed Practice Guidance Document (Practice Guidance).

There is a glossary at the end of the Code with definitions of terms used throughout this document.

## **Chapter 2 – Administration**

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### **2.1. Introduction**

Chapter 2 deals with the designation of Competent Authorities, operational delivery systems and the monitoring by Competent Authorities of their delivery of official controls.

#### **2.1.1 Designation of Competent Authorities by Central Competent Authorities for Feed<sup>8</sup>**

The Food Standards Agency has designated local authorities and the London Port Authority as Competent Authorities to deliver official controls for feed on those matters which are not the remit of Veterinary Medicines Directorate (VMD), the Animal Health and Veterinary Laboratory Agency (AHVLA).

The Department of Food and Rural Affairs (Defra) has designated the VMD as the competent authority responsible for enforcement of feed legislation relating to feeds which contain veterinary medicines or specified feed additives.

Defra has separately designated the AHVLA as the Competent Authority regulating the use of specified materials in animal feed which includes the ban on feeding animal proteins to ruminants and processed animal proteins to farmed animals, as implemented by the Transmissible Spongiform Encephalopathies Regulations.

AHVLA is also responsible for enforcing the Animal By-Products Regulations, together with local authorities.

#### **2.1.2 Delegation of Official Controls by a Competent Authority**

Competent Authorities responsible for the delegation of specific tasks to Control Bodies should provide the FSA with details of the Control Body and the tasks delegated to it. Delegation cannot include action where non-compliance is identified which must remain the responsibility of the Competent Authority.<sup>9</sup>

A Competent Authority may only delegate tasks to a Control Body if the requirements of Article 5 of the European Regulation 882/2004 on official control of feed and foods are met in full.

### **2.2 Impartiality, Quality and Consistency of Official Controls<sup>10</sup>**

Competent Authorities and their authorised officers must deliver a high quality of official controls which are consistent and must be free from conflicts of interest. In doing so the Competent Authority and its officers must apply the provisions given below.

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<sup>8</sup> Article 4.1 of Regulation (EC) No 882/ 2004

<sup>9</sup> Articles 5.1 and 54 of Regulation (EC) No 882/2004

<sup>10</sup> Article 4.4 of Regulation (E.C) No 882/2004

### **2.2.1 Delivery of Official Controls at all stages of production, distribution, and on the use of feed**

Competent Authorities must develop an effective, risk-based programme of controls<sup>11</sup> in line with this Code in their area which covers all parts of the feed chain including, where appropriate, controls on importers at points of entry, and on those food businesses placing surplus food or co-products<sup>12</sup> into the feed chain.

### **2.2.2 Avoidance of Conflicts of interest**

Staff carrying out official controls must be free from any conflict of interest<sup>13</sup>.

Competent Authorities must ensure their officers are aware of the potential conflicts of interest that can sometimes arise in an enforcement situation through the promotion of the Competent Authority's services.

Officers must not provide their own services, e.g. training, in their own time within the area of the Competent Authority that employs them.

Competent Authorities must ensure that potential or actual conflicts of interest do not arise as a result of Primary, Home or Originating Authority responsibilities and contracting in services for enforcement purposes.

Competent Authorities and their officers must avoid the exclusive promotion of the Competent Authority's services if other providers of those services exist in the area or the services are offered by a particular organisation. Training is an example of a Competent Authority service that is sometimes provided in competition with those supplied by other organisations.

Where a Competent Authority delegates enforcement to a Control Body it must obtain proof that the Control Body is impartial and free from any conflict of interest regarding the tasks delegated to it. This applies equally to temporary employees and contractor staff engaged in official controls.

### **2.2.3 Enforcement within local authority- run establishments**

The Competent Authority's Feed Law Enforcement Policy (see Chapter 5.) must detail the Competent Authority's arrangements for ensuring compliance with feed law in establishments where the Competent Authority is itself the feed business operator, and steps must be taken to ensure enforcement decisions are free from any conflict of interest.

Where any serious breach of feed law is detected in such an establishment this must be brought to the attention of the authority's Chief Executive without delay.

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<sup>11</sup> Article 3.1 Regulation (EC) No 882/2004

<sup>12</sup> Article 4.2 (a) Regulation (EC) No 882/2004

<sup>13</sup> Article 4.2 (b) and 4.4 Regulation (EC) No 882/2004

## **2.3 Appointment of an Agriculture Analyst<sup>14</sup>**

All Competent Authorities must appoint one or more Agriculture Analyst as required by 67(3) of the Agriculture Act 1970 who meets the minimum qualifications set out in regulation 5 of the Feed (Sampling and Analysis and Specified Undesirable Substances) Regulations 2010. The appointed analyst(s) must have the capacity for testing the range of samples and analytes required or have in place arrangements to have such testing carried out under their supervision as permitted by the regulation 30 of the Hygiene Regulations.

## **2.4 Facilities and Equipment<sup>15</sup>**

Competent Authorities must ensure they have appropriate equipment to undertake feed controls<sup>16</sup>, including an appropriately configured database<sup>17</sup>. Facilities and equipment may be shared with other Competent Authorities provided they will be readily available for use so as not to impede the effective delivery of official controls. More information on facilities and equipment can be found in the Practice Guidance.

Competent Authorities must also have facilities to receive Feed Alerts and Updates from the FSA by an electronic mail system that is acceptable to the FSA (see paragraph 4.3 in Chapter 4).

## **2.5 Powers to Carry out Official Controls<sup>18</sup>**

### **2.5.1 Feed (Hygiene and Enforcement) (England) Regulations 2005**

Regulation 24 of the Hygiene Regulations permits an authorised officer to enter premises to undertake official controls and take with them such other persons as they consider necessary. This would include, for example, an assistant or expert.

The same regulation permits:

- inspection of material which appears to be feed;
- inspection of packaging and labelling;
- inspection of plant and equipment, including vehicles;
- sampling of materials which appear to be feed; and
- Inspection of records including those held electronically.

Further powers relating to the seizure of feed and the prohibition of certain activities and the suspension, revocation of registered and approved establishments are also contained in the Hygiene Regulations. More information on the use and exercise of these powers can be found in the Practice Guidance.

### **2.5.2 Official Feed and Food Control Regulations 2009**

Regulation 18 of these Regulations contains further powers which are applicable to the official control of feed. These powers are separate and in addition to those given above and mainly concern the monitoring of official control bodies and should be read in conjunction with Regulation 17(1).

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<sup>14</sup> Article 4.2 (c) of Regulation (EC) No 882/2004

<sup>15</sup> Article 4.2 (d) of Regulation (EC) No 882/2004

<sup>16</sup> Article 4.2 (d) of Regulation (EC) No 882/2004

<sup>17</sup> Framework Agreement. on Official Feed and Food Controls by Local Authorities

<sup>18</sup> Article 4.2 (e) of Regulation (EC) No 882/2004

Regulation 31 permits appropriately authorised officers of Competent Authorities to use the powers set out in Articles 18 to 21 and 24 of the EU Regulation 882/2004 on the Official Control of Feed and Feed.

More information on the use and exercise of these powers can be found in the Practice Guidance.

## **2.6 Authorisation of Officers**

Authorisation of officers to carry out official controls must be carried out in accordance with a documented procedure and be recorded.

Authorisation of officers must be in writing, either generally or specifically to act in matters arising under relevant national and EU Regulations on feed. However, officers performing duties under the Hygiene Regulation and the Official Feed and Food Controls Regulations, need to be separately authorised to deal with matters arising under those particular Regulations. With regard to other specific feed Regulations made under the European Communities Act 1972, where appropriate, relevant officers should be specially authorised for each of those Regulations.

Competent Authorities should ensure that they authorise officers in accordance with their documented procedure and that they are:

- suitably qualified;
- experienced; and
- competent to carry out the range of tasks and duties they are required to perform.

Officers must meet the qualification and competency requirements set out in Chapter 3 of this Code as they apply to the duties they are required to undertake.

## **2.7 Operating in another Area**

A Competent Authority should normally only deal with matters arising in its area of jurisdiction unless it has the consent of another Competent Authority in whose area it wishes to undertake enforcement action. Officers may be appointed to enforce feed law requirements by more than one Competent Authority. This would permit officers to enforce feed law in those areas in which they had been given authorisation by the relevant feed authorities.

When exercising agreed powers in another area, authorised officers must liaise with the relevant Competent Authority for the area they are visiting, in advance wherever possible. If it is not possible to give prior notice to the Competent Authority in which the business is located, for example in an emergency or out of hours, the Competent Authority must be notified as soon as possible.

Authorised officers must not give advice or recommend changes to a feed business operator's systems or procedures in another area unless this is part of their authorisation or agreement with the Competent Authority in whose area the business is based. The Competent Authority for the area must be informed of the outcome of any visit to its area by officers from another Competent Authority, whether this involves the use of powers or not and includes any advice or requirement to change procedures given to the feed business operator.

## **2.8 Contingency Plans<sup>19</sup>**

Competent Authorities must set up and implement a documented procedure for dealing with feed incidents<sup>20</sup> that are identified within their area – see Chapter 4 of this Code for more information on incidents. Where incidents have implications for other Competent Authorities or agencies these procedures must detail how relevant agencies/Competent Authorities will be brought together at short notice to implement urgent control measures and how a lead authority will be identified where necessary.

## **2.9 Feed Business Establishment Records<sup>21</sup>**

### **2.9.1 Information Requirement<sup>22</sup>**

The Competent Authority shall maintain up to date accurate records on all feed establishments in accordance with this Code, Practice Guidance and centrally issued guidance. These records should include the information required in Chapter 5 of this Code.

The Competent Authority's establishment record files, which may be computer based, must be updated after each official control and must include the information as required and set out in the Practice Guidance.

Information on the retention of documents can be found in the Practice Guidance.

### **2.9.2 Reports following an Official Control**

The outcome of an inspection or audit must always be reported in writing to the feed business operator either at the conclusion of the official control or shortly thereafter, even if the outcome was satisfactory. Reports could include reference to checks on compliance with other legislative requirements carried out on the same occasion, e.g. food law, although matters relating to feed law must be clearly differentiated from other matters. Where there is a Primary Authority inspection plan in place in relation to the feed business operator, any report required by the inspection plan must be provided to the primary authority.<sup>23</sup>

Results of analysis on samples must similarly be reported to the feed business operator. The outcome of other official controls e.g. inspection of consignments at points of entry must also be reported to the feed business operator responsible for the consignment unless the check was of a monitoring nature designed to decide if further controls were required. e.g. manifest checks.

### **2.9.3 Registration and Approval of Feed Business Establishments<sup>24</sup>**

Competent Authorities must maintain an up to date data-base of approved and registered feed business establishments in their respective areas. Competent Authorities are required to establish procedures for feed business operators to follow when applying for the registration of their establishments. Some of the formalities are set out in Part 2 of the Hygiene Regulations.

Competent Authorities are responsible for approvals at establishments where activities listed in Article 10(1) (a) of Regulation (EC)183/2005 are undertaken. Responsibility for approval at an

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<sup>19</sup> Article 4.2 (f) Regulation (EC) No 882/2004

<sup>20</sup> Framework Agreement on official Feed and Food Controls by Local Authorities – standard and paragraph 14

<sup>21</sup> Article 9 and 31 Regulation (EC) No 882/2004

<sup>22</sup> Framework Agreement on official Feed and Food Controls by Local Authorities – standard and paragraph 16

<sup>23</sup> Regulatory Enforcement and Sanctions Act 2008 (as amended) section 30(7E)

<sup>24</sup> Article 31 of Regulation (EC) No 882/2004 and Articles 9 to 19 of Regulation (EC) 183/2005

establishment relating to the activity of the manufacture of a premixture and feeding stuffs containing a medicinal substance or a specified feed additive e.g. coccidiostats, histomonostats and growth promoters as listed in Article 10(1) (b) and (c) falls to the VMD in Great Britain. This is regardless of whether vitamin A or D, or the trace elements, copper or selenium have been incorporated in the feed or other activities are carried out at the establishment where Competent Authorities have responsibility for approval or official controls.

Further information on the approval of feed business establishments and the respective roles of Competent Authorities and VMD can be found in the MoU between the two referred to in 4.1.2 in Chapter 4.

Further guidance on the approval of feed business establishments can be found in the Practice Guidance.

## **2.10 Monitoring of Official Controls**

### **2.10.1 Internal Monitoring<sup>25</sup>**

Competent Authorities must ensure that official controls are carried out to a consistently high standard, and that the planned programme of controls is being maintained.

### **2.10.2 Documented Monitoring Procedures**

Competent Authorities must maintain documented procedures for monitoring progress of the planned programme of official controls and the quality and consistency of controls undertaken by authorised officers to ensure they are carried out competently<sup>26</sup>. The procedure will also include steps to be taken to address any performance which does not meet expected standards. This applies equally to temporary employees and contractor staff engaged in official controls.

### **2.10.3 Internal Monitoring System Requirement**

The monitoring system must include measures to assess:

- adherence to the Competent Authority's planned programme of official feed controls;
- compliance with this Code of Practice, the Practice Guidance and other FSA guidance;
- the consistent application of the Animal Feed Law Scoring system;
- appropriate use of relevant inspection forms;
- compliance with internal procedures, policies and the Competent Authority's Enforcement Policy;
- that the action taken by officers during and following an official control is appropriate and consistent within that Competent Authority's procedures and policies and also with FSA and/or LGA guidance;
- that officers are aware of and have access to other published EU, national and industry codes of practice relevant to the businesses within the area of the Competent Authority; and
- how the Authority will amend its programme to allow for in-year changes, such as newly opened establishments, establishments found to be closed, and establishments for which the risk-rating is changed.

Further information on appropriate monitoring can be found in the Practice Guidance.

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<sup>25</sup> Article 4.6 of Regulation (EC) No 882/2004

<sup>26</sup> Framework Agreement on Official Feed and Food Controls by Local Authorities paragraph 19

#### **2.10.4 Auditing of Control Bodies by Competent Authorities<sup>27</sup>**

Where a Competent Authority has delegated control tasks to a Control Body, the Competent Authority will carry out audits as necessary. If these audits show agreed tasks are not carried effectively and efficiently then they will withdraw delegation if appropriate remedial action is not taken in a timely manner.

#### **2.10.5 Enforcement Activity Data<sup>28</sup>**

The Competent Authority's database must also record the details of establishments, risk-rating score, inspections/audits, sampling and enforcement actions. This data will inform official controls undertaken by officers, support Competent Authorities monitoring of its delivery of official controls and provide the data which is required by the FSA on an annual basis to enable it to report enforcement and sampling activity in the UK<sup>29</sup>.

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<sup>27</sup> Article 5.2 (e) and 5.3 of Regulation (EC) No 882/2004

<sup>28</sup> Article 4.6 Regulation of (EC) No 882/2004

<sup>29</sup> Article 44 Regulation of (EC) No 882/2004



## Chapter 3 – Competency of Officers

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### 3.1 Introduction

This chapter concerns the competency of officers who are authorised to carry out official controls to verify compliance with feed law<sup>30</sup>.

### 3.2 Application of Qualification and Competency Requirements

This chapter does not apply to staff who have only indirect managerial responsibility for the Competent Authority's feed law enforcement service such as Chief Executives, Directors, or Chief Officers, or to those employed in a support role such as administrative and legal staff.

If a Competent Authority needs to engage expertise in an area listed in Chapter I of Annex II to Regulation 882/2004, it must ensure that any expert it engages has appropriate competency and experience in the area for which the expertise is required.

Minimum competency requirements that officers must demonstrate before they can be authorised to undertake specific official feed control duties are set out in **Annex 1** to this document.

To be authorised to undertake a specific type of official control duty or fill a particular role an officer will be required to demonstrate that they meet all the requirements of the relevant statement of competence unless this is otherwise stated in **Annex 1**.

Authorisation of an officer to undertake a specific type of official feed control duty or role can only occur once the Competent Authority is content that the officer meets and can evidence that they meet the appropriate competency requirements set out in **Annex 1** and any qualification requirement mentioned in 3.3 below.

Officers responsible for official controls on feed must be:

- competent to carry out the range of tasks and duties they are required to perform; and
- able to co-operate with other Competent Authorities and agencies involved in the delivery of controls feed and food controls<sup>31</sup>.

This applies equally to temporary employees and contractor staff engaged in official controls.

Competent Authorities must not authorise new officers, or extend the duties of currently employed officers, unless they are competent in accordance with the relevant provisions of this Chapter.

Competent Authorities must keep records of the relevant qualifications and training undertaken by their authorised officers, including temporary staff.

Officers who undertake alternative enforcement activities (AES) will not be required to meet the qualification or competency requirements set out in Paragraph 3.3 or Annex 1 provided their work is:

- overseen by a Lead Feed Officer (or an officer who holds the qualification referred to in paragraph 3.3 and meets the relevant competency requirement in Annex 1 for the establishment subject to AES); and

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<sup>30</sup> Article 6 Regulation (EC) No 882/2004

<sup>31</sup> Article 6 (c) Regulation (EC) No 882/2004

- they are not involved in assessing compliance, giving advice on compliance with feed law or using enforcement powers.

### **3.3 Qualification**

All officers involved in the assessment of compliance with feed law (other than those only undertaking sampling of feed, official controls at primary production or at points of entry, including the use of any associated enforcement powers) are required to hold an appropriate qualification. Lead Feed Officers must also hold an appropriate qualification before they can be appointed to the role.

The Practice Guidance includes the list of appropriate qualifications which are required for authorisation in the circumstances mentioned above.

Officers involved in sampling of feed, official controls at primary production or at points of entry must meet the competency requirements in Annex 1. The use of enforcement sanctions by officers who do not hold a qualification must be reviewed as soon as possible by the Lead Feed Officer or another appropriately qualified and competent officer.

Nationals from other countries in the European Economic Area<sup>32</sup> have a right under EU law to the recognition of qualifications and experience gained outside the UK in those countries. This situation may arise if an individual seeks employment in the UK as feed law enforcement officer, having acquired relevant qualifications and work experience in their home country. Competent Authorities must accept suitable non-UK qualifications and experience in order to give effect to these EU rights. The equivalence of non-UK qualifications will be determined by organisations recognised by the Department of Business, Innovation and Skills (BIS) for the purposes of Directive 89/48/EEC (the Mutual Recognition of Professional Qualifications)<sup>33</sup>. Competent Authorities must make enquiries with the relevant professional and awarding bodies if they have any doubts in this area before confirming an appointment.

### **3.4 Training**

Competent Authorities must ensure that authorised officers receive relevant on-going training to ensure they remain fully compliant. The training programme in respect of any authorised officer should be informed by and address any areas identified where the officer's competence falls short of that required to perform their current role or to extend it to new areas of activity. Officers should apply all training received as part of their official feed control duties as soon as possible to reinforce the knowledge gained.

### **3.5 On-going Continuing Professional Development (CPD) Requirements**

CPD is the means by which all authorised officers maintain, improve and broaden their knowledge and skills, and develop the personal qualities and competencies required to undertake their feed law enforcement role. Guidance on the different ways in which officers can undertake CPD and what constitutes CPD can be found in the Practice Guidance.

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<sup>32</sup> EU member states (other than Croatia) including Norway, Iceland and Liechtenstein

<sup>33</sup> Council Directive 89/48/EEC on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration. *Official Journal L19, 24/01/1989, p16-23*

The FSA recognises that officers also need to maintain competency in other professional areas but requires officers to demonstrate that they have undertaken feed law enforcement related CPD. This CPD can include topics common to other areas of enforcement e.g. investigatory skills.

Competent Authorities must review the training needs and CPD requirements of their officers on an annual basis where the required level and hours will be agreed. The minimum number of CPD hours should be 10 hours per year based on the principles of continuing professional development.

### **3.6 Officers Returning to Feed Law Enforcement**

Officers whose knowledge or practical experience of feed law enforcement is out of date must receive revision training supervised by the Lead Feed Officer or another experienced feed law enforcement officer. The extent of the revision training will vary according to the previous experience of the officer and the period that the officer has not been undertaking feed law enforcement duties. The revision training must address any deficiencies highlighted where the officer fails to meet the competences set out in the competence requirements applicable to their authorisation.

Officers who are newly qualified or are returning to feed law enforcement duties after an absence of more than three years, must be subject to a period of structured training including supervised inspections until the competent authority is satisfied that the officer has addressed any identified deficiencies against the competence requirements relevant to the officer's authorisation.

### **3.7 Lead Feed Officer Requirements**

Competent Authorities with responsibility for the enforcement of feed law must appoint a suitably competent and experienced Lead Feed Officer to take responsibility for operational management of feed law matters.

The appointed Lead Feed Officer must:

- have a good knowledge and understanding of the nature and type of feed establishments that operate in the authority's area;
- understand the common hazards and risks associated with the feed processes and technologies in operation at these establishments;
- be able to apply appropriate control measures, including enforcement sanctions;
- apply the requirements of this Code;
- be involved in the assessment of other officers competency; and
- comply with the competency requirements for Lead Feed Officers in Annex 1.

A Competent Authority's Lead Feed Officer may be an officer employed by another authority provided they meet the necessary competency requirements for the area or areas to which they have been appointed as Lead Feed Officer. This will facilitate regional working and sharing of knowledge. This will be of particular benefit to Competent Authorities with low numbers of feed business operators in their area.

## Chapter 4 – Communications

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### 4. Introduction

Chapter 4 deals with the effective and efficient co-ordination of official controls (including management of feed incidents) between Competent Authorities, Control Bodies, other government departments responsible for feed controls and co-operation between Member States.

#### 4.1 Co-ordination of Official Controls<sup>34</sup>

##### 4.1.1 Local/Regional Liaison<sup>35</sup>

Lead Feed Officers from Competent Authorities must ensure effective day-to-day liaison arrangements are in place between their respective authorities, control bodies and other government departments responsible for official controls on feed and are documented and operating satisfactorily. Competent Authorities should be represented at an appropriate level of experience, normally by the relevant Lead Feed Officer, at relevant meetings of regional feed liaison groups to help maintain effective and efficient delivery of controls, cooperation and consistency of enforcement.

Liaison groups should include appropriate representation from a Competent Authority's agricultural analyst and other control bodies as relevant. Representation from the VMD and AHVLA should also be sought to share intelligence and avoid duplication of enforcement. Attendance by other agencies, experts and specialists should be considered as the need arises.

Matters of legal interpretation and consistency should be discussed with colleagues in the appropriate regional feed liaison group and the primary, home or originating authority if appropriate. Competent Authorities must avoid taking unilateral decisions on interpretations of legislative requirements outside of current guidance or advice without seeking the views of the FSA.

Groups of Primary or Home Authorities serving feed businesses trading in the same sector of the industry should undertake regular liaison to ensure that the advice given across a sector is consistent. This can be undertaken as part of regional or national liaison meetings as appropriate to the sector.

##### 4.1.2 Liaison on Registration/Approval

Individual Competent Authorities must liaise with other Competent Authorities responsible for feed and food controls to ensure that their registers of feed business establishments are both complete and accurate. This includes liaison with those Competent Authorities not responsible for official feed controls but which are responsible for keeping registers of food business establishments under Article 6(2) of Regulation (EC) No 853/2004. Regular liaison must also take place with officers of VMD and AHVLA about identification of feed business establishments in their area/region.

Competent Authorities must pass on information they receive which indicates a change in the operations and or ownership of a feed business establishment, and information on any withdrawal, suspension or reinstatement of an establishment's approval, to other relevant Competent Authorities, including VMD and AHVLA as appropriate, at the earliest opportunity.

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<sup>34</sup> Article 4.3 Regulation (EC) No 882/2004

<sup>35</sup> Framework Agreement on official Feed and Food Controls by Local Authorities– standard and paragraph 18

Competent Authorities receiving initial requests for approval of a feed establishment under Article 10 of Regulation 1831/2003 should supply this information to VMD where the authority has information that would suggest the establishment is involved in the use, handling or incorporation of veterinary medicine/specified products. This is to facilitate liaison on appropriate inspection of the establishment and the issuing of approval numbers.

In some feed establishments both local authorities and the VMD will have responsibility for official controls at that establishment. The memorandum of understanding (MoU) between National Agricultural Panel and VMD sets out agreed procedures to be followed where such premises require separate approval/registration by both VMD and the local authority. More information is available in the Practice Guidance.

## **4.2 Home/Primary Authority<sup>36</sup>**

### **4.2.1 Home Authority Principle**

The FSA endorses the Home Authority Principle<sup>37</sup>. Competent Authorities must, where possible, adopt and implement its provisions.

Competent Authorities considering giving advice or taking enforcement action in relation to feed businesses that have a Home Authority arrangement should consider whether they need to contact the Home Authority first. This would normally be necessary, for example, where the advice or enforcement action relates to centrally agreed policies or procedures of a feed business. It may not be necessary, however, where such action relates to matters of an exclusively local nature.

### **4.2.2 Primary Authority**

The statutory framework for the Primary Authority scheme is set out in the Regulatory Enforcement and Sanctions Act 2008.

The FSA endorses the Primary Authority scheme<sup>38</sup> to deliver consistency between Competent Authorities and avoid unnecessary duplication of regulatory effort.

In this scheme a local authority is nominated a 'Primary Authority' for a business by the Secretary of State in relation to specified areas of regulation. Once nominated, the Primary Authority has certain statutory functions and local authorities that regulate the business must do so in accordance with the provisions of the scheme.

The Primary Authority may issue assured advice to the business or to other Competent Authorities and may also produce an inspection plan which other Competent Authorities must follow, unless there has been prior consent from the Primary Authority to an alternative approach.

Where a Competent Authority has concerns about the compliance of a business that has a Primary Authority partnership, it should discuss the issue with the Primary Authority at an early stage if enforcement is envisaged. There is a statutory requirement for enforcing authorities to notify the Primary Authority of any proposed enforcement action.

Where actions of a business are potentially subject to enforcement action by a Competent Authority, the Primary Authority will advise on whether relevant assured advice has been given, and whether

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<sup>36</sup> Framework Agreement on official Feed and Food Controls by Local Authorities– standard and paragraph 9

<sup>37</sup> See Joint Statement of Commitment (JSOC) signed by the Better Regulation Delivery Office (BRDO, formerly the Local Better Regulation Office), the Trading Standards Institute (TSI) and the Chartered Institute of Environmental Health (CIEH), in June 2011

<sup>38</sup> Framework Agreement on official Feed and Food Controls by Local Authorities– standard and paragraph 9

the proposed action is consistent with that advice. Where the proposed action would be inconsistent with advice that has been given, the Primary Authority will advise against the action being taken.

In circumstances where immediate action is required in order to prevent harm, or other specified circumstances<sup>39</sup>, the requirement to notify proposed enforcement action does not apply and the enforcement action must be notified retrospectively.

### **4.3 Managing Incidents and Alerts<sup>40</sup>**

#### **4.3.1 Feed Incidents**

When a Competent Authority becomes aware of a feed hazard it must take action to protect public and animal health at the earliest opportunity and in any event by the next working day, including, if necessary, detaining or seizing the feed concerned if it is located within the Competent Authority's area or liaising with the appropriate Competent Authority to ensure this happens where necessary.

Competent Authorities must also consider the use of other powers under relevant feed law as appropriate, relevant to the circumstances involved.

Once a feed hazard has been identified, the Competent Authority must immediately carry out an assessment to determine the likely scale, extent and severity of the risk to public health or safety of the hazard, involving other agencies as appropriate. These other agencies might include primary, home, originating and neighbouring authorities and Agriculture Analysts, as necessary. Further information on the assessment of feed hazards and their categorisation is provided in the Practice Guidance for feed.

Where a Competent Authority becomes aware that a feed business operator in their area has withdrawn or recalled feed from the market in accordance with Articles 15 and 20 of Regulation 178/2002<sup>41</sup>, due to non-compliance with a feed safety requirement, the Competent Authority must confirm that the FSA is also aware of this incident.

Responsibility for action at a local level remains with the Competent Authority to take the required enforcement action to deal with the hazard unless and until the FSA advises the Competent Authority otherwise.

Feed incidents that are contraventions of feed law, but not feed hazards, should normally be resolved by the Competent Authority and the feed business operator, through the primary, home or originating authority if appropriate.

In the event of a localised feed hazard, the Competent Authority could issue a local press statement to alert the public to the hazard. The relevant feed business operators must be consulted before the identity of a business or branded feed is discussed with, or released to, the media. Such media releases must be sent to the FSA without delay. The Competent Authority must notify the FSA immediately if the feed business operator raises objections to the release of such information.

#### **4.3.2 Responding to Feed Alerts**

Competent Authorities must ensure that their documented procedure for dealing with feed safety incidents includes the effective response to Feed Alerts issued by the FSA.

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<sup>39</sup> As defined in secondary legislation under the Regulatory Enforcement and Sanctions Act 2008

<sup>40</sup> Article 13.2 (c) Regulation (EC) No 882/2004

<sup>41</sup> Regulation (EC) No 178/2002 laying down general principles of food law



These procedures must refer to the systems/facilities by which the Competent Authority ensures that Feed Alerts can be responded to outside normal working hours.

#### **4.3.3 Action by Competent Authorities on Receiving Feed Alerts**

Competent Authorities must ensure that any action specified by the FSA in a Feed Alert is undertaken promptly and in any event by the next working day, and in accordance with any risk assessment carried out by the FSA. If Competent Authorities propose to take alternative actions, they must agree these with the FSA before implementing them. Where a Competent Authority anticipates difficulties in complying with a request for action given in an Alert, they must contact the FSA's team immediately.

#### **4.3.4 Media relations - Feed Alerts**

Competent Authorities wishing to enhance local publicity can, where permitted by the FSA, use a press release/media statement issued by the FSA as a basis for a local press release. In such cases, the Competent Authority must ensure that the local statement is accurate, relevant and consistent with the FSA statement.

If Competent Authorities wish to display Feed Alerts on their websites they must ensure that any material from FSA Feed Alerts or press/media releases is edited so as to specify what local action has been taken in response to the Alert. It must also include local contact information.

### **4.4 Information to be supplied to the FSA**

#### **4.4.1 Registered and Approved Establishment Details**

Competent Authorities should supply a complete copy of their register of feed establishments and list of approved feed establishments when requested by the FSA in order to fulfil the latter's duty to keep national lists of approved and registered establishments.

#### **4.4.2 Lead Feed Officer Details**

Competent Authorities must notify the FSA of the name of their appointed Lead Feed Officer who has operational and management responsibility for feed law enforcement matters and any changes to these details.

#### **4.4.3 Out of Hours Service**

Competent Authorities must advise the FSA of emergency telephone numbers on which responsible officers may be contacted outside the Competent Authority's normal office hours. Information on out-of-hours contacts must be provided in the manner and at the frequency required by the FSA. The Competent Authority must also proactively advise the FSA of any changes to these details at the earliest opportunity.

#### **4.4.4 Enforcement e-mail addresses**

Competent Authorities must notify the FSA of their electronic mail address to which communications can be sent and notify the FSA of any changes to these details.

#### **4.4.5 Delegation of Official Controls**

Competent Authorities responsible for the delegation of specific tasks to Control Bodies must provide the FSA with details of the control body and the tasks delegated to it. This notification should take place within three working days of the decision being made as should any subsequent withdrawal or change in the tasks delegated.

#### **4.5 Liaison with other Member States**

The FSA is the designated liaison body for the purposes of Article 35 of Regulation 882/2004 and, as such, is responsible for assisting and co-ordinating communication between Competent Authorities and the transmission and reception of requests for assistance. However, this does not preclude direct contacts, exchange of information or co-operation between the staff of feed control authorities in different Member States in certain circumstances.

Trans-border matters that may have policy implications, matters relating to outbreaks of feed-borne illness and matters connected with feed hazards are dealt with by the FSA. Competent Authorities must therefore notify the FSA of all such matters at the earliest opportunity.

Detailed provisions on administrative assistance and co-operation with other Member States are set out in Articles 34 to 38 of Regulation 882/2004.

##### **4.5.1 Definitions of Trans-Border Issues**

Trans-border matters fall into three broad categories:

- trans-border matters that need to be referred directly to the FSA;
- trans-border matters reported to the FSA after liaison has taken place; and
- routine liaison between Competent Authorities and competent authorities in other Member States. Competent Authorities must only deal directly with “for Information” matters. Other issues requiring action must be referred without delay to the FSA.

Further guidance on the categorisation of trans-border issues can be found in the Practice Guidance.

##### **4.5.2 Enquiries to other Member States**

Competent Authorities must address routine liaison enquiries about feed law enforcement issues in other Member States to the appropriate liaison body or authority in the Member State concerned either via the FSA or direct. The FSA can provide assistance in identifying the relevant liaison body or authority if necessary.

##### **4.5.3 Enquiries from other Member States**

Competent Authorities must comply with any reasonable request for information or administrative assistance from another Competent Authority, or feed control body in another Member State (or the FSA).

Any request for information regarding a matter which, after investigation, liaison or enquiry, appears to be of a serious nature, must be referred to the FSA.



#### **4.5.4 Disclosure of Information to Member States**

Article 7 of Regulation 882/2004 sets out the general requirements in respect to transparency and confidentiality. Detailed provisions on administrative assistance and co-operation with other Member States are set out in Articles 34 to 38 of Regulation 882/2004. Article 34 stipulates that Articles 35 to 40 of that Regulation, which deal with administrative assistance and co-operation between Member States and with the Commission “shall not prejudice national rules applicable to the release of documents which are the object of, or are related to, court proceedings, or rules aimed at the protection of natural or legal persons’ commercial interests”.

Competent Authorities must therefore ensure that any release of information is compatible with national legislation including that relating to Data Protection and Freedom of Information.

## Chapter 5 – Organisation of Official Controls

Chapter 5 deals with general obligations with regard to the organisation of official controls, control activities, methods and techniques.

### 5.1 Requirement for a Documented Feed Service Plan

Each Competent Authority must have an up-to-date, documented Feed Service Plan which is readily available to feed business operators and consumers<sup>42</sup>. The Competent Authority must regularly review the Service Plan and clearly state the period of time during which the Plan has effect.

The Plan must cover all sectors of the feed industry including primary production, manufacturers, distributors and points of entry and sets out how the authority intends to deliver official controls within its area. The Plan must include reference to the authority's approach to enforcement as set out in Chapter 6.

When drafting their Feed Service Plan, Competent Authorities must have regard to any advice on the structure and contents of such plans as issued by the FSA and include national enforcement priorities as appropriate. Further guidance on Service planning can be found in the Practice Guidance and the guidance in Chapter 1 of the Framework Agreement.

### 5.2 Frequency of Official Controls<sup>43</sup>

Competent Authorities shall ensure inspections are carried out regularly, on a risk basis and with appropriate frequency as set out in **Annex 2** to this document.

Inspection risk-ratings determine the interval that should elapse between one planned inspection of an individual feed establishment and the next.

The inspection risk-ratings of a feed business must be assessed or re-assessed at the conclusion of every planned inspection in accordance with **Annex 2**. Amendments to inspection risk-ratings may also be notified to Competent Authorities by the FSA e.g. when an assurance scheme loses its approval as mentioned in paragraph 5.3.

Inspection risk-ratings may be informed by a Primary Authority inspection plan, where one is in place. For example, a Primary Authority's work to assess management processes and procedures could inform the confidence in management score as part of the risk rating process.

Inspection ratings should not be re-assessed at visits other than inspections which are part of the Competent Authority planned programme of inspections.

Inspection programmes should be planned so that businesses are inspected no later than 28 days after the relevant date determined by the inspection rating, apart from circumstances outside the control of the Competent Authority.

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<sup>42</sup> See Chapter 2, Paragraph 15 of The Framework Agreement on Official Feed and Food Control by Local Authorities

<sup>43</sup> Article 3.1 Regulation (EC) No 882/2004

### 5.3 Earned Recognition<sup>44</sup>

Feed business operators who demonstrably maintain high standards of feed safety by taking appropriate steps to comply with the law, may have these standards recognised by the Competent Authority when determining the frequency of their official controls and therefore earn recognition.

Such recognition of current compliance levels and management controls should be applied to all feed business operators depending on whether a Feed Business Operator is a member of an approved assurance scheme or not. Chapter 5 of the Practice Guidance provides further guidance on the approach.

The application and effect of earned recognition on the frequency of inspections is described in **Annex 2 – A.2.1.2**.

Typical risk-ratings for feed business establishments which achieve earned recognition are included in Chapter 5 of the Practice Guidance.

This Code describes two approaches as to how a feed business may qualify for earned recognition:

- a business which is not a member of an assurance scheme but demonstrates broad compliance; or
- a business which is a member of an approved assurance scheme and demonstrates satisfactory or broad compliance.

#### 5.3.1 Earned Recognition through membership of an assurance scheme

The criteria by which an assurance scheme can be approved as one whose members can take advantage of earned recognition is detailed in the Practice Guidance together with a current list of approved assurance schemes.

The list of approved assurance schemes will be kept under regular review and published by the FSA. The list will be kept up to date and included in **Annex 3** of the Practice Guidance.

The frequency of audits or inspections at an individual feed business establishment whose operator is a member of an approved assurance scheme will be reduced as set out in Annex 2 until such time as:

- the assurance scheme is no longer approved by the FSA;
- the feed business operator is no longer a member of the approved assurance scheme or has been suspended;
- the Competent Authority becomes aware of a serious non-compliance; or
- a significant change of activity takes place which is outside the scope of the business operator's membership of the assurance scheme.

#### 5.3.2 Earned Recognition by demonstrating broad compliance

Earned recognition is also available to feed business operators who are not members of an approved assurance scheme but are found to be broadly compliant with feed law.

The frequency of official controls will be determined by the Competent Authority as described in paragraph 5.4 and Annex 2 until such time as:

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<sup>44</sup> Article 3.1 (c) Regulation (EC) No 882/2004

- the Competent Authority becomes aware of a serious non-compliance;
- a significant change of activity at the operator's feed business establishment takes place; or
- ownership of the feed business establishment to which earned recognition applies changes.

Earned recognition can also be lost where a Competent Authority has any other concern that would suggest an establishment may not comply with relevant feed law e.g. intelligence from other enforcement agencies which suggest the requirements of feed law might not be being met. Where this is the case then this should be reflected in the establishment's confidence in management rating as set out in Annex 2.

#### **5.4 Alternative Enforcement Strategy (AES)**

Every Competent Authority should develop an AES to explain how they will conduct official controls at premises where the use of AES is indicated by Annex 2.

An AES may consist of one or more of the following activities:

- questionnaires;
- surveys;
- project based inspections;
- customer complaint response;
- intelligence gathering visits;
- random percentage of premises subject to inspection.

Where an AES activity is undertaken by staff who do not meet the competency requirements referred to in Chapter 3 then the programme of controls must be overseen by the Lead Feed Officer to determine if further follow-up action is required at individual feed business establishments.

#### **5.5 Points of Entry**

Competent Authorities responsible for feed at points of entry in GB should monitor consignments of all materials entering ports which originate from outside of the EU and are intended for use in animal feed. Controls at points of entry include carrying out systematic documentary checks, random identity checks and sampling for analysis as appropriate<sup>45</sup>.

Official controls should be proportionate and risk-based. Where no specific frequency of checking is specified in the legislation, priority should be given to identifying all consignments of feed entering a point of entry and its country of origin. The frequency of other types of official controls should be informed by:

- history of compliance for a given material;
- history of compliance by a given importer;
- the quantity of consignments entering the port (particularly if material has not been seen before or only infrequently); and,
- National enforcement priorities.

Competent Authorities should liaise with relevant Port Health Authorities to share information, particularly in relation to feed which might be coming through points of entry. It should be remembered that a wide range of materials can be used in animal feed many of which can also be used in food or have other industrial uses. Where the intended use of a consignment is in doubt, enquiries should be made with importers, shipping agents, and inland authorities where businesses

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<sup>45</sup> Articles 15 and 16 Regulation (EC) 882/2004 on the official control of feed and food

using the materials are based. This is particularly important in helping to prevent materials not intended for feed use from entering the feed chain.

All Competent Authorities responsible for points of entry should monitor consignments of animal feed to ensure that products which are required to enter the EU via designated points of entry have done so and have undergone the necessary official controls at those points of entry.

More information on checks at points of entry can be found in the Practice Guidance.

## **5.6 Sampling Policy and Sampling Programme**

Competent Authorities must prepare and publish a Feed Sampling Policy<sup>46</sup> and make it available to businesses and consumers. The Policy must set out the Competent Authority's general approach to feed sampling and its approach in specific situations such as process monitoring, Primary Authority scheme including inspection plans. Home Authority Principle, inspections, complaints, special investigations and national, regional and local co-ordinated programmes.

The Sampling Policy must commit the Competent Authority to providing the resources necessary to carry out its feed Sampling Programme.

Competent Authorities must also prepare a Sampling Programme which details their intended feed sampling priorities. The Programme must take account of the number, type and risk-ratings of the feed businesses, and the type of feed produced in the area, the Competent Authority's originating or home authority responsibilities and the need to ensure that the provisions of feed law are enforced. The Sampling Programme should not be published.

The Sampling Programme must take into account Primary Authority inspection plans which seek to coordinate sampling for partnership businesses<sup>47</sup>.

The Sampling Policy and the Sampling Programme should be prepared in consultation with the Competent Authority's Agricultural Analyst, which may take place on a local or regional basis. It should also take account of the FSA national feed priorities that are issued annually.

All samples which are sent to an Official Laboratory constitute official control samples<sup>48</sup>. All such samples must be dealt with in accordance with Article 11 of Regulation 882/2004 on the official control of feed and food and applicable national legislation.

Further advice on sampling can be found in the Practice Guidance.

## **5.7 Initial inspection of a New Establishment or change of Feed Business Operator**

This paragraph does not apply to establishments at the level of primary production except those which indicate an activity that would require them to comply with the requirements of Annex II of Regulation (EC) 1831/2003.

Competent Authorities must make use of information supplied to them by feed business operators in connection with the registration or application for approval of their feed business establishments in accordance with Article 31 of Regulation (EC) No 882/2004, in order to determine when to carry out an initial inspection.

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<sup>46</sup> See Chapter 2, Paragraph 12 of the Framework Agreement on Official Feed and Food Controls by Local Authorities

<sup>47</sup> Regulatory Enforcement and Sanctions Act 2008(as amended) section 30(7)

<sup>48</sup> A list of Official Laboratories is available on the Food Standards Agency website

In the case of an approved establishment having changed ownership since 1 January 2006 which has not been reapproved, this business must be prioritised for re-approval<sup>49</sup>. Subsequent changes in the ownership of such businesses must result in re-approval as detailed in the Practice Guidance.

New feed business establishments that come to the attention of the Competent Authority for the first time must be subject to an initial inspection following which risk-rating(s) for the establishment must be determined.

An officer carrying out an initial inspection of a new feed establishment must:

- establish the scope of the business's activities and the relevant feed law that applies to the operations taking place;
- thoroughly and systematically gather and record information from the observation of practices, procedures and processes, including procedures based on HACCP principles, and discussion with feed, contractors, feed business operators and their employees;
- determine whether it is necessary to collect samples of raw materials, ingredients, additives, intermediate products, and finished products for analysis;
- identify any actual or potential breaches of feed law and, if appropriate, gather and preserve evidence; and
- determine relevant enforcement action and communicate to the feed business operator and Primary Authority, where there is one, an intention to carry out such action.

## 5.8 Planning and Notification of Official Controls

The Competent Authority Feed Service Plan must contain details on how its programme of official controls is to be delivered as required by the Framework Agreement on Official Feed and Food Control by Local Authorities. This includes how new feed establishments and changes of ownership are to be included in the Authority's planned programme of inspections, the use of earned recognition including the use of AES and its sampling programme.

These programmes must be planned so that establishments receive an inspection no later than 28 days after the relevant date. In circumstances outside the control of the Competent Authority such as seasonal business closures, Competent Authorities have the discretion to defer an inspection (see also Paragraph 5.2).

Where possible the inspection delivered at a feed establishment must be undertaken without prior notification. The general principle regarding pre-notification of an inspection or audit is set out in Regulation (EC) No 882/2004 which states in Article 3(2) that:

*“Official controls shall be carried out without prior warning, except in cases such as audits where prior notification of the feed or food business operator is necessary. Official controls may also be carried out on an ad hoc basis”.*

There will, however, be circumstances when it is advantageous to give advance notice, particularly when the purpose of an inspection is to see a particular process in operation or examine records which are only available if the proprietor of the feed business is present. In such cases no more than 48 hours' notice of the intended visit can be given to the feed business operator. Authorised officers must exercise discretion in this area guided by the overriding aim of ensuring compliance with feed legislation.

All feed businesses must receive unannounced inspections and sampling visits and announced official controls must be the exception.

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<sup>49</sup> Allan Rich Seafoods v Lincoln Magistrates Court

## **5.9 Planned Inspections and Revisits**

Planned inspections should be based on the relevant inspection form for the activity carried out by the business concerned. A suite of inspection forms for this purpose can be found in the Practice Guidance. Sufficient information should be recorded by officers of their findings to indicate what was examined/expected, how compliance with a feed requirement is achieved at the feed business establishment and any deficiencies identified.

The inspection forms will form the basis of the report of the inspection that must be prepared<sup>50</sup>. Whilst it is at the discretion of the Competent Authority and the inspecting officer how much of the activities at a feed business establishment are examined during a planned inspection it is also their duty to assure themselves that the requirements of feed law are being complied with.

Where a Primary Authority inspection plan is in place for a feed business, inspections must be carried out in accordance with the inspection plan, unless the Primary Authority has consented (in advance) to an alternative method of inspection<sup>51</sup>.

A copy of the completed inspection form can be left with the Feed Business Operator or his representative as an alternative to the inspection report referred to in Paragraph 2.9.2.

An assessment of whether to take samples, and if so what to sample, should be an integral part of every planned inspection. This is particularly the case at those establishments where materials originating from outside the EU and intended for use as feed are kept, and on-farm mixers.

## **5.10 Enforcement Actions and Revisits**

Feed businesses that fail to comply with significant statutory requirements must be subject to appropriate enforcement action and revisit(s) where compliance cannot be assessed by other means. Further information on enforcement action can be found in the Practice Guidance.

Where a feed business has a Primary Authority, notification of the proposed enforcement action must be made to the Primary Authority before action can be taken against the business<sup>52</sup>. Certain emergency actions are excepted, in which case notification must be made retrospectively<sup>53</sup>.

Revisits should focus on the contraventions identified at the last planned programmed inspection and ensure that they have been remedied before deciding that no further action is required.

The timing of the revisit will be determined by the severity of the non-compliances identified.

Such a revisit should, whenever practicable, be undertaken by the officer who undertook the original audit or inspection.

The Competent Authority's approach to revisits and enforcement actions should be part of its documented Enforcement Policy (see Chapter 6).

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<sup>50</sup> Article 9 Regulation (EC) 882/2004 on the official control of feed and food

<sup>51</sup> Regulatory Enforcement and Sanctions Act 2008 (as amended) section 30 (7A)

<sup>52</sup> Regulatory Enforcement and Sanctions Act 2008 (as amended) section 28

<sup>53</sup> The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, article 3



## Chapter 6 – Enforcement Sanctions and Penalties

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This chapter deals with how Competent Authorities should use the powers available to them to ensure non-compliances are rectified in an efficient and timely manner<sup>54</sup>.

### 6.1 Dealing with Non-Compliance

Competent Authorities must ensure that authorised officers have up-to-date information readily available to enable them to carry out their duties competently.

This includes relevant legislation, this Code of Practice and the associated Practice Guidance, and UK and EU Guides and Codes of Good Practice in respect of feed, where appropriate; guidance issued by the FSA, relevant industry codes of practice and appropriate technical literature.

Feed business operators should be advised at the earliest opportunity of a Competent Authorities decision to prosecute. In all cases of non-compliance it should be explained to the feed business operator what action is needed to secure compliance. This should be recorded in writing and provided to the feed business operator.

Where a feed business has a Primary Authority, notification of the proposed enforcement action must be made to the Primary Authority before action can be taken against the business<sup>55</sup>. Certain emergency actions are excepted, in which case notification must be made retrospectively<sup>56</sup>.

#### 6.1.1 Proportionality

Competent Authorities must ensure that enforcement action taken by their authorised officers is reasonable, proportionate, risk-based and consistent with good practice.

In considering whether to initiate enforcement action, Competent Authorities must take account of the following:

- Code for Crown Prosecutors;
- Enforcement Concordat;
- Competent Authority's Enforcement Policy; and
- Regulators Code, where applicable.

#### 6.1.2 Hierarchy of Enforcement

Authorised officers must take account of the full range of enforcement options. This includes educating feed business operators, giving advice, informal action, sampling, detaining and seizing feed, serving Feed Business Improvement Notices, serving Feed Business Prohibition or Emergency Prohibition Notices (with follow-up applications for court orders), and initiating prosecution procedures.

Except where circumstances indicate a significant risk, officers must operate a graduated and educative approach (*the hierarchy of enforcement*) starting with advice/education and informal action moving to more formal action where the informal action does not achieve the desired effect. The approach taken must ensure the timely remedy of non-compliance with feed law.

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<sup>54</sup> Framework Agreement on official Feed and Food Controls by Local Authorities– standard and paragraph 15

<sup>55</sup> Regulatory Enforcement and Sanctions Act 2008 section 28

<sup>56</sup> The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009, article 3



### 6.1.3 Requirement for a documented policy

Each Competent Authority must have an up-to-date, documented Feed Law Enforcement Policy which is readily available to feed business operators and consumers<sup>57</sup>.

The Policy must cover all areas of feed law that the Competent Authority has a duty to enforce and include criteria for the use of all the enforcement options that are available.

Competent Authorities must have regard to any advice issued by the FSA when drafting their Feed Law Enforcement Policies.

A Competent Authority's Feed Law Enforcement Policy could be part of a generic policy, or combined with other enforcement policies, e.g. food law, providing the applicability of the policy to the enforcement of feed law is clear and unambiguous.

Authorised officers must implement their Competent Authority's Feed Law Enforcement Policy, which must reflect all the factors set out in 6.1.1 above.

Departures from the Policy must be exceptional and the reasons for any departure should be recorded.

In deciding the type of enforcement action to take, an authorised officer must have regard to:

- the nature of the breach and the history of compliance of the feed business operator; or
- in the case of new business, an assessment of the feed business operator's willingness to undertake the work identified by the officer.

It is important that the full range of enforcement options remains open to an authorised officer. A Competent Authority must not adopt policies where the number of hygiene improvement notices served or the number of other legal processes, such as prosecution or formal caution, is an indicator of performance.

Further guidance on the use of formal sanctions can be found in Chapter 6 of the Practice Guidance.

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<sup>57</sup> See Chapter 2, Paragraph 15.1 of the Framework Agreement on Local Authority Food Law Enforcement

## **GLOSSARY OF TERMS AND ABBREVIATIONS**

Additives	Feed additives means substances, micro- organisms or preparations, other than feed material and premixtures, which are intentionally added to feed or water in order to perform, in particular, one or more of the functions mentioned in Article 5 (3) of EC Regulation 1831/2003.
Agricultural analyst	Has the meaning as defined in section 66(1) of the Agriculture Act 1970.
Animal Feed	Defined in Article 3.4 of 178/2002 to mean any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral to food or non-food producing feeding to animals.
Approved Premises	An establishment must be approved under Regulation (EU) 183/2005 if it manufactures, markets or uses certain specified feeds.
Audit	A systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.
Authorised Officers	Means a person (whether or not an officer of the Competent Authority) who is authorised by the Competent Authority, either generally or specifically to act in relation to matters arising under the Hygiene Regulations.
Central Competent Authority	Has the meaning set out in Regulation 882/2004 and in the UK is the Food Standards Agency.
Co Products	Materials intentionally generated as part of the food and drink manufacturing process e.g. residues of soya bean from the extraction of oils, and vegetable trimmings (e.g. carrot tops and potato skins), brewers and distillers grains.
Competent	Means meeting the requirements of the competency framework set out in Chapter 3 and Annex 1 the Code commensurate with the level of work undertaken.
Competent Authority	Has the meaning set out in Regulation 2 (1) The Official Feed and Food Controls Regulations 2009. (Statutory definition)
Compliant	Conforming with the requirements of the law.
Compound Feeds	Means a mixture of at least two feed materials, whether or not containing feed additives for oral animal feeding.

Conditional Approval	Has the meaning set out in Article 31(2)(d) of Regulation (EC) No. 882/2004.
Continuing Professional Development	The means by which members of a profession maintain improve and broaden their knowledge and skills and develop the qualities required in their professional lives.
Earned recognition	Feed Business Operators who demonstrably maintain high standards of feed safety by taking appropriate steps to comply with the law, may have these standards recognised by the Competent Authority when determining the frequency of their official controls and therefore earn recognition.
EU	European Union.
Enforcing Authority	Means the body identified as having the duty to enforce under regulation 16 of the Feed (Hygiene and Enforcement) Regulations 2005.
Establishment	“Establishment” defined in EU law as a ‘unit of a feed business’, does not simply mean “premises”, but is directly linked to the business occupying the establishment (“establishment denotes both premises and the manner in which those premises are being used by the feed business operator”).
Export	Means the action of sending or transporting a commodity outside the UK.
Feed Alert	The method by which the FSA informs LAs about feed hazards and advises of specific action to be taken.
Feed Business	Means any undertaking whether for profit or not and whether public or private, carrying out any operation of production, manufacture, processing, storage, transport or distribution of feed including any producer producing, processing or storing feed for feeding animals on his own holding.(Statutory definition)
Feed Business Operator	Means any natural or legal person responsible for ensuring that the requirements of the relevant legislation are met within the feed business under their control.(Statutory definition)
Feed Hazard	A biological, chemical or physical agent in feed capable of causing adverse effect to public health.
Feed Incident	Where there are concerns about actual or suspected threats to the safety or quality of feed that requires intervention to protect public health e.g. contamination of animal health in processing or environmental pollution incidents.
Feed Material	Any products of vegetable or animal origin, in their natural state, fresh or preserved; any products derived from the industrial processing of such products or organic or inorganic substances which are intended for oral animal feeding, either directly or in a compound feed. Feed materials are primarily used to meet an animals nutritional needs for

	example energy, dietary fibres, nutrients and minerals.
Formal Action	Means the taking of action against a feed business operator as set out in the legislation for example the service of a statutory notice to remedy non-compliance with legal requirements, the issuing of a Simple Caution or the institution of legal proceedings for breaches of legal requirements.
Formal Notice	Means a notice as defined in the various Acts of Parliament or statutory instruments relating to feed law.
FSA	Food Standards Agency.
Full approval	Has the meaning set out in Article 31(2)(d) of Regulation (EC) No 882/2004.
Home Authority	Means the authority where the relevant decision making base of an enterprise is located.
Import	Means the action of bringing in goods and/or services from another country.
Informal Action	Means bringing to the attention of a feed business operator and giving advice on non-compliances with feed law in order that any non-compliance can be quickly remedied.
Inspection	An inspection would form part of an investigation of any aspect of feed in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules.
Investigation	Means the examination of any aspect of feed in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and welfare rules.
Lead Feed Officer	Means the Authorised Officer, appointed by the Authority in relation to feed who demonstrates the requirements, set out in the competency framework set out in Chapter 3 and Annex 1 to the Code and has the necessary experience in relation to the complexity, nature and types of feed business within the authority's area to be able to advise other officers where necessary.
Local Authority	Has the meaning set out in Section 1 of the Local Government Act 1972.
Medicated feeding stuff	Contains a veterinary medical product which can only be supplied to a keeper of animals on prescription.
Monitoring	Means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed law.
Non – Compliant	Means a failure to comply with one or more the requirements of feed law.

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Official Controls	Has the meaning set out in Article 2 (1) of Regulation (EC) No. 882/2004.
Originating Authority	An authority in whose area a decentralised enterprise produces good and services.
Penalty	The punishment imposed by a court on conviction for an offence under feed legislation.
Port Health Authority	Has the meaning set out in Section 2 of the Public Health (Control of Diseases) Act 1984.
Premises	Includes any establishments as well as fixed locations, this includes vehicles, ships, aircraft and other movable structures.
Primary Authority	Has the meaning set out in Section 25 of the Regulatory Enforcement and Sanctions Act 2008 as amended.
Primary Production (Feed)	Means the production of agricultural products including, in particular, growing, harvesting of feed which do not undergo any other operation following their harvest, collection, capture, apart from simple, physical treatment as defined in Regulation (EC) No. 185/2005.
Registration Authority	Means the authority in whose area the feed business establishment is located.
Regulatory Function	Has the meaning set out in Section 32 (2) of the Legislative and Regulatory Reform Act 2006.
Regulatory Services	Means Environmental Health, Trading Standards and Licensing as set out in “National Enforcement Priorities for Local Authority Regulatory Services”. March 2007 (Rogers Review).
Risk Rating Category	The Risk Category attributed to a premises following an inspection and scoring of the premises in accordance with the Inspection Rating Scheme and used to determine the frequency of inspection of the premises.
Sampling	Means taking feed or any other substance (including from the environment) relevant to the production, processing and distribution of feed or food or to the health of animals, in order to verify through analysis compliance with feed or food law or animal health rules.
Specified feed additives	Substances routinely added to animal feeding stuffs without prescription for the prevention of coccidiosis or histomoniasis or to favourably affect the growth of animals.
Standards	Means rules or principles defined in feed law that are used as the basis for judgment against.
Surplus foods	This includes out of date products, products that do not meet the required specification, or are otherwise surplus to the requirements of food and drink businesses including retailers. This may include bakery, confectionary, dairy or oil products.

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Surveillance	Means a careful observation of one or more food businesses, or food business operators or their activities.
Third Country	A country outside the EU or European Economic Area.
Third Party Assurance	Independent verification of business compliance against a predetermined standard which has been endorsed by the Food Standards Agency as being equivalent to /complying with the requirements for food law.
Verification	Means the checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled.
Veterinary Medicines	Any substance or combination of substances presented as having properties for treating or preventing diseases in animals.
APHA	Association of Port Health Authorities
BIS	Department for Business, Innovation and Skills
BRDO	Better Regulation Delivery Office (formerly LBRO)
CPD	Continuing Professional Development
DCA	Diploma in Consumer Affairs
DCATS	Diploma in Consumer Affairs and Trading Standards
DTS	Diploma in Trading Standards
FCATS	Foundation Certificate in Consumer Affairs and Trading Standards
FeBO	Feed Business Operator
FSA	Food Standards Agency
Framework Agreement	Framework Agreement on Local Authority Food Law Enforcement
HACCP	Hazard Analysis and Critical Control Point
HCATS	Higher Diploma in Consumer Affairs and Trading Standards
IMS	Information Management Scheme
LBRO	Local Better Regulation Office (Now BRDO)
LGA	Local Government Group Association
LAEMS	Local Authority Enforcement Monitoring System
MCA	Maritime and Coastguard Agency
MoU	Memorandum of Understanding
OFT	Office of Fair Trading
RPA	Rural Payments Agency
SIMS	Ships Inspection Management System
TSI	Trading Standards Institute
UK	United Kingdom
UKAS	United Kingdom Accreditation Service
UKFSS	United Kingdom Food and Feed Surveillance Scheme

## ANNEX 1 Competency of Officers

### A1.1 Introduction

The competence statements reflect the competence that officers need to demonstrate in order to be authorised to undertake specific official control duties.

Unless otherwise stated, officers will be required to provide evidence that they meet all the requirements of a particular competence in order to be authorised to undertake that particular official control duty.

### A1.2 Competency Requirements

The following is the list of competency requirements against which officers will need to provide evidence to demonstrate that they comply in order to undertake the type of official control or perform the role mentioned.

No.	Title
1	Lead Feed Officers
2	Inspection of Feed Establishments at Primary Production (including those which incorporate additives into feed for their own use)
3	Inspecting Feed Establishments Required to Comply with the Feed Hygiene Requirements other than those at Primary Production
4	Official Controls at Points of Entry
5	Sampling of Animal Feed
6	Use of Enforcement Powers

#### 1. Lead Feed Officer

No	Statement of Competence	
I	Local and Specialist Knowledge	<ul style="list-style-type: none"> <li>Has knowledge and understanding of the nature and type of businesses that operate in the authority's area.</li> <li>Understands the common hazards and risks associated with the feed processes and technologies in operation at establishments within the authority's area and can apply appropriate control measures.</li> <li>Identifies hazards that can occur, applying an understanding of hazard identification techniques where relevant.</li> <li>Explain, and be able to apply, the principles of effective risk management to the relevant feed establishments.</li> <li>Understands proportionate application of feed law requirements to establishments taking account the size of their operation.</li> </ul>

ii	Legislation and centrally issued Guidance	<ul style="list-style-type: none"> <li>• Understands relevant EU and National legislation on feed and can advise appropriately on their application, as required, to other staff responsible for the delivery of official controls and feed business operators.</li> <li>• Understands, interprets and applies the Framework Agreement on Food Law Enforcement with Local Authorities, the Feed Law Code of Practice and associated Practice Guidance appropriately, ensuring that these are incorporated into the delivery of official controls.</li> </ul>
iii	Partnership and Cooperation	<ul style="list-style-type: none"> <li>• Ensures that effective liaison is in place with other agencies responsible for the enforcement of feed and food law in the Competent Authority's area.</li> <li>• Understands the liaison arrangements put in place by the central Competent Authorities with feed assurance schemes and ensures they can be used by officers in co-ordinating the delivery of official controls.</li> </ul>
iv	Planning of an Official Control Programme	<ul style="list-style-type: none"> <li>• Can appropriately apply national and local priorities to the profile of feed business establishments and points of entry in the authorities when planning a programme of official feed controls.</li> </ul>
v	Consistency of Official Control delivery	<ul style="list-style-type: none"> <li>• Co-ordinates consistent delivery of official controls within the authority and between other Competent Authorities.</li> <li>• Understands the role of Home Authorities and Primary Authorities in co-ordinating the delivery of official controls and ensures it is applied by the authority.</li> </ul>
vi	Training	<ul style="list-style-type: none"> <li>• Can identify skill or knowledge gaps in officers delivering official feed controls.</li> <li>• Can identify appropriate training and opportunities for continuing professional development.</li> </ul>
vii	Contingency Planning	<ul style="list-style-type: none"> <li>• Understands the process of raising and managing feed incidents as set out in the Code of Practice.</li> <li>• Understands how local contingency arrangements apply to the management of serious feed related incidents.</li> </ul>



## 2. Inspection of Feed Establishments at Primary Production (including those which incorporate additives into feed for their own use)

No		Statement of Competence
i	Recitals and general requirements of Regulation (EC) 1831/2003 on Feed Hygiene	An understanding of the purpose of feed hygiene requirements and how they apply to different types and sizes of feed business operators at primary production.
ii	Guides to Good Practice	An appreciation of the different routes by which guides to good practice can be introduced and knowledge of those which are available, relevant to individual officers area of authorisation, and how they have been incorporated into assurance scheme standards, where appropriate.
iii	Registration and Approval	Understands the application of registration to feed establishments at primary production, including the application of approval by the Veterinary Medicines Directorate.
iv	Regulation (EC) 1831/2003 on Feed Hygiene Annex I and III	Understands the hygiene requirement applied to the production of primary products, storage and use of feed on farm, including the mixing of feed with complementary feeds.
iv	Regulation (EC) 1831/2003 on Feed Hygiene Annex II – Requirements for feed businesses	<p>Understands the circumstances in which primary producers become subject to hygiene requirements applicable to feed establishments requiring to have in place feed safety management systems (FSMS) based on the principles of HACCP, including the role of other agencies in enforcing these requirements at primary production.</p> <p>Understands the proportionate application of FSMS based on the principles of HACCP taking into account the activity and the size of the business.</p> <p>The circumstances where the activity is sufficiently complex to require the involvement of an officer authorised to inspect feed establishments which are required to have a FSMS.</p> <p>Inspection skills which test compliance with feed law requirements.</p>
v	Other relevant legislation which all feed produced, distributed or used in the EU must comply.	<p>Officers will understand EU legislation relevant to the composition of feeding stuffs, controls on the presence of contaminants appropriate to the use/production of feed at primary production:</p> <ul style="list-style-type: none"> <li>• Labelling, marketing and use of feed – particularly those provisions relating to banned substances in feed;</li> <li>• Restrictions on the presence of undesirable substances in feed;</li> <li>• The application of animal by-products legislation and other legal requirements prohibiting certain products being used in animal feed and the role of other enforcement agencies in enforcing the requirements.</li> </ul>

### 3. Inspecting Feed Establishments Required to Comply with the Feed Hygiene Requirements other than those at Primary Production

No	Sub Task	Statement of Competence
I	Recitals and general requirements of Regulation (EC) 1831/2003 on feed hygiene.	An understanding of the purpose of the feed hygiene requirements and how it applies to different types and size of feed business operator.
ii	Guides to Good Practice	An appreciation of the different routes by which guides can be introduced and knowledge of those which are available, relevant to individual officers area of authorisation, and how they have been incorporated into assurance scheme standards, where appropriate.
iii	Registration and Approval	Application of approval and registration to all types of feed establishments including the differences between approvals carried out by the Veterinary Medicines Directorate and those by the authority.
iv	Annex II – Requirements for feed businesses	<p>Understanding of the following appropriate to the type of establishments in which authorised officers are responsible for undertaking official controls:</p> <ul style="list-style-type: none"> <li>▪ The principles of HACCP as applied to the animal feed industry.</li> <li>▪ A detailed understanding of Annex II of Regulation 1831/2003.</li> <li>▪ The role of assurance schemes across the feed industry with particular focus on those which operate at feed business establishments for which an officer is responsible.</li> <li>▪ An understanding of the proportionate application of the Annex II requirements taking into account the activity and the size of the business.</li> <li>▪ Ability to assess the effectiveness of feed safety management systems to ensure that risks associated with all aspects of the business' processes connected to the production or handling of feed have been considered and effective measures taken to monitor and control critical control points.</li> <li>▪ Inspection skills which test compliance with feed law requirements.</li> </ul> <p>Where applicable to an officer's duties the following sector specific knowledge will be required to carry out controls at the following types of establishment:</p> <p><u>Food producers placing co-products into the feed chain</u></p> <ul style="list-style-type: none"> <li>▪ Types of co-product and food businesses involved in their production;</li> <li>▪ Typical methods of production of co-products;</li> <li>▪ Typical hazards associated with the production of co-products;</li> <li>▪ Ways in which the design of facilities and equipment help prevent cross contamination and facilitate cleaning;</li> <li>▪ Products prohibited from use in animal feed which are</li> </ul>

		<p>commonly used as ingredients or processing aids in food production.</p> <p><u>Food producers and retailers placing surplus food into the feed chain</u></p> <ul style="list-style-type: none"> <li>Types of food which are typically added to the feed chain;</li> <li>The role of surplus food processors entering the feed chain;</li> <li>Typical systems used to avoid contamination of surplus food intended for feed.</li> </ul> <p><u>Manufacturers of feed and feed additives, including mobile mixers</u></p> <ul style="list-style-type: none"> <li>Types of product produced for various species of animal as relevant to the officer's area of responsibility;</li> <li>Types of feed materials and other additives used for inclusion in compound feed and the manufacture of additives;</li> <li>Methods of production relevant to the type of feed/feed additive being manufactured;</li> <li>Hazards associated with the materials used in the manufacture of feed or feed additives;</li> <li>Hazards associated with potential cross contamination of feed during handling and manufacturing;</li> <li>Typical feed safety management systems and the use of procedures and pre-requisites;</li> <li>Testing of feed to ensure mixing achieves homogeneity.</li> </ul>
V	Other relevant EU legislation and knowledge of EU feed law requirements.	<p>Officers will understand EU legislation relevant to the composition of feeding stuffs, controls on the presence of contaminants and the authorisation of certain additives. This includes understanding how the legislation applies to establishments in which authorised officers are responsible for undertaking official controls:</p> <ul style="list-style-type: none"> <li>Labelling, marketing and use of feed – particularly those provisions relating to banned substances in feed;</li> <li>Restrictions on the presence of undesirable substances in feed;</li> <li>The contaminants common to various types of feed material and feed additives originating from outside of the EU;</li> <li>Requirements for the authorisation, use and labelling of additives in feed, including the authorisation procedure, categories and functional groups of additives, and labelling and packaging requirements;</li> <li>Knowledge of additives in use outside the EU which are not authorised for use within the EU;</li> <li>Legislative requirements on the use of fats and oils in feed;</li> <li>Legislative requirements on the use and labelling of genetically modified feed materials, including compound feeds which incorporate these types of feed materials;</li> <li>Knowledge of safeguard measures applicable to feed imported from outside the EU.</li> <li>The application of animal by-products legislation and other legal requirements prohibiting certain products being used in animal feed and the role of other agencies in enforcing the requirements.</li> </ul>

#### 4. Official Controls at points of entry

<b>No</b>	<b>Sub Task</b>	<b>Knowledge/skills</b>
<b>I</b>	The European Union is an economic and political partnership between countries who have signed up to the treaty which includes the 'single market' that allows goods to trade freely between member states.	<p>All officers will be required to understand the principles of European law and structures in order to be able to effectively apply controls at the border. This includes:-</p> <ul style="list-style-type: none"> <li>• The EU legal structure, its membership and that of European Economic Association (EEA) and how the two interact in terms of cross border trade;</li> <li>• The general framework of EU law on feed, in particular Regulation 178/2002 laying down the general principles of food law;</li> <li>• Regulation (EC) No 882/2004 Chapter V-Official Controls on the Introduction of feed and food from third countries;</li> <li>• Specific feed controls on imported feed originating from outside the EU (safeguard measures) currently in effect;</li> <li>• Regulation (EU) 669/2009, as amended on higher-risk material;</li> <li>• The EU Rapid Alert Food and Feed System (RASSF) and how it operates, its use in monitoring imported feed and the role of Competent Authorities in updating the system with information on feed found not to meet EU requirements.</li> <li>• Emergency import controls on feed and food may be effected by Declaration issued by the FSA.</li> </ul>
<b>II</b>	Relevant EU legislation which all feed produced, distributed or used in the EU must comply with.	<p>Officers will understand EU legislation relevant to the composition of feeding stuffs, controls on the presence of contaminants and the authorisation of certain additives. This includes:</p> <ul style="list-style-type: none"> <li>• Labelling, marketing and use of feed – particularly those provisions relating to banned substances in feed;</li> <li>• Restrictions on the presence of undesirable substances in feed;</li> <li>• The contaminants common to various types of feed material and feed additives originating from outside of the EU;</li> <li>• Requirements on the authorisation, use and labelling of additives in feed, including the authorisation procedure, categories and functional groups of additives, and labelling and packaging requirements;</li> <li>• Knowledge of additives in use outside of the EU which are not authorised for use within the EU.</li> </ul>
<b>III</b>	Operating an effective import control system at a point of entry.	<p>Officers will have an understanding of the typical information available which enables them to identify consignments of feed entering the port of entry and the enforcement powers available to access this information and deal with consignments which are found to be non-compliant with EU requirements. This will include:</p> <ul style="list-style-type: none"> <li>• Knowledge of the Port Operator responsible for point of entry for which authorisation is required;</li> <li>• Knowledge of the Importers and Shipping Agents using the point of entry and the type of feed materials being imported and the</li> </ul>

		<p>countries of origin from which they are dispatched;</p> <ul style="list-style-type: none"> <li>• The effective use of manifest/shipping information available to identify relevant consignments of feed, including database information;</li> <li>• The origin and nature of the feed and other relevant imports;</li> <li>• Sources of information and intelligence which would inform checks at the point of entry;</li> <li>• The authorities sampling policy and programme;</li> <li>• Facilities and mechanisms available at the port for the safe inspection of consignments;</li> <li>• The Competent Authorities, Port Operator and other relevant feed business operators policies and procedures relating to health and safety;</li> <li>• The work of other Agencies at the port, including the Port Health Authority and AHVLA.</li> </ul>
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## 5. Sampling of Animal Feed

<u>No</u>	<u>Sub Task</u>	<u>Knowledge/skills</u>
I	Regulation (EU) 152/2009 as amended on the sampling of animal feed	<p>An officer must understand:</p> <ul style="list-style-type: none"> <li>• Any advice or direction given on sampling priorities whether locally or centrally;</li> <li>• The procedures for sampling animal feeding stuffs of different types and as set out in the Regulation.</li> <li>• The types of equipment required to carry out sampling and their appropriate use;</li> <li>• The most appropriate methods of sampling for the type and quantity of various feeding stuffs;</li> <li>• The nature of constituents and undesirable substances to be tested for, their distribution within feed and the different approaches to sampling required;</li> <li>• Safe working practices and the authority's own health and safety requirements;</li> <li>• Methods and practices operated at local feed business establishments;</li> <li>• Understand procedures and have practical experience of preparing samples including submission to an Agricultural Analyst, complying with requirements to provide feed business operators with portions of the sample and the retention of a reference sample;</li> </ul>

		<ul style="list-style-type: none"> <li>• The role of the Agricultural Analyst underpinning scientific assessment of feed safety, standards, labelling and in optimising the use of analytical testing;</li> <li>• The Government Chemist and its role in disputes;</li> <li>• Knowledge of the most appropriate methods for storing samples.</li> </ul>
II	Other relevant EU legislation and knowledge of EU feed law requirements	<p>Officers will understand the following EU requirements as they apply to the products they are required to sample and the analyses to be undertaken:</p> <ul style="list-style-type: none"> <li>• Labelling, marketing and use of feed – particularly those provisions relating to banned substances in feed so far as they affect an officer's ability to sample feed effectively;</li> <li>• EU legislation laying down the methods of sampling and analysis for the official control of feed as regards the presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired;</li> <li>• EU legislation establishing harmonised methods of sampling for the official control of pesticide residues in and on products of plant and animal origin.</li> </ul>

## 6. Use of Enforcement Powers

No	Sub Task	Knowledge/skills
I	Understanding the use of enforcement to achieve compliance and the powers available.	<p>All officers must understand the following commensurate to the type of activity they are authorised to enforce and the powers they are authorised to use:</p> <ul style="list-style-type: none"> <li>• Limits of their own authorisation including differences between their authorisation and other officers;</li> <li>• Powers to enter premises to inspect feed, processes and records under all relevant EU and National legislation on animal feed and the procedures involved;</li> <li>• Proportionate and progressive use of enforcement powers to achieve compliance with feed law in a timely manner;</li> <li>• Appropriate use of informal methods of enforcement e.g. warning letters;</li> <li>• Use of powers to issue improvement notices and the procedures involved;</li> <li>• Use of emergency prohibition notices and orders and the procedures involved;</li> </ul>

		<ul style="list-style-type: none"> <li>• Use of powers to detain and seize feed and the procedures involved;</li> <li>• Suspension and removal of feed registration and approval and the procedures involved;</li> <li>• Powers to sample, seize, detain and remove imported feed not complying with EU law from the feed chain;</li> <li>• National legislation applicable to the use of formal enforcement powers, including those relating to the use of investigatory powers and interview of suspected defendants.</li> </ul>
II	Other relevant EU legislation and skills of EU feed law requirements	<p>All officers are required to understand</p> <ul style="list-style-type: none"> <li>• The general framework of EU law on feed, in particular Regulation 178/2002 laying down the general principles of food law as it applies to the duties on feed business operators to produce feed compliant with EU requirements and the actions required of them in certain circumstances;</li> <li>• Regulation (EC) 882/2004 on the official control of</li> <li>• feed and food as it applies to the delivery by officers of official controls;</li> <li>• The system of feed alerts and reporting of feed hazards operated by the FSA;</li> <li>• Sufficient skills for the investigation and reporting of offences.</li> </ul>



## **ANNEX 2 : Animal Feed Law Inspection Rating Scheme**

### **A2.1.1: Basic Principles**

- i. Competent Authorities use the risk assessment criteria in this Annex, to determine their planned animal feed law inspection programmes. These programmes of inspection must include all types of feed business establishments in the authority's area.
- ii. Competent Authorities may also base the feed law risk assessment on the ACTSO National Trading Standards Board Risk Assessment Scheme for trading standards. Where assessments are based on the ACTSO/ NTSB scheme, the inspection frequency for feed law purposes should not be less than would have been the case under this Code. In addition, earned recognition must be applied to individual feed business establishments as it is described in this Annex.
- iii. This inspection risk-rating scheme is set out in the form of an assessment document that can be used by officers in the field. An assessment should be completed at the end of every planned inspection.
- iv. Officers should use the full range of scores available within the system, to prevent the rating system being frustrated by cautious marking or by a reluctance to recognise effective management/control systems.
- v. Officers must determine whether there is a Primary Authority inspection plan in place for the business before using the inspection risk- rating scheme. If there is, officers must have regard to the plan where it informs the risk-rating process unless they obtain prior consent from the Primary Authority. For example, a primary authority's work to assess management processes and procedures could inform the confidence in management score as part of the risk rating process. The Primary Authority inspection plan should not require a Local Authority to perform any additional planned inspections.
- vi. Businesses that fall into more than one scoring category for a scoring factor should be allocated the highest score of those that are applicable.
- vii. The operation of this inspection rating scheme within the Competent Authority should be subject to periodic management review to ensure that staff are using the scheme correctly and consistently.
- viii. The inspection of higher risk businesses must always take preference over the inspection of lower risk. The practice of completing the inspection programme of lower risk businesses that have not been visited during an earlier programme before commencing the inspection of higher risk businesses cannot be supported. However, implementing an inspection programme which includes only establishments that are rated as high risk is also not acceptable.

### **A.2.1.2: Earned Recognition**

- ix. With the exception of those circumstances given in xi below, feed businesses obtain earned recognition when they are broadly compliant. Where this is the case the risk-rating given in the Code will be further reduced in line with the table in **figure 2** of Chapter 5 of the Practice Guidance.



- x. If a business that qualified for earned recognition through demonstrating a broad compliance and is not a member of an approved assurance scheme loses its earned recognition status, the business must be informed.
- xi. Where a feed business establishment is assessed as achieving at least satisfactory levels of compliance and is also a member of an approved assurance scheme, the risk-rating in the Code will also be further reduced in line with the table in **figure 2** of Chapter 5 of the Practice Guidance.
- xii. An assurance scheme which appears in **Annex 3** of the Practice Guidance has been assessed by the FSA and is considered to be an approved assurance scheme for the purposes of this risk-rating scheme.
- xiii. Feed business establishments which belong to an approved assurance scheme but which are found not to have satisfactory levels of compliance during a planned inspection will have their risk-rating increased accordingly unless the non-compliances identified are minor and can be rectified immediately or within a reasonable timescale of being identified.
- xiv. If a feed business which is a member of an approved assurance scheme is no longer achieving satisfactory levels of compliance, it will lose its earned recognition status and the business must be informed of this.
- xv. If a Competent Authority decides to remove earned recognition from a feed business that is a member of an approved assurance scheme then the FSA must be informed.
- xvi. The outcome of inspections at establishments which are operating to an approved assurance scheme provides important evidence and enables the FSA to monitor the performance of such schemes.
- xvii. In some instances described in **figure 2** of Chapter 5 of the Practice Guidance, earned recognition takes the form of AES. In these circumstances an AES must be followed at the next planned intervention by an inspection. If this inspection shows that the establishment is broadly compliant then the next planned intervention can be an AES.

#### **A2.1.3: Definitions**

For the purpose of interpreting the following risk rating scheme the following definitions apply:

Arable Farm	A primary production establishment that produces crops of which some or all are put into the feed chain.
Co-product Producer	Food business which, in manufacturing food, intentionally place a fraction of the material produced into the feed chain.
Distributor	Wholesaler or retailer of feed or feed products.
Importer	A business which is responsible for bringing feed or feed products into the UK whether from another Member State or outside of the EU.

Livestock Farm	A business which keeps food producing animals which are, or whose products are, intended to be placed into the food chain.
On-farm mixer	A primary producer who mixes feeds using compound feeds containing additives, or mixes additives or premixtures (i.e. not contained in a compound feed) with other feeds, for the consumption of his/her own livestock.
Manufacturer	Feed compounder/blender which processes feed <sup>1</sup> with or without the inclusion of feed additives or produces feed products <sup>2</sup> .
Mobile mixer	Feed business which mixes or blends compound feeds on behalf of a farmer on the premises of the farm whether or not some or all of the material is supplied by the user of the feed.
Store	Feed business establishment which stores feed or feed products for other feed business operators.
Supplier of Surplus Food	Food manufacturer or retailer which places food originally intended for human consumption into the feed chain.
Transporter	Feed business which moves feed or feed products from one place to another.

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<sup>1</sup> Feed includes compound feeds, feed materials and pet foods

<sup>2</sup> Feed products include additives and premixtures

## The Animal Feed Law Scoring System

### Part 1: The Potential Risk

#### A. Risk to Animal/Human Health and/or Other Businesses

This factor considers the potential adverse effect on animals/human health, and the consequences for other businesses, should the establishment not comply with feed legislation. Consequences for other businesses include the economic effects of unfair trading and the potential harm to animals and human health.

Score	Guidance on the Scoring System
30	<p><b>Manufacturers</b> of nutritional additives including vitamins, pro-vitamins, trace elements, amino acids (including their salts and analogues), and urea and derivatives.</p> <p><b>Manufacturers</b> of additives: enzyme and micro-organisms which act as digestibility enhancers, gut flora stabilisers and substances which favourably affect the environment.</p> <p><b>Manufacturers</b> of antioxidants with maximum permitted limits, colourant additives: carotenoids and xanthophyll's.</p> <p><b>Manufacturers</b> of proteins obtained from micro-organisms belonging to groups of bacteria, yeast, algae and lower fungi.</p> <p><b>Manufacturers</b> of premixtures, additives with maximum limits and novel protein products.</p> <p><b>Manufacturers</b> of other additives used in feeds.</p> <p><b>Manufacturers</b> or packers of compound feed which include additives, but not including mobile mixers.</p> <p><b>Importers</b> of all feedingstuffs originating from outside the EU.</p>
20	<p><b>Manufacturers</b> of compound feed which do not contain additives but are manufactured to be placed on the market, including mobile mixers.</p> <p><b>Mobile Mixers</b> of animal feeds with or without the inclusion of feed additives.</p> <p><b>Manufacturer</b> of feed materials including co-products.</p> <p><b>Co Product Producer</b>, food business which in manufacturing food intentionally places a fraction of the material produced into the feed chain.</p>

10	<p><b>Livestock Farm</b> for all types of species which are intended to enter the human food chain.</p> <p><b>Arable Farms</b> which are producers of primary products intended to be fed to animals.</p> <p><b>On-Farm Mixer</b> producing compound animal feed by the inclusion of additives or premixtures, but not complementary feed.</p> <p><b>Distributors</b> of feed and feed products.</p> <p><b>Supplier of Surplus Food</b>, manufacturer or retailer which places food originally intended for human consumption into the feed chain.</p>
5	<p><b>Transporters</b> of feed who also carry products other than feed, including surplus food.</p> <p><b>Any other business</b> not included in the categories above</p> <p><b>Stores</b> of feed and feed products.</p>

## B. Extent to Which the Activities of the Business Affect any Hazard

This factor considers the type of activities that the feed business undertakes, the need for any of those activities to be closely monitored and controlled, and the feed business operators potential effectiveness in maintaining compliance with animal feed law. Consider whether the business produces, labels, or advertises products to which animal feed law applies. If the business produces its own products, consider the monitoring and control of recipes and ingredients.

The scores below provide examples of feed businesses to which a particular score should apply.

Score	Guidance on the Scoring System
30	<p><b>Manufacturers</b> of nutritional additives including vitamins, pro-vitamins, trace elements, amino acids (including their salts and analogues), and urea and derivatives.</p> <p><b>Manufacturers</b> of additives: enzyme and micro-organisms which act as digestibility enhancers, gut flora stabilisers and substances which favourably affect the environment.</p> <p><b>Manufacturers</b> of antioxidants with maximum permitted limits, colourant additives: carotenoids and xanthophyll's.</p> <p><b>Manufacturers</b> of proteins obtained from micro-organisms belonging to groups of bacteria, yeast, algae and lower fungi.</p> <p><b>Manufacturers</b> of premixtures, additives with maximum limits and novel protein products.</p> <p><b>Manufacturers</b> of other additives used in feeds.</p> <p><b>Manufacturer</b> of feed materials.</p> <p><b>Manufacturers</b> of compound feed which do not contain additives but are manufactured to be placed on the market.</p> <p><b>Manufacturers</b> or packers of compound feed which include additives, <b>including mobile mixers.</b></p> <p><b>Importers</b> of all feedingstuffs originating from outside the EU.</p> <p><b>Mobile Mixers</b> of animal feeds with or without the inclusion of feed additives.</p> <p><b>Co Product Producer</b>, food business which in manufacturing food intentionally places a fraction of the material produced into the feed chain.</p>

20	<p><b>Manufacturers and Importers</b> dealing in a limited range of products which contain additives.</p> <p><b>Supplier of Surplus Food</b> who place surplus food into the feed chain where products not permitted for use as feed are kept/used.</p> <p><b>Transporter</b> of feed who also carry products other than feed, including surplus food.</p>
10	<p><b>Livestock Farms</b> for all types of species which are intended to enter the human food chain or arable farms placing feed materials into the feed chain.</p> <p><b>On Farm Mixing</b> / Manufacturers of animal feeds by the inclusion of complementary feed which are produced for the manufacturers own use e.g. farms.</p> <p><b>Suppliers of Surplus Food</b> other than manufacturers who place surplus food into the feed chain where products not permitted for use with all animals are kept/used.</p> <p><b>Transporter</b> of feed who carries feed only</p> <p><b>Stores</b> of feed and feed products.</p>
5	<p><b>Distributors, Arable farms and</b> any other business not included in the categories above.</p>

## C. Ease of Compliance

This factor considers the volume and complexity of animal feed law that applies to the business and with which it has a responsibility to ensure compliance. Consider the range and complexity of products, processes and services including the supply of raw materials. Consider the level of difficulty of the task for the feed business operator including how easy it is to recognise a hazard.

Score	Guidance on the Scoring System
20	<p><b>Manufacturers</b> of nutritional additives including vitamins, pro-vitamins, trace elements, amino acids (including their salts and analogues), and urea and derivatives.</p> <p><b>Manufacturers</b> of additives: enzyme and micro-organisms which act as digestibility enhancers, gut flora stabilisers and substances which favourably affect the environment.</p> <p><b>Manufacturers</b> of antioxidants with maximum permitted limits, colourant additives: carotenoids and xanthophyll's.</p> <p><b>Manufacturers</b> of proteins obtained from micro-organisms belonging to groups of bacteria, yeast, algae and lower fungi.</p> <p><b>Manufacturers</b> of premixtures, additives with maximum limits and novel protein products.</p> <p><b>Manufacturers</b> of other additives used in feeds.</p> <p><b>Manufacturer</b> of feed materials.</p> <p><b>Manufacturers</b> of compound feed which do not contain additives but are manufactured to be placed on the market.</p> <p><b>Manufacturers</b> or packers of compound feed which include additives, <b>including mobile mixers</b>.</p> <p><b>Mobile Mixers</b> of animal feeds with or without the inclusion of feed additives.</p>
10	<p><b>Co Product Producer</b>, food business which in manufacturing food intentionally places a fraction of the material produced into the feed chain.</p> <p><b>Supplier of Surplus Food</b> who place surplus food into the feed chain where products not permitted for use as feed are kept/used.</p> <p><b>Transporters</b> of feed who also carry other products.</p>

5	<p><b>On-Farm Mixer</b> producing compound animal feed by the inclusion of additives or premixtures, but not complementary feed.</p> <p><b>Stores and Distributors</b> of feed and feed products</p> <p><b>Supplier of Surplus Food</b> other than manufacturers who place surplus food into the feed chain where products not permitted for use with all animals are kept/used.</p>
0	<p><b>Arable Farms, Livestock Farms, Importer</b> and any other business not included in the categories above.</p>



## D. Animals and People at Risk

This factor considers the number of animals/people likely to be at risk if the business fails to comply with animal feed legislation.

Score	Guidance on the Scoring System
20	<p><b>Manufacturers</b> of nutritional additives including vitamins, pro-vitamins, trace elements, amino acids (including their salts and analogues), and urea and derivatives.</p> <p><b>Manufacturers</b> of additives: enzyme and micro-organisms which act as digestibility enhancers, gut flora stabilisers and substances which favourably affect the environment.</p> <p><b>Manufacturers</b> of antioxidants with maximum permitted limits, colourant additives: carotenoids and xanthophyll's.</p> <p><b>Manufacturers</b> of proteins obtained from micro-organisms belonging to groups of bacteria, yeast, algae and lower fungi.</p> <p><b>Manufacturers</b> of premixtures, additives with maximum limits and novel protein products.</p> <p><b>Manufacturers</b> of other additives used in feeds.</p> <p><b>Manufacturer</b> of feed materials.</p> <p><b>Manufacturers</b> of compound feed which do not contain additives but are manufactured to be placed on the market.</p> <p><b>Manufacturers</b> or packers of compound feed which include additives.</p> <p><b>Importers</b> of all feedingstuffs originating from outside the EU.</p> <p><b>Mobile Mixers</b> of animal feeds with or without the inclusion of feed additives.</p> <p><b>Co Product Producers</b>, food businesses which in manufacturing food intentionally places a fraction of the material produced into the feed chain., which is traded outside the region.</p> <p><b>Importers and Stores</b>, and <b>Transporters</b> of feed that is traded outside of their region.</p>

10	<p><b>Manufacturers, Importers, Stores and Transporters</b> of feed whose trade does not extend beyond a region e.g. <b>Distributors</b>/wholesaler; small-scale local manufacturer.</p> <p><b>Mobile Mixers</b> of animal feeds with or without the inclusion of feed additives.</p> <p><b>Co Product Producers</b> which is not traded outside the region.</p>
5	<p><b>Distributors</b> of feed and feed products.</p> <p><b>On-Farm Mixer</b> producing compound animal feed by the inclusion of additives or premixtures, but not complementary feed.</p> <p><b>Suppliers of Surplus Food</b> which is put into feed chain where products not permitted for use with all animals are kept/used.</p>
0	<p><b>Livestock Farm, Arable Farm</b> and any other business not included in the categories above.</p>

## Part 2: Level of (Current) Compliance

This factor considers the level of compliance with animal feed law observed during the inspection. Adherence to relevant UK or EU Industry Guides to Good Practice and standards produced by assurance schemes should be considered.

100	Poor Compliance	No evidence of feed safety management/documented procedures. Significant hazards not understood and no effective controls in place. Staff not suitably supervised, instructed and/or trained and no appreciation of feed hazards or controls. Poor track record.
70	Varying Compliance	Feed safety management/documented procedures inappropriate or inadequate. Significant hazards not fully understood and not all controls in place. Significant improvements in feed safety procedures/implementation of controls required. Some staff not suitably supervised, instructed and/or trained. Varying track record.
42	Satisfactory Compliance	Generally satisfactory feed safety controls in place. All significant hazards understood and controls in place. Feed safety management records appropriate and are generally maintained but some deficiencies/gaps identified. Staff generally suitably supervised, instructed and/or trained but there may be some minor issues. Satisfactory track record.

<b>21</b>	Broad Compliance or Better	Feed safety management/procedures in place. Hazards understood, properly controlled, managed and reviewed. Feed safety management records appropriate and are generally maintained. Staff suitably supervised, instructed and/or trained with good staff knowledge and new staff receiving induction training. Good track record.
<b>0</b>	A Minimum of Satisfactory Compliance and member of an FSA Recognised Assurance Scheme	Business qualifies for earned recognition through being a compliant member of an approved industry feed assurance scheme.

### Inspection Frequencies

Category	Points Range	Minimum Inspection Frequency
<b>A</b>	147 to 200	at least every 12 months
<b>B</b>	122 to 146	at least every 24 months
<b>C</b>	106 to 121	at least every 36 months
<b>D</b>	85-105	at least every 48 months
<b>E</b>	0-84	at least every 60 months

For feed businesses that qualify for earned recognition, the inspection frequency is described in Chapter 5 of the Feed law Practice Guidance document.

