



NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2005 No. 1323 (W.97)

AGRICULTURE, WALES

The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Wales) Regulations 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Wales, implement Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt 10 in maize products (OJ No. L101, 21.4.2005, p.14).

2. The Regulations -

- (a) prohibit the first placing on the market of certain maize products originating from the United States of America (defined as "controlled products" in regulation 2(1)) unless, as required by Article 2 of Commission Decision 2005/317/EC, it can be demonstrated that the products do not contain Bt 10 maize or feed produced from Bt 10 maize (regulation 3(1));
- (b) make it an offence to breach that prohibition (regulation 3(2));
- (c) apply with modifications certain provisions of the Agriculture Act 1970 (1970 c.40) for the purposes of the Regulations (regulation 5);
- (d) apply with modifications certain provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (S.I. 1999/1663) for the purposes of the Regulations (regulation 6);
- (e) provide for the inspection, seizure and detention of corn gluten feed or brewers grains illegally first placed on the market (regulation 7); and
- (f) amend the Genetically Modified Animal Feed (Wales) Regulations 2004 (S.I. 2004/3221 (W.277)) to provide that where material which is condemned pursuant to those Regulations constitutes controlled products as defined in regulation 2(1) of these Regulations, the expenses reasonably incurred in connection with the destruction or disposal of that product must be defrayed by the operator responsible for the first placing on the market of that material (regulation 8).

3. The CN codes referred to in the definition of "controlled products" are the code numbers of the combined nomenclature established by Council Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (OJ No. L256, 7.9.87, p.1).

4. No regulatory appraisal has been prepared in relation to these Regulations.

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AGRICULTURE, WALES

**The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control)
(Wales) Regulations 2005**

Made 12 May 2005

Coming into force 13 May 2005

The National Assembly for Wales, being designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms, in exercise of the powers conferred by that section, makes the following Regulations:

Title, commencement and application

1.-(1) The title of these Regulations is the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Wales) Regulations 2005 and they come into force on 13 May 2005.

(2) These Regulations apply in relation to Wales.

Interpretation

2.-(1) In these Regulations -

"the Act" means the Agriculture Act 1970⁽³⁾ and any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

"the Commission Decision" means Commission Decision 2005/317/EC on emergency measures regarding the non-authorized genetically modified organism Bt 10 in maize products⁽⁴⁾;

"controlled products" means -

(a) corn gluten feed containing or produced from genetically modified maize within CN code 2309 90 20 originating from the United States or America; and

(b) brewers grains containing or produced from genetically modified maize within CN code 2303 30 00 originating from the United States of America;

"enforcement authority" means a county council or county borough council; and

"feed" means feed as defined in Article 3.4 of Regulation 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽⁵⁾.

(2) Any term used both in these Regulations and in the Commission Decision has the meaning it bears in the Commission Decision.

(1) S.I. 2003/2901.

(2) 1972 c.68.

(3) 1970 c.40.

(4) OJ No. L101, 21.4.2005, p.14.

(5) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

Prohibition on first placing on the market

3.-(1) No person may first place on the market any controlled products unless -

- (a) the conditions specified in Article 2 of the Commission Decision relating to analytical reports are satisfied in relation to those products; and
- (b) the costs incurred in the implementation of Articles 2 and 4 in relation to that first placing on the market have been met by the operators responsible for that activity.

(2) Any person who knowingly contravenes paragraph (1) will be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Enforcement

4.-(1) Each enforcement authority must, within its area, enforce and execute the provisions of these Regulations.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an inspector of the authority concerned must ensure that the requirements referred to in paragraph (3) are met.

(3) The requirements are those specified in —

- (a) Article 3 of that Decision (which is concerned with the sampling and analysis of controlled products), other than the requirement to supply the Commission with specified information; and
- (b) Article 4 of that Decision (which is concerned with measures to be taken to ensure that controlled products that are found to contain Bt 10 maize or feed produced from Bt 10 maize are not placed on the market).

(4) Each enforcement authority must give such assistance and information to the National Assembly for Wales and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Act

5.-(1) The provisions of the Act listed in paragraph (2) apply for the purposes of these Regulations subject to the modification set out in paragraph (2)(a) and as if —

- (a) any reference in those provisions to a feeding stuff were a reference to feed;
- (b) any reference in those provisions to the Act or any Part of it were a reference to these Regulations;
- (c) any reference in those provisions to samples taken in a prescribed manner were a reference to samples taken in a manner prescribed in Part II of Schedule 1 of the Feeding Stuffs (Sampling and Analysis) Regulations 1999(1);
- (d) any reference in those provisions to a prescribed manner of analysis were a reference to a method that is suitable and validated for the purposes of Article 2.1 of the Commission Decision.

(2) The provisions referred to in paragraph (1) are-

- (a) section 76 (inspector's power to enter premises and take samples), which applies as if paragraph (b) of subsection (2) included power to require production of and to take copies of any documentation relating to the feed concerned;
- (b) section 77 (division of samples and analysis by agricultural analyst);
- (c) section 78(2), (3), (4), (5), (6), (7), (8) and (10) (further analysis by the Government Chemist);
- (d) section 79(4), (5), (6), (8) and (10) (supplementary provisions relating to samples and analysis);
- (e) section 80 (institution of prosecutions);
- (f) section 81 (offences due to fault of other person);
- (g) section 82 (defence of mistake, accident, etc.);
- (h) section 83 (exercise of powers by inspectors);
- (i) section 110 (offences by bodies corporate).

(1) S.I. 1999/1663, amended by S.I. 1999/1871, S.I. 2001/2253 (W.163), S.I. 2002/1797 (W.172), S.I. 2003/1677 (W.180), S.I. 2003/1850 (W.200), S.I. 2003/3119 (W.297), S.I. 2004/1749 (W.186) and S.I. 2004/3091 (W.265).

Application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999

6.-(1) The provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 listed in paragraph (2) apply for the purposes of these Regulations subject to the modifications set out in that paragraph and as if any reference in those provisions to a feeding stuff were a reference to feed.

(2) The provisions referred to in paragraph (1) are-

- (a) regulation 3(a) (manner of taking, preparing, marking, sealing and fastening of samples);
- (b) regulation 4 (methods of sending part of a sample), with the modification that the reference to "subsection (1)(b) or (2) of section 77 of the Act" is deemed to be a reference to these Regulations;
- (c) regulation 5 (qualifications of agricultural analysts and deputy agricultural analysts), with the modification that the reference to "The prescribed qualifications for an agricultural analyst or a deputy agricultural analyst for the purposes of section 67(5) of the Act insofar as it relates to feeding stuffs" is deemed to be a reference to the qualifications required by a person analysing feed for the purposes of these Regulations;
- (d) regulation 6(4) (applications of methods of analysis), with the modification that the reference to "the Act" is deemed to be a reference to these Regulations;
- (e) regulation 7 (form of certificate of analysis), with the modification that the reference to "section 77(4) of the Act" is deemed to be a reference to section 77(4) of the Act as applied for the purpose of these Regulations by regulation 5;
- (f) regulation 8 (period within which analysis of the oil content of feeding stuffs must be carried out) with the modification that the reference to "in the prescribed manner" is deemed to be a reference to a method that is suitable and validated for purposes of Article 2.1 of the Commission Decision;
- (g) Schedule 1 (manner of taking, preparing, marking, sealing and fastening of samples);
- (h) Schedule 3 (form of certificate of analysis) with the modification that the reference in Part I to "Part IV of the Agriculture Act 1970" is deemed to be a reference to these Regulations.

Inspection, seizure and detention of corn gluten feed or brewers grains illegally first placed on the market

7.-(1) An inspector of the relevant enforcement authority may at all reasonable times inspect any corn gluten feed or brewers grains; and on such an inspection the inspector may, taking account of all the information available to him or her, certify that the corn gluten feed or brewers grains are controlled products that have been first placed on the market in contravention of regulation 3(1).

(2) Where any corn gluten feed or brewers grains have been certified as mentioned in paragraph (1) they must be treated for the purposes of regulation 8 of the Genetically Modified Animal Feed (Wales) Regulations 2004⁽¹⁾ as failing to comply with a specified Community provision, subject to the modification that in paragraph (4)(a) of that regulation the reference to "regulation 5" will be deemed to be a reference to regulation 3 of these Regulations.

Amendment to the Genetically Modified Animal Feed (Wales) Regulations 2004

8.-(1) The Genetically Modified Animal Feed (Wales) Regulations 2004 are amended in accordance with paragraph (2).

(2) In regulation 8 (inspection, seizure and detention of suspected animal feed) -

(a) in paragraph (5) -

- (i) insert at the beginning the words "Subject to paragraphs (5A), (5B) and (6),"; and
- (ii) delete the words "subject to paragraph (6) below"; and

(b) after paragraph 5 substitute the following paragraphs -

"(5A) When the material which is condemned pursuant to paragraph (5) is feed or grains that are controlled products then the expenses reasonably incurred in connection with the destruction or disposal must be defrayed by the operator responsible for the first placing on the market of that material.

(5B) In paragraph (5A) "controlled products" means controlled product as defined in the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Wales) Regulations 2005."

(1) S.I. 2004/2334 (W.277).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽¹⁾.

12 May 2005

John Marek

The Deputy Presiding Officer of the National Assembly

(1) 1998 c.38.

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