

## **EXPLANATORY MEMORANDUM TO THE FEED (SPECIFIED UNDESIRABLE SUBSTANCES) (WALES) REGULATIONS 2007**

This explanatory memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales.

### **1. Description**

This Statutory Instrument transposes Directive 2006/77/EC of 29 September 2006, amending Directive 2002/32 on undesirable substances. The amending Directive revises the maximum permitted levels for a range of organochlorine compounds, which are classified as undesirable substances (contaminants) in animal feed.

The opportunity is also being taken to correct an omission which occurred during consolidation of the Feeding Stuffs (Wales) Regulations 2006 (S.I. 2006/116 (w.14)), relating to a sub-group of permitted protein sources consisting of two by-products from the production of amino acids by fermentation, which were omitted from Schedule 6.

### **2. Matters of special interest to the Subordinate Legislative Committee**

None.

### **3. Legislative Background**

The powers enabling this instrument to be made are contained in section 2(2) of the European Communities Act 1972. The Welsh Assembly Ministers are designated for the purpose of section 2(2) by virtue of the European Communities (Designation) (No.2) Order 2005 (SI 2005/1971) (which function has been transferred to them by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006), in respect of measures relating to feed produced for or fed to food producing animals.

### **4. Purpose and Intended Effect of the Legislation**

EC feed legislation includes provisions which lay down maximum permitted levels (MPLs) for certain undesirable substances in animal feed. Essentially, these are either naturally occurring environmental contaminants present at low levels in feed and food, particularly vegetable crops drawing nutrients directly from the soil, or process contaminants which may be introduced into the feedingstuff either during or as a consequence of its treatment, manufacture or storage. Examples include arsenic, cadmium, aflatoxin B1 and dioxins. The legislation which establishes these limits has been in place for many years; it was last consolidated as European Parliament and Council Directive 2002/32/EC of 7 May 2002. The MPLs prescribed in this Directive are implemented in Schedule 5 to the Feeding Stuffs (Wales) Regulations 2006.

Commission Directive 2006/77/EC, which amends Directive 2002/32/EC and which these Regulations transpose into law in Wales, revises some of these MPLs by: setting new limits for aldrin and dieldrin, two insecticides which were

prohibited from use some time ago but persist in the environment (particularly in fish oil). It also sets new limits for endosulphan (a pesticide found chiefly in the atmosphere, soil and sediment) in crude vegetable oil, and replaces the term “fats” by the term “fats and oils”.

Commission Directive 2006/77/EC is intended to help sustain and enhance feed safety, and thus the protection of public health of human consumers of meat products as well as animal health. The measure revises the MPL for a range of organochlorine compounds, chiefly pesticides.

An important safeguard in the protection of animal and human health is the setting of statutory limits for undesirable substances in animal feed. European Parliament and Council Directive 2002/32, the most recent consolidation of Community legislation on undesirable substances in feeds, prohibited the dilution (through mixing with other feed materials) of consignments of feed with levels of contamination above the specified MPLs. When this Directive was adopted the European Commission agreed that these MPLs should be reviewed in the light of current experience and up-to-date scientific evidence. When reviewing these MPLs, the Commission takes into account the prohibition of any dilution.

These reviews are being conducted by a scientific panel of the European Food Safety Authority (EFSA), which produces Opinions setting out its risks assessments of a range of undesirable substances. Directive 2006/77/EC represents the adoption of some of these Opinions in Community feed law.

#### Rationale for Government Intervention

Feed containing a relatively high proportion of fish oil in its formulation has been found to contain significant levels of aldrin and/or dieldrin, two insecticides the use of which was prohibited some time ago but which persist in the environment. Because of higher rates of bio-accumulation in the aquatic food chain, fish derived products, particularly fish oil, have the highest levels of these insecticides. Based on both this and available monitoring data, EFSA has recommended that there should be separate, lower, MPLs for fats and oils and fish feed than for all other feedingstuffs. A similar amendment is being made to MPLs for camphechlor, a pesticide.

Endosulphan is a pesticide found chiefly in the atmosphere, soil and sediment. Direct uptake from soil to plant as well as transport in plants is assessed by EFSA as negligible, but it is readily absorbed through the gastrointestinal tract and distributed to the kidneys and liver and to a lesser extent to other tissues. However, scientific opinion and monitoring data suggest that it is appropriate to amend the MPLs by the addition of a new MPL for this pesticide in crude vegetable oil. This recognised that data has indicated higher concentrations of endosulphan in the oil than in the oilseeds and other products derived from oilseed processing.

Scientific opinion and available monitoring data indicate that no changes are necessary to the existing maximum levels for hexachlorocyclohexanes and endrin.

Many of the organochlorine compounds for which MPLs are set -- aldrin, dieldrin, chlordane, DDT, endrin, heptachlor, hexachlorine and hexachlorocyclohexanes (HCH) -- have separate, lower, MPLs for fats than for other feedingstuffs and feed materials. EFSA has recommended that the term "fats" in the list of feedingstuffs potentially contaminated with these substances should be replaced by the term "fats and oils". This is to indicate clearly that the MPL applies to all fats and oils, including animal fat, vegetable oils and fish oil.

In transposing Commission Directive 2006/77/EC into national law, the opportunity is also being taken to rectify the omission from Schedule 6 to the Feeding Stuffs (Wales) Regulations 2006 of a sub-group of permitted protein sources, consisting of two by-products from the production of amino acids by fermentation. The rectification of this omission is necessary to clarify that these two amino acid by-products can legally continue to be used in animal feed. Two other minor typing errors made during the consolidation are also being corrected.

## **5. Implementation**

This Statutory Instrument applies only to Wales. Separate but parallel legislation will be made for Scotland, England and Northern Ireland.

## **6. Consultation**

Key stakeholders were kept informed of developments during negotiations on the revised MPLS. The feed industry was also invited to comment on the draft Regulations to transpose these MPLs into national legislation, and to provide any supporting financial or other relevant data.

## **7. Regulatory Impact Assessment**

### 7.1 Options

In respect of the legislation the 'Do Nothing' option is not an option, as it would ultimately lead to infraction proceedings against the Welsh Ministers by the European Commission. Therefore, the 'Make the Legislation' option to implement the changes required to comply with the European legislation is being recommended.

Full implementation of the proposed measure would provide additional safeguards on feed safety and would be consistent with the UK's obligations as a member of the EU. Full implementation could also benefit UK feed producers, as they would be able to continue to sell the full range of their products on other markets in the EU.

### 7.2 Costs and Benefits

#### Sectors and Groups Affected

The provisions of Directive 2006/77/EC will directly affect the UK feed industry, which will need to ensure that its products comply with the amended MPLs. Quantification of this impact is difficult because the amendments are marginal and because, as a matter of routine, the feed industry will already be carrying out sampling and analysis work to ensure that its products comply

with existing levels. In addition, the UK feed industry is highly fragmented and the impact of the measures will vary greatly among feed producers - the compound feed production sector in particular is more concentrated and is dominated by two large companies.

The rectification of the omission from Schedule 6 to the Feeding Stuffs (Wales) Regulations 2006 of two amino acid by-products from the list of permitted protein sources will end the disparity between the Regulations and the relevant Directive which authorised them and thus resolve any potential confusion on the part of the feed industry and enforcement authorities.

It is possible that local authorities may wish to undertake additional sampling and analysis of feed products to ensure that they comply with the new and revised MPLs, at least in the short term. The Local Authorities Coordinators of Regulatory Services (LACORS), the co-ordinating body for local authority trading standards departments, have submitted estimates of the potential extra cost of this work, which for Wales amounts to approximately £2,000 to £3,000 per year. However, the question of whether such additional work is actually undertaken will depend on the relative priority given to enforcement of the amended levels by both the local authorities themselves and the annual National Control Plan published by the Food Standards Agency, which sets out the checks it expects them to undertake. The current Plan does not include any requirements to sample for the presence of organochlorine compounds.

### Benefits

Full implementation of the measures will be of direct benefit to UK manufacturers, who will be able to continue to sell their products into the feed chain in the UK and other Member States.

Through the extension of controls on undesirable substances, there will be greater health benefits for farmed livestock and human consumers of meat products. This should provide purchasers of feed with more confidence in the products they buy, helping to promote sales by UK manufacturers. However, because the amended MPLs have been set on a precautionary basis, for scientific rather than economic reasons, it is difficult to quantify the potential benefits in financial terms.

### Costs

Full implementation could have some costs for UK feed producers in the short term because they may wish to undertake additional sampling and analysis work to ensure that their feed products conform to amended MPLs. However, as explained earlier, the feed industry carries out sampling and analysis as a matter of routine to ensure that its products comply with existing levels, and the nature of the amendments means that any increase in the price of feed to livestock farmers are likely to be marginal. Livestock producers unable to pass on higher costs to their customers could possibly be disadvantaged. In any case, the amendments will not alter the existing need for all feed business operators and users to keep sources of supply under review to ensure that potential sources of contamination are kept to a minimum.

There are no financial implications for the Assembly arising from the making of these Regulations.

#### Small Firms Impact Test

Approximately three-quarters of the companies that manufacture animal feed claim small company status. Feed industry trade associations have advised the Agency in response to previous consultations that they would prefer to be the point of contact for all of their members, including small businesses, so that they can provide information on the potential impact on them of new legislative measures.

Despite seeking their views, no information was forthcoming from either feed trade associations or small businesses directly on the potential impact of the measure in response to the public consultation on the draft Regulations.

#### 7.3 Competition Assessment

Detailed information on the number, size, market share and geographical location of businesses operating in the animal feed sector is not available, as statistical data of this nature has not been collected for some years. It is therefore not possible to give an accurate picture of the sector's economic position. However, it is known that national production of compound feed is characterised by two large companies, which account for approximately 50% of the sector, with the remainder accounted for by compounders that do not manufacture or distribute on a national basis, but have significant capacity in certain parts of the UK, and by co-operative or farmer-controlled compounders that have other interests in addition for feed manufacture, such as wholesaling and retailing.

Information collated by the Inter-Departmental Business Register, a database of the Office of National Statistics, showed that at the start of 2006 there were 405 companies in the UK, 15 of which were located in Wales, recorded as engaged in the 'manufacture of prepared animal feeds', with a total turn over of £3.3 billion and a total employment of about 12,000. These figures would have included firms producing pet food and feed for horses, as well as feed for farmed livestock, although they excluded firms producing fish meal and oil seed cake.

It should be noted that the possible marginal increases in process arising from implementation of the Directive are unlikely to affect competition significantly in the relevant upstream markets, as these rises will tend to fall uniformly across companies and not act to raise barriers to entry significantly.

#### 7.4 Consultation

Key stakeholders were kept informed of developments during negotiations on the revised MPLS.

The Food Standards Agency Wales carried out a public consultation between 11 June and 3 September 2007. Fifty-nine stakeholders in Wales, including consumer and industry representative bodies and farming unions, were invited

to comment on the draft Regulations that transpose these MPLs into national legislation, and the draft Regulatory Impact Assessment, and to provide any supporting financial or other relevant data. (A list of stakeholders is attached at Annex A).

One response was received to the consultation exercise in Wales, and four responses were received UK-wide, only two of which were substantive.

The responses received mainly commented on the potential additional resource requirements to be met by the local authorities as a consequence of the action necessary to ensure that the revised MPLs are observed by the feed industry. The other responses essentially amounted to no comment.

No amendments were made to the Regulations as a result of the responses received to the consultation exercise.

#### 7.5 Post Implementation Review

The Food Standards Agency will carry out a review of the impact of the new and amended levels within a year of the Regulations coming into force. This will take the form of a further public consultation, including the feed industry and enforcement authorities. The results of this review will help inform the UK's response to further Opinions adopted by EFSA as part of its continuing review of the current MPLs for undesirable substances.

#### 7.6 Summary

This Regulatory Impact Assessment has identified some potential compliance benefits and costs for the feed industry and other stakeholders, although the minimalist nature of some of the amendments to MPLs to be transposed means that it is quite difficult to estimate the precise economic or material impacts or to provide quantification of them. However, implementation may have some small costs to both the UK feed industry and enforcement authorities because of a perceived need to ensure that feed products conform to the amended requirements, at least in the short term, but may also have benefits to the feed industry because it will retain the ability to market its products in other EU Member States, and to the health of consumers of animal products through enforcement to feed safety.

## ANNEX A

Owen	Davies	ADAS
John	Clague	Asda Stores Ltd
J	Hall	Bernard Matthews Foods Ltd
Haji Mohammed	Akram	Birmingham Halal Abbatoir Ltd
I P	Thompson	Bishopston Comprehensive School
Andrew	Clarke	Brace's Bakery Limited
Helen	Lewis	Brecon High School
Nicola	Morris	British Diabetic Association
Mark	Williams	British Egg Industry Council
L	Corr	British Poultry Council
Sian	Richards	Cardiff LHB
M	Williams	Cardiff Scientific Services
Brenda	Davis	City & County of Cardiff
Julian	Salmon	County Land and Business Association Wales
John	Lloyd Jones	Countryside Council for Wales
J	Goss	Daniel James Community School
Ian	Kemp	Denbighshire Catering Services
Ivor	Chestnutt	Dental Public Health Unit
Keith	Ashcroft	Environment Agency Wales
Paul	Allen	European Food Law Association UK
Nick	Fenwick	Farmers' Union of Wales
Gethin	Williams	Federation of Small Businesses (South Wales)
Maureen	Byrne	Food & Beverage International
Clare	Oxborrow	Friends of the Earth Ltd
Heather	McCalman	Grassland Development Centre, IGER
Alan	Horine	Guild of Welsh Lamb & Beef Suppliers
Steven	Nash	Haemolytic Uraemic Syndrome Help
Masood	Khawaja	Halal Food Authority
Gwyn	Howells	Hybu Cig Cymru (Meat Promotion Wales )
		Institute of Food Science FST
Marco	Zacharia	John Lewis Partnership
Gwyneth	Beddoe	LACORS
Sarah	Eddy	Lidl
Michael	Fogden	Meat and Livestock Commission
Eleri	Evans	Meirion Dwyfor College
Trevor	Johnson	Minton Treharne Davies Ltd
Mary	James	National Farmers Union Cymru
Rabbi Dafydd	Jarrett	National Farmers Union Cymru
John	Mercer	National Farmers Union Cymru
David	Walters	Royal Welsh Agricultural Society
James	Thomas	Royal Welsh Agricultural Society
Tricia	Whitmore	Ryvita Co Ltd
Peter	Wilson	Sea Fish Industry Authority
SA	Sidani	Seven Seas Ltd
Tegwen	Evans	Soroptomists International
Jacob	Mothopeng	South Africa High Commission
Stuart	Challenor	Tesco Stores Ltd
Andrew	Opie	The British Retail Consortium
Gareth	Walters	Trading Standards Institute
P	Colbourn	University of Wales Aberystwyth

Jean	Feord	Waitrose Ltd
Don	Thomas	Welsh Lamb & Beef Producers
Richard	Howells	Welsh Lamb and Beef Promotions
Marilyn	James	Welsh Organic Scheme
Julie M	Thomas	Women's Food & Farmin Union Livestock Committee
Geoff	Lang	Wrexham Local Health Board
Non	Knott	Ysgol Tre-Gib
Hazel	Ashworth	
Helen	Porter	