

Environment, Planning and the Countryside Committee

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Venue: Committee room 2, Senedd

Title: The Feeding Stuffs (Wales) (Amendment) Regulations 2006

The Feeding stuffs (Wales) (Amendment) Regulations 2006

Purpose

At the request of the Business Committee, this paper brings the above regulations to the attention of Members of the Environment, Planning and Countryside Committee.

Background

The Feeding Stuffs (Wales) (Amendment) Regulations 2006 amend the Feeding Stuffs (Wales) Regulations 2006 (SI 2006/116(w.14)) by inserting into them a provision requiring the percentage of each feed material contained in a compound feed to be declared, within a tolerance of +/-15%. These regulations also revoke a provision in the Feeding Stuffs (Wales) Regulations 2001 (SI 2001/343 (w.15)) as amended requiring the exact percentage of each feed material in a compound feed to be disclosed to customers on request. The regulations implement in Wales Commission Directive 2002/2/EC which amend Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC.

There is extensive EC legislation on animal feed. This includes provisions on the declaration of ingredients in the labelling of compound (manufactured) feeds. Feed manufacturers originally had the option of declaring individual ingredients (e.g. wheat, barley) or categories of ingredients (e.g. cereals).

In 2002, the European Commission made a proposal to remove the category option and require manufacturers to declare the percentage inclusion of each ingredient of compound feeds. Some Member States, including the UK, argued against the proposal on the grounds that there had been no calls for it from feed purchasers, and that it was not required for human food. Some feed manufacturers, in the UK and other Member States, also opposed the proposal on the grounds that full declaration of feed ingredients would compromise commercially sensitive research and recipe information.

The Commission's proposal for percentage ingredients declaration was adopted by a qualified

majority as Directive 2002/2/EC (the UK voted against). It included a tolerance of +/-15% to allow for variations on declared analyses.

Directive 2002/2/EC was implemented in Wales by way of an amendment to the Feeding Stuffs (Wales) Regulations 2001. However, before these amending Regulations came into force, some feed companies applied to the High Court to have the relevant provisions suspended. The High Court (and equivalent courts for Scotland and Northern Ireland) referred the Directive to the European Court of Justice (ECJ) and further ordered that the relevant provisions of the implementing Regulations be suspended in England and Wales pending the outcome of the reference to the ECJ.

In December 2005, the ECJ ruled that the Directive's requirement for compound feed manufacturers to declare the percentage of each ingredient within a tolerance of +/-15% was proportionate and therefore a valid part of EC law. However, another requirement for manufacturers to disclose exact percentage information to customers on request was rejected by the Court on the grounds that it was disproportionate.

Member States are under a legal duty to give effect to the ECJ's ruling in line with their obligations under Article 10 of the Treaty establishing the European Communities. The Feeding Stuffs (Wales) (Amendment) Regulations 2006 amend the Feeding Stuffs (Wales) Regulations 2006 to give effect to this, i.e. they provide a requirement for percentage ingredient labelling of compound feeds (subject to a tolerance of +/-15%) but omit the requirement to supply exact percentages on demand.

Consultation

The Food Standards Agency Wales carried out a public consultation from 27 March to 19 June 2006 on the proposed regulations. Forty-seven stakeholders in Wales including consumer and industry representative bodies and farming unions were invited to comment on the draft Regulation and the draft Regulatory Appraisal. Two responses were received to the consultation exercise in Wales, and 13 substantive responses were received UK-wide.

In summary, concerns from some feed companies related to the loss of intellectual property, as competitors could copy feed recipes formulated on the basis of the former's research. The respondents maintained that this would risk stifling further innovation in the production of feeds that optimise animal performance and have a financial impact on feed manufacturers through loss of trade.

Several responses from agricultural organisation also indicated opposition to the measure, although one expressed support for the implementation of the legislation. One organisation representing trading standards departments of local authorities that enforce legislation, indicated that enforcement would be given a priority proportionate to the relatively low contribution that percentage ingredient declaration makes to feed safety.

Financial Implications

There are no additional financial implications for the Welsh Assembly Government arising from making these regulations. The measures will have some additional implications for local authorities

which are responsible for the enforcement of animal feed legislation.. However, it is not anticipated that these implications will be financial. Local Authorities will be required to check labels to ensure that the additional information is included. As enforcement officers already check labels as part of their routine assessment, the regulations should not have any additional financial implications for Local Authorities. The Local Authority Co-ordinators of Regulatory Services (LACORS), the co-ordinating body for local authorities in England and Wales, was invited to comment on the potential impact of this legislation on local authorities as part of the consultation, but no response was received.

The measures will have most effect on feed manufacturers, who will have to revise their labelling and may also have to recalibrate feed production equipment in order to record the percentage inclusion rates of each ingredient. Some stakeholders have said that percentage ingredient declaration could have an impact on some feed manufacturers' future research and development expenditure and on the nutritional expertise and advice currently offered to livestock farmers.

Press and Publicity

Should the National Assembly approve the legislation, the Agency will write to interested parties advising them that the Regulations have been made. No other publicity arrangements are currently planned.

Compliance

The powers enabling this Instrument to be made are contained in section 2(2) of the European Communities Act 1972, under which the National Assembly for Wales has been designated, by virtue of the European Communities (Designation) (No.2) Order 2005 (S.I. 2005/1971), in relation to measures relating to feed produced for or fed to food-producing animals, for the purposes of implementing community legislation. Further the Assembly has the power to make these Regulations by virtue of section 66(1), 68(1), 69(1), 74(1) and 74a of the Agriculture Act 1970(1), which functions were transferred to it by the National Assembly for Wales (Transfer of Functions) Order 1999. Under Assembly Standing Order 24, the Minister is able to put forward draft proposals for Assembly Regulations for consideration by the Assembly in plenary. There are no issues of regularity or propriety for the National Assembly arising from the making of these regulations. The Assembly Compliance Office has been copied in on this submission.

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Minister for Health and Social Services