

Guidance for
Enforcement Officers on
Regulation (EC) No.
669/2009 (as amended
by Regulation (EU) No.
212/2010) regarding the
increased levels of official
controls on imports of
certain feed and food of
non-animal origin and
amending Decision
2006/504/EC

If you require this information in an alternative format – such as audio, large print, Braille – please contact us.

CONTACT TELEPHONE 020 7276 8018

Summary

Intended audience:	This Guidance is intended for Local Authorities, particularly those with Designated Points of Entry (DPEs) within their administrative areas.
Regional coverage:	This Guidance is applicable in Scotland. Similar Guidance has been prepared in England, Northern Ireland and Wales.
Purpose:	<p>The Guidance explains safeguard measures and, the enforcement of Regulation (EC) No 669/2009 concerning the increased level of official controls on imports of certain feed and food of non-animal origin (FNAO).</p> <p>The intention is that there will be a clear understanding of the requirements regarding the increased level of controls of “high-risk” feed and food products imported into Scotland from Third Countries.</p>
Legal status:	<p>This Guidance is intended:</p> <ul style="list-style-type: none"> • to explain the regulations and, • to outline best practice.
Essential actions to comply with regulation(s):	<ul style="list-style-type: none"> • Officers enforcing the Regulation must be appropriately authorised. • Import/sampling areas to be Designated Points of Entry and meet the relevant requirements. • Officers should understand and be familiar with the Regulations and keep up-to-date with any amendments to the list of “high-risk” foods.

REVISION HISTORY

Revision No.	Revision date	Purpose of revision	Revised by
1	22 July 2010		

CONTENTS

INTRODUCTION.....	5
PURPOSE AND LEGAL STATUS.....	5
BACKGROUND.....	6
NEW LEGISLATION ON IMPORTS OF "HIGH-RISK" FNAO.....	7
MINIMUM FACILITIES AT DESIGNATED POINTS OF ENTRY (DPEs).....	9
IMPORTERS' RESPONSIBILITIES.....	9
ACTIONS REQUIRED BY AUTHORISED OFFICERS.....	10
REFERENCES.....	15
CONTACTS.....	15

Introduction

1. This Guidance, intended for feed and food law enforcement officers, covers import controls at designated points of entry (DPEs) into Scotland of specific feed and food not of animal origin, (FNAO) that are regarded as “high-risk”, under European law. Onward transmission of consignments is permitted in certain circumstances, when the “control” of the consignment will fall to another Authority.

2. Regulation (EC) No 882/2004 includes requirements for the official control of feed and food of non-animal origin being imported from third countries. Article 15(5) of Regulation 882/2004 provides that a list of certain feed and food products be drawn up, on the basis of known or emerging risks and be subject to increased controls at points of entry into the EU, and that fees related to these controls should be established. On 25 July 2009, Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC was published. However, since then, the Commission has published an amending Regulation to clarify some terminology used in Regulation 669/2009; to provide more precise definitions for certain CN codes; to take account of RASFF notifications received over the last three years regarding pesticides residues in vegetables, fresh, chilled or frozen (food) and, to present further technical clarifications. On 12 March 2010 Regulation (EU) No 212/2010 amending Regulation (EC) 669/2009 was published. All references to Regulation (EC) 669/2009 in this guidance note are therefore to Regulation (EC) 669/2009, as amended by Regulation (EU) 212/2010. This amending Regulation applies from 25 January 2010, as does Regulation 669/2009, which sets out rules for the increased level of official controls for products that present a known or emerging risk (“high-risk”) under Article 15(5) of Regulation 882/2004. The Official Feed and Food Controls (Scotland) Regulations 2009, provide for the execution and enforcement of Regulation 669/2009. The Regulations also revoke and re-enact, with changes, the Official Feed and Food Controls (Scotland) Regulations 2007. Similar legislation has been introduced in the England, Northern Ireland and Wales.

Purpose and Legal Status

3. This Guidance has been produced to provide informal, non-binding advice on:

- existing safeguard measures.
- the legal requirements of Regulation 669/2009 and,
- best practice in this area.

4. This Guidance should be read in conjunction with the relevant legislation itself. Moreover, the information provided on legal requirements should not be taken as an authoritative statement or interpretation of the law, as only the Courts have this power. It is ultimately the responsibility of individual feed and food business operators (importers) (FBOs) to ensure they comply with the law. Feed and food law does not require compliance with advice on best practice.

5. FBOs with specific queries may wish to seek the advice of their enforcement authority, which will be the Authority responsible for enforcement at the relevant DPE or, other Authorities in certain cases (see below) Hence, relevant Authorities need to keep up-to-date with the requirements.

Background

6. Enforcement powers for Regulation 882/2004 and Regulation 669/2009 are contained in the national Regulations, hence authorisation is required for enforcement officers under them. The Regulations allow examinations to be deferred in exceptional cases [at the discretion of the enforcement authority] to the point of destination, if a written undertaking, regarding specific precautionary measures, is obtained from the importer. Hence, all relevant Local Authorities (LAs) should ensure they correctly authorise their enforcement officers.

7. The Regulations also allow Declarations to be issued, when there is a serious and imminent risk to animal or public health and control measures need to be put in place rapidly. In particular, they may be used to ensure that Emergency Control Decisions (safeguard measures) made at EU level may be implemented in the UK without any delay. Emergency Control Decisions may either suspend imports altogether or specify conditions of import. In the UK Emergency Control Decisions are implemented by Declarations made under the Regulations, or by product specific Emergency Control Regulations, e.g. The Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005, which were revoked when Regulation 669/2009 came into effect.

8. Emergency Control Decisions are made under Article 53 of the EU General Food Law [Regulation (EC) No 178/2002]. Emergency Control Regulations are made under the European Communities Act 1972. The Agency publicises Declarations and / or product specific Emergency Control Regulations, when they are made.

9. On occasions, authorised officers may need to check relevant emergency control legislation / Declarations to determine whether suspect products, which are on sale, are subject to conditions or restrictions and therefore whether they have been legally imported.

10. However, Regulation 669/2009 has amended Decision 2006/504/EC (which was subsequently repealed by Regulation (EC) No 1152/2009) and repealed Decision

2005/402/EC, on emergency measures regarding chilli, chilli products, curcuma and palm oil, which was implemented by the aforementioned national Emergency Control Regulations. The repeal of this latter Decision arose because, since the adoption of the relevant measures, there has been a significant improvement in the situation regarding Sudan dyes in relevant products and, the controls are now included in this latest EU Regulation on imports of “high-risk” products. Notwithstanding this new Regulation, Declarations may still be issued in the future, subject to risk associated with any particular feed or food.

11. Products covered by Regulation 669/2009 are subject to Documentary, Identity and Physical checks at the DPE and, if found to be satisfactory, a Common Entry Document (CED) is completed. [See Article 8 (1) (a) & (b) of Regulation 669/2009 and Article 2 (17), (18) and (19) of Regulation 882/2004]

12. Officers inspecting retailers, importers, wholesalers, distributors and manufacturers should look out for large consignments of “high-risk” FNAO (see below) and, where found, should make enquiries in relation to their origin. Officers should enquire about the DPE used for the feed or food and request to see copies of CED/official documents, whilst recognising that these are not legally required to be present at the point of retail where much of this feed or food may be found.

New Legislation on Imports of “High-Risk” FNAO

13. The now repealed Decision 2006/504/EC (as amended) on special conditions governing certain foodstuffs imported from certain third countries due to contamination risks of these products by aflatoxins, required that specified FNAO from third countries, can only be imported into the EU via “designated points of import”. This requirement has been carried forward in the replacement Regulation (EC) No 1152/2009.

14. The specified products in Decision 2006/504/EC (as amended) from certain Third Countries had to be accompanied on import by the results of sampling and analysis for aflatoxins and, a health certificate, in accordance with the model certificate set out in Annex I of this Decision. This too has been carried forward in Regulation 1152/2009.

15. However, owing to the decrease in the number of notifications of aflatoxins in peanuts from Brazil, the new Regulation 669/2009 discontinues the measures for these particular products that were in Decision 2006/504/EC. Instead, the new Regulation 1152/2009 sets out the controls for such products. This new Regulation 1152/2009 came into effect on 1 January 2010 and includes measures to align the special import conditions as regards aflatoxins, with Regulation 669/2009 for different food products. The CED referred to in Article 3 (a) of Regulation 669/2009 must be used for the particular products covered by Regulation 1152/2009.

16. In addition to the above and pursuant to Article 15(5) of Regulation 882/2004, the Commission issued a proposal for rules to implement these measures in March 2007. The proposal was adopted as Regulation 669/2009. The Regulation provides for an increased level of controls for feed and food from a number of Third Countries, subject to a known or emerging risk currently relating to aflatoxins, ochratoxin A, Sudan dyes, cadmium and lead and, pesticide residues.

17. Similarly, in this new Regulation specified products from certain third countries must enter the EU through “designated points of entry” (DPEs). The Commission has advised that Border Inspection Posts (BIPs) may be authorised as DPEs. The BIPs would not need to have separate facilities for imports of POAO and FNAO, however there would need to be proper controls to prevent cross-contamination. Regarding this topic, please refer to Appendix T of the Defra BIP Manual on the following link.

<http://www.defra.gov.uk/foodfarm/animaltrade/imports/bips/pdf/bipmanual.pdf>

18. The import of products listed in Annex 1 of Regulation 669/2009 (as amended) may be permitted only through a DPE that has appropriate control facilities for different types of feed and food.

The current list of “high-risk” FNAO in the Annex to this Regulation may be accessed at:

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:065:0016:0022:EN:PDF>

19. The Annex 1 list in the Regulations will be reviewed on a regular basis. This will follow receipt of relevant information (at least quarterly) by the Commission from the following sources:

- Information obtained through RASFF.
- FVO Reports.
- Reports and information from Third Countries.
- Information exchanged between the Commission, Member States and the European Food Safety Authority (EFSA).
- Scientific assessments.

As indicated above, on 12 March 2010, Annexes 1 and 2 to Regulation (EC) No 669/2009 were amended by the Annex to Regulation (EU) No 212/2010

Minimum Facilities at DPEs

20. Article 4 sets out the minimum requirements for DPEs to undertake increased levels of control for specific “high-risk” feed and food. DPEs must also be designated by the Agency. These minimum requirements for DPEs are to ensure a degree of uniformity in the effectiveness of the controls. Relevant Authorities should work with port operators to ensure that the minimum facilities are provided for DPEs.

- There shall be a sufficient number of suitably qualified and experienced staff to perform the prescribed checks and officers must be appropriately authorised.
- The facilities provided must be suitable for the necessary checks.
- Detailed instructions must be available regarding sampling and, the dispatch of the samples to a designated laboratory.
- There should be suitable and sufficient storage facilities for a consignment(s) during detention, whilst awaiting the laboratory results. This includes cold stores, in cases where such storage is necessary owing to the nature of the consignment.
- Suitable unloading and sampling equipment, with the possibility to perform unloading of the consignment and sampling for analysis, in a sheltered area, where appropriate.
- There should be a designated laboratory situated in a location that allows samples to arrive at the laboratory in a short period.

21. The Agency maintains and makes publicly available an up-to-date list of DPEs for each of the products listed in Annex I and advises the Commission accordingly. When the Agency is concerned that the continuing operation of a DPE could present a serious risk to animal or public health and/or there is a serious breach in respect of the above requirements, it may suspend the designation of the point of entry, either in full or part, by serving a written notice to that effect on the port operator.

Importers’ Responsibilities

22. The relevant FBOs (importers) of “high-risk” feed and/or food (or their representatives) who have responsibility for the consignments must give adequate prior notification to the enforcement officer(s) at the DPE(s) of the time and date of arrival of consignments at the particular DPE and, their specific nature. The obligation to pre-notify will have been clearly breached, if the consignment is brought in somewhere that is not a DPE, and, an offence will have been committed.

23. This notification must be undertaken through completion of Part 1 of a Common Entry Document (CED) by the importer (in English) at least one working day prior to

the physical arrival of the consignment at the DPE. The CED is provided in Annex II of the Regulation. Failure of a FBO to pre-notify relevant consignments, which are subsequently revealed elsewhere e.g. by UKBA staff in a transit shed, should result in action to place the consignment(s) immediately under official detention, and that it be either destroyed or re-dispatched. [Articles 19 (2) (b) and 21 of Regulation 882/2004].

24. Where a consignment has “special characteristics”, e.g. highly perishable and/or specific packaging features, and there is a need, FBOs shall provide human resources and assist with logistics to unload the consignment to allow official controls to take place and provide the appropriate sampling equipment / assistance, if the sampling cannot be representatively performed with standard sampling equipment.

25. With the increased level of official controls, FBOs are responsible for the payment of fees to the relevant Authority, which shall not be higher than the costs borne by the Authority as laid down in Annex VI of Regulation 882/2004.

26. The FBO or their representative must present the CED (or its electronic equivalent) once completed by the authority, to the Customs authorities for the consignment(s) to be released into free circulation.

27. To facilitate matters and where feasible, a FBO may request the authorised officer to “represent” him / her and notify the HMRC National Clearance Hub (including electronically) to confirm that the CED has been presented and endorsed, and that the consignment(s) may be released from customs control.

Actions Required by Authorised Officers

28. When appropriate, application for DPE status should be made to the Agency by the port operator after liaison with the relevant authority to arrange for appropriate facilities to be provided or upgraded, if necessary.

29. In order for the relevant imported FNAO to undergo proper enhanced checks, it must enter through DPEs that meet minimum requirements. However, for a transitional period of five years from the date of entry into force of Regulation 669/2009, DPEs that are not fully equipped with the relevant facilities required to undertake identity and physical checks, the checks may be carried out at another authorised point of control. However, this alternative authorised point of control must meet the minimum requirements for a DPE for the Agency to authorise it. It is unlikely that the UK will need to use these transitional measures.

30. The official controls including the sampling of feed or food covered by this Regulation are set out in Article 8, which refers to “consignments”. A “consignment” is defined in Article 3 (c) as “a quantity of any feed or food of non-animal origin listed in Annex I to this Regulation of the same class or description, covered by the same documents(s), conveyed by the same means of transport and coming from the same third country or part of such country.” If these conditions are fulfilled, the consignment can comprise more than one container. Hence, provided the contents of the containers meet the aforementioned requirements, a single CED will cover the

consignment. However, each separate “commodity” listed in Annex 1 is a separate “consignment” and a CED must be completed for each consignment, whether in the same container or not. When the increased level of controls and the CED have been completed and the consignment is split into separate “commodities”, a CED must accompany each different part of the split consignment until released for free circulation.

31. Even though there is no minimum consignment size given in the Regulation, personal imports of any of the feed / food listed in Annex I are not regarded as commercial “consignments”. However, for the purposes of this Guidance, a “quantity” of feed or food in, for example, a mixed “consignment” may be between 5 – 20 kg and should be subject to official controls. The relevant authorised officer must undertake documentary checks on all consignments within two working days from the time the consignments arrive at the DPE, unless there are exceptional and unavoidable circumstances [Article 8 (1) (a)].

32. Annex I of the Regulation sets out the frequency of identity and physical checks and the particular hazards associated with different feed/food. The consignment must remain under the control of an authority until the results of the physical checks, including sampling and analyses for the relevant hazard(s), are known. Such results should be made available as soon as technically possible. FBO’s or their representatives should not be able to predict whether any particular consignment will be subject to such checks as laid down in Annex I.

33. However, if an authorised officer has concern that some listed products may require more frequent checks than set out in Annex I, owing to previous samples of particular products from certain countries consistently failing to meet requirements, then action under Article 18 of Regulation 882/2004 should be considered.

34. It should be borne in mind that unless very carefully controlled, sampling large numbers of bags of product, e.g. seasonings, spices and fresh produce, at the DPE may disrupt the integrity of the packaging and lead to possible food safety issues including potential:

- foreign body contamination,
- pest ingress,
- microbiological contamination,
- allergen cross-contamination.

It is possible that significant quantities of product might need to be destroyed as a result. Therefore, care should be exercised when sampling and then re-sealing bags, sacks and other containers after sampling.

35. Most fresh fruit and vegetables are subject to the EU Marketing Standards. All regulated produce imported from non-EU countries must be accompanied by a Certificate of Conformity. These are issued by the Scottish Government’s Horticulture and Marketing Unit (SG HMU) (contact: hort.mark@scotland.gsi.gov.uk). For some countries approved by the EU, certificates may be produced at the point of

export by official authorities. Where possible, LAs are encouraged to carry out joint examinations of pertinent products with SG HMU in order to reduce the burden on importers and subsequent delays.

36. Similar arrangements are in place for plant health controls. Inspections are undertaken on specific plants and plant products by SG HMU in order to prevent the introduction of harmful plant pests and diseases. Guidance is available for importers at the following address:

<http://www.scotland.gov.uk/Publications/2009/11/16103416/0>

37. Officers should ensure that the analytical results, particularly of samples taken of perishable products, are obtained as soon as practicable. For example, the Agency is aware that some laboratories are able to report the results of the analyses for pesticides late on the day after the day the sample was submitted.

38. Where feed and food official controls are undertaken concurrently at a DPE, care should be exercised when undertaking the controls, e. g. preventing cross-contamination.

39. Following completion of the checks, which should be undertaken without undue delay (Article 8) and the consignment is found to be satisfactory, the authorised officer should complete Part II of the CED, and stamp, sign and date it. A copy of this completed CED should be retained, whilst the original CED should accompany the consignment to the place of destination indicated on the CED following the FBO presenting to the Custom Authorities the completed CED, or an electronic equivalent.

40. The timeframe for undertaking documentary, identity and physical checks should be as short as possible, particularly when perishable commodities are involved. Should there be any FBO queries in relation to the official controls, please refer to Article 2 of Regulation 882/2004 regarding the definitions of “documentary check”; “identity check” and “physical check”, which in this situation includes sampling for analysis and laboratory testing.

41. If the results of the checks indicate non-compliance, the authorised officer should complete Parts II and III of the CED and take action in terms Regulation 882/2004, viz. Article 19 – Action following official controls on feed and food from third countries; Article 20 – Special treatment, and/or Article 21 - Re-dispatch of consignments. The authorised officer should discuss with the FBO the options available. FBOs will also be liable for any costs incurred at the DPE concerning the actions taken as outlined above. If necessary, consideration should be given to the use of the RASFF system.

42. Fees charged to the FBO should be in accordance with Article 27(4) of Regulation 882/2004. Hence, the fees collected for the purposes of official controls shall not be higher than the costs borne by the responsible competent authority in relation to the following items (Annex VI of Regulation 882/2004), i.e. the criteria to consider for the calculation of fees are:

- a) the salaries of the staff involved in the official controls;
- b) the costs for the staff involved in the official controls, including facilities, tools, equipment, training, travel and associated costs;
- c) the laboratory analysis and sampling costs.

43. Regarding Article 8(2) of Regulation 669/2009, in the unlikely event that onward transmission of a consignment is authorised by the Officer, pending the results of physical checks of these “high-risk” products, consideration should be given to the possible consequences of known or emerging risks. However, the Officer must liaise with the Authority at the place of destination, so that appropriate arrangements are implemented to ensure that the consignment remains under the control of the second (receiving) Authority and cannot be tampered with pending the results of the physical checks. The Authority at the DPE must notify the Authority at the point of destination of the results of the physical checks. If onward transmission is permitted, e.g. for chilled fresh produce, a certified copy of the original CED should accompany the consignment and the Custom Authorities advised and kept updated, in respect of whether the consignment subsequently enters free circulation. Article 24 (1) - (3) of Regulation 882/2004 is also relevant, i.e. there should be close co-operation between customs services and authorities:

- customs services shall not allow the entry or handling of the “high-risk” products in free zones or free warehouses without the agreement of the authority.
- when samples are taken, the authority should notify the customs services and indicate whether the consignment is to be transported to another destination to be under the control of another authority pending the results of the physical checks.

44. Regarding Article 9 (2) identity and physical controls may be undertaken at the point of destination, after documentary checks have been completed at the relevant DPE, but only in exceptional cases and where Annex I provides a derogation to that effect. Examples that may apply are if the product is highly perishable and/or where the nature of the packaging is such that the product cannot be sampled at the DPE, without causing a serious risk to food safety or damaging the product to an unacceptable extent. The premises where the identity and physical checks are undertaken must fulfil the requirements of Article 4 and the consignment(s) must remain under the control of the relevant authority.

45. There is a requirement for Member States to report to the Commission on a quarterly basis the results of the checks. The information required is as follows:

- a) details of each consignment, including the size in terms of net weight of the consignment and the country of origin;
- b) the number of consignments subjected to sampling for analysis and,

c) the results of the documentary, identity and physical checks.

Officers should collate this information and forward it to the Agency on a three monthly basis.

46. Member States may request the Commission to authorise the relevant Authority at DPEs, where there are specific geographical constraints, to carry out physical checks at the FBO's establishment, under the control of the relevant Authority. This needs to be approved for that purpose by the Commission provided the efficiency of the controls undertaken at the DPE is not adversely affected and, the establishment fulfils relevant requirements of an "approved" DPE, e.g. suitable facilities to allow the checks to be carried out, appropriate amenities for storage, unloading equipment, etc.

47. Officers should ensure that consignments are not split until completion of the increased level of official controls, and until the CED is completed. Should the consignment(s) be subsequently split, an authenticated copy of the CED should accompany each part of the split consignment until it is released for free circulation. However, when there are mixed container loads, i.e. containers that have a product that is listed in Annex I, together with a product which is not so listed, then the product not subject to additional checks, may be released for free circulation, when appropriate.

48. When a consignment contains various "high-risk" products listed in Annex I, with the possibility of different hazards and analyses, the consignment may be split to allow the different parts to be subsequently released, subject to the analytical results. This should avoid unnecessary delay with the release of any particular product(s). As indicated above, each "high-risk" product is a separate "commodity" and a CED must be completed to cover each different part of the consignment.

49. Once all controls have been undertaken and there have been satisfactory results of all the necessary official controls, the FBO should present the completed CED to the Customs services to allow the release of the consignment into free circulation.

50. Should a consignment of an Annex I listed "high-risk" feed or food be found to have avoided official controls at a DPE, appropriate action should be taken, e.g. liaison between relevant authorities and the use of regulation 31 of the Official Feed and Food Controls (Scotland) Regulations 2009, concerning the use of Article 19 of Regulation 882/2004. The relevant authority for the particular area also should instigate such action, if the FBO refuses to return the consignment(s) to a DPE or, if it has been abandoned in a transit shed.

References

- Commission Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
- Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC.
- Commission Regulation (EU) No 212/2010 amending Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin.
- Commission Regulation (EC) No 1152/2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC.
- The Official Feed and Food Controls (Scotland) Regulations 2009. (SSI 2009 No 446).

Contacts

- Imported Food Contact:

Carolyn Ainsbury

Tel: 01224 285 156

Carolyn.ainsbury@foodstandards.gsi.gov.uk

- Imported Feed contact:

Jacqui Angus

Tel: 01224 285 174

Jacqui.angus@foodstandards.gsi.gov.uk