

# FINAL REGULATORY IMPACT ASSESSMENT

## 1. TITLE OF THE REGULATORY PROPOSAL

### THE FEEDING STUFFS AMENDMENT (SCOTLAND) (NO 2) REGULATIONS 2003

#### Implementation of:

(a) Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC; and

(b) Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed.

## 2. PURPOSE AND INTENDED EFFECT OF THE MEASURES

### 2(i) Issue and Objectives

These Regulations implement two EC measures relating to animal feedingstuffs – Directive 2002/2 on the labelling of compound feedingstuffs, and Directive 2002/32 on undesirable substances. The first of these Directives removes the option to declare by category of ingredient for feed for farmed livestock and requires ingredients to be listed by percentage weight; the second, amongst other things, prohibits the blending down of consignments of feed with levels of contamination above the maximum permitted levels.

### 2(ii) Devolution

These Regulations will apply only in Scotland. Separate but parallel Regulations will be made in England, Wales and Northern Ireland.

### 2(iii) Background

#### a) Directive 2002/2 (Ingredient Listing of Compound Feeds)

Since 1991, the ingredients of compound (i.e., manufactured) animal feeds have had to be declared in descending order by weight, either by category of ingredient or by specific ingredient. In 2000, the Commission introduced a proposal to delete the category option for feed for farmed livestock and require all compound feed ingredients to be declared in descending order by weight, together with the amount in terms of percentage by weight. The Commission justified this approach on the grounds of improving traceability of feed materials and transparency for farmers.

Member States, including the UK, supported the deletion of the category option, but not the declaration of ingredients by percentage. It was pointed out that full percentage declaration was not required for human food, that there had been no calls for it from farming organisations, and that it would add little to the other nutritional and analytical information required under EU animal feed law. Feed manufacturers were also opposed on the grounds that this provision could compromise commercially sensitive research and recipe information.

Full percentage declaration by weight was nevertheless supported by the European Parliament, although the Council and Commission subsequently compromised on declaration in five percentage bands. The proposal then remained deadlocked for over a year, and seemed set for formal conciliation procedures until the then Presidency unexpectedly revived a previous Presidency's compromise proposal for full percentage listing with a tolerance of +/-15% to allow for variations in the declared analyses. This approach gained qualified majority support in Council, with the UK voting against, and was subsequently accepted by the European Parliament.

#### **b) Directive 2002/32 (Blending Down of Undesirable Substances)**

Controls on undesirable substances in animal feed have been progressively strengthened over the years. The most important safeguard for the protection of animal and human health is the setting of risk-based maximum permitted levels (MPLs) for a range of contaminants including heavy metals, nitrates, aflatoxins, dioxins and certain pesticides.

Under Directive 1999/29 on undesirable substances in animal nutrition, certain establishments are permitted to dilute feed materials with levels of contamination above the specified MPLs by combining them with uncontaminated material (blending down) to ensure that the MPLs in finished feed are observed. This provision is restricted to manufacturers who have been approved under Directive 95/69 (the Establishments Directive). Approval is subject to a prior check by the authorities that such establishments have the equipment and facilities to process material effectively and safely. Directive 1999/29 requires that material containing levels of undesirable substances above the MPLs be accompanied by a document stating the amount of undesirable substance in the material, that the consignment is intended for manufacturers of compound feedingstuffs who fulfil the conditions in Directive 95/69, and that it must not be fed to livestock without prior processing.

Directive 2002/32 amends Directive 1999/29, principally by removing the provisions that permit material above MPLs to be blended down, which means that all feed materials put into circulation must now observe the MPLs set for them. Investigations must be carried out in cases where MPLs are breached, and also where the level of contamination is below the MPL but could be "significant". (The threshold action levels for significant contamination have still to be laid down, but there are provisions in place for doing so.) There is also a provision to permit the Commission to define the criteria for the acceptability of processes for detoxifying feed. Other amendments include the extension of the scope of Directive 1999/29 to products used in animal feeds (e.g. feed additives) and the removal of a derogation which meant that MPLs did not apply to fodder used on-farm.

### **c) Timetable**

Member States are required to transpose Directive 2002/2 into domestic legislation no later than 6 March 2003, with a coming into force date of 6 November 2003. Directive 2002/32 has a date of 1 May 2003 for transposition by Member States, and a coming into force date of 1 August 2003.

## **2(iv) Risk Assessment**

### **(a) Directive 2002/2 (Ingredient Listing of Compound Feeds)**

The Directive is intended to provide farmers with complete information on the constituents of compound animal feeds, including the amounts. It would advise farmers exactly what is in a manufactured compound feed, which might assist them to better formulate and utilise rations to meet the nutritional needs of their livestock. However, both the feed industry and the Food Standards Agency, as well as farming unions, question whether in practice farmers will be able to interpret nutrient levels from percentages of ingredients.

The Commission originally contended that percentage inclusion rates would help reduce the frequency of contamination incidents, such as the high levels of dioxins found in recovered vegetable oil in Belgium in 1999. The European Parliament has similarly argued that percentage declaration by weight is necessary for consumer protection, but both claims have little to support them. Percentage declaration could not have prevented what was either an accidental or criminal mixing of transformer with other oils in the Belgian dioxin case, and full percentage declaration is not a requirement for human food. In addition, the tolerance limit of +/-15% is not linked to any scientific criterion and could potentially allow for inaccurate declarations and wide variations in enforcement in Member States.

### **(b) Directive 2002/32 (Blending Down of Undesirable Substances)**

From the point of view of public safety – both feed operators handling contaminated feedingstuffs and consumers of animal products – and animal health, it is important that MPLs for undesirable substances are observed. For example, there are instances of aflatoxin in consignments of imported feed materials. There have also been a number of major contamination incidents over the past few years; e.g. the contamination of molasses with a pharmaceutical product and dioxin contamination of a copper premixture imported into the UK from the USA. In general, the feed industry should seek to minimise levels of contamination in all its raw materials.

The Commission made the proposal to prohibit blending down in the wake of the Belgian dioxin incident of 1999. Allowing feed materials to be put into circulation with contamination above MPLs clearly poses some risks, as such materials could illegally reach unauthorised recipients - the current arrangements only permit blending down by approved establishments. Moreover, these provisions, whilst not leading to breaches of the MPLs for compound (i.e. mixed) feeds, can result in a

higher overall input of contaminants and other undesirable substances than would otherwise be the case. In negotiations, the UK argued that although a ban on blending down under supervision in the EU might remove some risks it was not a complete solution, as third countries exporting to the EU are beyond the scope of the Directive and blending down could therefore continue outside the EU. This argument was supported by the independent Advisory Committee on Animal Feedingstuffs (ACAF), which was also concerned that no scientific risk assessment had been carried out.

Industry, particularly importers and feed manufacturers, has expressed concern about the potential effect of this measure on trade. There could be more rejected consignments; trade from some countries could cease because they are unable to supply materials with contamination levels below the specified MPL (a particular problem where aflatoxins are concerned); and compounders could be more restricted in the ingredients available to them.

During negotiations, the Commission made a commitment that its Scientific Committee on Animal Nutrition (SCAN) would review the existing MPLs, taking into account the implications of the prohibition on blending down. The view was taken that some MPLs had been set too strictly given that material could be blended down, and relaxation might therefore be possible. This review, which was supposed to be completed before the Directive came into force, is now under way.

Removal of the provision that permitted Member States not to apply MPLs to fodder used on farm closes a loophole that had potential safety implications. The UK had not applied this derogation, and had no objection to its deletion.

It is consistent to bring feed additives within the scope of the Directive, since they can be susceptible to contamination. The impact of this cannot be assessed within the terms of this RIA, since compliance implications depend on the individual MPLs set for additives. The Regulations contain no MPLs for additives, and the setting of them would be subject to separate Directives made by the Commission.

**2(v) Business Sectors Affected**

The business sectors likely to be affected by these two measures are importers of feed materials, agricultural merchants, feed compounders and pet food manufacturers. The approximate number of such businesses is as follows:

Manufacturers of additives and premixtures	40
Distributors of additives and premixtures	2,400
Manufacturers of prepared feed for farm animals	405
Manufacturers of prepared pet foods	130
Importers and agricultural merchants	70
Farmers	150,000

**2(vi) Issues of Equity and Fairness**

Directive 2002/2 will provide more information on the composition of compound animal feed. The main beneficiaries should be farmers, who will receive additional

information on the feed they purchase. On the other hand, such information should be proportionate to the need and not to overburden the feed industry. There has been no demand from farmers for percentage inclusion rates, so it is questionable whether it is fair to impose this on manufacturers. ACAF also concluded that percentage declarations should be optional, not mandatory, and would not compromise precise formulation drawn up the manufacturer.

As previously mentioned, percentage declarations are not required for human food. Moreover, there is no direct link here with safety or public health issues, such as BSE, where there are already extensive controls in place. Nevertheless, the lack of harmonised legislation could result in barriers to trade and distortion of competition within the EU Single Market.

One company and one trade association which responded to the consultation on this measure have expressed the view that businesses would suffer loss of intellectual property (i.e., recipe information) and thus competitive edge from full disclosure of feed ingredients, with a subsequent impact on R&D and employment of specialist personnel. It is argued that the feed industry would be less inclined to invest in research on optimising animal nutrition and the development of new products if the results were visible to all businesses (including those which did not make such investments); in consequence, the livestock sector itself would suffer. There would be an adverse impact on work for universities and other researchers; reduction in the availability of specialist nutritional advice for farmers; there may be increased imports of both feed products and food for human consumption from third countries, with adverse environmental effects from the additional distances involved (food and feed miles); and ultimately UK feed mill capacity would decline.

Directive 2002/32 will have most impact on importers and feed manufacturers, although farmers and the consumers of animal products will benefit indirectly through the removal of a potential risk to the safety and integrity of the feed chain. There may be some marginal benefit to feed manufacturers, as the provisions of the Directive also apply to feed products intended for export to third countries; removal of the option to blend down may in turn remove any concern about potential contamination of exported UK feed products. In addition, the requirement to investigate the reasons for breaches of the MPLs, and to take action where levels of contamination are considered “significant” (although these levels have still to be defined), may help identify the sources of any persistent problems in third countries exporting to the EU, thus allowing importers and feed manufacturers to avoid supplies from these countries in the future or even assist the third country exporters to eliminate the problem. However, UK importers and feed manufacturers could lose competitive edge because they would only be able to purchase materials which did not breach MPLs; third country manufacturers, by contrast, would still be able to incorporate contaminated materials in compound feedingstuffs by ensuring that there is no breach of the MPL for the finished product.

### 3. OPTIONS

#### 3(a) Options (including risks)

There would appear to be three possible options:

- (i) non-implementation or partial implementation of either or both measures;

Directive 2002/32 - This option would retain the status quo whereby authorised manufacturers could blend down materials with levels of undesirable substance to ensure that these were within safety margins for the finished feed. An anticipated adverse impact on sources of imports and related additional costs would be averted. However, this option could entail a loss of export markets to UK companies as their feed products and meat and other animal produce might be perceived as less safe by other Member States. There could be concerns that a measure intended to enhance the safety and integrity of the feed chain and the protection of consumers was being delayed or ignored.

Directive 2002/2 - If the UK introduced a system of percentage bands, this would effectively be a national labelling measure and require notification under the technical standards Directive. This involves a three week standstill period in which the Commission could issue an opinion on the measure, which might be in terms that it is a potential barrier to trade and not in keeping with Directive 2002/2. This standstill period could be extended to six months.

Directives 2002/2 and 2002/32 - Non-implementation or partial implementation would also result in undoubtedly successful legal proceedings against the UK in the European Court of Justice, as the terms of both Directives require implementation of all provisions. The costs of non-implementation would include the costs of infraction proceedings to the UK Government as well as the payment of any penalties imposed. We are aware that countries such as Spain and Germany have already implemented Directive 2002/2 and other Member States are in the course of doing so.

- (ii) full implementation of both measures;

The impact on business is discussed elsewhere in this RIA, in the sections on Risk Assessment, Issues of Equity and Fairness, and Compliance Costs.

- (iii) delayed implementation of either or both measures.

Directive 2002/32 - There could be concerns that a measure intended to enhance the safety and integrity of the feed chain and the protection of consumers was being delayed.

Directives 2002/2 and 2002/32 - This would still leave the UK open to infraction proceedings, see non-implementation above.

#### **4. BENEFITS**

##### **Option 1**

Non-implementation of Directive 2002/2 would be consistent with the position taken by the UK during negotiations on the measure that full ingredient listing by percentage weight of ingredient is unnecessary for both consumer protection and animal health, and would add little to the other nutritional and analytical information required under EU animal feed law.

Non-implementation of Directive 2002/32 might be justified on the grounds that risk-based MPLs, properly observed, provide an adequate safeguard for the protection of both animal and human health. In addition, establishments which have the necessary facilities to blend down contaminated consignments of feed could continue to be approved for this activity under existing legislation.

Partial implementation of Directive 2002/2 could involve deletion of the option to declare by category, which the UK supported in negotiations, allied perhaps to the original Council compromise on declaration in five percentage bands (<2%, 2-5%, 5-15%, 15-30%, and >30%). Partial implementation of Directive 2002/32 could involve stricter controls on contaminated feed materials; for example, the option to blend down could be restricted to consignments with levels of contamination which exceed the MPL by no more than (say) 10-15%, with automatic destruction required for those more grossly contaminated.

##### **Option 2**

Full implementation of Directives 2002/2 and 2002/32 would meet the UK's mandatory obligation to implement EC measures. Despite their concerns, this might have some benefits to UK manufacturers and suppliers because (a) compliance with the new labelling declaration could demonstrate greater transparency and openness about their products; and (b) the removal of the option to blend down would eliminate a potential risk to the safety and integrity of the feed chain and indicate a willingness to take greater care in sourcing materials. However, it is not possible to put a financial value on these benefits. If this option is adopted, the UK will press the Commission to review and remove the full percentage ingredient measure when it makes an amendment to the Compound Feed Directive. If effected this would mitigate the ongoing costs to the feed industry identified in section 5(i) below.

##### **Option 3**

Delaying implementation of Directives 2002/2 and 2002/32 might defer any implementation costs.

## 5. COSTS FOR BUSINESS, CHARITIES & VOLUNTARY ORGANISATIONS

### 5(i) Compliance Costs

#### Ingredient Listing

The likely costs of establishing systems for percentage ingredient declaration for larger feed compounders will not be significant, as they should already possess the necessary integrated computer systems to declare percentage inclusion rates of ingredients. There are likely to be non-recurring compliance costs for smaller compounders who need to purchase or upgrade software and hardware.

Industry interests – who were consulted during the negotiations on Directive 2002/2 and considered that the likely costs would be disproportionate to any benefits – were asked specifically to provide information on the potential costs to them.

One company said that the impact might be relatively higher for fish feed manufacturers because these are generally higher value products. The cost to the industry is estimated to be £3.6million. One feed company provided detailed information on the potential cost to them of ingredient declaration by percentage weight, but requested that its response be treated as confidential because of the commercially sensitive nature of the information, particularly that related to R&D expenditure. One trade association also provided information on the potential cost to the UK feed industry as a whole of the implementation of full ingredient declaration, but did not ask for the figures to be kept confidential. These estimated costs (continuing costs are assessed as per annum) are as follows:

Upgrading of computer systems	(One-off cost)	£70,000
Administrative costs of updating labels and dealing with customer enquiries	(One-off cost) (Continuing cost)	£25,000 £850,000
Loss of R&D and formulation expertise (based on entire compound feed market – 13 million tonnes per annum at £1 per tonne)	(Continuing cost)	£13 million
Withdrawal of feed industry support to research establishments	(Continuing cost)	£2 million
Loss of technical support (nutritional, formulation and analytical inputs)	(Continuing cost)	£5 million
Loss of profitability for customers (no progress in livestock performance, produce quality, animal welfare, milk yield, infertility research, etc.)	(Continuing cost)	£12 million

On this assessment, the one-off costs of implementing the measure, at £95,000, would therefore be greatly outweighed by the annual costs to the feed industry, the

livestock sector and ultimately the human consumers of animal products, of almost £33 million.

### Prohibition on Blending Down

Feed industry representatives were also asked to provide information on the likely costs to them of the prohibition by Directive 2003/32 of the blending down of feed materials with levels of contamination above the MPLs, including the potential costs of switching (on a temporary or permanent basis) to more expensive supplies of assured feed materials in substitution for supplies from regions of the world where assurance schemes do not operate and where contamination may accordingly be more likely. In this instance, figures for likely additional costs were more difficult to quantify. One trade association suggested that the extra costs of segregating, testing and detoxifying some imports of some feed materials from certain tropical regions of the world could amount to £40 per tonne, for a total annual cost to the feed industry of over £500,000. In some instances, it could be uneconomic to crush and detoxify imported materials the bulk of which routinely exceeded the MPLs (for example, copra from tropical countries), which could mean the permanent loss of the commodity in question and possible economic implications for the exporting country.

### **5(ii) Costs for Typical Businesses**

As for 5(i) above.

### Cost Benefit Analysis

#### Benefits

It is difficult to establish public health benefits related specifically to the two objectives of these Regulations. Detailed ingredient listing (above what is currently provided) would mainly provide information to farmers and it is difficult to argue that this will lead to economic gains through increased productivity. Although the blending down of undesirable substances (which are above MPLs) does have health risks there does not appear to have been any problems associated with current arrangements (which only permit blending down by approved establishments). Any such ban would also not form a complete solution because third countries are beyond the scope of this directive; imports from this source could therefore continue.

No quantitative estimates of benefits have been included in this analysis.

#### Costs

There are various costs which may fall on industry:

*Potential Loss of EU Export Markets.* This relates mainly to option 1 if the Directive is not implemented. It is difficult to know, and to what extent, whether UK exports would be affected. It is considered unlikely that compound feed (not for pets)

constitutes a large proportion of the export market worth around £155 million per year to UK suppliers. Most goes to EU countries (though it is highly fragmented). However, this market is relatively, small 3% of total value, 7% of total volume. There could be an impact on exports of British meat and other animal produce if it is perceived that the UK has failed to implement a measure aimed at safeguarding consumers (the ban on blending down). The ban on blending down will affect buying patterns as importers and the feed industry will endeavour to avoid sourcing materials that could potentially exceed the MPLs as there is no option to blend down. We do not have an estimate of the cost of buying alternate supplies.

*Other Industry Costs.* Industry have listed and estimated various costs relating to options 2 and 3 (see section 5(i) and all have been included in the calculations unless otherwise stated.

*Infraction Costs.* Non implementation will make the UK liable to these. These would include the cost of preparing for and conducting the case itself and any penalties subsequently imposed. In one instance this has been assessed as £70,000 per day. No figures have been included in the formal calculations.

### Summary

None of the options yield a positive economic benefit because of the lack of identifiable and quantifiable benefits. The potential impact on export markets was assessed and could be significant if countries took a negative view of the UK's refusal to implement a safety-related measure, the ban on blending down. There will be an impact on imports as feed traders and manufacturers seek sources of feed materials, which will not contain undesirable substances above MPLS. The industry has been unable to quantify the potential impact.

<b>Option</b>	<b>Main Assumption</b>	<b>Net Present Value (£ million)</b>
1. Non Implementation	10% loss of EU export market	- £103.5
	100% loss of EU export market	- £1035.3
	25% loss of EU export market	- £258.8
2. Full Implementation	All estimated costs from industry included	- £266.2
	Exclude loss of profitability to customers	- £166.4
	Exclude loss of profitability to customers and loss of R&D expertise	- £58.3
3. Delayed Implementation	Loss of 10% of EU export market; all industry estimated costs included	- £176.6

All options estimated over 10 years using 3.5% discount rate.

Option 3 relates to delay of implementation until year 4 and therefore has a mix of the different costs of options 1 and 2.

Assumed that 80% of exports go to EU countries.

## **6. CONSULTATION WITH SMALL BUSINESS (THE “LITMUS TEST”)**

Approximately one-third of the companies which manufacture prepared animal feed claim small company status and could face increased costs from the implementation of these two EU measures. Only one small business responded to this consultation and provided figures on the potential impact of percentage ingredient declaration; however, it also requested that its response be treated as confidential.

## **7. COMPETITION ASSESSMENT**

The UK feed industry is highly fragmented with over 340 companies; 70 of the largest account for 21% of the market and 185 for 55% of market value. However compound feed production is more concentrated being dominated by two large companies who account for nearly 50% of the market. All the considered options have competition implications.

Option 1 may affect the competitive position of UK firms exporting feed to the EU. This may no longer be allowed, or consumers may perceive them to be less safe than those supplied by other member states; in both cases UK suppliers will be placed at a competitive disadvantage in these markets. However UK producers will remain on a level footing with non-EU producers who are exempt from the blending down requirements. It is important to note that only a small proportion of production is exported (3% of total production; 7% by value); total imports account for 5.4% of the value of the UK market.

Option 2 would ensure that UK producers would remain on an equal competitive footing with other EU producers but could be placed at a cost disadvantage to third country suppliers due to their exemption from these Regulations. However the majority of trade in feedingstuffs is intra-EU and hence this option is likely to have the least negative effects for UK producers.

Option 3 would provide a combination of the effects of options 1 and 2 – essentially delaying the movement to an equal competitive footing with EU producers whilst preserving that against third country suppliers.

Option 2 is recommended. Implementation will preserve the access of UK suppliers to their most important export markets. However it is important to note that the domestic market is of much greater importance – implementation of these Regulations will have a greater impact on smaller companies through their need to upgrade computer systems.

## **8. ENFORCEMENT AND SANCTIONS**

### **8(i) Enforcement**

Local authorities, which are responsible for the enforcement of animal feedingstuffs legislation in Great Britain, and the Northern Ireland Department of Agriculture and Rural Development, which is responsible for enforcement in Northern Ireland, were kept informed of progress during negotiation of the measures and asked to comment on the issues raised as part of the consultation process. Sampling and analysing to detect consignments of animal feed with contamination above specified MPLs should be accommodated within existing enforcement activity.

LACORS, the Local Authorities Co-ordinators of Regulatory Services – the co-ordinating body for local authority trading standards departments in England and Wales – remarked that enforcement of percentage ingredient declaration would be complicated by the fact that for many feed ingredients there were no officially recognised methods of analysis. In the absence of reliable analytical methods the quantitative declaration of ingredients will have to be undertaken by examination of manufacturers' records.

### **8(ii) Sanctions**

The penalties for non-compliance with feedingstuffs legislation are set out in the Agriculture Act 1970 and the Feeding Stuffs Regulations 2000.

## **9. MONITORING AND REVIEW**

The Food Standards Agency will consult with the feed industry, enforcement authorities and other stakeholders to evaluate their experience of and the effectiveness of the new legislation. The Food Standards Agency is also drawing up guidance on ingredient declaration by percentage weight to assist enforcement authorities, the feed industry and other stakeholders on the application of this aspect of the new legislation.

Food Standards Agency Scotland is committed to ensuring that all Regulations introduced are, and remain, proportionate and fit for purpose. In line with Scottish Executive guidance provided by Improving Regulations in Scotland (IRIS) Unit we will review the continued effectiveness of this Regulation through the use of a Review Regulatory Impact Assessment. This will be completed within 10 years of the date of the Regulation coming into force.

## **10. CONSULTATION**

### **10(i) Within Government**

The Food Standards Agency in England, Wales and Northern Ireland has been consulted on the implementation of the measure.

### 10(ii) Public Consultation

A total of twenty-four responses were received from stakeholders in response to this consultation. Fourteen either made no comment on the proposals or made comments which did not require a substantive response; three others made minor comments. Two companies provided detailed responses, but asked for their comments and their estimates of the likely financial impact to be treated as confidential.

One professional body queried the proposed wording of some parts of the draft Regulations and suggested alternative phraseology which in its opinion would make them more logical; it has been advised that the UK has to implement the Directives as adopted and that there is accordingly no scope in effect to rewrite them. One trade association called for the UK to implement ingredient declaration in percentage bands, and has been advised that this could only be possible if an amendment was made to Directive 2002/2. One company provided information on the impact of the ingredient declaration measures on fish feed manufacturers. One trade association provided detailed information on the potential impact on the feed industry of the two Directives being implemented by these Regulations; these comments have been discussed in section 5(i) above.

The response from LACORS, the co-ordinating body for local authority trading standards departments in England, has been discussed in section 8(i) above. LACORS also drew attention to a lacuna in the wording of one of the draft regulations, which has been corrected in the version submitted for ministerial signature.

## 11. SUMMARY AND RECOMMENDATIONS

Option	Total Cost	Total Benefit
1. Non-implementation or partial implementation	Costs of infraction proceedings (which would be ongoing, perhaps £100,000 per day); probable loss of export markets for UK agriculture and feed manufacturers.	<u>Non-implementation</u> : maintenance of the existing legislative framework relating to labelling of feed and the control of contaminated consignments. <u>Partial implementation</u> : less onerous but generally effective controls.
2. Full implementation	Industry estimates non-recurring costs of £0.1m pa and recurring costs of £33.5m pa	Provision of further information on feed ingredients to allow farmers to make informed choices; removal from the feed chain of risks associated with the blending

		down of contaminated feed (e.g. reducing dietary exposure of consumers and diversion of supplies to unauthorised manufacturers).
3. Delayed implementation	Costs of infraction proceedings	As with non-implementation (in the short term).

The **prohibition of the blending down of feedingstuffs** with levels of contamination above the specified MPLs could have a significant effect on those feed merchants and feed manufacturers who obtain materials from sources where relatively high levels of a particular contaminant are known to be present. There could in consequence be restrictions on the types and quantities of ingredients used in feed; this would have less impact on farmers, animals and the consumers of animal products, although some costs might be passed on. Overall, however, a prohibition on blending down in the EU will help reduce risks to the safety and integrity of the feed chain. There would be an unquantifiable reduction in the overall input of potentially harmful contaminants and other substances upstream in the food chain. The risks of contaminated material, currently blended down by approved recipients, reaching unauthorised users will diminish.

In addition, the Commission is in the process of reviewing MPLs for certain undesirable substances. Latest discussions indicate that it is aware that a number of MPLs will need urgent revision and possible relaxation (at the same time without compromising safety). When implemented, this could offset some of the effects on the feed trade of this proposal.

The implementation of **full ingredient percentage declaration** will provide farmers with quantitative information on ingredients, and help them to make informed choices on which feeds to buy and use. However, as has been detailed elsewhere in this RIA, this measure will have a significant impact on some feed manufacturers. For these and other reasons, the UK voted against Directive 2002/2.

On the other hand, the UK has a clear legal obligation to implement this measure and if it did not do so would be subject to infraction proceedings by the European Commission and the potentially significant costs of these, including any penalties. The UK Government has already received a letter from the Commission under Article 226 of the EU Treaty about late transposition of Directive 2002/2. This will only be resolved by transposition into law, and shows that the Commission will not hesitate to take action for non-implementation. There is also the question of the UK losing credibility if it refused to transpose a measure lost in negotiation.

Non-implementation of an animal feed measure on the grounds that it would cost industry money, put that simply could attract adverse criticism from consumers, who are likely to equate the feed industry, rightly or wrongly, with BSE and other problems.

The issue of cost is difficult to balance. The industry has produced estimates as outlined above for the impact of ingredient listing by percentage, with difficulty in estimating the financial impact of the cost of blending down. Not to implement the two measures on the other hand would produce other imponderables: the cost of infraction proceedings and penalties imposed in the European Court of Justice; and the potential impact on exports of meat and other animal produce (worth £2 billion in 2000) of a perceived failure by the UK to implement safety-related feed measures. In these circumstances, the legal obligation on the UK Government to implement EC law seems to have primacy. It is therefore **recommended** that Commission Directives 2002/2 and 2002/32 be implemented in the Feeding Stuffs Amendment (Scotland) (No 2) Regulations 2003 (option 2). However, the UK will press the Commission to come forward with an amendment to remove the full percentage ingredient measure at the earliest opportunity. This would mitigate on-going costs to the feed industry identified in this RIA.

***Declaration***

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister \_\_\_\_\_

Date \_\_\_\_\_

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