
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 91

**AGRICULTURE
FOOD**

**The Official Controls (Animals, Feed
and Food) (Scotland) Regulations 2007**

Made - - - - 20th February 2007
Laid before Parliament 21st February 2007
Coming into force - - 15th March 2007

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾, and of all other powers enabling them in that behalf, and having carried out a consultation in accordance with Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽²⁾, hereby make the following Regulations:

Part 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Official Controls (Animals, Feed and Food) (Scotland) Regulations 2007, and shall come into force on 15th March 2007.

(2) These Regulations extend to Scotland only.

(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46) (“the 1998 Act”), Schedule 8, paragraph 15(3). The function conferred on the Minister of the Crown under section 2(2) of the European Communities Act 1972, so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred and in so far as relating to food (including drink) including the primary production of food, that function was transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I.2005/849).

(2) O.J. No. L 31, 1.2.2002, p.1, as last amended by Regulation (EC) No..575/2006 of the European Parliament and the Council (O.J. No. L 100, 8.4.2006, p.3.).

Interpretation

2.—(1) In these Regulations—

“the 2005 Regulations” means the Official Feed and Food Controls (Scotland) Regulations 2005⁽³⁾;

“audit” means, except in regulation 10, an audit of a competent authority carried out for the purposes of Article 4.6 of Regulation 882/2004 in relation to one or more pieces of relevant legislation;

“auditor” means a person carrying out such an audit;

“authorised officer” means a person authorised by the competent authority of a member State for the purposes of enforcing Regulation 882/2004;

“the food authority” in relation to any relevant legislation for which a designation is made under these Regulations has the same meaning as it has in that relevant legislation;

“inspector” means in relation to any relevant legislation, an inspector, veterinary officer, or other officer authorised by the Scottish Ministers or other authority to act in Scotland under that relevant legislation;

“the local authority” in relation to any relevant legislation for which a designation is made under these Regulations has the same meaning as it has in that relevant legislation;

“premises” means premises or other property, place or means of transport;

“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules⁽⁴⁾, as read with—

- (a) Commission Decision 2006/677 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules⁽⁵⁾;
- (b) Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004⁽⁶⁾;
- (c) Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004, and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004⁽⁷⁾; and
- (d) Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

(3) S.S.I. 2005/616.

(4) O.J. No. L 165, 30.4.2004, p.1; see the corrected text as set out in the corrigendum to the Regulation published in O.J. No. L 191, 28.5.2004, p.1. Amended by Commission Regulation (EC) No. 776/2006 (O.J. No. L 136, 24.5.2006, p.3.).

(5) O.J. No. L 278, 10.10.2006, p.15.

(6) O.J. No. L 338, 22.12.2005, p.27, as amended by Commission Regulation (EC) No. 1664/2006 (O.J. No. L 320, 18.11.2006, p.13).

(7) O.J. No. L 338, 22.12.2005, p.83, as amended by Commission Regulation (EC) No. 1664/2006 (O.J. No. L 320, 18.11.2006, p.13).

(2) In these Regulations, “relevant legislation” means feed law and food law to which Regulation 882/2004 applies and animal health and welfare rules, except—

- (a) “relevant feed law” and “relevant food law” as defined in the 2005 Regulations;
- (b) the application of the rules laid down for the protection of designations of origin and geographical indications of agricultural products and foodstuffs in Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs(8);
- (c) the application of the rules laid down for Community certificates of specific character which may be obtained for certain agricultural products and foodstuffs in Council Regulation (EEC) No. 509/2006 on certificates of specific character for agricultural products and foodstuffs as traditional specialities guaranteed(9);
- (d) the regulation of organic products under the Organic Products (Imports from Third Countries) Regulations 2003(10) and the Organic Products Regulations 2004(11);
- (e) the regulation of residues of veterinary medicines and other substances under the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997(12);
- (f) the regulation of residues of pesticides under the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Regulations 2005(13); and
- (g) the Veterinary Medicines Regulations 2006(14) in so far as they regulate zootechnical additives and medicated feedingstuffs.

(3) In paragraph (2)(g)—

“medicated feedingstuffs” has the meaning given in Article 1.6 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products(15); and

“zootechnical additives” means feed additives in the categories mentioned in Article 6.1(d) and (e) of Regulation (EC) No. 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition(16) with the exception of those belonging to the functional group listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation.

(4) Unless otherwise provided in this regulation, terms used in these Regulations have the same meaning as they have in Regulation 882/2004.

(5) Unless otherwise required by the context, references in these Regulations to an “Article” or “Title” are to an Article or Title, respectively, of Regulation 882/2004.

(8) O.J. No. L 93, 31.3.2006, p.12.

(9) O.J. No. L 93, 31.3.2006, p.1.

(10) S.I. 2003/2821.

(11) S.I. 2004/1604.

(12) S.I. 1997/1729, amended by S.I. 2001/3590, 2004/147 and 2006/755.

(13) S.S.I. 2005/599.

(14) S.I. 2006/2407.

(15) O.J. No. L 311, 28.11.2001, p.1, as last amended by Directive 2004/28/EC of the European Parliament and of the Council (O.J. No. L 136, 30.4.2004, p.58.).

(16) O.J. No. L 268, 18.10.2003, p.29, as amended by Commission Regulation (EC) No. 378/2005 (O.J. No. L 59, 5.3.2005, p.8).

Part 2

Designation of competent authorities and the exchange of information amongst them

Purposes of designations

3. Designations in this Part are made for the purposes of Article 4.1.

Designation of the Scottish Ministers as competent authority

4. The Scottish Ministers are designated a competent authority in relation to relevant legislation.

Designation of local authorities, etc, as competent authorities

5.—(1) The local authority is designated a competent authority in relation to functions of enforcement and execution (other than prosecution) which it exercises under relevant legislation.

(2) The food authority is designated a competent authority in relation to functions of enforcement and execution (other than prosecution) which it exercises under relevant legislation.

(3) In this regulation, “the local authority” and “the food authority” include a local authority or food authority which exercises its functions referred to in paragraph (1) or (2) as the case may be as an “enforcement authority” under and within the meaning of relevant legislation.

Exchange of information

6. Competent authorities designated under these Regulations may disclose information to each other and to other competent authorities in the United Kingdom and other member States for the purposes of Regulation 882/2004.

Part 3

Audits and Community controls

Powers of auditors and exception for Food Standards Agency auditors

7.—(1) An auditor may exercise the powers in this regulation if the auditor is authorised—

- (a) by a competent authority designated under these Regulations to carry out an audit of its activities; or
- (b) by the Scottish Ministers to carry out an audit pursuant to regulation 8(3).

(2) For the purposes of carrying out an audit, an auditor may enter premises to which an inspector has a power of entry under relevant legislation (“audit premises”) as if the auditor were an inspector meeting the criteria for gaining such entry under that relevant legislation.

(3) An auditor exercising power of entry may be accompanied by any person whose assistance the auditor reasonably requires.

(4) An auditor may request such information from any person at any audit premises as the auditor reasonably requires for purposes of the audit, and may inspect such records as the auditor reasonably requires for those purposes.

(5) An auditor may make or require copies of such records.

(6) When exercising the powers conferred by this regulation an auditor shall upon request produce evidence of the auditor’s authorisation under these Regulations.

(7) This regulation shall not apply where regulation 9 applies.

Powers of the Scottish Ministers in relation to audits of local authorities, etc

8.—(1) The Scottish Ministers may require a competent authority designated under regulation 5 to provide them with information about any audits it has carried out or undergone or which it plans to carry out or undergo.

(2) Where the Scottish Ministers require information under paragraph (1), they shall do so in writing and shall state the time limit within which the required information is to be provided.

(3) The Scottish Ministers may require—

- (a) an auditor to carry out an audit of a competent authority designated under regulation 5; and
- (b) the competent authority concerned to provide such assistance to that auditor as the auditor may reasonably require in order to carry out the audit.

Powers of the Food Standards Agency undertaking audits on behalf of the Scottish Ministers

9.—(1) Where the Scottish Ministers arrange for the Food Standards Agency to undertake an audit in relation to relevant legislation, the audit provisions of the 2005 Regulations shall apply as if—

- (a) the undertaking of such an audit was for a purpose described in regulation 8 of the 2005 Regulations; and
- (b) the competent authority concerned was an enforcement authority to which regulations 9 and 10 of the 2005 Regulations applied.

(2) The audit provisions of the 2005 Regulations are—

- (a) regulations 9 and 10(1) to (8) and (10), as read with regulation 11; and
- (b) regulation 12.

(3) Regulations 18(2) and (4), 19(2) to (9), 20 to 22, 42 to 47 of the 2005 Regulations shall apply where paragraph (1) of this regulation applies as if that paragraph were a provision of the 2005 Regulations falling to be enforced or executed under the 2005 Regulations.

(4) Regulation 18(5) of the 2005 Regulations, in so far as it relates to an authority which appoints an officer acting under regulation 19 of those Regulations, shall apply where paragraph (1) of this regulation applies as if that paragraph were a provision of the 2005 Regulations falling to be enforced or executed under the 2005 Regulations.

Community controls

10. In so far as an inspector does not already have powers to do so, for the purposes of facilitating audits to be carried out by Commission experts pursuant to Article 45, an inspector may enter any premises to which the inspector has a power of entry under relevant legislation, and—

- (a) be accompanied by any such experts; and
- (b) show them such records as the inspector inspects.

Part 4

Assistance and co-operation under Title IV

Duties of local authorities, etc, under Title IV

11. A local authority or food authority which is designated a competent authority under regulation 5 shall notify the Scottish Ministers if it considers that it is unable to undertake action required in any individual case under Title IV (Administrative assistance and cooperation in the areas of feed and food) and shall provide such information to the Scottish Ministers as they may reasonably request.

Facilitating assistance and co-operation under Title IV

12.—(1) For the purposes of assisting a competent authority of another member State as provided for under Article 36.3, or enabling a competent authority designated under these Regulations to do so, an inspector who is exercising powers under relevant legislation to enter premises or to inspect records may—

- (a) be accompanied by authorised officers of a competent authority of another member State;
- (b) show to such authorised officers such records as the inspector inspects; and
- (c) make for them, or require to be made for them, copies of such records as the inspector has powers to make or require under the relevant legislation.

(2) For the purposes of facilitating a visit by an inspection team sent by the Commission as provided for in Article 40.3(a), an inspector may be accompanied by representatives of the Commission when the inspector is exercising powers under relevant legislation to enter premises or to inspect records.

Recovery of expenses

13.—(1) Expenses charged by a competent authority to a feed or food business pursuant to Article 40.4 shall be paid by that business on the written demand of the competent authority concerned.

(2) Expenses charged by a competent authority to an operator pursuant to Article 28 shall be paid by that operator on the written demand of the competent authority concerned.

(3) In this regulation, “competent authority” means a competent authority designated under regulation 4 or 5.

Part 5

Enforcement and penalties

Interpretation and application of Part 5

14.—(1) In this Part—

- (a) “enforcement officer” means an officer authorised to enforce these Regulations by the competent authority responsible for enforcement pursuant to regulation 15;
- (b) “premises” excludes any premises or part of premises used exclusively as a dwelling;
- (c) “relevant auditor” means an auditor exercising powers under regulation 7;
- (d) “relevant inspector” means an inspector accompanied by any person pursuant to regulation 10 and 12.

(2) This Part does not apply where regulation 9 applies.

Enforcement

15. Enforcement of these Regulations shall be the responsibility of the competent authority which in any given circumstances authorises the exercise of powers under these Regulations.

Powers of enforcement officers

16.—(1) An enforcement officer may—

- (a) at any reasonable hour enter premises;
- (b) make any enquiries, observe any activity or process, and take photographs; and
- (c) inspect any article or records of any class which appear to the officer to be relevant for the purposes of the officer's investigation, and may make or require copies of such records or remove such records as the officer reasonably requires.

(2) An enforcement officer shall—

- (a) produce evidence of the officer's authorisation when requested to do so;
- (b) as soon as the officer reasonably can, provide to the person appearing to the officer to be responsible for records which the officer removes under paragraph (1)(c) a written receipt identifying those records; and
- (c) as soon as the officer reasonably can after deciding that they are no longer required, return such records, apart from those used as evidence in court proceedings.

Offences and penalties

17.—(1) A person is guilty of an offence if without reasonable excuse that person obstructs, causes or permits to be obstructed—

- (a) a relevant auditor;
- (b) a relevant inspector;
- (c) any person who accompanies a relevant auditor or relevant inspector under regulations 7(3), 10 or 12; or
- (d) an enforcement officer.

(2) For the purposes of paragraph (1), to obstruct includes—

- (a) failure—
 - (i) to produce records;
 - (ii) to provide copies of such records; or
 - (iii) to provide reasonable facilities for copying records, as required under these Regulations; and
- (b) failure by any person to provide information in that person's possession when requested to do so by a relevant auditor, a relevant inspector or an enforcement officer.

(3) A person is guilty of an offence if without reasonable excuse that person supplies to a relevant auditor, a relevant inspector or an enforcement officer information which, in any material particular, is false or misleading.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

Offences by bodies corporate

18.—(1) If an offence under regulation 17 committed by a body corporate is shown to have been committed with the consent or connivance of an officer, or to be attributable to any neglect on the part of an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if the member were a director of the body.

(3) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) “Body corporate” includes a partnership in Scotland and, in relation to such a partnership, a reference to an officer of a body corporate is a reference to a partner.

St Andrew’s House,
Edinburgh
20th February 2007

ROSS FINNIE
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply and enforce Council Regulation (EC) No. 882/2004 (O.J. No. L 191, 28.05.2004, p.1) (“Regulation 882/2004”) in Scotland in relation to animal health and welfare rules, and feed and food law excluded from the Official Feed and Food Controls (Scotland) Regulations 2005 (“the 2005 Regulations”), which also apply and enforce Regulation 882/2004.

These Regulations provide for the designation of the Scottish Ministers and local authorities (including food authorities) as competent authorities for the purposes of Article 4.1 of Regulation 882/2004 (regulations 3 to 5). The designations relate to:

- (a) animal health and welfare rules;
- (b) feed and food law which concerns controls on animals; and
- (c) certain feed and food law concerning controls on food or feed excluded from the designations in the 2005 Regulations, namely:
 - (i) animal by-products (in relation to feed); and
 - (ii) the import from third countries of, and intra-Community trade in, products of animal origin; and
 - (iii) beef labelling.

They also relate to TSEs in relation to testing (including sampling) controls on bovine, ovine and caprine animals slaughtered for human consumption.

The designations do not include medicated feedingstuffs and zootechnical additives, which are a reserved matter covered in paragraph 4 of Schedule 5 to the Veterinary Medicines Regulations 2006. Nor do the designations include the following—

- (i) protected name food products and specific character food products;
- (ii) veterinary medicines residues;
- (iii) pesticides residues;
- (iv) organic foods, including imported organic food products.

These Regulations provide expressly for the exchange of information between competent authorities in Scotland and elsewhere in the United Kingdom, and in the European Union (regulation 6).

They create independent powers for a competent authority’s auditors to conduct audits required under Article 4.6 of Regulation 882/2004 (regulation 7). Provision is made for the Scottish Ministers to call for information from a local authority about its audits; and for them to require an auditor to carry out an audit of that local authority’s official controls as a competent authority (regulation 8).

Where the Scottish Ministers arrange that the Food Standards Agency is to carry out an audit of relevant legislation under these Regulations, monitoring provisions of the 2005 Regulations apply together with the corresponding enforcement provisions from the 2005 Regulations (regulation 9 of these Regulations).

The Regulations also supplement existing powers of inspectors so that they may bring Commission experts with them for the purposes of the Commission’s own audits (regulation 10). There are provisions to facilitate assistance and co-operation between member States required under Title IV (Articles 34 to 40) of Regulation 882/2004 (regulations 11 and 12), in particular to enable officials of the Commission and other member States to attend with an inspector who investigates suspected

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breaches under the relevant legislation. Regulation 13 provides for the payment on written demand of expenses charged to a feed or food business operator under Articles 28 and 40.4 of Regulation 882/2004.

Part 5 provides for the enforcement of the Regulations, including powers of enforcement officers for this purpose (regulation 16). It is an offence under regulation 17 to obstruct an auditor, an enforcement officer, or an inspector who is accompanied by representatives from the Commission or other member States, or any persons accompanying an inspector or auditor. It is also an offence under regulation 17 to provide misleading or false information to, or to fail to provide information requested by, an inspector or auditor or an enforcement officer. The penalty on summary conviction for the offences is a fine at level 5 of the standard scale (currently £5,000) or three months' imprisonment, or both (regulation 17(4)). Provision is made for the prosecution of offences committed by corporate bodies (regulation 18).

A regulatory impact assessment has been prepared in respect of these Regulations and has been placed in the Scottish Parliament Information Centre. Copies can be obtained from The Scottish Executive Environment and Rural Affairs Department, Pentland House, Robb's Loan, Edinburgh, EH14 1TY.