

2005 No. 616

AGRICULTURE

FOOD

**The Official Feed and Food Controls (Scotland)
Regulations 2005**

Made 30th November 2005

Laid before the Scottish Parliament 1st December 2005

Coming into force 1st January 2006



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The Scottish Ministers, in exercise (with regard to regulation 41 of the following Regulations) of the powers conferred by sections 16(1), 17(2) and 48(1) of the Food Safety Act 1990(a), having had regard in accordance with section 48(4A)(b) of that Act to relevant advice given by the Food Standards Agency and, in exercise (with regard to the following Regulations except regulation 41) of the powers conferred by section 2(2) of the European Communities Act 1972(c) and of all other powers enabling them in that behalf, and after consultation as required by 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(d), hereby make the following Regulations:

PART 1

PRELIMINARY

Citation, commencement and extent

1. These Regulations—
 - (a) may be cited as the Official Feed and Food Controls (Scotland) Regulations 2005;
 - (b) come into force on 1st January 2006; and
 - (c) extend to Scotland only.

Interpretation

- 2.—(1) In these Regulations—
 - “the Act” means the Food Safety Act 1990;
 - “the Agency” means the Food Standards Agency;
 - “authorised officer”—
 - (a) in relation to a competent authority, means any person appointed under regulation 3(1); and
 - (b) in relation to a relevant enforcement authority, means any person appointed under regulation 3(2);

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- (a) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. 2004/2990); section 48(1) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”); amendments made by Schedule 5 to the 1999 Act which extend to Scotland shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
 - (b) Section 48(4B) was inserted by the 1999 Act, section 40(1) and Schedule 5, paragraph 21.
 - (c) 1972 c.68. Section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3). The function conferred on the Minister of the Crown under section 2(2) of the 1972 Act, in so far as exercisable 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 S.I. 2005/849.
 - (d) O.J. No. L 31, 1.2.02, p.1 as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4).

“competent authority” means the authority which, by virtue of regulation 4, is so designated for the purposes of the provisions of Regulation 882/2004 specified in that regulation;

“Directive 2004/41”, “Regulation 178/2002”, “Regulation 1831/2003”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 882/2004” and “Regulation 1688/2005” have the meanings respectively given to them in Schedule 1;

“feed authority” and “food authority” respectively mean a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

“the Official Control Regulations” means these Regulations and Regulation 882/2004;

“premises” includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

“primary production” has the meaning it bears in Regulation 852/2004;

“relevant enforcement authority” means a body which, by virtue of regulation 18, is made responsible for executing and enforcing regulations 6(3), 10(8), 12, 17, 19(8) and 20;

“relevant feed law” has the meaning given to it in Schedule 2; and

“relevant food law” has the meaning given to it in Schedule 3.

(2) Subject to paragraph (3), any expression other than—

(a) one defined in paragraph (1); and

(b) for the purposes of Part 3 of these Regulations one defined in regulation 23,

that is used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Subject to paragraph (1) and, for the purposes of Part 3 of these Regulations to regulation 23, and unless the contrary intention appears, any expression used both in these Regulations and in Regulation 178/2002 or Regulation 882/2004 has the meaning it bears in Regulation 178/2002 or Regulation 882/2004 as the case may be.

Appointment of authorised officers

3.—(1) Competent authorities may in writing appoint as authorised officers, either generally or specially, such persons (whether or not officers of those bodies) as they consider necessary to act in matters arising under the Official Control Regulations.

(2) Relevant enforcement authorities may in writing appoint as authorised officers, either generally or specially, such persons (whether or not officers of those bodies) as they consider necessary to act in matters arising under Part 2 of these Regulations.

PART 2

MAIN PROVISIONS

Competent authorities

4.—(1) Subject to paragraphs (2) and (5), any body specified in Column 1 of Schedule 4 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant feed law.

(2) Where the feed authority is designated as a competent authority pursuant to paragraph (1) the designation shall extend to its area only.

(3) Subject to paragraphs (4) to (6), any body specified in Column 1 of Schedule 5 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule insofar as those provisions apply in relation to relevant food law.

(a) 1994 c.39; section 2 was amended by the Environment Act 1995 (c.25), Schedule 22, paragraph 232.

(4) Where the food authority is designated as a competent authority pursuant to paragraph (3) the designation shall extend to its area only.

(5) Where the Agency is designated as a competent authority pursuant to paragraph (1) or (3) for the purposes of Article 31(1) of Regulation 882/2004, the designation shall extend only to the operations in respect of which the Agency executes and enforces the Food Hygiene (Scotland) Regulations 2005^(a) by virtue of regulation (5)(1)(a) of those Regulations.

(6) Where the Agency is designated as a competent authority pursuant to paragraph (3) for the purposes of Article 31(2) of Regulation 882/2004, the designation shall extend, as regards Article 31(2)(a) to (e), only to those operations in respect of which the Agency executes and enforces the Food Hygiene (Scotland) Regulations 2005 by virtue of regulation 5(2) of those Regulations.

Exchanging and providing information

5.—(1) For the purpose of enabling competent authorities, other OFFC authorities and member States to fulfil the obligations placed on them by Regulation 882/2004 competent authorities may exchange among themselves or provide to other OFFC authorities any information received by them in the execution or enforcement of relevant feed law or relevant food law.

(2) For the purposes of executing or enforcing relevant feed law or relevant food law, competent authorities may exchange among themselves any information received by them in the execution or enforcement of relevant feed law or relevant food law.

(3) Competent authorities may share information received by them in the execution or enforcement of relevant feed law or relevant food law with the bodies that execute and enforce relevant feed law or relevant food law in Wales, England and Northern Ireland for the purposes of facilitating the execution or enforcement of relevant feed law or relevant food law in those countries.

(4) Paragraphs (1), (2) and (3) are without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

(5) For the purposes of this regulation, “other OFFC authorities” means authorities designated in any part of the United Kingdom as competent authorities for the purposes of Regulation 882/2004 other than the competent authorities designated under these Regulations.

Obtaining information

6.—(1) For the purpose of enabling competent authorities and member States to fulfil the obligations placed on them by Regulation 882/2004 and for the purpose of executing or enforcing relevant feed law or relevant food law, a competent authority may require a control body—

- (a) to provide the competent authority with any information which it has reasonable cause to believe the control body is able to give; and
- (b) to make available to the competent authority for inspection by it any records which it has reasonable cause to believe are held by the control body or are otherwise within its control (and, if they are kept in computerised form, to make them available in a legible form).

(2) The competent authority may copy any records made available to it under paragraph (1)(b).

(3) A person who—

- (a) fails without reasonable excuse to comply with any requirement imposed under paragraph (1); or
- (b) in purported compliance with such a requirement furnishes information which that person knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(a) S.S.I. 2005/505.

(4) For the purposes of paragraph (1), the term “control body” includes any member, officer or employee of a control body.

Power to issue codes of recommended practice

7.—(1) For the guidance of feed authorities and food authorities, the Scottish Ministers may issue codes of recommended practice as regards—

- (a) the exercise of functions conferred upon those authorities in their capacity as competent authorities by or under Regulation 882/2004; and
- (b) the execution and enforcement of Part 3 of these Regulations,

and any such code shall be laid before the Scottish Parliament after being issued.

(2) The Agency may, after consulting the Scottish Ministers, give a feed authority or a food authority a direction requiring it to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on it as a competent authority by or under Regulation 882/2004, and in executing and enforcing Part 3 of these Regulations, every feed authority and food authority—

- (a) shall have regard to any relevant provision of any such code; and
- (b) shall comply with any direction which is given under this regulation and requires it to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by an order of the Court of Session under section 45 of the Court of Session Act 1988(a).

(5) The Agency shall consult the Scottish Ministers before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Scottish Ministers shall have regard to any relevant advice given by the Agency.

Monitoring of enforcement action

8.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing relevant audit legislation.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant audit legislation.

(3) Each annual report of the Agency shall contain a report on its activities during the year in enforcing any relevant audit legislation for which it is the enforcement authority and its performance in respect of—

- (a) any standards under paragraph (2) that apply to those activities; and
- (b) any objectives relating to those activities that are specified in the statement of objectives and practices under section 22 of the Food Standards Act 1999(b).

(4) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant audit legislation and such a report may include guidance as to action which the Agency considers would improve that performance.

(5) The Agency may direct an authority to which such a report has been made—

- (a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report; and
- (b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.

(a) 1988 c.36.
(b) 1999 c.28.

(6) Section 19 of the Food Standards Act 1999 shall apply in relation to information obtained through monitoring under this regulation as if it were information obtained through monitoring under section 12 of that Act.

Power to request information relating to enforcement action

9.—(1) For the purpose of carrying out its function under regulation 8 in relation to any enforcement authority the Agency may require a person mentioned in paragraph (2)—

- (a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give; or
- (b) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within that person's control (and, if they are kept in computerised form, to make them available in a legible form).

(2) A requirement under paragraph (1) may be imposed on—

- (a) the enforcement authority or any member, officer or employee of the authority; or
- (b) a person subject to any duty under relevant audit legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) The Agency may copy any records made available to it in pursuance of a requirement under paragraph (1)(b).

Power of entry for persons monitoring enforcement action

10.—(1) The Agency may authorise any individual (whether a member of its staff or otherwise) to exercise the powers specified in paragraph (4) for the purpose of carrying out its function under regulation 8 in relation to any enforcement authority.

(2) No authorisation under this regulation shall be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency.

(3) An authorisation under this regulation shall be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygienic precautions to be taken while exercising powers in pursuance of the authorisation).

(4) An authorised person may—

- (a) enter any premises mentioned in paragraph (5) at any reasonable hour in order to inspect the premises or anything which may be found on them;
- (b) take samples of any articles or substances found on such premises;
- (c) inspect and copy any records found on such premises (and, if they are kept in computerised form, require them to be made available in a legible form);
- (d) require any person present on such premises to provide the authorised person with such facilities, such records or information and such other assistance as the authorised person may reasonably request.

(5) The premises which may be entered by an authorised person are—

- (a) any premises occupied by the enforcement authority;
- (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation has been carried out for the enforcement authority; and
- (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(6) An authorised person entering premises by virtue of the power of entry conferred by this regulation may be accompanied by any other person the authorised person may consider appropriate.

(7) An authorised person shall on request—

- (a) produce that person’s authorisation before exercising any powers under paragraph (4); and
- (b) provide a document identifying any sample taken, or documents copied, under those powers.

(8) If a person who enters any premises by virtue of this regulation discloses to any person any information obtained on the premises with regard to any trade secret the person making the disclosure is, unless the disclosure is made in the performance of that person’s duty, guilty of an offence.

(9) Where the Agency is the enforcement authority in relation to relevant audit legislation this regulation applies in relation to the Agency in respect of its performance in enforcing those provisions, with the omission of paragraph (5)(a).

(10) In this regulation “authorised person” means a person authorised under this regulation.

Meaning of “enforcement authority” and related expressions

11.—(1) In regulations 8 to 10 “relevant audit legislation” means relevant feed law and relevant food law in respect of which the Agency is designated as a competent authority under regulation 4(1) or (3) but does not include “relevant legislation” as defined in section 15 of the Food Standards Act 1999.

(2) In regulations 8 to 10 “enforcement authority” means the authority by whom relevant audit legislation is to be enforced and includes the Agency itself, if by virtue of that legislation it is the enforcement authority in relation to it, but does not include the European Commission; and “enforcement” in relation to relevant audit legislation includes the execution of any provisions of that legislation.

(3) Any reference in regulations 8 to 10 (however expressed) to the performance of an enforcement authority in enforcing any relevant audit legislation includes a reference to the capacity of that authority to enforce it.

Offences relating to regulations 9 and 10

12. A person who—

- (a) intentionally obstructs a person exercising powers under regulation 10(4)(a), (b) or (c);
- (b) fails without reasonable excuse to comply with any requirement imposed under regulation 9(1) or (4)(d); or
- (c) in purported compliance with such a requirement—
 - (i) furnishes information which that person knows to be false or misleading in any material particular; or
 - (ii) recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

Right of appeal

13.—(1) Any person who is aggrieved by a decision of the competent authority taken in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004 pursuant to—

- (a) Article 31(2)(c) of Regulation 882/2004 (approval);
- (b) Article 31(2)(d) of Regulation 882/2004 (conditional approval and full approval); or
- (c) Article 31(2)(e) of Regulation 882/2004 (withdrawal of approval and suspension of approval),

may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be 1 month from the date on which notice of the decision was served on the person desiring to appeal.

(4) Where on an appeal under paragraph (1) the sheriff determines that the decision of the competent authority is incorrect, the authority shall give effect to that determination.

(5) Where an approval is withdrawn, the food business operator who, immediately before such withdrawal, had been using the establishment concerned may continue to use it, subject to any conditions imposed by the competent authority for the protection of public health, unless—

- (a) the time for appealing against the decision to withdraw the approval has expired without an appeal having been lodged; and
- (b) where an appeal against that decision has been lodged, the appeal has been finally disposed of or is withdrawn.

(6) Nothing in paragraph (5) shall permit an establishment to be used for a food business if—

- (a) a hygiene prohibition order, a hygiene emergency prohibition notice or a hygiene emergency prohibition order has been imposed in relation to the establishment;
- (b) a prohibition order, an emergency prohibition notice, an emergency prohibition order or an emergency control order has been imposed in relation to the establishment pursuant to section 11, 12 or 13 of the Act;
- (c) the approval of the establishment has been suspended pursuant to Article 31(2)(e) of Regulation 882/2004; or
- (d) the establishment is prevented from being used following the service of a remedial action notice.

(7) In this Regulation each of the terms “hygiene prohibition order”, “hygiene emergency prohibition notice”, “hygiene emergency prohibition order” and “remedial action notice” has the same meaning as it has in the Food Hygiene (Scotland) Regulations 2005.

Appeal to Court of Session against dismissal of appeal under regulation 13(1)

14. A person who is aggrieved by the sheriff’s dismissal of an appeal under regulation 13(1) may appeal to the Court of Session.

Staff of competent authority of another member State

15. An authorised officer of a competent authority may be accompanied by the staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004.

Commission experts

16.—(1) When an enforcing officer enters premises for the purposes of executing and enforcing official controls that officer may be accompanied by a Commission expert to enable that expert to carry out functions under Article 45 of Regulation 882/2004.

(2) In this regulation “enforcing officer” means an authorised officer of any authority which is responsible for executing and enforcing official controls for the verification of compliance with relevant feed law or relevant food law.

Prohibition on disclosure of trade secrets

17. If a person enters any premises by virtue of regulation 15 or 16 and discloses to any person any information obtained on the premises with regard to any trade secret the person making the disclosure is, unless the disclosure is made in the performance of that person’s duty, guilty of an offence.

Execution and enforcement

18.—(1) The authority responsible for executing and enforcing regulation 6(3) shall be the competent authority that imposed the requirement on the control body concerned under regulation 6(1).

(2) The authority responsible for executing and enforcing regulations 10(8) and 12 shall be the Agency.

(3) The authority responsible for executing and enforcing regulation 17 shall be the authority whose officer took the person who made the disclosure on to the premises concerned.

(4) The authority responsible for executing and enforcing regulation 19(8) shall be the authority exercising powers of entry under or in accordance with that regulation.

(5) The authority responsible for executing and enforcing regulation 20 shall be the authority who appointed the officer acting under regulation 15, 16 or 19 respectively.

Powers of entry

19.—(1) An authorised officer of a relevant enforcement authority other than the Agency shall, on producing, if so required, some duly authenticated document showing that officer's authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of regulations 6(3) or 17 for which that authority has enforcement responsibility pursuant to regulation 18(1) or (3) as the case may be; and
- (b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area,

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing that officer's authority, have a right at all reasonable hours to enter any premises for the purpose of—

- (a) ascertaining whether there is or has been on the premises any contravention of regulations 10(8) or 12, or any contravention of regulations 6(3) or 17 for which the Agency has enforcement responsibility pursuant to regulation 18(1) or (3) as the case may be; and
- (b) ascertaining whether there is on the premises any evidence of any such contravention,

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a sheriff, a magistrate or a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) or (2) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation shall continue in force for a period of 1 month.

(5) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and

on leaving any unoccupied premises which that officer has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found.

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the officer may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of this Part of the Regulations; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(8) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, that person is, unless the disclosure is made in the performance of that person's duty, guilty of an offence.

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(a), to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Obstruction etc. of officers

20.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of regulation 15, 16 or 19; or
- (b) without reasonable cause, fails to give to any person acting in the execution of regulation 15, 16 or 19 any assistance or information which that person may reasonably require for the performance of functions under those regulations,

is guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Penalties

21.—(1) A person guilty of an offence under regulation 19(8) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, to a fine or to both.

(a) 1981 c.22.

(2) A person guilty of an offence under regulation 6(3), 10(8), 12 or 17 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under regulation 20 is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

Time limit for commencement of prosecutions

22.—(1) No prosecution for an offence under this Part of these Regulations which is punishable under regulation 21(1) shall be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to the prosecutor’s knowledge,

whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor’s opinion to warrant the proceedings came to the knowledge of the prosecutor, shall be conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

PART 3

OFFICIAL CONTROLS ON FEED AND FOOD OF NON-ANIMAL ORIGIN FROM THIRD COUNTRIES

Interpretation of this Part of these Regulations

23. In this Part of these Regulations—

“authorised officer”, in relation to an enforcement authority, means any person appointed under regulations 24(2) or 25(2) as the case may be;

“enforcement authority” means—

- (a) in relation to the enforcement of this Part of these Regulations in relation to feed the feed authority; and
- (b) in relation to the enforcement of this Part of these Regulations in relation to food the food authority;

“feed” does not include—

- (a) any of the following feed additives—
 - (i) coccidiostats;
 - (ii) histomonostats; or
 - (iii) any zootechnical additive falling within category (d) of Article 6(1) of Regulation 1831/2003; or
- (b) any premixture within the meaning given in Article 2(2)(e) of Regulation 1831/2003 consisting solely of a combination of such additives;

“the Import Provisions” means this Part of these Regulations and Articles 15 to 24 of Regulation 882/2004;

“outside Scotland enforcement authority” means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except Scotland;

“product” means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (feed and food of non-animal origin not included in the scope of Directive 97/78/EC) and

includes those composite food products listed in the Annex to Commission Decision 2002/349/EC laying down the list of products to be examined at border inspection posts under Council Directive 97/78/EC^(a) which include only a limited percentage of products of animal origin and which are thereby excluded from the provisions of Directive 97/78/EC by Article 3(1) of that Decision; and

“the relevant territories” means the territories referred to in Annex I to Regulation 882/2004.

Feed enforcement responsibilities

24.—(1) Each feed authority shall execute and enforce the Import Provisions in its area in relation to feed.

(2) Feed authorities may in writing appoint as authorised officers, either generally or specially, such persons (whether or not officers of the feed authority concerned) as they consider necessary to act in matters arising under the Import Provisions in relation to feed.

Food enforcement responsibilities

25.—(1) Each food authority shall execute and enforce the Import Provisions in its area in relation to food.

(2) Food authorities may in writing appoint as authorised officers, either generally or specially, such persons (whether or not officers of the food authority concerned) as they consider necessary to act in matters arising under the Import Provisions in relation to food.

Deferred execution and enforcement

26.—(1) Where—

- (a) a product from a third country has entered Scotland;
- (b) customs examination of that product has been completed or has been deferred until it reaches its place of destination elsewhere in the United Kingdom;
- (c) an authorised officer of the enforcement authority for the place of entry has on reasonable grounds issued an authorisation confirming that—
 - (i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in Scotland, or
 - (ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and
- (d) the person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in Scotland, shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking shall—

- (a) state the destination of the product; and
- (b) confirm that—
 - (i) the container containing the product has been sealed and will not be opened until it has reached that destination,
 - (ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if it is in Scotland or the outside Scotland enforcement authority if the destination is not in Scotland, and

(a) O.J. No. L 121, 8.5.02, p.6.

- (iii) the container will be available at that destination for examination under the Import Provisions or, where the location is elsewhere in the United Kingdom outside Scotland, legislation with respect to imported products in force there.

(3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), that officer shall—

- (a) (if the product's place of destination is within Scotland) notify the enforcement authority for that place or (if the product's place of destination is in any other part of the United Kingdom) notify the outside Scotland enforcement authority—
 - (i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions, and
 - (ii) if customs examination of the product has been deferred, of that fact; and
- (b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).

(4) Where the product has been sent to a destination in Scotland from another part of the British Islands and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in Scotland.

(5) No person shall breach an undertaking given under paragraph (1)(d).

Prohibition on introduction of certain feed and food

27.—(1) No person shall—

- (a) introduce into Scotland from a third country specified feed which fails to comply with feed safety requirements; or
- (b) introduce into Scotland from elsewhere in the relevant territories specified feed originating in a third country which fails to comply with feed safety requirements.

(2) No person shall—

- (a) introduce into Scotland from a third country specified food which fails to comply with—
 - (i) food safety requirements, or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004; or
- (b) introduce into Scotland from elsewhere in the relevant territories specified food originating in a third country which fails to comply with—
 - (i) food safety requirements, or
 - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004.

(3) In this regulation—

- (a) “specified feed” means feed that is a product; and
- (b) “specified food” means food that is a product.

Checks on products

28.—(1) The person responsible for introducing any product into Scotland shall permit an authorised officer of an enforcement authority to carry out checks in relation to the product pursuant to Article 16 of Regulation 882/2004.

(2) When an authorised officer is carrying out checks in relation to a product pursuant to Article 16 of Regulation 882/2004, the person introducing the product shall provide the facilities and assistance which the authorised officer reasonably requires to carry them out.

(3) When an authorised officer of an enforcement authority is carrying out an identity check or a physical check on a product in accordance with Article 16 of Regulation 882/2004 that officer shall be entitled to require that the check takes place at a specified place.

Detention, destruction, special treatment, re-dispatch and other appropriate measures and costs

29.—(1) An enforcement authority shall have the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled.

(2) The enforcement authority shall be the competent authority for the purposes of Article 22 of Regulation 882/2004.

Notices pursuant to Article 19 of Regulation 882/2004 (imports of feed and food from third countries)

30.—(1) If an authorised officer of an enforcement authority wishes to take any of the measures referred to in Article 19(1)(a) and (b) of Regulation 882/2004 in respect of feed or food the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it after that feed or food business operator has been heard as provided in Article 19.

(2) If an authorised officer of an enforcement authority wishes to exercise any of the powers referred to in Article 19(2) of Regulation 882/2004 in respect of feed or food the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

Right of appeal in respect of notices served under regulation 30

31.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 30 may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be 1 month from the date on which the notice was served on the person desiring to appeal.

(4) Where on an appeal under paragraph (1) the sheriff determines that the decision of the authorised officer of the enforcement authority is incorrect, the authority shall give effect to that determination.

Appeal to Court of Session against dismissal of appeal under regulation 31

32. A person who is aggrieved by the sheriff's dismissal of an appeal under regulation 31(1) may appeal to the Court of Session.

Serious risk to animal or public health

33.—(1) Where the Scottish Ministers or the Agency learns, or has reasonable grounds to suspect, that food or feed that has been or may be introduced into Scotland from a third country is likely to constitute a serious risk to animal or public health, the Scottish Ministers or the Agency, as the case may be, may by written declaration suspend, or impose conditions on, the introduction into Scotland of any product from the whole or any part of that third country.

(2) Such a declaration shall be published in such manner as the Scottish Ministers or the Agency, as the case may be, thinks fit and shall specify the product and the third country or part thereof concerned.

(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof shall specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration.

(5) Where a declaration is in force imposing conditions on the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof

specified in the declaration unless the product complies with the conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

Liability for charges

34.—(1) The enforcement authority shall notify the person responsible for a consignment of the charge falling to be paid for the controls carried out on it by the authority.

(2) Any charge notified to a person by the enforcement authority under paragraph (1) shall be payable by that person to the enforcement authority on demand.

(3) The charge referred to in paragraph (1) is the aggregate of the costs incurred in relation to the consignment by the enforcement authority acting as the competent authority for the purposes of Article 22 of Regulation 882/2004 by virtue of regulation 29(2).

Procurement by authorised officers of samples with regard to food

35. An authorised officer of a food authority may, for the purposes of the execution and enforcement by that authority of the Import Provisions—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
 - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption, or
 - (ii) is found on or in any premises which the officer is authorised to enter by or under regulation 37;
- (c) take a sample from any food source, or a sample of any contact material, which is found by the officer on or in any such premises; and
- (d) take a sample of any article or substance which is found on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

Analysis etc. of samples

36.—(1) An authorised officer of a food authority who has procured a sample under regulation 35 shall—

- (a) if the officer considers that the sample should be analysed, submit it to be analysed by a public analyst;
- (b) if the officer considers that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—

- (a) to be analysed by the public analyst for the area in which the purchase was made; or
- (b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner is for any reason unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by the food analyst or examiner to such other food analyst or examiner as that person may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to that food analyst or examiner under this regulation, but may, except where—

- (a) that person is the public analyst for the area in question; and
- (b) the sample is submitted for analysis by an authorised officer of a food authority,

demand in advance the payment of such reasonable fee as the food analyst or examiner may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by the food analyst or examiner, but the analysis or examination may be made by any person acting under the direction of the food analyst or examiner.

(8) In any proceedings under the Import Provisions, the production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or
- (b) of a document supplied to that party by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) Any reference in this regulation to a public analyst for a given area shall, where 2 or more public analysts have been appointed for that area, be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations 1990^(a) shall apply in relation to a sample procured by an authorised officer of a food authority under regulation 35 as if it were a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

Powers of entry of authorised officers of a food authority

37.—(1) An authorised officer of a food authority shall, on producing if so required, some duly authenticated document showing the officer's authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Import Provisions in relation to food;
- (b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and
- (c) to enter any premises for the purpose of the performance by the authority of their functions under the Import Provisions,

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) If a sheriff, a magistrate or a justice of the peace on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or

(a) S.I. 1990/2463, to which there are amendments not relevant to these Regulations.

- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation shall continue in force for a period of 1 month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises which the officer has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the officer may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(7) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, that person is, unless the disclosure was made in the performance of that person's duty, guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(a), to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

Obstruction etc. of officers (imports)

38.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of the Import Provisions; or
- (b) without reasonable cause, fails to give to any person acting in the execution of the Import Provisions any assistance or information which that person may reasonably require for the performance of that person's functions under the Import Provisions,

is guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

(a) 1981 c.22.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Offences and penalties

39.—(1) Any person who—

- (a) contravenes or fails to comply with regulations 26(5), 27, or 33(4) or (5); or
- (b) fails to comply with a notice served upon that person under the Import Provisions,

is guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under this Part of these Regulations is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, to a fine or to both.

(3) A person guilty of an offence under regulation 38 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

Time limit for commencement of prosecutions (imports)

40.—(1) No prosecution for an offence under this Part of these Regulations which is punishable under regulation 39(2) shall be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to the knowledge of the prosecutor,

whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor, and stating the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the knowledge of the prosecutor, shall be conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

PART 4

AMENDMENT OF THE GENERAL FOOD REGULATIONS 2004

Amendment of the General Food Regulations 2004

41.—(1) The General Food Regulations 2004(a) are amended in accordance with paragraphs (2) to (5).

(2) For regulation 4 (requirements under Regulation (EC) No. 178/2002 : offences) substitute—

“4. Any person who contravenes or fails to comply with any of the following provisions of Regulation (EC) No. 178/2002 shall be guilty of an offence—

- (a) Article 12 (food and feed exported from the Community) in so far as it relates to food;
- (b) Article 14(1) (food safety requirements);
- (c) Article 16 (presentation) in so far as it relates to food;
- (d) Article 18(2) or (3) (traceability) in so far as it relates to food business operators;

(a) S.I. 2004/3279.

- (e) Article 19 (responsibilities for food : food business operators).”.
- (3) For regulation 5(2)(a) (punishment of offences) substitute–
 - “(a) in the case of an offence under regulation 4(b), £20,000;”.
- (4) For regulation 6(1) (enforcement) substitute–
 - “(1) Subject to paragraph (2), each food authority shall enforce and execute the following provisions of Regulation (EC) No. 178/2002 and these Regulations in its area–
 - (a) Article 12 in so far as it relates to food;
 - (b) Article 14;
 - (c) Article 16 in so far as it relates to food;
 - (d) Article 18 in so far as it relates to food business operators; and
 - (e) Article 19.”.
- (5) After regulation 6 (enforcement) insert–

“Defence for exports

6A. In any proceedings for an offence of contravening or failing to comply with food law it shall be a defence for the accused to prove–

- (a) that the item in respect of which the offence is alleged to have been committed was intended for export to a country that is not a member State and that the item could lawfully be exported there under Article 12 of Regulation (EC) No. 178/2002; or
- (b) that the item in respect of which the offence is alleged to have been committed was intended for export to a member State and that–
 - (i) the legislation applicable to that item in that member State is compatible with the applicable provisions of food law (except in so far as it relates to feed produced for or fed to food producing animals) at Community level; and
 - (ii) the item complies with that legislation.”.

PART 5

ENFORCEMENT AND SUPPLEMENTARY PROVISIONS

Offences due to fault of another person

42. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Defence of due diligence

43.—(1) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the accused’s control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless at the earlier of–

- (a) a 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of the accused, before a court in connection with the alleged offence,

the accused has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in the accused's possession.

Offences by bodies corporate

44.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate is to be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Offences by Scottish partnerships

45. Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is to be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Protection of officers acting in good faith

46.—(1) An officer of a competent authority, a relevant enforcement authority or an enforcement authority within the meaning of regulation 23, is not personally liable in respect of any act done by that officer—

- (a) in the execution or purported execution of the Official Controls Regulations; and
- (b) within the scope of the officer's duties,

if the officer did that act in the honest belief that the officer's duties under the Official Controls Regulations required or entitled it to be done.

(2) Nothing in paragraph (1) shall be construed as relieving any such authority of any liability in respect of the acts of its officers.

(3) Where an action has been brought against an officer in respect of an act done by that officer outside the scope of the officer's duties referred to in paragraph (1)(a) above, the authority concerned may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if it is satisfied that the officer honestly believed that the act complained of was within the scope of the officer's duties.

(4) A public analyst appointed by a food authority shall be treated for the purposes of this regulation as being an officer of that authority, whether or not that analyst's appointment is a whole-time one.

Service of documents

47.—(1) Any document which is required or authorised under these Regulations to be served on a person may be served—

- (a) by delivering it to that person;
- (b) in the case of an incorporated company or body, by delivering it to its secretary at its registered or principal office, or by sending the document in a prepaid letter addressed to its secretary at that office; or

(c) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to that person at that person's usual or last known residence.

(2) Where a document is to be served on the occupier of any premises under these Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises are unoccupied, the document may be served by addressing it to the person concerned in the capacity of "occupier" of the premises (naming them), and—

(a) by delivering it to some other person at the premises; or

(b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

Consequential amendment

48.—(1) The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(a) are amended as provided in paragraph (2).

(2) In Schedule 1 (specified feed law) after the entry for "The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005" insert the entry "The Official Feed and Food Controls (Scotland) Regulations 2005(b)".

Revocations

49. The instruments specified in Column 1 of Schedule 6 are revoked to the extent specified in Column 3 of that Schedule.

LEWIS MACDONALD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
30th November 2005

(a) S.S.I. 2005/608.

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

SCHEDULES

SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF COMMUNITY LEGISLATION

“Regulation 178/2002” means 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^(a) as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 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^(b);

“Regulation 1831/2003” means Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition^(c);

“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs^(d) as read with Regulation 1688/2005;

“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin^(e) as read with Directive 2004/41 and Regulation 1688/2005;

“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^(f);

“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs^(g).

(a) O.J. No. L 31, 1.2.02, p.1.

(b) O.J. No. L 245, 29.9.03, p.4.

(c) O.J. No. L 268, 18.10.03, p.29. That Regulation was amended by Commission Regulation (EC) No. 378/2005 (O.J. No. L 59, 5.03.05, p.8).

(d) O.J. No. L 139, 30.4.04, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.3).

(e) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.22).

(f) O.J. No. L 165, 30.4.04, p.1. The revised text of Regulation 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

(g) O.J. No. L 271, 15.10.05, p.17.

SCHEDULE 2

Regulation 2(1)

DEFINITION OF RELEVANT FEED LAW

“relevant feed law” means–

- (a) Part IV of the Agriculture Act 1970(a), in so far as it applies in relation to feeding stuffs;
- (b) the Feeding Stuff (Sampling and Analysis) Regulations 1999(b);
- (c) the Feeding Stuff (Scotland) Regulations 2000(c);
- (d) the Genetically Modified Animal Feed (Scotland) Regulations 2004(d)
- (e) the Food Hygiene (Scotland) Regulations 2005(e) in so far as they apply in relation to feed;
- (f) the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Scotland) Regulations 2005(f);
- (g) the Feeding Stuff (Scotland) Regulations 2005(g); and
- (h) the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(h),

but excluding the Act and Regulations listed above in so far as they may apply to–

- (a) any of the following feed additives–
 - (i) coccidiostats;
 - (ii) histomonostats; or
 - (iii) any zootechnical additive falling within category (d) of Article 6(1) of Regulation 1831/2003; or
- (b) any premixture within the meaning given in Article 2(2)(e) of Regulation 1831/2003 consisting solely of a combination of such additives.

(a) 1970 c.40.

(b) S.I. 1999/1663, as amended by S.I. 1999/1871, S.S.I. 2000/453, 2001/104, 2002/285 and 2003/277.

(c) S.S.I. 2000/453, as amended by S.S.I. 2001/334, 2002/255 and 285, 2003/101, 312 and 474, 2004/208 and 458 and S.S.I. 2005/605.

(d) S.S.I. 2004/433.

(e) S.S.I. 2005/505.

(f) S.S.I. 2005/246.

(g) S.S.I. 2005/605.

(h) S.S.I. 2005/608.

DEFINITION OF RELEVANT FOOD LAW

“relevant food law” means–

- (a) food law in so far as it applies in relation to food, except in so far as it involves–
 - (i) 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(a),
 - (ii) the regulation of residues of pesticides under the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Regulations 2000(b),
 - (iii) 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 (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs(c) as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(d),
 - (iv) 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. 2082/92 on certificates of specific character for agricultural products and foodstuffs(e) as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded,
 - (v) the regulation of organic products under the Organic Products (Imports from Third Countries) Regulations 2003(f) and the Organic Products Regulations 2004(g),
 - (vi) the regulation of beef labelling under the Beef Labelling (Enforcement) (Scotland) Regulations 2001(h), and
 - (vii) the regulation of the import of and trade in products of animal origin–
 - (aa) under the Products of Animal Origin (Import and Export) Regulations 1996(i), with the exception of the execution and enforcement of regulation 3 thereof by the Agency, and
 - (bb) under the Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002(j), with the exception of the execution and enforcement of regulation 4 thereof by the Agency;

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

(b) S.S.I. 2000/22, as amended by S.S.I. 2001/84, 221 and 435, 2002/271 and 489, 2003/118 and 445, 2004/104, 220 and 399 and 2005/109 and 281.

(c) O.J. No. L 208, 24.7.92, p.1.

(d) O.J. No. L 236, 23.9.03, p.33.

(e) O.J. No. L 208, 24.7.92, p.9.

(f) S.I. 2003/2821.

(g) S.I. 2004/1604.

(h) S.S.I. 2001/252.

(i) S.I. 1996/3124, amended by S.I. 1996/3125, 1997/1181 and 3023, 1998/994, 1999/221 and 683, S.S.I. 2000/62, 171 and 288, 2001/169 and 257, 2002/87, 234 and 445, 2003/299, 405, 466 and 568.

(j) S.S.I. 2002/445 as amended by S.S.I. 2002/565, 2003/165, 225, 333 and 411 and 2005/323.

- (b) food law in so far as it applies in relation to materials and articles in contact with food except in so far as it involves the regulation of food contact materials under the Ceramic Ware (Safety) Regulations 1988^(a); and
- (c) food law in so far as it involves the regulation of primary production and those associated operations listed in paragraph 1 of Part AI of Annex I to Regulation 852/2004 under the Food Hygiene (Scotland) Regulations 2005.

^(a) S.I. 1988/1647.

SCHEDULE 4

Regulation 4(1)

COMPETENT AUTHORITIES FOR THE PURPOSES OF CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR AS THEY APPLY IN RELATION TO RELEVANT FEED LAW

<i>Column 1</i> <i>Competent authority</i>	<i>Column 2</i> <i>Provisions of Regulation 882/2004</i>
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 19(1), (2) and (3), 24, 31(1) and (2)(f), 34, 35(3) and (4), 36, 37(1), 38, 39, 40(2) and (4), 52(1) and 54.
The feed authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54.

SCHEDULE 5

Regulation 4(3)

COMPETENT AUTHORITIES FOR THE PURPOSES OF CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR AS THEY APPLY IN RELATION TO RELEVANT FOOD LAW

<i>Column 1</i> <i>Competent authority</i>	<i>Column 2</i> <i>Provisions of Regulation 882/2004</i>
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 14, 19(1), (2) and (3), 24, 31, 34, 35(3) and (4), 36, 37(1), 38, 39, 40(2) and (4), 52(1) and 54.
The food authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54.

SCHEDULE 6

Regulation 49

REVOCATIONS

<i>Column 1 Instruments</i>	<i>Column 2 Reference</i>	<i>Column 3 Extent of revocation</i>
The Mineral Hydrocarbons in Food (Scotland) Regulations 1966	S.I. 1966/1263	Regulation 10
The Erucic Acid in Food (Scotland) Regulations 1977	S.I. 1977/1028	Regulation 9
The Chloroform in Food (Scotland) Regulations 1980	S.I. 1980/289	Regulation 9
The Imported Food (Scotland) Regulations 1985	S.I. 1985/913	The whole Regulations
The Caseins and Caseinates (Scotland) Regulations 1986	S.I. 1986/836	Regulation 10(a)
The Food (Control of Irradiation) Regulations 1990	S.I. 1990/2490	Regulation 8
The Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990	S.I. 1990/2625	Article 8
The Food Safety (Exports) Regulations 1991	S.I. 1991/1476	The whole Regulations
The Flavourings in Food Regulations 1992	S.I. 1992/1971	Regulation 8
The Food Additives Labelling Regulations 1992	S.I. 1992/1978	Regulation 6
The Extraction Solvents in Food Regulations 1993	S.I. 1993/1658	Regulation 6
The Infant Formula and Follow-on Formula Regulations 1995	S.I. 1995/77	Regulations 5(2) and 6(2)
The Sweeteners in Food Regulations 1995	S.I. 1995/3123	Regulation 8
The Colours in Food Regulations 1995	S.I. 1995/3124	Regulation 10
The Miscellaneous Food Additives Regulations 1995	S.I. 1995/3187	Regulation 8
The Food Labelling Regulations 1996	S.I. 1996/1499	Regulation 47
The Miscellaneous Food Additives (Amendment) Regulations 1997	S.I. 1997/1413	Regulation 5
The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997	S.I. 1997/1729	Regulation 29
The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997	S.I. 1997/2182	Regulation 8
The Imported Food Regulations 1997	S.I. 1997/2537	The whole Regulations
The Bread and Flour Regulations 1998	S.I. 1998/141	Regulation 9

(a) Regulation 10 was inserted by the Food Safety (Exports) Regulations 1991 (S.I. 1991/1476), regulation 2(1).

<i>Column 1 Instruments</i>	<i>Column 2 Reference</i>	<i>Column 3 Extent of revocation</i>
The Plastic Materials and Articles in Contact with Food Regulations 1998	S.I. 1998/1376	Regulation 3(2)
The Food Labelling (Amendment) Regulations 1998	S.I. 1998/1398	Regulation 12
The Drinking Milk Regulations 1998	S.I. 1998/2424	Regulation 7
The Food Labelling (Amendment) Regulations 1999	S.I. 1999/747	Regulation 10
The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999	S.I. 1999/1540	Regulation 18(1) and (3)
The Spreadable Fats (Marketing Standards) (Scotland) Regulations 1999	S.S.I. 1999/34	Regulation 7
The Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (Scotland) Regulations 2000	S.S.I. 2000/62	Regulation 7(1) and Part I of Schedule 5
The Foods for Special Medical Purposes (Scotland) Regulations 2000	S.S.I. 2000/130	Regulation 6
The Food Irradiation Provisions (Scotland) Regulations 2000	S.S.I. 2000/309	Regulation 8
The Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001	S.S.I. 2001/38	Regulation 9
The Food For Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2002	S.S.I. 2002/397	Regulation 7
The Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002	S.S.I. 2002/445	Schedule 8, paragraph 3
The Plastic Materials and Articles in Contact with Food (Amendment) (Scotland) Regulations 2002	S.S.I. 2002/498	Regulation 5(a) in so far as it amends regulation 3(2) of S.I. 1998/1376
The Natural Mineral Water, Spring Water and Bottled Drinking Water (Amendment) (Scotland) Regulations 2003	S.S.I. 2003/139	Regulation 13(a) and (c)
The Food Supplements (Scotland) Regulations 2003	S.S.I. 2003/278	Regulation 10
The Cocoa and Chocolate Products (Scotland) Regulations 2003	S.S.I. 2003/291	Regulation 9
The Fruit Juices and Fruit Nectars (Scotland) Regulations 2003	S.S.I. 2003/293	Regulation 8
The Condensed Milk and Dried Milk (Scotland) Regulations 2003	S.S.I. 2003/311	Regulation 8
The Specified Sugar Products (Scotland) Regulations 2003	S.S.I. 2003/527	Regulation 8
The Honey (Scotland) Regulations 2003	S.S.I. 2003/569	Regulation 9
The Food Labelling Amendment (Scotland) Regulations 2003	S.S.I. 2003/578	In Regulation 4(2), the reference to regulation 47(b)
The Meat Products (Scotland) Regulations 2004	S.S.I. 2004/6	In Regulation 8(a)(iii) "or" and Regulation 8(b)

<i>Column 1 Instruments</i>	<i>Column 2 Reference</i>	<i>Column 3 Extent of revocation</i>
The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004	S.S.I. 2004/8	Regulation 11
The Jam and Similar Products (Scotland) Regulations 2004	S.S.I. 2004/133	Regulation 8
The Food Safety (Act of Accession concerning the Czech Republic and other States) (Consequential Amendments) (Scotland) Regulations 2004	S.S.I. 2004/395	Regulation 7
The Food Labelling (Added Phytosterols or Phytosterols) (Scotland) Regulations 2005	S.S.I. 2005/1	Regulation 9

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, provide for the execution and enforcement of 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 (O.J. No. L 165, 30.4.04, p.1) (“Regulation 882/2004”) in relation to “relevant feed law” and “relevant food law”, which terms are defined in Schedules 2 and 3 respectively. The revised text of Regulation 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

These Regulations also impose prohibitions on the introduction of certain feed and food into Scotland in so far as non-compliant with Article 11 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 (O.J. No. L 31, 1.2.02, p.1), as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) (“Regulation 178/2002”) and as read with Article 10 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (O.J. No. L 139, 30.4.04, p.1; the revised text of that Regulation is now set out in a Corrigendum, O.J. No. L 226, 25.6.04, p.3).

These Regulations also amend in relation to Scotland the General Food Regulations 2004 (S.I. 2004/3279) (“the 2004 Regulations”) (which extend to Great Britain) to provide for the execution and enforcement of Article 12 of Regulation 178/2002, which imposes conditions on the export and re-export of food and feed from the Community for placing on the market of third countries, in so far as that Article relates to food. These Regulations also insert a new regulation 6A into the 2004 Regulations which provides a defence in relation to exports in the case of prosecutions for contravening or failing to comply with food law. The defence applies both in relation to items intended for export to a third country and to items intended for export to a member State.

These Regulations cite as enabling powers both section 2(2) of the European Communities Act 1972 (1972 c.68) and certain sections of the Food Safety Act 1990 (1990 c.16). The Food Safety Act powers have been exercised to enact regulation 41 of these Regulations, which amends the 2004 Regulations to provide that a person who contravenes or fails to comply with Article 12 of Regulation 178/2002 in so far as it relates to food, is guilty of an offence. The remaining provision of these Regulations were made under section 2(2) of the 1972 Act.

These Regulations—

- (a) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation 882/2004 (regulation 4) and for the appointment of authorised officers of such bodies (regulation 3);
- (b) provide for the exchange and provision of information by competent authorities (regulation 5);
- (c) enable a competent authority to require a control body to provide information and make records available and provide that a person who –
 - (i) fails to comply with a requirement to provide information or make records available, or
 - (ii) in purported compliance with such a requirement furnishes false or misleading information,is guilty of an offence (regulation 6);
- (d) enable the Scottish Ministers to issue codes of recommended practice to feed authorities and food authorities as regards their competent authority functions and the execution and enforcement of Part 3 of these Regulations relating to imports of feed and food of non-animal origin (regulation 7);

- (e) give the Food Standards Agency (“the Agency”) the function of monitoring the performance of enforcement authorities in enforcing certain legislation (regulation 8);
- (f) give the Agency the power, for the purpose of carrying out the function referred to in sub-paragraph (e) above—
 - (i) to require information to be provided and records to be made available (regulation 9), and
 - (ii) to authorise individuals (who may thereby exercise certain powers, including a power of entry) (regulation 10);
- (g) define certain terms used in regulations 8 to 10 (regulation 11);
- (h) provide that a person who —
 - (i) obstructs a person exercising a power to enter premises, take samples or inspect and copy records,
 - (ii) fails to comply with a requirement to provide information, make records available or provide facilities, records, information or other assistance, or
 - (iii) in purported compliance with such a requirement furnishes false or misleading information,
 is guilty of an offence (regulation 12);
- (i) provide rights of appeal to the sheriff and then to the Court of Session in respect of a decision of the competent authority concerning the approval of certain establishments taken under Article 31 of Regulation 882/2004 (regulations 13 and 14);
- (j) provide that an authorised officer of a competent authority may be accompanied by the staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004 (regulation 15);
- (k) provide that when an “enforcing officer” (defined in regulation 16(2)) enters premises for the purpose of executing and enforcing official controls that officer may be accompanied by a Commission expert to enable that expert to carry out functions under Article 45 of Regulation 882/2004 (regulation 16);
- (l) provide that a person who enters premises under the powers referred to in sub-paragraph (j) or (k) above and discloses any information obtained on the premises with regard to any trade secret is guilty of an offence unless the disclosure is made in the performance of that person’s duty (regulation 17);
- (m) specify which authorities are responsible for executing and enforcing regulations 6(3), 10(8), 12, 17, 19(8) and 20 (regulation 18);
- (n) give powers of entry to authorised officers of the authorities referred to in sub-paragraph (m) above (regulation 19);
- (o) create the offence of obstructing an officer acting in the execution of regulations 15, 16 or 19 (regulation 20);
- (p) provide penalties for offences under Part 2 of these Regulations (regulation 21);
- (q) provide a time limit for bringing prosecutions for certain offences under that Part (regulation 22);
- (r) make provision for the execution and enforcement of Part 3 of these Regulations and Articles 15 to 24 of Regulation 882/2004, together defined in regulation 22 as “the Import Provisions”, relating to imports of feed and food of non-animal origin (regulations 24 and 25);
- (s) make provision for the execution and enforcement of import controls to be deferred until a product reaches its destination in the United Kingdom (regulation 26);
- (t) in the light of Article 11 of Regulation 178/2002 as read with Article 10 of Regulation (EC) No. 852/2004 (as described above) prohibit the introduction into Scotland of certain feed and food unless specified conditions are met (regulation 27);
- (u) provide for the checking of products that are introduced into Scotland (regulation 28);

- (v) provide that an enforcement authority, first, has the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation 882/2004 and, second, is the competent authority for the purposes of Article 22 of that Regulation (regulation 29);
- (w) provide for the service of notices by an authorised officer of an enforcement authority when that officer wishes to take certain measures or exercise certain powers under Article 19 of Regulation 882/2004 (imports of feed and food from third countries) (regulation 30);
- (x) provide rights of appeal to the sheriff and then to the Court of Session in respect of the service of notices under regulation 30 (regulations 31 and 32);
- (y) enable the Scottish Ministers or the Agency by written declaration to suspend, or impose conditions on, the introduction into Scotland of any product from a third country where they learn or reasonably suspect that any food or feed that has been or may be so introduced is likely to constitute a serious risk to animal or public health (regulation 33);
- (z) provide for charges to be payable in relation to controls carried out on consignments (regulation 34);
- (aa) provide for the procurement and analysis of samples of food for the purposes of the execution and enforcement of the Import Provisions (regulations 35 and 36);
- (bb) provide powers of entry for authorised officers of food authorities in relation to the execution and enforcement of the Import Provisions (regulation 37);
- (cc) create the offence of obstructing an officer acting in the execution of the Import Provisions (regulation 38);
- (dd) create offences consisting of contravening or failing to comply with specified regulations and failing to comply with a notice served under the Import Provisions and provide penalties for offences under Part 3 (regulation 39);
- (ee) provide a time limit for bringing certain prosecutions for offences under Part 3 (regulation 40);
- (ff) amend the 2004 Regulations, as described above (regulation 41);
- (gg) provide that where the commission of an offence under these Regulations is due to the act or default of some other person that other person is guilty of the offence (regulation 42);
- (hh) provide that in proceedings for an offence under these Regulations it is a defence for the accused to prove that all reasonable these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or a person purporting to act as such that officer as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 44);
- (ii) provide that where an offence under them committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 45);
- (jj) provide for the protection of officers acting in good faith (regulation 46);
- (kk) provide for the service of documents (regulation 47); and
- (ll) make a consequential amendment to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (S.S.I. 2005/608) (regulation 48); and
- (mm) provide for the revocation of specified instruments to the extent specified (regulation 49).

A full regulatory impact assessment, which includes a compliance cost assessment of the effect which these Regulations will have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.

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