

EXECUTIVE NOTE

THE OFFICIAL FEED AND FOOD CONTROLS (SCOTLAND) REGULATIONS 2005 SSI/2005/616

Made by Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972¹ and of all other powers enabling them in that behalf. This instrument is subject to negative resolution procedure.

Policy Objective

1. The Official Feed and Food Controls (Scotland) Regulations 2005 provides for the execution and enforcement of the feed and food elements of EC Regulation 882/2004 on official feed and food, animal health and animal welfare controls. It designates the competent authorities and enforcement authorities and creates relevant offences and penalties. In particular, it provides for the enforcement of new rules on official controls of feed and food of non-animal origin imported from outside the Community.
2. This instrument will apply to Scotland only. There will be separate but parallel legislation for England, Wales and Northern Ireland.

Background

3. The EC Regulation sets out a framework of requirements for the authorities in Member States (the competent authorities) that are responsible for monitoring and enforcing compliance of businesses with feed and food law as well as for checking that animal health and animal welfare rules are adhered to (i.e. for undertaking official controls). This framework includes the principles that should be adopted e.g. a risk-based and 'farm to fork' approach, and specifies operational criteria with which the authorities must comply, e.g. they must be audited to assess the effectiveness of their performance.
4. The Regulation also includes new harmonised rules for official controls of feed and food of non-animal origin imported from third countries.
5. The provisions of the EU Regulation apply directly in the Member States. Most of these consolidate existing requirements such that enforcement arrangements in the UK for feed and food are generally already consistent with these. However, some updating is needed. In particular, national legislation is needed to extend the Food Standards Agency's existing function (set out in the Food Standards Act 1999) to monitor and audit enforcement authorities. Additionally, the

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 was conferred on the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The competence of Scottish Ministers was extended to include all "food" as defined in EC Regulation 178/2002 by virtue of Section 63 of the 1998 Act.

requirements for checks of third country imports of feed and food of non-animal origin are new and national legislation is needed to provide for their enforcement.

6. The instrument will be made under the powers given in Section 2(2) of the European Communities Act 1972 and certain sections of the Food Safety Act 1990. The enforcement powers and the offences and penalties in the instrument mirror those already provided in the Food Safety Act or the Food Standards Act.
7. The objective of the EU Regulation is to create a more comprehensive and integrated, risk-based, 'farm to fork' approach to official controls. It does so by consolidating and extending existing legislative requirements. The aim is to improve the consistency and effectiveness of controls across the EU and, as a consequence, raise standards of food safety and consumer protection. The EU Regulation also aims to provide a greater degree of transparency for consumers about enforcement arrangements. The national legislation will provide the enforcement powers required in relation to provisions in the EU Regulation that apply from 1 January 2006 and will contribute to the anticipated benefits of a more consistent and effective control system.

Consultation

6. Around 230 interested parties including all local authorities in Scotland (these authorities are responsible for enforcement of the majority of feed and food law) were consulted on the draft instrument as well as the Regulatory Impact Assessment and associated guidance material. A full list of consultees can be found at Annex 1.
7. A total of 11 responses were received. The majority of comments related to the provisions on import controls and 'high risk' non-POAO. As there has been no progress at EU level with regard to 'high risk' non-POAO, it will not be possible at this stage to include these proposed measures in the domestic legislation. It is proposed that once the list of 'high-risk' products has been agreed at EU level, the national legislation will be amended accordingly and further stakeholder consultation will be undertaken. The issues and questions raised in consultation responses will be considered at that time and during the further development of these legal instruments and related guidance material.
8. There was also concern from stakeholders on co-operation and co-ordination between enforcement authorities to avoid duplication and to ensure consistency of approach, particularly with respect to import controls. This is acknowledged and the need for partnership working to achieve this is recognised. In this respect, the Food Standards Agency will continue to work with local authorities and their representatives and professional bodies. In particular, the Agency will continue to work closely with HM Revenues and Customs (HMRC), the UK Agriculture Departments and with local authorities to ensure that imported food controls are in place at borders and inland. This will build on and aim to strengthen existing avenues of communication and co-operation which are already well developed.

9. An analysis of the responses is included in the Regulatory Impact Assessment. The Food Standards Agency Board has reviewed this and endorsed the approach being taken.

Other Government Departments

10. The Agency in Scotland also consulted with SEERAD, Justice Department, Improving Regulation Unit in Scotland, as well as London based departments during the development of these regulations.

Other Administrations

11. Similar regulations were recently laid in the English Parliament. Parallel legislation is being developed in Wales and Northern Ireland.

Financial affects/ Regulatory Impact Assessment

12. The instrument itself is not considered to incur significant additional costs to either industry or enforcement authorities. A Regulatory Impact Assessment for this instrument has been prepared and is available at the address below.

Parliamentary Procedure

13. The regulations are subject to negative resolution procedure, and the 21-day rule applies.

FOOD STANDARDS AGENCY SCOTLAND

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CONSULTATION LIST: SCOTTISH INTERESTED PARTIES**ANNEX 1**

Aberdeen Scotch Meat Ltd	Orkney Fisheries Association
Aberdeen Scotch Meats	Orkney Herring Co Ltd
Aberdeen Smoked Salmon Company.	Pataks Frozen Food
AIC	Puremalt Products Ltd.
All Scottish Local Authorities	Quality Meat Scotland
Allied Distillers	Robert Wisemans Dairies
Anaphylaxis Campaign	Rowett Research Institute
Association of Deer Management Groups	Royal Environmental Health Institute for Scotland
Association of Independent Crop Consultants	Royal Highland & Agricultural Society of Scotland
Association of Public Analysts	Scallop Association
Association of Scottish Shellfish Growers	Scot Trout Ltd.
Assured Chicken Production	Scotch Whisky Research Institute
BASC Scotland	SCOTSS
Baxters of Speyside	Scottish Agriculture Collage
British Association for Shooting & Conservation	Scottish Ass.of Meat Wholesalers
British Deer Society	Scottish Association of Master Bakers
British Poultry Council	Scottish Beekeepers Association
British Trout Association	Scottish Centre Infection & Environmental Health
British Veterinary Association	Scottish Chambers of Commerce
Charis Innovative Food Services Limited	Scottish Civic Forum
Clyde Fishermens Association	Scottish Consumer Council
Consumers Assosiation	Scottish Corn Trade Association Ltd
Convention of Scottish Local Authorities(COSLA)	Scottish Egg Producer Retailers Assoc
Co-operative Group (CWS) Ltd	Scottish Enterprise
Dairy UK - Scotland	Scottish Enterprise/Food & Drink
Dawnfresh Seafoods	Scottish Federation of Meat Traders
DEER Commission	Scottish Fishermans Federation
Diageo	Scottish Flour Millers Association
Express Dairies Direct Service	Scottish Food & Drink Federation
Federation of Small Businesses	Scottish Food Enforcement Liason Committee
Food Certification (Scotland) Ltd	Scottish Food Quality Certification Ltd
Food Industry Forum	Scottish Food Safety Officers Association
Food Training & Consultants Company	Scottish Game/Dealers Processors Ass.
FRS Marine Laboratory	Scottish Gamekeepers Asociation
FTA	Scottish Grocers Federation
Glanbia Foods	Scottish Health Food Retailers Association
Grampian Country Food Group Ltd	Scottish Licensed Trade Association
Guinness UDV	Scottish Organic Producers Association Ltd
Hannah Research Institute	Scottish Quality Salmon

Health and Safety Executive	Scottish Retail Consortium
International Federation of Environmental Health	Scottish Rural Property and Business Ass.
LACORS	Scottish Salmon Smokers Association
MacPhie of Glenbervie Ltd	Scottish Sea Farms Ltd.
MacRae Foods Ltd.	Scottish Seafood Processors Federation
Macsween of Edinburgh	Scottish Seafood Processors Federation
Mallaig & North-West Fishermen's Association	Scottish Shellfish Marketing Group Ltd.
McIntosh Donald	Scottish Wholesale Association
Meat and Livestock Commission	Sea Fish Industry Authority
Moray Coast Produce	Seafish
Moray Seafood Ltd	Seafish Industry Authority
NBA Scotland	SEPA
Neville Craddock Ass.	Shetland Salmon Farmers Association
NFU Scotland	Shetland Seafood Quality Control
North of Scotland Milk Co-operative	Simply Organic
Organic Scotland	Society Environmental Health for Scotland
Strathaird Salmon Ltd	
The Edinburgh Smoked Salmon	
The Malt Distillers Association of Scotland	
The Scotch Whisky Association	
Trading Standards Institute	
United Distillers	
United Fish Products	
Walkers Shortbread Ltd	
West of Scotland Fish Producers Organisation Ltd	