

2006 No. 578

AGRICULTURE

The Feeding Stuffs (Scotland) and the Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2006

Made - - - - - *29th November 2006*

Laid before the Scottish Parliament *30th November 2006*

Coming into force - - - *26th December 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 66(1), 74(1), 74A and 84 of the Agriculture Act 1970(a), section 2(2) of the European Communities Act 1972(b) (in so far as these Regulations cannot be made under the powers of the Agriculture Act 1970 specified above) and of all other powers enabling them in that behalf, after consultation as required by section 84(1) of the Agriculture Act 1970 with such persons or organisations appearing to represent the interests concerned and 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(c), hereby make the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Feeding Stuffs (Scotland) and the Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2006 and come into force on 26th December 2006.

(2) These Regulations extend to Scotland only.

Amendments to the Feeding Stuffs (Scotland) Regulations 2005

2.—(1) The Feeding Stuffs (Scotland) Regulations 2005(d) are amended in accordance with paragraphs (2) to (4).

(2) In Part B (compound pet foods) of Schedule 4 (limits of variation), after the entries relating to methionine, insert the entries for moisture as set out in Schedule 1 to these Regulations.

(a) 1970 c.40. Section 66(1) contains definitions of the expressions “the Ministers”, “prescribed” and “regulations” and was relevantly amended by S.I. 1982/980, 1995/1412, 1996/1342 and 1999/1663 and S.S.I. 2000/453. Section 74A was inserted by the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6. The functions of the Secretary of State, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”).

(b) 1972 c.68; section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown by section 2(2), insofar as exercisable within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(c) O.J. No. L 31, 1.2.02, p.1, as last amended by Regulation (EC) No. 575/2006 of the European Parliament and of the Council (O.J. No. L 100, 8.4.06, p.3.).

(d) S.S.I. 2005/605, as amended by S.S.I. 2006/16 and S.S.I. 2006/516.

(3) In relation to the table in Chapter A of Schedule 5 (prescribed limits for undesirable substances)—

- (a) for the entries in that table relating to cadmium, dioxin, fluorine and lead, substitute the entries for those substances as set out in the table in Part I of Schedule 2 to these Regulations;
- (b) after the entries for dioxin, insert the entries for sum of dioxins and dioxin-like PCBs as set out in the table in Part I of Schedule 2 to these Regulations; and
- (c) add the footnotes set out in Part I of Schedule 2 to these Regulations.

(4) In relation to the table in Chapter D of Schedule 5—

- (a) for the entries in that table relating to camphechlor (toxaphene), substitute the entries as set out in the table in Part II of Schedule 2 to these Regulations; and
- (b) add the footnote set out in Part II of Schedule 2 to these Regulations.

Amendments to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

3.—(1) The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(a) are amended in accordance with paragraphs (2) and (3).

(2) After regulation 24 (powers of entry for authorised officers), insert—

“**24A.**—(1) For the purpose of carrying out investigations, in accordance with Article 4.2 of Directive 2002/32, to determine the source of those undesirable substances listed in Annex II to that Directive where action thresholds specified in that Annex have been reached, an authorised officer may, at all reasonable times and on producing if requested some duly authenticated document showing that officer’s authority, enter any premises (not being premises used only as a dwelling) on which that officer has reasonable cause to believe that feed has been or is being manufactured or produced, has been placed on the market or is being kept for the purpose of being placed on the market, incorporated into another product or used.

(2) An authorised officer entering any premises by virtue of this regulation may—

- (a) take such other persons and such equipment as may appear to be necessary;
- (b) inspect anything that officer would have had the right to inspect under regulation 24(5); and
- (c) take on those premises a sample of any material appearing to be a feed manufactured, produced, placed on the market or intended to be placed on the market or to be material used or intended for use as feed.

(3) Where for the purpose of taking a sample pursuant to paragraph (2)(c) an authorised officer takes material from one or more containers, each of which weighs no more than six kilograms and which are exposed for sale by retail, the owner of the container or containers may require the authorised officer to purchase the container or containers on behalf of the authority for which that officer acts.

(4) An authorised officer entering any premises by virtue of this regulation has the same rights to production, inspection and copying of records, including records kept on or produced by a computer, as are specified in regulation 24(9)(a) and (b) and (10)(c).

(5) Regulation 24(14) applies to the power of entry under this regulation as it does to such powers under that regulation.

(6) Directive 2002/32 means Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed(b), as amended by Commission Directive 2003/57/EC(c), Commission Directive 2003/100/EC(d), Commission Directive

(a) S.S.I. 2005/608, as amended by S.S.I. 2005/616.

(b) O.J. No. L 140, 30.5.02, p.10.

(c) O.J. No. L 151, 19.6.03, p.38.

(d) O.J. No. L 285, 1.11.03, p.33.

2005/8/EC(a), Commission Directive 2005/86/EC(b), Commission Directive 2005/87/EC(c) and Commission Directive 2006/13/EC(d).”.

(3) In regulation 27(4), after “regulation 24”, insert “or regulation 24A”.

LEWIS MACDONALD

Authorised to sign on behalf of the Scottish Ministers

St Andrew’s House,
Edinburgh
29th November 2006

(a) O.J. No. L 27, 29.1.05, p.44.

(b) O.J. No. L 318, 6.12.05, p.16.

(c) O.J. No. L 318, 6.12.05, p.19.

(d) O.J. No. L 32, 4.2.06, p.44. This amending Directive introduced action thresholds and the requirement to investigate.

SCHEDULE 1

Regulation 2(2)

Entries to be added to Part B of Schedule 4 to the Feeding Stuffs (Scotland) Regulations 2005

| <i>Analytical constituents</i> | <i>Limits of variation (absolute value in percentage by weight, except where otherwise specified)</i> |
|--------------------------------|---|
| Moisture | If present in excess— 3 for declarations of 40% or more 7.5% of the amount stated for declarations of 20% or more but less than 40% 1.5 for declarations less than 20% |

SCHEDULE 2

Regulation 2(3) and (4)

PART I

Entries to be substituted or added in Chapter A of Schedule 5 to the Feeding Stuffs
(Scotland) Regulations 2005

| <i>Column 1: Undesirable substances</i> | <i>Column 2: Products intended for animal feed</i> | <i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i> |
|---|---|---|
| Cadmium ⁽¹⁾ | Feed materials of vegetable origin | 1 |
| | Feed materials of animal origin | 2 |
| | Feed materials of mineral origin | 2 |
| | except: | |
| | – phosphates | 10 |
| | Additives belonging to the functional group of compounds of trace elements | 10 |
| | except: | |
| | – copper oxide, manganous oxide, zinc oxide and manganous sulphate monohydrate | 30 |
| | Additives belonging to the functional groups of binders and anti-caking agents | 2 |
| | Premixtures | 15 |
| | Mineral feeding stuffs: | |
| | – containing less than 7% phosphorus | 5 |
| | – containing 7% or more phosphorus | 0.75 per 1% phosphorus, subject to a maximum of 7.5 |
| | Complementary feeding stuffs for pet animals | 2 |
| | Other complementary feeding stuffs | 0.5 |
| | Complete feeding stuffs for cattle, sheep and goats and feeding stuffs for fish | 1 |
| | except: | |
| | – complete feeding stuffs for pet animals | 2 |
| | – complete feeding stuffs for calves, lambs and kids, and other complete feeding stuffs | 0.5 |

| <i>Column 1: Undesirable substances</i> | <i>Column 2: Products intended for animal feed</i> | <i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i> |
|--|---|---|
| <p>Dioxins (sum of polychlorinated dibenzo-<i>para</i>-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs)) expressed in World Health Organisation (WHO) toxic equivalents, using the WHO-TEFs (toxic equivalency factors) 1997⁽²⁾⁽³⁾</p> | <p>Feed materials of plant origin with the exception of vegetable oils and their by-products Vegetable oils and their by-products Feed materials of mineral origin Animal fat, including milk fat and egg fat Other land animal products, including milk and milk products and eggs and egg products Fish oil Fish, other aquatic animals, their products and by-products, with the exception of fish oil and fish protein hydrolysates containing more than 20% fat⁽⁴⁾ Fish protein hydrolysates containing more than 20% fat The additives kaolinitic clay, calcium sulphate dihydrate, vermiculite, natrolite-phonolite, synthetic calcium aluminates and clinoptilolite of sedimentary origin belonging to the functional groups of binders and anti-caking agents Additives belonging to the functional group of compounds of trace elements Premixtures Compound feeding stuffs, with the exception of feed for fur-producing animals, pet foods and feed for fish Feed for fish ; pet foods</p> | <p>0.75 ng WHO-PCDD/F-TEQ/kg 0.75 ng WHO-PCDD/F-TEQ/kg 1.0 ng WHO-PCDD/F-TEQ/kg 2.0 ng WHO-PCDD/F-TEQ/kg 0.75 ng WHO-PCDD/F-TEQ/kg 6.0 ng WHO-PCDD/F-TEQ/kg 1.25 ng WHO-PCDD/F-TEQ/kg 2.25 ng WHO-PCDD/F-TEQ/kg 0.75 ng WHO-PCDD/F-TEQ/kg 1.0 ng WHO-PCDD/F-TEQ/kg 1.0 ng WHO-PCDD/F-TEQ/kg 0.75 ng WHO-PCDD/F-TEQ/kg 2.25 ng WHO-PCDD/F-TEQ/kg</p> |
| | | <p>Note in respect of all entries in respect of dioxins in column 3: upper bound concentrations are calculated on the assumption that all values of the different congeners below the limit of quantification are equal to the limit of quantification.</p> |

| <i>Column 1: Undesirable substances</i> | <i>Column 2: Products intended for animal feed</i> | <i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i> |
|---|---|---|
| <p>Sum of dioxins and dioxin-like PCBs (sum of polychlorinated dibenzo-<i>para</i>-dioxins (PCDDs), polychlorinated dibenzofurans (PCDFs) and polychlorinated biphenyls (PCBs)) expressed in World Health Organisation (WHO) toxic equivalents, using the WHO-TEFs (toxic equivalency factors) 1997⁽²⁾</p> | <p>Feed materials of plant origin with the exception of vegetable oils and their by-products</p> <p>Vegetable oils and their by-products</p> <p>Feed materials of mineral origin</p> <p>Animal fat, including milk fat and egg fat</p> <p>Other land animal products, including milk and milk products and eggs and egg products</p> <p>Fish oil</p> <p>Fish, other aquatic animals, their products and by-products, with the exception of fish oil and fish protein hydrolysates containing more than 20% fat⁽⁴⁾</p> <p>Fish protein hydrolysates containing more than 20% fat</p> <p>Additives belonging to the functional groups of binders and anti-caking agents</p> <p>Additives belonging to the functional group of compounds of trace elements</p> <p>Premixtures</p> <p>Compound feeding stuffs, with the exception of feed for fur-producing animals, pet foods and feed for fish</p> <p>Feed for fish; pet foods</p> | <p>1.25 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>3.0 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.25 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>24.0 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>4.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>11.0 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>1.5 ng WHO-PCDD/F-PCB-TEQ/kg</p> <p>7.0 ng WHO-PCDD/F-PCB-TEQ/kg</p> |
| | | <p>Note in respect of all entries in respect of sum of dioxins and dioxin-like PCBs in column 3: upper bound concentrations are calculated on the assumption that all values of the different congeners below the limit of quantification are equal to the limit of quantification.</p> |

| <i>Column 1: Undesirable substances</i> | <i>Column 2: Products intended for animal feed</i> | <i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i> |
|---|---|--|
| Fluorine ⁽⁵⁾ | Feed materials except: – feeding stuffs of animal origin other than marine crustaceans such as marine krill – marine crustaceans such as marine krill – phosphates – calcium carbonate – magnesium oxide – calcareous marine algae Vermiculite (E 561) Complementary feeding stuffs – containing 4% phosphorus or less – containing more than 4% phosphorus Complete feeding stuffs except: – complete feeding stuffs for cattle, sheep and goats – – in lactation – – other – complete feeding stuffs for pigs – complete feeding stuffs for poultry – complete feeding stuffs for chicks | 150 500 3,000 2,000 350 600 1,000 3,000 500 125 per 1% phosphorus 150 30 50 100 350 250 |
| Lead ⁽¹⁾ | Feed materials except: – green fodder (including products intended for animal feed such as hay, silage, fresh grass, etc) – phosphates and calcareous marine algae – calcium carbonate – yeasts Additives belonging to the functional group of compounds of trace elements except: – zinc oxide – manganous oxide, iron carbonate, copper carbonate Additives belonging to the functional groups of binders and anti-caking agents | 10 30 15 20 5 100 400 200 30 |

| <i>Column 1: Undesirable substances</i> | <i>Column 2: Products intended for animal feed</i> | <i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i> |
|---|--|---|
| | except: – clinoptilolite of volcanic origin | 60 |
| | Premixtures | 200 |
| | Complementary feeding stuffs | 10 |
| | except: – mineral feeding stuffs | 15 |
| | Complete feeding stuffs | 5 |

(1) Maximum levels refer to an analytical determination of this substance, whereby extraction is performed in nitric acid (5% w/w) for 30 minutes at boiling temperature. Equivalent extraction procedures can be applied where it can be demonstrated that the procedure used has an equal extraction efficiency.

(2) WHO-TEFs for human risk assessment based on the conclusions of the World Health Organisation meeting in Stockholm, Sweden, 15-18 June 1997 (Van den Berg et al., (1998), Toxic Equivalency Factors (TEFs) for PCBs, PCDDs and PCDFs for Humans and for Wildlife, Environmental Health Perspectives, 106(12), 775).

(3) The separate maximum level for dioxins (PCDD/F) remains applicable for a temporary period. The products intended for animal feed mentioned in column 2 have to comply both with the maximum levels for dioxins and with the maximum levels for the sum of dioxins and dioxin-like PCBs during that temporary period.

(4) Fresh fish directly delivered and used without intermediate processing for the production of feed for fur-producing animals is not subject to the maximum levels, while maximum levels of 4.0 ng WHO-PCDD/F-TEQ/kg product and 8.0 ng WHO-PCDD/F-PCB-TEQ/kg product are applicable to fresh fish used for the direct feeding of pet animals, zoo and circus animals. The products, processed animal proteins produced from these animals (fur-producing animals, pet animals and zoo and circus animals) cannot enter the food chain and cannot be fed to farmed animals which are kept, fattened or bred for the production of food.

(5) Maximum levels refer to an analytical determination of fluorine, whereby extraction is performed with hydrochloric acid 1 N for 20 minutes at ambient temperature. Equivalent extraction procedures can be applied where it can be demonstrated that the procedure used has an equal extraction efficiency.

PART II

Entries to be substituted in Chapter D of Schedule 5 to the Feeding Stuff (Scotland) Regulations 2005

| <i>Column 1: Undesirable substances</i> | <i>Column 2: Products intended for animal feed</i> | <i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i> |
|---|--|---|
| Camphechlor (toxaphene) — sum of indicator congeners CHB 26, 50 and 62 ⁽¹⁾ | Fish, other aquatic animals, their products and by-products with the exception of fish oil | 0.02 |
| | Fish oil | 0.2 |
| | Feeding stuffs for fish | 0.05 |

(1) Numbering system according to Parlar, prefixed by either “CHB” or “Parlar #”:

— CHB 26: 2-endo,3-exo,5-endo, 6-exo, 8,8,10,10-octochlorobornane,

— CHB 50: 2-endo,3-exo,5-endo, 6-exo, 8,8,9,10,10-nonachlorobornane,

— CHB 62: 2,2,5,5,8,9,9,10,10- nonachlorobornane.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the Feeding Stuffs (Scotland) Regulations 2005 (S.S.I. 2005/605, as already amended by S.S.I. 2006/16 and S.S.I. 2006/516) (“the Feeding Stuffs Regulations”) and also amend the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (S.S.I. 2005/608, as already amended by S.S.I. 2005/616) (“the Feed Hygiene Regulations”).

These Regulations provide for the implementation of the following EC Directives–

- (a) Commission Directive 2005/86/EC amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed as regards camphechlor (O.J. No. L 318, 6.12.05, p.16);
- (b) Commission Directive 2005/87/EC amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed as regards lead, fluorine and cadmium (O.J. No. L 318, 6.12.05, p.19); and
- (c) Commission Directive 2006/13/EC amending Annexes I and II to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed as regards dioxins and dioxin-like PCBs (O.J. No. L 32, 4.2.06, p.44).

The Regulations also implement a provision contained in Council Directive 79/373/EEC on the circulation of compound feedingstuffs (O.J. No. L 86, 6.4.79, p.30), as last amended by Council Regulation (EC) No. 807/2003 (O.J. No. L 122, 16.5.03, p.36). This provision relates to the limits of variation for the declaration of the moisture content of compound pet foods.

The Regulations amend the Feeding Stuffs Regulations–

- (a) in Part B of Schedule 4, by inserting limits of variation for declarations of the moisture content of compound pet foods (regulation 2(2) and Schedule 1);
- (b) in Chapter A of Schedule 5, by amending the existing entries for cadmium, dioxin, fluorine and lead and by adding new entries relating to the sum of dioxins and dioxin-like PCBs (regulation 2(3) and Part I of Schedule 2); and
- (c) in Chapter D of Schedule 5, by amending the existing entries for camphechlor (toxaphene) (regulation 2(4) and Part II of Schedule 2).

The Regulations amend the Feed Hygiene Regulations–

- (a) by inserting a new regulation 24A to give authorised officers of a feed authority powers of entry, sampling, inspection and associated activities in order to carry out the investigative functions required by Directive 2002/32/EC as amended by Commission Directive 2006/13/EC (regulation 3(2)); and
- (b) by amending regulation 27(4) (which deals with disclosure of information related to sampling) so as to extend its application to sampling conducted under regulation 24A (regulation 3(3)).

A full regulatory impact assessment, which includes a compliance cost assessment of the effect that 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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