

2008 No. 201

AGRICULTURE

**The Feed (Hygiene and Enforcement) (Scotland) Amendment
Regulations 2008**

<i>Made</i> - - - -	<i>28th May 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>29th May 2008</i>
<i>Coming into force</i> - -	<i>20th June 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 66(1), 74A, 78(6), 79(1), (2) and (9) and 84 of the Agriculture Act 1970(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2008 and come into force on 20th June 2008.

Amendment of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

2.—(1) The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(c) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) in the definition of “excluded additive” after “1831/2003” insert—

“except an additive that is either—

- (i) a digestibility enhancer;
- (ii) a gut flora stabiliser; or
- (iii) a substance incorporated with the intention of favourably affecting the environment”.

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- (a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. In so far as not so transferred, and in so far as they are exercisable in relation to animal feeding stuffs intended to be used for oral feeding to animals, which are not veterinary medicinal products as defined in regulation 2(1) of the Veterinary Medicines Regulations 2005 (S.I. 2005/2745) or, in relation to any feed additive to which Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition applies, which is not a specified feed additive as defined by paragraph 1(1) of Schedule 5 to the Veterinary Medicines Regulations 2005, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304).
- (b) 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 (c.68), Schedule 4, paragraph 6. 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 Scotland Act 1998 (c.46). In so far as not so transferred and in so far as relating to animal feeding stuffs, which are not veterinary medicinal products or specified feed additives as defined in the Veterinary Medicines Regulations 2005, the functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304).
- (c) S.S.I. 2005/608 as amended by S.S.I. 2005/616 and 2006/578.

(3) After regulation 31 insert—

“Secondary analysis by the Government Chemist

31A.—(1) Paragraphs (2) to (10) apply where a part of a sample sent by an authorised officer for analysis under regulation 30(1)(b) has been analysed and—

- (a) proceedings are intended to be or have been commenced against a person for an offence under specified feed law; and
- (b) the prosecution intends to adduce evidence of the result of the analysis of that part of the sample.

(2) The authorised officer—

- (a) may of the officer’s own volition;
- (b) must if requested by the prosecutor; or
- (c) must (subject to paragraphs (5) and (6)) if requested by the accused,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part of the sample received under paragraph (2) in the manner prescribed by any provision referred to in regulation 29 and send a certificate of analysis to the authorised officer which is—

- (a) completed in the form set out in Part I of Schedule 3 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 and in accordance with the notes set out in Part II of Schedule 3 to those Regulations^(a); and
- (b) signed by the Government Chemist or by a person authorised by the Government Chemist to sign such a certificate.

(4) The authorised officer shall immediately on receipt of the Government Chemist’s certificate of analysis supply the prosecutor and the accused with a copy.

(5) Where a request is made under paragraph (2)(c), the authorised officer may give notice in writing to the accused requesting payment of a fee specified in the notice in respect of the functions mentioned in paragraph (3).

(6) The authorised officer may, in the absence of agreement by the accused to pay the fee referred to in paragraph (5), refuse to comply with the request made under paragraph (2)(c) if the specified fee does not exceed either—

- (a) the cost of performing those functions; or
- (b) the appropriate fee for the performance of any similar function under section 78 of the Act.

(7) In this regulation—

- (a) “accused” includes a person against whom proceedings are intended to be commenced; and
- (b) “the appropriate fee” means such fee as may be fixed in accordance with the provisions of section 78(10) of the Act.

(8) Any analysis required to be made under paragraph (3) may be performed by any person acting under the direction of the Government Chemist.

(9) A certificate of analysis by the Government Chemist shall in any legal proceedings be received as evidence of the facts stated in the certificate if the party against whom it is to be given in evidence—

- (a) has been served with a copy of it at least 21 days before the hearing; and
- (b) has not served on the other party a notice requiring the attendance of the Government Chemist at least 7 days before the hearing.

(a) S.I. 1999/1663; as relevantly amended by S.S.I. 2002/285, 2005/605 and 2006/16.

(10) Any document purporting to be a certificate of analysis for the purposes of paragraph (9) shall be deemed to be such a certificate unless the contrary is proved.”.

(4) In Schedule 1 (specified feed law)–

- (a) at the end of “The Feeding Stuffs (Scotland) Regulations 2005” insert “(as modified by the Feeding Stuffs (Application to Zootechnical Additives etc.) (Scotland) Regulations 2005(a))”; and
- (b) below “The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005” insert “The Official Feed and Food Controls (Scotland) Regulations 2007(b)”.

Revocations

3. Regulations 5 (application of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 to non-medicinal Zootechnical additives) and 6 (secondary analysis by the Government Chemist) of the Feeding Stuffs (Application to Zootechnical Additives etc.) (Scotland) Regulations 2005 are revoked.

Savings

4.—(1) Regulation 37 (revocations) of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 continues to have effect as if the amendments made by regulation 2(2) to (4) of these Regulations had not been made.

(2) The regulations referred to in regulation 3 continue to have effect in relation to anything done under those regulations prior to these regulations coming into force.

S ROBISON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
28th May 2008

(a) S.I. 2005/3362; as amended by S.S.I. 2007/522.
(b) S.S.I. 2007/522.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (“the Feed Hygiene Regulations”) and the Feeding Stuffs (Application to Zootechnical Additives etc.) (Scotland) Regulations 2005 (“the Zootechnical Additives Regulations”).

These Regulations are made in consequence of the amendment of the Zootechnical Additives Regulations by the Official Feed and Food Controls (Scotland) Regulations 2007 (S.S.I. 2007/522).

The Regulations—

- (1) amend the definition of excluded additives in the Feed Hygiene Regulations (regulation 2(2));
- (2) insert a new regulation 31A (secondary analysis by the Government Chemist) into the Feed Hygiene Regulations (regulation 2(3));
- (3) amend the list of provisions in Schedule 1 (specified feed law) to the Feed Hygiene Regulations (regulation 2(4));
- (4) revoke regulations 5 (application of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 to non-medicinal zootechnical additives) and 6 (secondary analysis by the Government Chemist) of the Zootechnical Additives Regulations (regulation 3);
- (5) make various savings provisions (regulation 4).

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business.

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