

EXECUTIVE NOTE

The Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2008 SSI 2008/201

The above instrument is made under powers conferred by section 2(2) of the European Communities Act 1972 and sections 66(1), 74A, 78(6), 79(1), (2) and (9) and 84 of the Agriculture Act 1970.

Policy Objectives

1. 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 OFFC Regulations 2007”).

2. 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 4);
 - (5) make various savings provisions (regulation 5).

Legislative Background

3. The Feed Hygiene Regulations provide for the enforcement in Scotland of the feed-related Articles of EC Regulation 178/2002 on the general principles of food and feed law and EC Regulation 183/2005 laying down the requirements for feed hygiene. These Regulations also consolidate and update the powers of feed enforcement authorities, to bring them into closer parity with those available to food authorities in accordance with the requirements of EC Regulation 882/2004 on official feed and food controls.
4. The Zootechnical Additives Regulations apply the Feed Hygiene Regulations to non medicinal zootechnical additives (i.e. digestibility enhancers, gut flora

stabilisers or substances incorporated with the intention of favourably affecting the environment).

5. The OFFC Regulations 2007 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), as last amended by Council Regulation (EC) No. 1791/2006 (O.J. No. L 363, 20.12.06, p.1) in relation to “relevant feed law” and “relevant food law.”
6. The OFFC Regulations 2007, which came into force on 14th December 2007, were made using section 2(2) of the European Communities Act 1972 as transferred to the Scottish Ministers by section 53 of the Scotland Act and by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304) (“the section 63 Order”). The OFFC Regulations 2007 cover non medicinal zootechnical additives, which were not covered by the Official Feed and Food Controls Regulations 2005 (“the OFFC Regulations 2005”). The deletion of references to the OFFC Regulations 2005 from the Zootechnical Additives Regulations, including from regulation 6 which dealt with provisions related to secondary analysis by the Government Chemist, did not take into account that the Feed Hygiene Regulations only applied to non medicinal zootechnical additives by virtue of the Zootechnical Additives Regulations and the definition of “specified feed law” contained therein. The effect of these amendments is that, in relation to non medicinal zootechnical additives, the definition of “specified feed law” in the Feed Hygiene Regulations no longer includes any OFFC Regulations.
7. The Feed (Hygiene and Enforcement) (Scotland) Amendment Regulations 2008 are made under section 2(2) of the European Communities Act 1970 as transferred to the Scottish Ministers by section 53 of the Scotland Act and the section 63 order. They amend the definition of “excluded additive” in the Feed Hygiene Regulations and add the OFFC Regulations 2007 to the definition of “specified feed law”. They move the regulation dealing with provisions concerning secondary analysis by the Government Chemist, with the necessary amendments, from the Zootechnical Additives Regulations in to the Feed Hygiene Regulations. They revoke regulations 5 and 6 of the Zootechnical Additives Regulations which are now rendered obsolete.
8. The overall effect is that the Feed Hygiene Regulations now contain all provisions relating to non medicinal zootechnical additives without requiring any reference to the Zootechnical Additives Regulations.

Extent

9. This instrument will extend to Scotland only.

Policy background

10. The amendments to the Feed Hygiene Regulations are the result of consideration undertaken by the Agency following comments made by the Subordinate Legislation Committee (SLC) on the OFFC Regulations 2007 at its meeting on 4th December 2007. The SLC's concerns related to the effect of Regulation 49 (5) (a) and (b) of the OFFC Regulations 2007 (which removed references in the Zootechnical Additives Regulations to the OFFC Regulations 2005) in so far as they removed the application of various regulations concerning enforcement measures to non medicinal zootechnical additives from the Feed Hygiene Regulations.

Consultation

11. There has been no public consultation on these Regulations. The Regulations address an unintended consequence of amendments made to the Zootechnical Additives Regulations by the OFFC Regulations 2007. A full public consultation was carried out prior to the making of the OFFC Regulations 2007. These regulations contain technical amendments which ensure the continued application of the Feed Hygiene Regulations to non-medicinal zootechnical additives and which ensure that the current position is as it was intended to be following the coming into force of the OFFC Regulations 2007.

Guidance

12. The Agency does not consider that separate guidance on this new measure is necessary. Full guidance on enforcement of feed law is provided for in the Feed Law Code of Practice.

Impact

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

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