

POLICY NOTE

THE FEED (HYGIENE AND ENFORCEMENT) AND ANIMAL FEED (SCOTLAND) AMENDMENT REGULATIONS 2013

SSI 2013/340

1. Description

1.1 The Scottish Ministers will make the following Regulations in exercise of the powers conferred by section 2 (2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative resolution.

2. Policy Objectives

2.1 This instrument amends The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (“the 2005 Regulations”) (regulation 2) and The Animal Feed (Scotland) Regulations 2010 (“the 2010 Regulations”) (regulation 3) to enforce Commission Regulation (EU) No 225/2012 amending Annex II to Regulation (EC) No 1831/2003 of the European Parliament and of the Council on feed hygiene as regards the approval of establishments placing on the market, for feed use, products derived from vegetable oils and blended fats and as regards the specific requirements for production, storage and dioxin testing of oils, fats and products derived thereof (“Commission Regulation 225/2012”) available on the Europa website at: <http://eur-lex.europa.eu/en/index.htm>.

2.2 The Regulations should help prevent a future dioxin contamination incident which would impact the feed and livestock industries, national and local government authorities, and public health and will ensure that there is;

- monitoring of feed businesses engaged in the production and processing of certain fats and oils for use in animal feed through the approval rather than the registration of their establishments;
- a requirement for businesses to maintain the physical separation of certain fats and

oils intended for feed use from those intended for other uses and to label them accordingly;

- a risk-based programme of testing of fats and oils, and finished feeds which contain certain of them, for the potential presence of dioxins and dioxin-like polychlorinated biphenyls (PCBs); and
- a requirement for the reporting by laboratories of results showing non-compliance with the maximum permitted levels for dioxins and dioxin-like PCBs.

3. Matters of special interest to the delegated powers and law reform Committee

3.1 The aforementioned EU Regulation was published in the Official Journal on 15 March 2012 which came into force on 16 September 2012. The dioxin testing requirements will be reviewed by 16 March 2014. However, the Committee will wish to be aware that, in practice, there are no consequential enforcement issues associated with the delay in execution of these provisions in Scotland, since there are no new approvals required and the affected businesses had already adopted the new testing requirements.

3.2 The EU Regulations are binding and directly applicable from the dates they come into force. However, in order for establishments producing or processing certain fats and oils for use in animal feed to be approved under Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (“the Feed Hygiene Regulation”) and to ensure that appropriate equipment and procedures are in place for the safe handling of these materials, it is necessary to close the enforcement gap since 15 March 2012 and provide for the enforcement of Commission Regulation 225/2012 by making amendments to the following:

The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

Amending regulation 2 (interpretation) by;

- Substituting a definition of the Feed Hygiene Regulation and inserting a reference to the Annex to the Feed Hygiene Regulation as it may be amended from time to time;
- Substituting regulation 4 (competent authorities) and the content of Schedule 2 (fees payable for approval)

The Animal Feed (Scotland) Regulations 2010

- Amending regulation 2 (interpretation and scope);
- Substituting paragraph regulation 4(1) (enforcement of requirements of Regulation 767/2009) paragraph (4) and the content of Schedule 1 (specified provisions of Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC (“Regulation 767/2009”);

The Feed (Hygiene and Enforcement)(Scotland) Amendment Regulations 2009

- Providing a consequential amendment omitting regulation 2(3).

- 3.3 Commission Regulation 225/2012 has been directly applicable since March 2012, and further delay in implementing its provisions will result in breach of the UK obligations as an EU Member State and may result in infraction proceedings against the UK by the Commission.
- 3.4 In Scotland the public consultation has confirmed that there are no businesses requiring further approval as processors and blenders of fats and oils. The Scottish feed producing businesses identified are all members of the Feed Materials Assurance Scheme (“FEMAS”). Following the dioxin incident in December 2010 - January 2011, FEMAS revised their standard in 2012 to include the new requirements within the Commission Regulation 225/2012, including mandatory testing of 100% of oil intended for use in animal feed. Therefore all Scottish businesses should currently comply and meet the requirements for testing and sampling set out in Commission Regulation 225/2012.
- 3.5 The FSA plans to have a common coming into force date of 12 January 2014 for these Regulations subject to differences in scrutiny procedure and parliamentary timetables to ensure consistency of enforcement provisions across the internal UK market.

4. Legislative Context

4.1 The instrument amends the definition of the Feed Hygiene Regulation in regulation 2(1) of the 2005 Regulations to include the amendments introduced by Commission Regulation 225/2012 and also:

- Inserts an ambulatory reference to the Annexes of the Feed Hygiene Regulation so that amendments to them have effect from the application date given in the relevant EU amending Regulation and do not require to be individually referenced in the domestic provisions each time they are made;
- Amends the designations of the competent authorities in regulation 4 of the 2005 Regulations to cover the references to the competent authority in the new section on dioxin monitoring in Annex II of Regulation 183/2005;
- Extends the requirement to pay a fee for approval under the 2005 Regulations to the categories of establishments listed in the facilities and equipment section of Annex II of the Feed Hygiene Regulation;
- Provides a substituted regulation 4(1) and Schedule 1 to the 2010 Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to Scotland only. Separate but parallel legislation is being made in England, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 This instrument does not raise any issues regarding the European Convention.

7. Consultation

7.1 Throughout 2012 and 2013, the Food Standards Agency consulted with stakeholders including industry, trade bodies such as the Agricultural Industries Confederation, the Feed Materials Assurance Scheme (“FEMAS”) and the Fats and Oils Federation, enforcement

bodies and other Government departments throughout the development and negotiation of these measures.

7.2 In June 2013 FSA in Scotland carried out a 12 week consultation on the draft Scottish Statutory Instrument Feed (Hygiene and Enforcement) and Animal Feed (Scotland) Amendments Regulations 2013 and on the Business Regulatory Impact Assessment which formed part of the wider UK consultation. Comments were sought from Scottish fish oil establishments producing fish oil for use in animal feed and also the Scottish aquaculture and agriculture animal feed producers.

7.3 FSA in Scotland did not receive any specific comments. However, industry associations (Agricultural Industries Confederation) and local authorities confirmed that there were no establishments in Scotland identified requiring approval as a consequence of Commission Regulation 225/2012. Although, from discussions with industry it was identified that there are four establishments across Scotland producing fish oils for use in animal feed and which will be subject to the dioxin and PCB testing requirements.

7.4 FSA in Scotland has carried out a face to face meeting with one of these fish oil businesses producing fish meal and fish oil from herring, mackerel when in season and salmon, supplying the agriculture (poultry and pig) and aquaculture (fish meal) and the pet food industry. This business, as a member of the trade association FEMAS, has met the dioxin testing and sampling requirements within Commission Regulation 225/2012 since 2012.

7.5 FSA in Scotland have also contacted Public Analysts in Scotland and they have confirmed that currently there is no dioxin or PCB testing carried out in Scottish laboratories and that Scottish businesses involved in the production of fish oils send their oils to laboratories in Europe for testing.

8. Other Administrations

8.1 This instrument applies to Scotland only. Separate legislation is being made for England, Wales and Northern Ireland.

9. Financial Effects

9.1 A Business and Regulatory Impact Assessment has been completed and there would be a financial impact to new activities referred in the Annex to Commission Regulation 225/2012 amending the Annex II to the Feed Hygiene Regulation as these are required to pay a new fee for approvals. However, FSA in Scotland has had discussions with the trading standards officers and industry representatives during the consultation and can confirm that there are no businesses in Scotland which require further approval.

10. Regulating small business

10.1 This instrument will apply to feed establishments placing on the market products for feed use derived from vegetable oils and blended fats and also those that produce, store, transport oils and fats and products within Commission Regulation 225/2012. There are also specific requirements for the production, labelling, storage and transport of those feed materials. There are also obligations for feed businesses to test fats, oils and products derived thereof for dioxin and dioxin like PCBs in order to reduce the risk of contaminated products entering the feed chain.

10.2 In Scotland, there are no businesses (fat blenders and crude vegetable oil producers) requiring further approval as feed businesses under Commission Regulation 225/2012. However there are four small to medium sized Scottish businesses producing fish oils for animal feed. These businesses will need to comply with the dioxin and PCB testing requirements but, from discussions with industry representatives and face to face discussions with one fish oil producer, it has been established that they currently meet the requirements within EU Commission Regulation 225/2012 and have done so since 2012. The impact and costs of dioxin monitoring and testing of batches of products to producers of fish oils is discussed within the Business Regulatory Impact Assessment.

11. Monitoring and Review

11.1 It is expected that the dioxin testing requirements will be reviewed by 16 March 2014 as set out in the Annex to Commission Regulation 225/2012 amending Annex II in the Feed Hygiene Regulation.

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