

**2018 No. 15**

**AGRICULTURE**

**The Animal Feed (Basic Safety Standards) (Scotland)  
Regulations 2018**

<i>Made</i>	- - - -	<i>16th January 2018</i>
<i>Laid before the Scottish Parliament</i>		<i>16th January 2018</i>
<i>Coming into force</i>	- -	<i>6th February 2018</i>

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

There has been consultation as required by Article 9 of Regulation (EC) 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).

**Citation and commencement**

1. These Regulations may be cited as the Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 and come into force on 6th February 2018.

**Interpretation**

2.—(1) In these Regulations—

“feed authority” means an authority identified in section 67(2) (enforcement authorities) of the Agriculture Act 1970 as having the duty to enforce Part IV of that Act within its area;

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- (a) 1970 c.40. Section 66(1) contains definitions of “the Ministers”, “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”). In so far as not transferred and in so far as relating to animal feeding stuffs, which are not veterinary medicinal products or specified feed additives as defined in S.I. 2005/2745, relevant functions were transferred to the Scottish Ministers by S.I. 2006/304. Section 84 was amended by S.I. 2004/3254. Section 74A was inserted by paragraph 6 of schedule 4 of the European Communities Act 1972 (c.68) and was amended by S.I. 2011/1043. Section 84 was amended by S.I. 2004/3254.
- (b) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (c) OJ L 31, 1.2.2002, p.1, as last amended by Regulation (EU) 652/2014 of the European Parliament and of the Council (OJ L 189, 27.6.2014, p.1).

“radioactive substance” means any substance that contains one or more radionuclides the activity or activity concentration of which cannot be disregarded from a radiation protection point of view.

(2) For the purposes of these Regulations, “import” and “export” are to be construed in accordance with the meanings that “time of importation” and “time of exportation” bear for the purposes of the Customs and Excise Management Act 1979(a).

### **Prohibition of practices**

3. A person must not deliberately add a radioactive substance in the production of feeding stuff.

4. A person must not import or export any feeding stuff to which a radioactive substance has been deliberately added during its production.

### **Offences and penalties**

5. A person who contravenes regulation 3 is guilty of an offence and liable on summary conviction to a fine not exceeding Level 5 on the standard scale or to imprisonment for a term not exceeding three months.

### **Defences of fault of another person, mistake etc.**

6.—(1) Where the commission by any person of an offence under these Regulations or section 74A(3) of the Agriculture Act 1970 by virtue of these Regulations, is due to the act or default of some other person, that other person is guilty of the offence and may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under these Regulations or section 74A(3) of the 1970 Act by virtue of these Regulations, it is, subject to paragraph (3), a defence to prove—

(a) that the commission of the offence was due to a mistake, or reliance on information supplied by another person, or to the act or default of another person, or to an accident or some other cause beyond the accused’s control; and

(b) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused or any other person under the accused’s control.

(3) If in any case the defence provided by paragraph (2) involves an allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the accused is not, without leave of the court, entitled to rely on that defence unless—

(a) at least 7 days before the trial diet (not being a notional diet); or

(b) no more than 28 days after the first appearance of the accused before a court in connection with the alleged offence,

the accused has served on the prosecutor a notice in writing giving such information as the accused has to identify or assist in identifying the other person.

### **Enforcement**

7. It is the duty of a feed authority within its area to enforce these Regulations.

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(a) 1979 c.2, section 5.

**Amendment of the Official Feed and Food Controls (Scotland) Regulations 2009**

8. The Official Feed and Food Controls (Scotland) Regulations 2009<sup>(a)</sup> are amended as follows.

In schedule 2—

(a) in paragraph (f) omit “and”; and

(b) after paragraph (g) insert—

“; and

(h) the Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018”.

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

9. The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005<sup>(b)</sup> are amended as follows.

In schedule 1, after “Part IV of the Agriculture Act 1970, in so far as it relates to animal feeding stuffs”, insert “The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018”.

*FERGUS EWING*

A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
16th January 2018

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(a) S.S.I. 2009/446.

(b) S.S.I. 2005/608.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations transpose in Scotland, in relation to animal feed, Article 21 of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/42 Euratom and 2003/122 Euratom (OJ L 13, 17.1.14, p.1).

Regulation 3 sets out that a person must not deliberately add a radioactive substance in the production of feed.

Regulation 4 sets out that a person must not import or export any animal feed to which a radioactive substance has been intentionally added during production.

Regulation 5 provides that it is an offence to fail to comply with Regulation 3, punishable on conviction by a fine or imprisonment not exceeding 3 months.

Regulation 6 sets out defences to offences set out in regulation 5 and under section 74A(3) of the Agriculture Act 1970.

Regulation 7 sets out that it is the duty of each feed authority to enforce these Regulations in its area.

Regulation 8 amends schedule 2 of the Official Feed and Food Controls (Scotland) Regulations 2009 (the “2009 Regulations”) (S.S.I. 2009/446). The amendment designates these Regulations as “relevant feed law” for the purposes of the 2009 Regulations.

Regulation 9 amends the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (the “2005 Regulations”) (S.S.I. 2005/608). The amendment designates the 2005 Regulations as “specified feed law” for the purposes of the 2005 regulations so that, among other things, authorised officers may serve improvement notices for failure to comply with regulations 3 and 4 of these Regulations and a person aggrieved by a decision to serve an improvement notice may appeal to the sheriff court. The amendment also allows, if particular requirements are complied with, a court to impose a prohibition order/emergency prohibition order on a feed business operator for failure to comply with regulations 3 or 4, and allows authorised officers to enter non-dwellings to investigate non-compliance with regulation 3 or 4 and to inspect, take samples, and to detain or seize products.

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