

POLICY NOTE

The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by sections 68(1), 74A(1), (2) and (4) and 84 of the Agriculture Act 1970, section 2(2) of the European Communities Act 1972, section 16(1) of the Food Safety Act 1990, section 35(1) and (2) of the Food (Scotland) Act 2015, and all other powers enabling them to do so.

The instrument is subject to the *affirmative procedure*.

Purpose of the instrument.

The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 will transfer functions for execution and enforcement of feed law in Scotland from Local Authorities in their areas to FSS, and make provision for FSS to delegate its functions administratively where appropriate.

Policy Objectives

The policy of transferring feed law functions to FSS was developed partly in response to previous animal feed audits by EU auditors to the UK and subsequently confirmed in annual enforcement returns from local authorities (LAs), which reported a weak and inconsistent system of official control (inspections and sampling) delivery with no national government structure in place. Weaknesses in the system do not provide assurance of safe animal feed. The safety of animal feed has a direct impact on the safety of food of animal origin for human consumption. If not addressed, the weaknesses in the current system may perpetuate a number of risks associated with public health, animal health and the economic prosperity of the animal feed industry in Scotland.

To achieve the need for consistency and a sustainable level of effective official controls, the new model aims to address a number of structural issues, including reductions in LA Trading Standards budgets for feed law functions (paid through the block grant, and not ring-fenced), reducing numbers of qualified and competent staff remaining in the profession and increasing number of feed businesses in Scotland. Furthermore, the UK's exit from the EU is likely to place further demand on Trading Standards services as a result of increasing workloads including import checks for feed and other goods, and providing assurance for any exported feed.

The SSI will transfer competence for all feed law functions to FSS which include official controls (inspections and sampling), enforcement, registration and approval of feed businesses and investigation of feed incidents and complaints. The aim of these activities is to improve levels of compliance in feed businesses and to bring Scotland in line with the rest of the UK.

Until FSS has developed the capacity to undertake all feed controls, FSS intends to delegate some functions to qualifying third parties such as LAs. Delegation of functions will allow FSS to respond promptly with local support to a feed emergency or sudden rise in the demand for feed controls. FSS plans to deploy its own officers to carry out the full range of feed law functions and where needed, supported by LAs. Administrative and coordination tasks such as official control planning, maintenance of feed business establishment lists and reporting will be undertaken by FSS. The development of an online reporting tool, accessible to all authorised officers and FSS Support will reduce the need of LA reporting. This delivery model provides resilience whilst ensuring that critical matters such as enforcement are undertaken by FSS.

FSS intends to fully fund all feed law work, providing payment to LAs for delivery of their agreed duties. It is estimated that the annual cost to FSS for delivering this work (including all staffing costs) is approximately £1.1 million, although £325,000 will be recouped from the block grant and a further £50,000 from a FSS funding grant.

It is proposed that the Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 will come into force on 1 April 2021. On that day, enforcement or investigation work in progress by LAs will remain with the LAs until completion. Considering the current low levels of feed law activity, the likelihood of there being any such work in progress is expected to be minimal. Thereafter all feed law functions will become the responsibility of FSS and carried out by FSS or LAs, on behalf of FSS.

Consultation

To comply with the requirements of Article 9 of Regulation (EC) No 178/2002, a [consultation](#) on the policy to transfer competence to FSS took place from 28 August to 20 November 2017, along with a number of LA and industry focus groups. FSS consulted with:-

- LA lead feed officer groups
- Representatives from the Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
- COSLA
- Industry groups

Consultation with stakeholders informed the development of the current model.

A further public [consultation](#) took place from 13 May to 8 July 2020. The outcome of the consultation was very positive and supported the policy to transfer competence to FSS and adopt a hybrid delivery model for animal feed, using FSS officers to carry out the full range of feed law functions supplemented by LA officers, working under delegation, to deliver routine duties. Both LA and industry respondents agreed that the current delivery model had to change in order to provide assurance of feed safety and order to do so, issues such as resources had to be addressed.

A full list of those consulted and who agreed to the release of this information is attached to the [consultation report](#) published on the Food Standards Scotland website. It includes numerous Scottish LAs, the Chartered Trading Standards Institute, the Agricultural Industries Confederation (AIC) and representatives from the Agricultural Analysts in Scotland.

Impact Assessment and Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed on 30 October 2020 on the policy to adopt a new delivery model for animal feed and is attached. The impact of this policy on business is *positive in that*:

- Scottish Feed Businesses will be subject to official controls at levels based on risk, and may benefit from reduced inspection if members of approved assurance schemes.
- Consistent actions undertaken by a single competent authority (FSS).
- Consistent advice and in many instances, continuation of the relationship with LA Authorised Officers.
- As a result of improved and increased levels of control, there will be enhanced assurance of feed safety which is a benefit to trade and the Scottish feed industry as whole.

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