

2003 No. 277

AGRICULTURE

The Feeding Stuffs (Miscellaneous Amendments) (Scotland) Regulations 2003

Made 5th June 2003

Laid before the Scottish Parliament 5th June 2003

Coming into force 26th June 2003

The Scottish Ministers, in exercise of the powers conferred by sections 66(1), 74A, 75(1), 76(1), 77(4), 78(6), 79(1) and (2) and (9) and 84 of the Agriculture Act 1970(a), after consultation as required by section 84(1) of that Act with such persons or organisations appearing to represent the interests concerned, and in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(b) (in so far as these Regulations cannot be made under the powers in the Agriculture Act 1970 specified above) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Feeding Stuffs (Miscellaneous Amendments) (Scotland) Regulations 2003 and shall come into force on 26th June 2003.

(2) These Regulations shall extend to Scotland only.

Amendment of the Feeding Stuffs (Sampling and Analysis) Regulations 1999

2. The Feeding Stuffs (Sampling and Analysis) Regulations 1999(c) shall be amended in accordance with regulations 3 to 7.

3. For regulation 1(2) (title, commencement and interpretation), there shall be substituted—

“(2) In these Regulations—

“the Act” means the Agriculture Act 1970;

“the sampling Directive” means First Commission Directive 76/371/EEC establishing Community methods of sampling for the official control of Community feedingstuffs(d); and

“Directive 2002/70/EC” means Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxin and dioxin-like PCBs in feedingstuffs(e).”

(a) 1970 c.40. Section 66(1) was relevantly amended by S.I. 1982/980, 1995/1412, 1996/1342 and 1999/1663. Section 66(1) contains definitions of “prescribed”, “regulations” and “the Ministers” relevant to the exercise of powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon Ministers of the Crown by section 2(2), in so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(c) S.I. 1999/1663, as modified by S.S.I. 2000/453, and relevantly amended by S.I. 1999/1871 and S.S.I. 2001/104 and 2002/285.

(d) O.J. No. L 102, 15.4.76, p.1.

(e) O.J. No. L 209, 6.8.02, p.15.

4. For regulation 3 (manner of taking, preparing, marking, sealing and fastening of samples), there shall be substituted—

“Manner of taking, preparing, marking, sealing and fastening samples

3. The manner in which samples of—
(a) feeding stuffs; and
(b) feed materials to be sampled pursuant to Directive 2002/70/EC, are to be taken, prepared, marked, sealed and fastened shall be as prescribed in Schedule 1.”.

5. In regulation 6 (application of methods of analysis)—

(a) for paragraph (1), there shall be substituted—

“(1) Subject to paragraphs (1A) and (2) below, to determine whether a substance of a kind listed in column 1 of Annex I to Part II of Schedule 2, or to determine whether a substance to which the method of analysis specified in Annex II or, as the case may be, Annex III to that Part relates, is present or active in a sample of—

- (a) a feeding stuff to be analysed pursuant to the Act;
- (b) in the case of the substances vitamin A and vitamin E, a premixture to be analysed pursuant to Commission Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feedingstuffs(a); or
- (c) in the case of dioxins and dioxin-like PCBs, a feed material to be analysed pursuant to Directive 2002/70/EC,

and if it is, what quantity or proportion of such substance is present or active in such a sample—

- (d) the provisions specified in Part I of Schedule 2 under the heading “GENERAL PROVISIONS” shall apply;
- (e) in relation to a substance of a kind listed (whether by itself or by reference to its activity) in column 1 of Annex I to Part II of Schedule 2, the relevant method of analysis set out in the Community provision listed in the corresponding entry in column 2 of that Annex shall be used; and
- (f) in relation to a substance to which the method of analysis specified in Annex II or, as the case may be, Annex III to Part II of Schedule 2 relates, the method applicable to that substance shall be used.”; and

(b) after paragraph (1), there shall be inserted—

“(1A) Where more than one method of analysis is referred to in column 2 of Annex I to Part II of Schedule 2 in relation to the same substance, the notes to that Annex shall have effect to specify which is the relevant method.”.

6. After regulation 6, there shall be inserted—

“Modification of the Agriculture Act 1970 and of these Regulations as regards analysis of samples of feeding stuffs and feed materials to determine levels of dioxins and dioxin-like PCBs

6A. For the purpose of determining whether dioxins or dioxin-like PCBs are present or active in a sample of a feeding stuff to be analysed pursuant to the Act or of a feed material to be analysed pursuant to Directive 2002/70/EC, and if they are, what quantity or proportion of dioxins or dioxin-like PCBs are present or active in such a sample—

- (a) Part IV of the Act shall have effect as if—
 - (i) in section 66(1), after the definition of “pet animal” there were inserted—
““point 4 compliant laboratory” means a laboratory which complies with the fourth and fifth indents of point 4 of Annex II to Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs;”;
 - (ii) in section 77(1)(a), for “the agricultural analyst for the inspector’s area” there were substituted “a point 4 compliant laboratory”;

(a) O.J. No. L 174, 13.7.00, p.32.

- (iii) in each of sections 77(3) and 78(5), for “the agricultural analyst” there were substituted “a point 4 compliant laboratory”;
- (iv) in section 77(4), for “The agricultural analyst shall analyse the part of a sample which is sent to him” there were substituted “A point 4 compliant laboratory shall analyse the part of a sample which is sent to it”;
- (v) section 77(5) were omitted;
- (vi) in section 78(3), for “agricultural analyst’s”, in both places where the words appear, there were substituted “point 4 compliant laboratory’s”;
- (vii) for section 79(4) and (5) there were substituted—

“(4) Any analysis required to be made by a point 4 compliant laboratory or the Government Chemist may be made by any person acting under the directions of an analyst at that laboratory or, as the case may be, of the Government Chemist.

(5) A certificate of analysis by an analyst at a point 4 compliant laboratory shall be signed by that analyst and a certificate of analysis by the Government Chemist shall be signed by the Government Chemist or a person authorised by the Government Chemist to sign the certificate.”;

and

- (viii) in section 79(6), for “agricultural analyst” there were substituted “analyst at a point 4 compliant laboratory”;
- (b) Part I of Schedule 3 shall have effect as if in the certificate set out there for “agricultural analyst for” there were substituted “analyst at”; and
- (c) Part II of Schedule 3 shall have effect as if in note (2) to the certificate which is set out there for “local authority” there were substituted “laboratory”.

7. In Schedule 2 (methods of analysis), in Annex I to Part II, after the entry for “Carbonates” there shall be inserted in columns 1 to 3 respectively—

“Dioxins and dioxin-like PCBs	Point 2 of Annex I to Directive 2002/70/EC and points 1 and 2, the second paragraph of point 3, the first three indents of point 4 and points 5 to 8 of Annex II to Directive 2002/70/EC	OJ No. L 209, 6.8.02, p.15.”.
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Amendment of the Feeding Stuffs (Enforcement) Regulations 1999

8. The Feeding Stuffs (Enforcement) Regulations 1999(a) shall be amended in accordance with regulations 9 to 15.

9. For regulation 7 (modification of the Agriculture Act 1970 for certain purposes), there shall be substituted—

“Modification of the Agriculture Act 1970 for certain purposes

7.—(1) For the purpose specified in paragraph (2), the Act shall have effect subject to the modifications set out in regulations 8, 9, 10 and 12.

- (2) The purpose referred to in paragraph (1) is the enforcement and administration of—
 - (a) the Feeding Stuffs (Scotland) Regulations 2000(b), as read with Part IV of the Act; and
 - (b) sections 73 and 73A of the Act.”.

(a) S.I. 1999/2325, as modified by S.S.I. 2000/453 and relevantly amended by S.S.I. 2000/62, 2001/104 and 334, 2002/285 and S.I. 2003/1026.

(b) S.S.I. 2000/453, amended by S.S.I. 2001/334, 2002/285 and 2003/101.

10. For regulation 8 (modification of references in Part IV of the Agriculture Act 1970 to samples taken in the prescribed manner), there shall be substituted–

“Modification of references in Part IV of the Agriculture Act 1970 to samples taken in the prescribed manner

8. References in Part IV of the Act to samples taken in the prescribed manner shall be taken to refer–

- (a) in the case of feeding stuffs, to samples taken in the manner prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999(a); and
- (b) in the case of products other than feeding stuffs, to samples taken in the manner prescribed in section 76(8) of the Act.”.

11. For regulation 9 (modification of section 67(8) of the Agriculture Act 1970), there shall be substituted–

“Modification of section 67(8) of the Agriculture Act 1970

9. Section 67 of the Act shall have effect as if for subsection (8) of the said section there were substituted the following subsection (instead of the subsection substituted by regulation 21 of the Feeding Stuffs and the Feeding Stuffs (Enforcement) Amendment (Scotland) Regulations 2001(b))–

“(8) If the Scottish Ministers are of the opinion that, in the area of an enforcement authority, the Feeding Stuffs (Scotland) Regulations 2000, or section 73 or 73A of this Act, have been–

- (a) insufficiently enforced or administered by that authority; or
 - (b) enforced or administered by it without sufficient regard to the requirements of Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition(c), as amended by Council Directive 1999/20/EC(d), Directive 2000/77/EC of the European Parliament and of the Council(e) and Directive 2001/46/EC of the European Parliament and of the Council(f),
- they may appoint one or more inspectors to exercise the powers exercisable by inspectors appointed by that authority, and any expenses certified by an inspector appointed by the Scottish Ministers as having been reasonably incurred by that inspector under this subsection shall be repaid on demand by that authority.”.

12. In regulation 10 (modification of section 76 of the Agriculture Act 1970)–

- (a) the words “(as specified in regulation 7)” shall be omitted;
- (b) for the modified versions of section 76(8), (9) and (10) of the Agriculture Act 1970 which are set out in that regulation, there shall be substituted–

“(8) Subject to subsections (9), (10) and (12) of this section, an inspector entering premises by virtue of this section, or of a warrant issued under it, shall have the right to take on those premises a sample of any material appearing to that inspector to be a controlled product other than relevant material as described in subsection (7) of this section, in the like manner as that prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999.

(8A) For the purposes of this Part of this Act, a sample taken in accordance with subsection (8) of this section shall be deemed to be taken in the prescribed manner.

(a) S.I. 1999/1663, as modified by S.S.I. 2000/453 and relevantly amended by S.I. 1999/1871 and S.S.I. 2001/104 and 2002/285.

(b) S.S.I. 2001/334.

(c) O.J. No. L 265, 8.11.95, p.17.

(d) O.J. No. L 80, 25.3.99, p.20.

(e) O.J. No. L 333, 29.12.00, p.81.

(f) O.J. No. L 234, 1.9.01, p.55.

(9) For the purposes of subsection (8) and (10) of this section, the provisions of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 shall have effect as if, for all references in those provisions to “feeding stuff” or to “feeding stuffs”, there were substituted references to “controlled product other than a feeding stuff” or to “controlled products other than feeding stuffs” respectively.

(10) The requirements specified in Part II, as regards preparation of samples, and in Part III of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 shall apply in relation to samples taken pursuant to subsection (8) of this section.”; and

(c) for the modified version of subsection (17) of section 76 of the Agriculture Act 1970 which is set out in that regulation, there shall be substituted—

“(17) In this section—

“compound feeding stuff” has the meaning given in regulation 2(1) of the Feeding Stuffs (Scotland) Regulations 2000;

“controlled product” means any feeding stuff, substance or product which is subject to any of the controls contained in the Feeding Stuffs (Scotland) Regulations 2000, as read with this Part of this Act, or in sections 73 or 73A of this Act;

“feeding stuff which is intended for a particular nutritional purpose” shall be construed in accordance with the definitions of “feeding stuff intended for a particular nutritional purpose” and “particular nutritional purpose” in regulation 2(1) of the Feeding Stuffs (Scotland) Regulations 2000;

“premises” include any land, vehicle, vessel, aircraft or hovercraft; and

“put into circulation” means sell or otherwise supply, or have in possession with a view to selling or otherwise supplying.”.

13. For regulations 11 and 11A (modification of sections 77(4) and 78(6) of the Agriculture Act 1970), there shall be substituted—

“Analysis for the purposes of sections 77(4) and 78(6) of the Agriculture Act 1970

11. For the purpose of the enforcement and administration of the Feeding Stuffs (Scotland) Regulations 2000, analysis in relation to a sample of a product which falls to be inspected pursuant to Directive 95/53 but is not—

- (a) a feeding stuff;
- (b) a premixture to which Part A or Part B of Commission Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feedingstuffs^(a) applies; or
- (c) a feed material to which Annex II to Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs^(b) applies,

shall be treated as carried out in the prescribed manner for the purposes of sections 77(4) and 78(6) of the Act if—

- (i) where there is an applicable standard of the kind referred to in the first indent of Article 18.3 of Directive 95/53, analysis is carried out in accordance with that standard; and
- (ii) where there is no such standard, analysis is carried out in accordance with any scientifically valid method the application of which does not contravene any general principle of the Treaty establishing the European Community.

11A. For the purpose of the enforcement and administration of the Feeding Stuffs (Scotland) Regulations 2000, analysis in relation to a sample of a premixture to which Part A or Part B of Commission Directive 2000/45/EC establishing Community methods of analysis for the determination of vitamin A, vitamin E and tryptophan in feedingstuffs applies, shall be treated as carried out in the prescribed manner for the purposes of sections 77(4) and 78(6) of the Act if it is carried out in accordance with whichever of those Parts is applicable in the case concerned.

(a) O.J. No. L 174, 13.7.00, p.32.

(b) O.J. No. L 209, 6.8.02, p.15.

11B. For the purpose of the enforcement and administration of the Feeding Stuffs (Scotland) Regulations 2000, analysis in relation to a sample of a feed material to which Annex II to Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs applies shall be treated as carried out in the prescribed manner for the purposes of sections 77(4) and 78(6) of the Act if it is carried out in accordance with the requirements specified in that Annex.”.

14. In regulation 12 (modification of section 83 of the Agriculture Act 1970), “(as specified in regulation 7)” shall be omitted.

15. Regulation 13 (modification of section 86 of the Agriculture Act 1970) shall be omitted.

Amendment of the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999

16. The Feeding Stuffs (Establishments and Intermediaries) Regulations 1999(a) shall be amended in accordance with regulations 17 to 19.

17. For paragraphs (8) and (9) of regulation 98 (powers of authorised persons), there shall be substituted—

“(8) Subject to paragraph (9), an authorised person entering premises by virtue of this regulation, or of a warrant issued under it, shall have the right to take on those premises, and prepare, a sample of—

(a) any material appearing to that authorised person to be a controlled product manufactured, produced, wrapped, packaged, stored or put into circulation, or intended to be put into circulation; or

(b) any material appearing to that authorised person to be a controlled product used, or intended to be used, for the purpose of animal feeding,

in the like manner as that prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999, and paragraph 10 of Part II of Schedule 1 to those Regulations shall have effect for the purposes of the certificate referred to in regulations 102 and 104(2).

(9) For the purposes of this Part of these Regulations, the provisions of regulation 3 of and Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999 shall have effect as if—

(a) for all references to “feeding stuff” and to “feeding stuffs” there were substituted references to “controlled product” and “controlled products” respectively; and

(b) in paragraph 1 of Part II of Schedule 1 the expression “, except where section 68(2)(b) of the Act applies” were omitted.”.

18. For paragraphs (a) and (b) of regulation 99 (division of samples), there shall be substituted—

“(a) cause each part to be marked, sealed and fastened in the like manner as that prescribed in Part III of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999;

(b) send one part for analysis to the agricultural analyst for the area of the competent body which authorised the authorised person to carry out the official check in the course of which the sample was taken;”.

19. For paragraph (1) of regulation 106 (methods of analysis), there shall be substituted—

“(1) Subject to paragraph (2) below, for the purpose of determining, by means of analysis of a part of a sample taken in the course of the carrying out of official checks, whether a substance—

(a) of a kind listed in column 1 of Annex I to Part II of Schedule 2 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999; or

(a) S.I. 1999/1872 relevantly amended by S.S.I. 2000/62 and 453 and 2003/101.

(b) to which the method of analysis specified in Annex II or, as the case may be, in Annex III to Part II of Schedule 2 to those Regulations relates, is present or active in it, and if it is, what quantity or proportion of such a substance is present or active in it, the provisions specified in Part I of Schedule 2 to those Regulations under the heading “GENERAL PROVISIONS” shall have effect, in the like manner as they have effect under those Regulations in relation to feeding stuffs, and—

- (i) in relation to a substance of kind listed (whether by itself or by reference to its activity) in column 1 of Annex I to Part II of Schedule 2 to those Regulations, the relevant method of analysis set out in the Community provision specified in the corresponding entry in column 2 of that Annex shall be used; and
- (ii) in relation to a substance to which the method of analysis specified in Annex II or, as the case may be, in Annex III to Part II of Schedule 2 to those Regulations relates, the method of analysis applicable to that substance shall be used,

and where more than one Community provision is specified in column 2 of Annex I to Part II of Schedule 2 to those Regulations in relation to the same substance, the notes to that Annex shall have effect to specify which is the relevant method.”.

St Andrew’s House,
Edinburgh
5th June 2003

TOM McCABE
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (S.I. 1999/1663, as already amended), the Feeding Stuffs (Enforcement) Regulations 1999 (S.I. 1999/2325, as already amended) and the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (S.I. 1999/1872, as already amended).

These Regulations implement Commission Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feeding stuffs (O.J. No. L 209, 6.8.2002, p.15).

These Regulations—

- (a) amend the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (“the 1999 Regulations”) by—
 - (i) inserting into regulation 1(2) a definition of the term “Directive 2002/70/EC” (regulation 3);
 - (ii) substituting a revised regulation 3, which makes the requirements as regards the prescribed manner of taking and handling samples, which previously applied only to samples of feeding stuffs, applicable also to feed materials to be sampled pursuant to Directive 2002/70/EC and removes the reference to paragraph 10 of Part II of Schedule 1 to the 1999 Regulations (regulation 4);
 - (iii) amending regulation 6 so that it now includes provisions which, when read with provisions added by these Regulations to Schedule 2 to the 1999 Regulations, specify the method of analysis to be used to determine whether dioxins and dioxin-like PCBs are present or active in a sample of a feeding stuff or a feed material to be analysed pursuant to Directive 2002/70/EC (and if it is, in what quantity or proportion) and apply to that determination specified provisions in Part I of Schedule 2 to the 1999 Regulations (regulations 5 and 7); and
 - (iv) modifying Part IV of the Agriculture Act 1970 (“the 1970 Act”) so as to provide that, in order to determine whether dioxins and dioxin-like PCBs are present or active in a sample of a feeding stuff or a feed material to be analysed pursuant to Directive 2002/70/EC (and if they are in what quantity or proportion), the sample is to be submitted to and analysed by a laboratory which satisfies specified requirements of that Directive; and making consequential modifications to Parts I and II of Schedule 3 to the 1999 Regulations (regulation 6);
- (b) amend the Feeding Stuffs (Enforcement) Regulations 1999 by—
 - (i) modifying regulation 7 so as to disapply it in relation to regulations 11 and 11A, and ensure that it does not become applicable in relation to the new regulation 11B, and to make some drafting amendments (regulation 9);
 - (ii) making consequential and drafting amendments to regulations 8, 9, 10, 12 and 13 (regulations 10, 11, 12, 14 and 15);
 - (iii) providing that samples taken in accordance with section 76(8) of the 1970 Act (as modified for the purposes of those Regulations) are deemed to be taken in the prescribed manner for the purposes of Part IV of that Act (regulation 12(b) inserting new subsection (8A));
 - (iv) further modifying section 76(9) of the 1970 Act as modified for the purposes of those Regulations by inserting into it a reference to section 76(10) as so modified (regulation 12(b) inserting a modified subsection (9));
 - (v) substituting revised regulations 11 and 11A (which are concerned with analysis for the purposes of sections 77(4) and 78(6) of the 1970 Act), the former being amended to include reference to feed materials to which Annex II to Commission Directive 2002/70/EC applies and the latter being re-enacted with drafting improvements (regulation 13); and
 - (vi) inserting a new regulation, 11B, which specifies the circumstances in which, for the purposes of enforcing the Feeding Stuffs (Scotland) Regulations 2000 (S.S.I. 2000/453), analysis in relation to samples of feed materials to which Annex II to Directive 2002/70/EC applies is to be treated as carried out in the prescribed manner for the purposes of sections 74(4) and 78(6) of the 1970 Act (regulation 13); and

- (c) make consequential amendments to the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (regulations 16 to 19).

A Regulatory Impact Assessment, which includes a compliance cost assessment of the effect which these Regulations would have on business costs, has been prepared for these Regulations and has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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AGRICULTURE

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