

## POLICY NOTE

### THE OFFICIAL FEED AND FOOD CONTROLS (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2020

#### SSI 2020/398

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### **Purpose of the instrument**

The purpose of this instrument is to amend existing domestic food and feed law to provide for the execution and enforcement, in Scotland, of the delegated and implementing regulations of Commission Regulation (EU) 2017/625. This instrument further amends and implements provisions not included in the previous exercise.

#### **Policy Objectives**

The instrument provides for the execution and enforcement, in Scotland, of the delegated and implementing regulations under Commission Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (“OCR”).

#### **Explanation of the law being amended by the regulations**

This instrument is making amendments to the following SSIs:

- The Food Hygiene (Scotland) Regulations 2006;
- The Fishery Products (Official Controls Charges) (Scotland) Regulations 2007;
- The Official Feed and Food Controls (Scotland) Regulations 2009; and
- The Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011.

The OCR is directly applicable in domestic law and applied as of 14 December 2019. The Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 ([SSI 2019/407](#)), which came into force on 14 December 2019, amended various domestic food and feed law SSIs to provide for the execution and enforcement, in Scotland, of the food and feed elements of the OCR and associated tertiary legislation that was in effect at the time.

This SSI will provide for the execution and enforcement, in Scotland, of the remaining delegated and implementing regulations subsequently published in the Official Journal of the European Union and makes other consequential amendments.

It also addresses a matter previously highlighted by the Delegated Powers and Law Reform Committee (DPLRC) concerning regulation 7(19) of SSI 2019/407 amending regulation 32 of the Official Feed and Food Controls (Scotland) Regulations 2009. The intention of regulation 32(2) is to impose a statutory duty on an enforcement officer to hear an operator before ordering them to take action in accordance with Article 63(3) of Regulation 2017/625. The previous use of the word “will” has now been replaced with the word “must” to convey this is a statutory duty on the enforcement officer, rather than an option.

## **Background**

The OCR is an overarching piece of legislation that sets operational standards for the performance of official controls and other official activities by competent authorities across the EU. The legal framework created by the OCR allows members of the single market to be sure that the competent authorities in other Member States are conducting controls in a suitably rigorous and impartial fashion. The legislation cuts across aspects of the agri-food chain, such as import controls and laboratories, as well as different commodities; such as live animals, plants and food of animal origin.

The OCR also provides for a number of empowerments enabling the European Commission to adopt tertiary legislation specifying more detailed rules and implementing measures for the performance of official controls and other official activities.

The EU official controls regime is integral to the activities of Food Standards Scotland (FSS) as the national competent authority responsible for the delivery of official food and feed controls in Scotland, and the activities of food and feed law enforcement authorities. Therefore it is important to ensure Scottish domestic food and feed law is updated to reflect these legislative changes and to ensure the continued and proper regulation of food and feed safety within Scotland after IP completion day. Parallel instruments are being taken forward by the other UK administrations in advance of 31 December 2020.

## **Consultation**

To comply with the requirements of Article 9 of Regulation (EC) No 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, FSS carried out a public consultation in relation to FSS’s areas of responsibility between 27 September to 25 October 2019. Five responses were received in Scotland from food businesses and associations. All respondents agreed affected sectors had been identified and no objections were received to the harmonised approach to official controls.

## **Impact Assessments**

A [Business and Regulatory Impact Assessment \(BRIA\)](#) was completed on the implementation, approach and assessment of impacts in Scotland to provide for the execution and enforcement of the food and feed safety elements of Regulation (EU) 2017/625. A

further BRIA has not been produced for this instrument as no impact on the private, voluntary or private sector is foreseen.

### **Financial Effects**

Any financial impacts on competent and enforcement authorities arising from the required amendments to the existing domestic legislation are low.

Food Standards Scotland

18 November 2020