SCOTTISH STATUTORY INSTRUMENTS

2004 No. 433

AGRICULTURE

The Genetically Modified Animal Feed (Scotland) Regulations 2004

Made - - - -	*4th October 2004*
Laid before the Scottish Parliament - - - -	*5th October 2004*
Coming into force - -	*15th November 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) 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 Genetically Modified Animal Feed (Scotland) Regulations 2004 and shall come into force on 15th November 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

(a) "the Act" means the Agriculture Act 1970(**2**);

"the Sampling and Analysis Regulations" means the Feeding Stuffs (Sampling and Analysis) Regulations 1999(**3**);

"electronic communications" has the same meaning as in the Electronic Communications Act 2000(**4**);

"enforcement authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**5**);

(**1**) 1972 c. 68 ("the 1972 Act"); section 2(2) was amended by the Scotland Act 1998 (c. 46) ("the 1998 Act"), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
(**2**) 1970 c. 40.
(**3**) S.I.1999/1663; relevant amending instruments are S.S.I. 2001/104, 2002/285, 2003/277 and 2004/433.
(**4**) 2000 c. 7.
(**5**) 1994 c. 39.

"inspector" means a person appointed as such under regulation 4;

"the Community Regulation" means Regulation (EC) No. 1829/2003(**6**) of the European Parliament and of the Council on genetically modified food and feed; and

"specified Community provision" means a provision of the Council Regulation specified in Column 1 and described in Column 2 of the Schedule to these Regulations;

(b) any other expression used in these Regulations which is also used in the Community Regulation has the meaning given in the Community Regulation;

(c) any reference to a numbered Article is a reference to the article so numbered in the Community Regulation;

(d) any reference to a numbered regulation or paragraph is, unless the contrary is indicated, a reference to the regulation or paragraph so numbered in these Regulations or in the regulation where the numbered reference appears, respectively; and

(e) any reference to a Schedule is, unless the contrary is indicated, a reference to the Schedule to these Regulations.

Submission of applications for authorisation to market products

3. The national competent authority for the purposes of an application under Chapter III of the Community Regulation shall be the Food Standards Agency.

Enforcement

4.—(1) Each enforcement authority shall enforce and execute these Regulations and Chapter III of the Community Regulation within its area.

(2) An enforcement authority may appoint as inspectors such persons as it considers necessary for the purpose of enforcing these Regulations and Chapter III of the Community Regulation.

(3) Any appointment of an inspector under section 67(3) of the Act which has effect at the date of coming into force of these Regulations has effect as if it was an appointment of that inspector as an inspector for the purpose of these Regulations.

Offences and Penalties

5.—(1) Any person who contravenes or fails to comply with any of the specified Community provisions referred to in Part I of the Schedule shall be guilty of an offence and liable–

(a) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine, or to both.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions referred to in Part II of the Schedule shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

(3) Any person who obstructs an inspector in the execution of these Regulations or the Community Regulation shall be guilty of an offence and liable on summary conviction to

(**6**) O.J. No. L 268, 18.10.03, p.1.

imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

(4) Any person guilty of an offence under regulation 8(2) shall be liable on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

Application of various provisions of the Act

6.—(1) The following provisions of the Act shall apply for the purposes of these Regulations and any reference in those provisions to the Act or Part thereof, shall be a reference to these Regulations and Chapter III of the Community Regulation and any reference to a feeding stuff shall be a reference to feed:–

(a) –

(i) section 77 (division of samples and analysis by agricultural analyst);

(ii) section 78(2) to (10) (further analysis by Government Chemist);

(iii) section 79(4) to (8) and (10) (supplementary provisions relating to samples and analysis);

(iv) section 80 (institution of prosecutions);

(v) section 81 (offences due to fault of other person);

(vi) section 82 (defence of mistake, accident, etc.); and

(vii) section 83 (exercise of powers by inspectors);

(b) section 76 (inspector's power to enter premises and take samples), with the modification that for subsection (2)(b)(i) substitute "any relevant documentation including extracts from information recorded in computerised form relating to the feed"; and

(c) section 110 (offences by bodies corporate) with the modification that a body corporate includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

(2) For the purposes of paragraph (1)–

(a) any reference to samples taken in the prescribed manner shall be the manner prescribed in Part II of Schedule 1 to the Sampling and Analysis Regulations; and

(b) any reference to a prescribed method of analysis shall be–

(i) in relation to methods for detecting the use of a particular authorised genetically modified organism, the method described in Article 17.3(i) for detection and identification of the transformation event; or

(ii) in any other case, any method that satisfies regulation 6(4)(b) of the Sampling and Analysis Regulations.

Application of various provisions of the Sampling and Analysis Regulations

7.—(1) The provisions of the Sampling and Analysis Regulations listed in paragraph (2) shall apply for the purposes of these Regulations and Chapter III of the Community Regulation subject to the modifications set out in that paragraph and as if any reference in those provisions to a feeding stuff were a reference to feed.

(2) The provisions referred to in paragraph (1) are–

(a) regulation 3(a) (manner of taking and sealing samples);

(b) regulation 4 (method of sending samples), which shall apply as if the reference to "subsection (1)(b) or (2) of section 77 of the Act" were a reference to these Regulations and Chapter III of the Community Regulation;

(c) regulation 5 (qualifications of agricultural analyst), which shall apply as if the reference to "the prescribed qualifications for an agricultural analyst or a deputy agricultural analyst for the purposes of section 67(5) of the Act insofar as it relates to feeding stuffs" were a reference to the qualifications required by a person analysing feed for the purposes of these Regulations and Chapter III of the Community Regulation;

(d) regulation 6(4) (method of analysis), which shall apply as if the reference to "the Act" were a reference to these Regulations and Chapter III of the Community Regulation;

(e) regulation 7 (certificate to be used for results of analysis), which shall apply as if the reference to "section 77(4) of the Act" were a reference to section 77(4) of the Act as applied by these Regulations;

(f) regulation 8 (time limit for analysis of oil content of feed) which shall apply as if the reference to a sample taken in "the prescribed manner" were a reference to a sample taken in accordance with these Regulations;

(g) Schedule 1 (detailed rules for sampling);

(h) Schedule 3 (standard form of certificate to be used for results of analysis) which shall apply as if the reference to "Part IV of the Agriculture Act 1970" were a reference to the Genetically Modified Animal Feed (Scotland) Regulations 2004(**7**).

Inspection detention and seizure of suspect animal feed

8.—(1) An inspector may at all reasonable times inspect any material intended for use as feed which–

(a) has been placed on the market; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing on the market or preparation for placing on the market,

and paragraphs (2) to (9) shall apply where, taking account of all of the information available to the inspector, or upon analysis of samples taken, it appears that the material may fail to comply with a specified Community provision.

(2) The inspector may either–

(a) give notice to the person in charge of the material that, until the notice is withdrawn, the material or any specified portion of it–

(i) is not to be used as feed; and

(ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(b) seize the material and remove it in order to have it dealt with by the sheriff;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) shall be guilty of an offence.

(3) Where the inspector exercises the powers conferred by paragraph (2)(a), the inspector shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the inspector is satisfied that the material complies with the specified Community provisions and–

(a) if the inspector is so satisfied, shall forthwith withdraw the notice; or

(b) if the inspector is not so satisfied, shall apply to have the material dealt with by the sheriff.

(**7**) 2004/433.