

Draft Regulations laid before the Scottish Parliament under section 2(2) of the European Communities Act 1972, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

AGRICULTURE

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

Made - - - - 2020
Coming into force in accordance with regulation 1(2)
and (3)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 68(1), 74A(1), (2) and (4) and 84 of the Agriculture Act 1970(1), section 2(2) of the European Communities Act 1972(2), section 16(1) of the Food Safety Act 1990(3), section 35(1) and (2) of the Food (Scotland) Act 2015(4), and all other powers enabling them to do so.

There has been consultation as required by section 84(1) of the Agriculture Act 1970 with such persons or organisations appearing to represent the interests concerned and as required by 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(5).

In accordance with section 33(1) of the Interpretation and Legislative Reform (Scotland) Act 2010(6), a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

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- (1) 1970 c.40. Section 66(1) contains definitions of the expressions “the Ministers”, “prescribed” and “regulations” and was relevantly amended by S.I. 2004/3254 and S.S.I. 2010/354. Section 74A was inserted by paragraph 6 of Schedule 4 to the European Communities Act 1972 (c.68). 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.
- (2) 1972 c.68 (“the 1972 Act”). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) with effect from exit day (see section 20 of the 2018 Act), but saved, subject to modifications, until IP completion day by section 1A of that Act. Section 1A of the 2018 Act was inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”), and defines “IP completion day” by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and schedule 1, Part 1. Paragraph 1A of schedule 2 was inserted by section 28 of the 2006 Act and amended by Part 1 of the Schedule to the 2008 Act and S.I. 2007/1388. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (3) 1990 c.16. Section 16(1)(da) inserted by Food (Scotland) Act 2015 (asp 1), subsection. 34(1).
- (4) 2015 asp 1.
- (5) OJ L 31, 1.2.2002, p.1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ L 198, 25.7.2019, p.241).
- (6) 2010 asp 10.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020.

(2) Subject to paragraph (3), the day appointed for the coming into force of these regulations is 1 April 2021.

(3) The day appointed for the coming into force of this regulation and regulation 7(2) and (5) is 31 December 2020.

(4) These Regulations extend to Scotland only.

Amendment of the Agriculture Act 1970

2.—(1) The Agriculture Act 1970 is amended as follows.

(2) In section 66(1) (interpretation of Part IV)—

- (a) in the definition of “agricultural analyst” for “section 67” substitute “67A”,
- (b) omit the definition of “enforcement authority”, and
- (c) in the definition of “inspector” for “section 67” substitute “67A”.

(3) Section 67 (enforcement authorities and appointment of inspectors and analysts) is repealed in so far as it applies to Scotland.

(4) After section 67 insert—

“Enforcement authorities and appointment of inspectors and analysts in Scotland

67A.—(1) Food Standards Scotland must enforce this Part of this Act in so far as it relates to feeding stuff.

(2) For the purposes of performing its duty under the provisions of this Part of this Act, Food Standards Scotland must appoint—

- (a) an agricultural analyst, and if it thinks fit, one or more deputy analysts, and
- (b) such inspectors as may be necessary.

(3) Every council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(7) must enforce this Part of this Act within their area in so far as it relates to fertiliser.

(4) For the purposes of performing its duty under the provisions of this Part of this Act, a council must appoint—

- (a) an agricultural analyst, and if it thinks fit, one or more deputy analysts, and
- (b) such inspectors as may be necessary.

(5) In so far as it applies to fertiliser, a person may be appointed as an inspector or as agricultural analyst or deputy agricultural analyst for the areas of two or more councils by those councils acting jointly.

(6) In so far as it applies to fertiliser if the Scottish Ministers are of opinion that this Part of this Act has been insufficiently enforced in the area of any council the Scottish Ministers may appoint one or more inspectors to exercise in that area the powers exercisable by inspectors appointed by the council, and any expenses certified by the Scottish Ministers as having been incurred by the Scottish Ministers under this subsection in respect of that area must be repaid to the Scottish Ministers, on demand, by the council in question.

(7) 1994 asp c.19.

(7) A person must not be appointed as agricultural analyst or deputy agricultural analyst unless that person has the prescribed qualifications.

(8) Nothing in this section shall be taken as authorising Food Standards Scotland or any council to institute proceedings for an offence.”.

(5) After section 72 insert—

“Delegation by Food Standards Scotland

72A.—(1) Where Food Standards Scotland may delegate any function under this Part of this Act, it may delegate the function to any person.

(2) Before delegating, Food Standards Scotland must consult the person to whom any delegation is to be made.

(3) Where Food Standards Scotland delegates any function, it must specify the function and the area within which that function is to be performed.

(4) Where Food Standards Scotland has delegated any function, Food Standards Scotland may vary, suspend or cancel that delegation, in whole or in part.

(5) Food Standards Scotland must publish and maintain an up to date register containing the details and operative date of any delegation.”.

(6) In section 76(5), at the end insert “or Food Standards Scotland (as the case may be)”.

(7) In section 79(5) (supplementary provisions relating to samples and analysis) for “67(3)(b)” substitute “67A(2)(a) or (3)(a)”.

Amendment of the Genetically Modified Animal Feed (Scotland) Regulations 2004

3.—(1) The Genetically Modified Animal Feed (Scotland) Regulations 2004(8) are amended as follows.

(2) In regulation 2(a) (interpretation), for the definition “enforcement authority” substitute—
““enforcement authority” means Food Standards Scotland;”.

(3) In regulation 4 (enforcement)—

(a) for paragraph (1) substitute —

“(1) The enforcement authority must enforce and execute these Regulations and Chapter III of the Community Regulation.”,

(b) for paragraph (2) substitute —

“(2) The 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.”, and

(c) omit paragraph (3).

(4) After regulation 10 (time limit for prosecutions) insert—

“Delegation by the enforcement authority

11.—(1) Where the enforcement authority may delegate any function under these Regulations, it may delegate the function to any person.

(2) Before delegating, the enforcement authority must consult the person to whom any delegation is to be made.

(3) Where the enforcement authority delegates any function, it must specify the function and the area within which that function is to be performed.

(4) Where the enforcement authority has delegated any of its functions, the enforcement authority may vary, suspend or cancel that delegation, in whole or in part.

(5) The enforcement authority must publish and maintain an up to date register containing the details and operative date of any delegation.

Transitional and savings provisions

12.—(1) The validity, effect or consequences of anything done under these Regulations as they had effect immediately before Food Standards Scotland becomes the enforcement authority is not affected by Food Standards Scotland becoming the enforcement authority.

(2) Any inspection, investigation or legal proceedings commenced prior to Food Standards Scotland becoming the enforcement authority is not affected by Food Standards Scotland becoming the enforcement authority.

(3) Any inspection, investigation or legal proceeding commenced prior to Food Standards Scotland becoming the enforcement authority may be continued after that date as if the amendments to these Regulations coming into force on that day had not been made.

(4) Any liability to a penalty for an offence committed before Food Standards Scotland becoming the enforcement authority is not affected by Food Standards Scotland becoming the enforcement authority.

(5) Despite Food Standards Scotland becoming the enforcement authority, these Regulations as they had effect before that day continue to have effect for the purposes of investigating any offence referred in paragraph (4).”.

Amendment of the Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004

4.—(1) The Genetically Modified Organisms (Traceability and Labelling) (Scotland) Regulations 2004⁽⁹⁾ are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “electronic communications” insert—

““feed” has the same meaning as in the Council Regulation;”.

(3) In regulation 3 (enforcement)—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (2)—

(a) each local authority must, in its area, enforce and execute these Regulations and the Council Regulation, in so far as it relates to food, and

(b) Food Standards Scotland must enforce and execute these Regulations and the Council Regulation, in so far as it relates to feed.”,

(b) for paragraph (2) substitute—

“(2) The Scottish Ministers may, in relation to any case of a particular description, direct that the duty of a local authority or Food Standards Scotland under paragraph (1) be discharged—

(a) in so far as it relates to food, by the Scottish Ministers instead of the local authority or by the Scottish Ministers and the local authority acting jointly,

(9) S.S.I. 2004/438.

- (b) in so far as it relates to feed by the Scottish Ministers instead of Food Standards Scotland or by the Scottish Ministers and Food Standards Scotland acting jointly.”,
 - (c) omit paragraph (4)(a).
- (4) In regulation 5 (obtaining information from persons)—
 - (a) for paragraph (1) substitute—
 - “(1) Subject to regulation 3(1), for the purpose of the enforcement and execution of these Regulations and the Council Regulation, the local authority, Food Standards Scotland or the Scottish Ministers (as the case may be) may by notice in writing served on any person who falls within paragraph (1A), require that person to furnish such relevant information available to the person as is specified in the notice, in such form and within such period as is specified.
 - (1A) A person falls within this paragraph if the person appears to the local authority, Food Standards Scotland or the Scottish Ministers (as the case may be)—
 - (a) to be involved in the placing on the market of—
 - (i) products consisting of or containing genetically modified organisms, or
 - (ii) food or feed produced from genetically modified organisms; or
 - (b) to be about to become, or to have been, involved in either of those activities.”,
 - (b) in paragraph (3) after “local authority” insert “, Food Standards Scotland”.
- (5) In regulation 6(4) (incorrectly labelled products) after “local authority” insert “, Food Standards Scotland”.
- (6) After regulation 12 (service of notices) insert—

“Delegation by Food Standards Scotland

- 13.—**(1) Where Food Standards Scotland may delegate any function under these Regulations, it may delegate the function to any person.
- (2) Before delegating, Food Standards Scotland must consult the person to whom any delegation is to be made.
- (3) Where Food Standards Scotland delegates any function, it must specify the function and the area within which that function is to be performed.
- (4) Where Food Standards Scotland has delegated any of its functions, Food Standards Scotland may vary, suspend or cancel that delegation, in whole or in part.
- (5) Food Standards Scotland must publish and maintain an up to date register containing the details and operative date of any delegation.

Transitional and saving provisions applying to feed

- 14.—**(1) The validity, effect or consequences of anything done under these Regulations as they had effect immediately before Food Standards Scotland becomes responsible to execute and enforce these Regulations in regulation 3(1)(b) is not affected by Food Standards Scotland becoming responsible to execute and enforce these Regulations.
- (2) Any inspection, investigation or legal proceedings commenced prior to Food Standards Scotland becoming responsible to execute and enforce these Regulations in regulation 3(1)(b) is not affected by Food Standards Scotland becoming responsible to execute and enforce these Regulations.