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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 446**

**AGRICULTURE  
FOOD**

**The Official Feed and Food Controls  
(Scotland) Regulations 2009**

*Made - - - - 17th December 2009*  
*Laid before the Scottish*  
*Parliament - - - - 18th December 2009*  
*Coming into force - - 25th January 2010*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 <sup>M1</sup> and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any reference to an EU instrument defined in Schedule 1 to be construed as a reference to that instrument as amended from time to time.

There has been consultation 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 <sup>M2</sup>.

**Marginal Citations**

- M1** 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) and the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#) (the “2006 Act”), s27(1). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not transferred, those functions were transferred to the Scottish Ministers by the [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#) and by the [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2006 \(S.I. 2006/304\)](#). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the 2006 Act.
- M2** O.J. No. L 31, 1.2.02, p.1 as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.2002, p.4), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.2006, p.3), Commission Regulation (EC) No. 202/2008 (O.J. No. L 60,

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5.3.2008, p.17) and Regulation (EC) No. 596/2009 of the European Parliament and of the Council (O.J. No. L 188, 18.7.2009, p.14).

## PART 1

### PRELIMINARY

#### Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Official Feed and Food Controls (Scotland) Regulations 2009;
- (b) come into force on 25th January 2010; and
- (c) extend to Scotland only.

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990 <sup>M3</sup>;

“the Agency” means the Food Standards Agency;

“authorised officer”—

- (a) in relation to a competent authority, means any person (whether or not an officer of the authority) who is authorised by the authority in writing for the purposes of regulation 14; and
- (b) in relation to a relevant enforcement authority, means any person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specially, to act in matters arising under Part 2 of these Regulations in relation to its enforcement responsibilities under regulation 17;

“competent authority” means, other than in regulations 23 and 24, an authority which, by virtue of regulation 3, is designated for the purposes of any of the provisions of Regulation 882/2004;

“Directive 2004/41”, “Regulation 999/2001”, “Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 1020/2008”, “Regulation 669/2009” and “Regulation 1162/2009” have the meanings respectively given to them in Schedule 1;

“feed authority” means the authority required by section 67(2) of the Agriculture Act 1970 <sup>M4</sup> to enforce that Act within its area;

“the Import Provisions” means Part 3 of these Regulations, Articles 15 to 24 of Regulation 882/2004 and Regulation 669/2009;

“the Official Control Regulations” means these Regulations and Regulation 882/2004;

“premises” includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

“primary production” has the meaning it bears in Regulation 852/2004;

“relevant enforcement authority” means a body which, by virtue of regulation 17, is made responsible for executing and enforcing any provision of Part 2 of these Regulations;

“relevant feed law” has the meaning given to it in Schedule 2; and

“relevant food law” has the meaning given to it in Schedule 3.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Unless the contrary intention appears, any expression used both in these Regulations and in Regulation 178/2002, Regulation 882/2004 or Regulation 669/2009 has the meaning it bears in Regulation 178/2002, Regulation 882/2004 or Regulation 669/2009 as the case may be.

(4) In these Regulations, any reference to an EU instrument defined in Schedule 1 is a reference to that instrument as amended from time to time.

#### Marginal Citations

**M3** 1990 c.16.

**M4** 1970 c.40.

## PART 2

### MAIN PROVISIONS

#### Competent authorities

**3.—**(1) Subject to paragraphs (2) and (5), any body specified in Column 1 of Schedule 4 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant feed law.

(2) Where the feed authority is designated as a competent authority pursuant to paragraph (1) the designation shall extend to its area only.

(3) Subject to paragraphs (4) to (6), any body specified in Column 1 of Schedule 5 is designated as a competent authority for the purposes of the provisions of Regulation 882/2004 indicated in the corresponding entry in Column 2 of that Schedule in so far as those provisions apply in relation to relevant food law.

(4) Where the food authority is designated as a competent authority pursuant to paragraph (3) the designation shall extend to its area only.

(5) Where the Agency is designated as a competent authority pursuant to paragraph (1) or (3) for the purposes of Article 31(1) of Regulation 882/2004, the designation shall extend only to the operations in respect of which the Agency executes and enforces the Food Hygiene (Scotland) Regulations 2006<sup>M5</sup> by virtue of regulation 5(1)(a) of those Regulations.

(6) Where the Agency is designated as a competent authority pursuant to paragraph (3) for the purposes of Article 31(2) of Regulation 882/2004, the designation shall extend, as regards Article 31(2)(a) to (e), only to those operations in respect of which the Agency executes and enforces the Food Hygiene (Scotland) Regulations 2006 by virtue of regulation 5(2) of those Regulations.

#### Marginal Citations

**M5** S.S.I. 2006/3 as amended by [S.S.I. 2007/11](#).

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## **Exchanging and providing information**

4.—(1) For the purposes of enabling competent authorities, other OFFC authorities and member States to fulfil the obligations placed upon them by Regulation 882/2004 competent authorities may exchange among themselves or provide to other OFFC authorities any information received by them in the execution and enforcement of relevant feed law or relevant food law.

(2) For the purpose of executing and enforcing relevant feed law or relevant food law, competent authorities may exchange among themselves any information received by them in the execution and enforcement of such law.

(3) For the purposes of facilitating the execution and enforcement of relevant feed law or relevant food law in England, Wales and Northern Ireland, competent authorities may share information received by them in the execution and enforcement of relevant feed law or relevant food law with the bodies that execute and enforce such law in those countries.

(4) Paragraphs (1), (2) and (3) are without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

(5) For the purposes of this regulation, “other OFFC authorities” means authorities designated in the United Kingdom as competent authorities for the purposes of Regulation 882/2004 other than the competent authorities designated under these Regulations.

## **Obtaining information**

5.—(1) For the purpose of enabling competent authorities and member States to fulfil the obligations placed on them by Regulation 882/2004 and for the purpose of executing and enforcing relevant feed law or relevant food law, a competent authority may require a control body—

- (a) to provide the competent authority with any information which it has reasonable cause to believe the control body is able to give; and
- (b) to make available to the competent authority for inspection by it any records which it has reasonable cause to believe are held by the control body or are otherwise within its control (and, if they are kept in computerised form, to make them available in a legible form).

(2) The competent authority may copy any records made available to it under paragraph (1)(b).

(3) A person who—

- (a) fails without reasonable excuse to comply with any requirement imposed under paragraph (1); or
- (b) in purported compliance with such a requirement furnishes information which that person knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(4) For the purposes of paragraph (1), the term “control body” includes any member, officer or employee of a control body.

## **Power to issue codes of recommended practice**

6.—(1) For the guidance of feed authorities and food authorities the Scottish Ministers may issue codes of recommended practice as regards—

- (a) functions conferred upon those authorities in their capacity as competent authorities by or under Regulation 882/2004; or
- (b) the execution and enforcement of the Import Provisions,

and any such code shall be laid before the Scottish Parliament after being issued.

(2) The Agency may, after consulting the Scottish Ministers, give a feed authority or food authority a direction requiring them to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on them as competent authorities by or under Regulation 882/2004 and in their execution and enforcement of the Import Provisions, every feed authority and food authority—

- (a) shall have regard to any relevant provision of any such code; and
- (b) shall comply with any direction which is given under this regulation and requires them to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by an order of the Court of Session under section 45 of the Court of Session Act 1988 <sup>M6</sup>.

(5) The Agency shall consult the Scottish Ministers before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Scottish Ministers shall have regard to any relevant advice given by the Agency.

#### Marginal Citations

M6 1988 c.36.

### Monitoring of enforcement action

7.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing relevant audit legislation.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant audit legislation.

(3) Each annual report of the Agency shall contain a report on its activities during the year in enforcing any relevant audit legislation for which it is the enforcement authority and its performance in respect of—

- (a) any standards under paragraph (2) that apply to those activities; and
- (b) any objectives relating to those activities that are specified in the statement of objectives and practices under section 22 of the Food Standards Act 1999 <sup>M7</sup>.

(4) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant audit legislation and such a report may include guidance as to action which the Agency considers would improve that performance.

(5) The Agency may direct an authority to which such a report has been made—

- (a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report; and
- (b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.

(6) Section 19 of the Food Standards Act 1999 shall apply in relation to information obtained through monitoring under this regulation as if it were information obtained through monitoring under section 12 of that Act.

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### Marginal Citations

M7 1999 c.28.

### Power to request information relating to enforcement action

8.—(1) For the purpose of carrying out its function under regulation 7 in relation to any enforcement authority the Agency may require a person mentioned in paragraph (2)—

- (a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give; or
- (b) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within that person's control (and, if they are kept in computerised form, to make them available in a legible form).

(2) A requirement under paragraph (1) may be imposed on—

- (a) the enforcement authority or any member, officer or employee of the authority; or
- (b) a person subject to any duty under relevant audit legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) The Agency may copy any records made available to it in pursuance of a requirement under paragraph (1)(b).

### Power of entry for persons monitoring enforcement action

9.—(1) The Agency may authorise any individual (whether a member of its staff or otherwise) to exercise the powers specified in paragraph (4) for the purpose of carrying out its function under regulation 7 in relation to any enforcement authority.

(2) No authorisation under this regulation shall be issued except in pursuance of a decision taken by the Agency itself or by a committee, sub-committee or member of the Agency acting on behalf of the Agency.

(3) An authorisation under this regulation shall be in writing and may be given subject to any limitations or conditions specified in the authorisation (including conditions relating to hygienic precautions to be taken while exercising powers in pursuance of the authorisation).

(4) An authorised person may—

- (a) enter any premises mentioned in paragraph (5) at any reasonable hour in order to inspect the premises or anything which may be found on them;
- (b) take samples of any articles or substances found on such premises;
- (c) inspect and copy any records found on such premises (and, if they are kept in computerised form, require them to be made available in a legible form);
- (d) require any person present on such premises to provide him with such facilities, such records or information and such other assistance as he may reasonably request.

(5) The premises which may be entered by an authorised person are—

- (a) any premises occupied by the enforcement authority;
- (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation has been carried out for the enforcement authority; and
- (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.

(6) An authorised person entering premises by virtue of the power of entry conferred by this regulation may be accompanied by any person the authorised person may consider appropriate.

(7) An authorised person shall on request—

- (a) produce that person's authorisation before exercising any powers under paragraph (4); and
- (b) provide a document identifying any sample taken, or documents copied, under those powers.

(8) If a person who enters any premises by virtue of this regulation discloses to any person any information obtained on the premises with regard to any trade secret the person making the disclosure is, unless the disclosure is made in the performance of that person's duty, guilty of an offence.

(9) Where the Agency is the enforcement authority in relation to relevant audit legislation this regulation applies in relation to the Agency in respect of its performance in enforcing those provisions, with the omission of paragraph (5)(a).

(10) In this regulation “authorised person” means a person authorised under this regulation.

### **Meaning of “enforcement authority” and related expressions**

**10.**—(1) In regulations 7 to 9 “relevant audit legislation” means relevant feed law and relevant food law in respect of which the Agency is designated as a competent authority pursuant to regulation 3(1) and (3) but does not include “relevant legislation” as defined in section 15 of the Food Standards Act 1999.

(2) In regulations 7 to 9 “enforcement authority” means the authority by whom relevant audit legislation is to be enforced and includes the Agency itself if by virtue of that legislation it is the enforcement authority in relation to it but does not include the European Commission; and “enforcement” in relation to relevant audit legislation includes the execution of any provisions of that legislation.

(3) Any reference in regulations 7 to 9 (however expressed) to the performance of an enforcement authority in enforcing any relevant audit legislation includes a reference to the capacity of that authority to enforce it.

### **Offences relating to regulations 8 and 9**

**11.** A person who—

- (a) intentionally obstructs a person exercising powers under regulation 9(4)(a), (b) or (c);
- (b) fails without reasonable excuse to comply with any requirement imposed under regulation 8(1) or regulation 9(4)(d); or
- (c) in purported compliance with such a requirement furnishes information which that person knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

### **Right of appeal**

**12.**—(1) Any person who is aggrieved by a decision of the competent authority taken in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004 pursuant to—

- (a) Article 31(2)(c) of Regulation 882/2004 (approval);
- (b) Article 31(2)(d) of Regulation 882/2004 (conditional approval and full approval); or
- (c) Article 31(2)(e) of Regulation 882/2004 (withdrawal of approval and suspension of approval),

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may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be 1 month from the date on which notice of the decision was served on the person desiring to appeal.

(4) Where on an appeal under paragraph (1) the sheriff determines that the decision of the competent authority is incorrect, the authority shall give effect to that determination.

(5) Where an approval is refused or withdrawn, the food business operator who, immediately before such refusal or withdrawal, had been using the establishment concerned may continue to use it, subject to any conditions imposed by the competent authority for the protection of public health, unless—

- (a) the time for appealing against the decision to refuse or withdraw the approval has expired without an appeal having been lodged; and
- (b) where an appeal against that decision has been lodged, the appeal has been finally disposed of or abandoned.

(6) Nothing in paragraph (5) shall permit an establishment to be used for a food business if—

- (a) a hygiene prohibition order, a hygiene emergency prohibition notice or a hygiene emergency prohibition order has been imposed in relation to the establishment;
- (b) a prohibition order, an emergency prohibition notice, an emergency prohibition order or an emergency control order has been imposed in relation to the establishment pursuant to section 11, 12 or 13 of the Act;
- (c) the approval of the establishment has been suspended pursuant to Article 31(2)(e) of Regulation 882/2004; or
- (d) the establishment is prevented from operating following the service of a remedial action notice.

(7) In this regulation each of the terms “hygiene prohibition order”, “hygiene emergency prohibition notice”, “hygiene emergency prohibition order” and “remedial action notice” has the meaning that it bears in the Food Hygiene (Scotland) Regulations 2006 <sup>M8</sup>.

#### **Marginal Citations**

**M8** S.S.I. 2006/3.

### **Appeal to Court of Session against dismissal of appeal under regulation 12(1)**

**13.** A person who is aggrieved by the sheriff’s dismissal of an appeal under regulation 12(1) may appeal to the Court of Session.

### **Staff of competent authority of another member State**

**14.** An authorised officer of a competent authority may be accompanied by a member of staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004.

### **Commission experts**

**15.—(1)** When an enforcing officer enters premises for the purposes of executing and enforcing official controls that officer may take with him a Commission expert to enable that expert to carry out functions under Article 45 of Regulation 882/2004.



(2) In paragraph (1) and regulation 17(5)(b) “enforcing officer” means an authorised officer of any authority which is responsible for executing and enforcing official controls for the verification of compliance with relevant feed law or relevant food law.

### **Prohibition on disclosure of trade secrets**

**16.** If a person enters any premises by virtue of regulation 14 or 15 and discloses to any person any information obtained on the premises with regard to any trade secret the person making the disclosure is, unless the disclosure is made in the performance of that person's duty, guilty of an offence.

### **Execution and enforcement**

**17.—(1)** The authority responsible for executing and enforcing regulation 5(3) shall be the competent authority who imposed the requirement on the control body concerned under paragraph (1) of that regulation.

(2) The authority responsible for executing and enforcing regulation 9(8) and regulation 11 shall be the Agency.

(3) The authority responsible for executing and enforcing regulation 16 shall be the authority whose officer took the person who made the disclosure on to the premises concerned.

(4) The authority responsible for executing and enforcing regulation 18(8) shall be the authority who authorised the person who entered the premises and disclosed the information.

(5) The authority responsible for executing and enforcing regulation 19 shall—

- (a) where the offence relates to the execution of regulation 14, be the competent authority whose authorised officer was accompanied by a member of staff of the competent authority of another member State;
- (b) where the offence relates to the execution of regulation 15, be the authority whose enforcing officer was accompanied by a Commission expert; and
- (c) where the offence relates to the execution of regulation 18, be the relevant enforcement authority whose authorised officer exercised powers under that regulation.

### **Powers of entry**

**18.—(1)** An authorised officer of a relevant enforcement authority other than the Agency shall, on producing, if so required, some duly authenticated document showing that officer's authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises a contravention of any provision of this Part of these Regulations for which that authority has enforcement responsibility pursuant to regulation 17; and
- (b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of such a contravention within that area,

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing that officer's authority, have a right at all reasonable hours to enter any premises for the purpose of—

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- (a) ascertaining whether there is or has been on the premises a contravention of any provision of this Part of these Regulations for which the Agency has enforcement responsibility pursuant to regulation 17; and
  - (b) ascertaining whether there is on the premises any evidence of such a contravention,
- but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a sheriff, magistrate or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) or (2) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation shall continue in force for a period of one month.

(5) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises which that officer has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found .

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of this Part of these Regulations; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(8) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, that person is, unless the disclosure was made in the performance of that person's duty, guilty of an offence.

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981 <sup>M9</sup>, to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

### Marginal Citations

M9 1981 c.22.

### Obstruction etc. of officers

19.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of regulation 14, 15 or 18; or
- (b) without reasonable cause, fails to give to any person acting in the execution of regulation 14, 15 or 18 any assistance or information which that person may reasonably require for the performance of functions under those regulations,

is guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

### Penalties

20.—(1) A person guilty of an offence under regulation 18(8) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, to a fine or to both.

(2) A person guilty of an offence under regulation 5(3), 9(8), 11 or 16 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under regulation 19 is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

### Time limit for prosecutions

21.—(1) No prosecution for an offence under this Part of these Regulations which is punishable under regulation 20(1) shall be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor,

whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the knowledge of the prosecutor, shall be conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

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## PART 3

### OFFICIAL CONTROLS ON FEED AND FOOD OF NON-ANIMAL ORIGIN FROM THIRD COUNTRIES

#### Interpretation of this Part of these Regulations

**22.** In this Part of these Regulations—

“authorised officer”, in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Import Provisions;

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“enforcement authority” means the feed authority or the food authority;

“feed” does not include additives of a type mentioned in Article 6(1)(e) of or paragraph 4(d) of Annex I to Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition<sup>M10</sup> or any premixture consisting solely of a combination of such additives;

“outside Scotland enforcement authority” means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except Scotland;

“product” means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (official controls on feed and food of non-animal origin not included in the scope of Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries<sup>M11</sup>) and includes those composite products and foodstuffs which are not required to be subject to veterinary checks as provided in Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC<sup>M12</sup>;

“the relevant territories” means the territories referred to in Annex I to Regulation 882/2004; and

“specified import provision” means any provision of Regulation 669/2009 that is specified in Column 1 of Schedule 6 and whose subject-matter is described in Column 2 of that Schedule.

#### Marginal Citations

**M10** O.J. No. L 268, 18.10.2003, p.29, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (O.J. No. L 188, 18.7.2009, p.14).

**M11** O.J. No. L 24, 30.1.98, p.9, as last amended by Council Directive 2006/104/EC adapting certain Directives in the field of agriculture (veterinary and phytosanitary legislation), by reason of the accession of Bulgaria and Romania (O.J. No. L 363, 20.12.2006, p.352).

**M12** O.J. No. L 116, 4.5.2007, p.9.

#### Feed enforcement responsibilities and competent authority status

**23.—**(1) Each feed authority shall execute and enforce the Import Provisions in its area in relation to feed.

(2) The feed authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant feed law.

(3) A feed authority's designation as a competent authority pursuant to paragraph (2) shall extend to its area only.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant feed law.

### **Food enforcement responsibilities and competent authority status**

**24.**—(1) Each food authority shall execute and enforce the Import Provisions in its area in relation to food.

(2) The food authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant food law.

(3) A food authority's designation as a competent authority pursuant to paragraph (2) shall extend to its area only.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant food law.

### **Functions of the Commissioners**

**25.** The Commissioners shall carry out the functions given to customs services under Article 24 of Regulation 882/2004 and Article 10 of Regulation 669/2009, in each case in relation to feed and food.

### **Exchange of information**

**26.**—(1) The Commissioners, the Agency and any enforcement authority may exchange information for the purposes of the Import Provisions, and may divulge information to the bodies defined as enforcement authorities in the provisions corresponding to Part 3 of these Regulations in England, Wales or Northern Ireland for the purposes of the Import Provisions or the provisions corresponding to the Import Provisions in those jurisdictions.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners, the Agency or any enforcement authority to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (1) if—

(a) the information relates to a person whose identity—

(i) is specified in the disclosure; or

(ii) can be deduced from the disclosure;

(b) the disclosure is for a purpose other than the purposes specified in paragraph (1); and

(c) the Commissioners have not given their prior consent to the disclosure.

### **Deferred execution and enforcement**

**27.**—(1) Subject to paragraph (6), where—

(a) a product from a third country has entered Scotland;

(b) customs examination of that product has been completed or has been deferred until it reaches its place of destination elsewhere in the United Kingdom;

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- (c) an authorised officer of the enforcement authority for the place of entry has on reasonable grounds issued an authorisation confirming that—
  - (i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in Scotland, or
  - (ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and
- (d) a person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in Scotland, shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking shall—

- (a) state the destination of the product; and
- (b) confirm that—
  - (i) the container containing the product has been sealed and will not be opened until it has reached that destination;
  - (ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if it is in Scotland or the outside Scotland enforcement authority if the destination is not in Scotland; and
  - (iii) the container will be available at that destination for examination under the Import Provisions or, as the case may be, legislation with respect to imported products in force elsewhere in the United Kingdom.

(3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), that officer shall—

- (a) (if the product's place of destination is within Scotland) notify the enforcement authority for that place or (if the product's place of destination is in any other part of the United Kingdom) notify the outside Scotland enforcement authority—
  - (i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions; and
  - (ii) if customs examination of the product has been deferred, of that fact; and
- (b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).

(4) Where a product has been sent to a destination in Scotland from another part of the British Islands and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in Scotland.

(5) No person shall breach an undertaking given under paragraph (1)(d).

(6) The deferred execution and enforcement provisions set out in this regulation are subject to any official controls that take place pursuant to Article 15(5) of Regulation 882/2004.

### **Prohibition on introduction of certain feed and food**

**28.**—(1) The following are prohibited—

- (a) the introduction into Scotland from a third country of specified feed that fails to comply with feed safety requirements;

- (b) the introduction into Scotland from elsewhere in the relevant territories of specified feed that originates in a third country and fails to comply with feed safety requirements;
  - (c) the introduction into Scotland from a third country of specified food that fails to comply with—
    - (i) food safety requirements; or
    - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004; and
  - (d) the introduction into Scotland from elsewhere in the relevant territories of specified food that originates in a third country and fails to comply with—
    - (i) food safety requirements; or
    - (ii) the requirements of Articles 3 to 6 of Regulation 852/2004.
- (2) In this regulation—
- (a) “specified feed” means feed that is a product; and
  - (b) “specified food” means food that is a product.

### Checks on products

**29.**—(1) The person responsible for introducing any product into Scotland shall permit an authorised officer of an enforcement authority to carry out checks in relation to the product pursuant to Article 16 of Regulation 882/2004.

(2) When an authorised officer is carrying out checks in relation to a product pursuant to Article 16 of Regulation 882/2004, the person introducing the product shall provide the facilities and assistance which the authorised officer reasonably requires to carry them out.

(3) An authorised officer of an enforcement authority carrying out an identity check or a physical check on a product in accordance with Article 16 of Regulation 882/2004 shall be entitled to require that the check takes place at a specified place.

### Suspension of designation of points of entry

[<sup>F1</sup>**30.**—(1) Where the Agency is satisfied that—

- (a) the continued operation of a designated point of entry presents a serious risk to public or animal health; or
- (b) at a designated point of entry, there has been a serious breach of the minimum requirements for designated points of entry laid down in Article 4 of Regulation 669/2009,

it may suspend the designation of the point of entry either in full or in part by service on the operator of the point of entry of a written notice to that effect.

(2) Upon service of a notice under paragraph (1), the point of entry shall cease to be a designated point of entry to the extent specified in that notice until it is again so designated in accordance with Article 17(1) of Regulation 882/2004.]

#### Textual Amendments

- F1** Reg. 30 substituted (25.1.2010) by [The Official Feed and Food Controls \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/5\)](#), regs. 1, **2(2)**

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### **Detention, destruction, special treatment, re–dispatch and other appropriate measures and costs**

**31.**—(1) An enforcement authority shall have the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled.

(2) The enforcement authority shall be the competent authority for the purposes of Article 22 of Regulation 882/2004.

### **Notices pursuant to Articles 18 and 19 of Regulation 882/2004 (imports of feed and food from third countries)**

**32.**—(1) If an authorised officer of an enforcement authority proposes to place a consignment of feed or food under official detention under Article 18 or 19(1) of Regulation 882/2004 the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

(2) If an authorised officer of an enforcement authority proposes to take any of the measures referred to in Article 19(1)(a) or (b) of Regulation 882/2004 in respect of feed or food the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it after the feed or food business operator has been heard as provided in Article 19.

(3) If an authorised officer of an enforcement authority proposes to take any action referred to in Article 19(2) of Regulation 882/2004 in respect of feed or food the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

### **Right of appeal in respect of notices served under regulation 32**

**33.**—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 32 may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be 1 month from the date on which the notice was served on the person desiring to appeal.

(4) Where on an appeal under paragraph (1) the sheriff determines that the decision of the authorised officer of the enforcement authority is incorrect, the authority shall give effect to that determination.

### **Appeal to Court of Session against dismissal of appeal under regulation 33**

**34.** A person who is aggrieved by the sheriff's dismissal of an appeal under regulation 33(1) may appeal to the Court of Session.

### **Serious risk to animal or public health**

**35.**—(1) Where the Scottish Ministers or the Agency learns or has reasonable grounds to suspect that any food or feed that has been or may be introduced into Scotland from a third country is likely to constitute a serious risk to animal or public health, they each have the power to issue a written declaration suspending or imposing conditions on the introduction into Scotland of any product from the whole or any part of that third country.

(2) Such a declaration shall be published in such manner as the Scottish Ministers or the Agency, as the case may be, thinks fit and shall specify the product and the third country or part thereof concerned.



(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof shall specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration.

(5) Where a declaration is in force imposing conditions on the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration unless the product complies with conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

### **Costs and fees**

**36.**—(1) The costs incurred by the enforcement authority for which the feed or food business operator or its representative is liable under Article 22 of Regulation 882/2004 shall be payable by the feed or food business operator or its representative on the written demand of the enforcement authority.

(2) The fees required to be collected by a competent authority under Article 14 of Regulation 669/2009 shall be payable by the feed or food business operator, subject to the increased level of official controls provided for in that Regulation, or its representative, on the written demand of the competent authority.

### **Procurement by authorised officers of samples with regard to food**

**37.** An authorised officer of a food authority may, for the purposes of the execution and enforcement by that authority of the Import Provisions—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
  - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption; or
  - (ii) is found by the officer on or in any premises which the officer is authorised to enter by or under regulation 39;
- (c) take a sample from any food source, or a sample of any contact material, which is found by the officer on or in any such premises; and
- (d) take a sample of any article or substance which is found on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

### **Analysis etc. of samples**

**38.**—(1) An authorised officer of a food authority who has procured a sample under regulation 37 shall—

- (a) if the officer considers that the sample should be analysed, submit it to be analysed by a public analyst;
- (b) if the officer considers that the sample should be examined, submit it to be examined by a food examiner.

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(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it —

- (a) to be analysed by the public analyst for the area in which the purchase was made; or
- (b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner determines (for any reason) that that food analyst or examiner is unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by the food analyst or examiner to such other food analyst or examiner as that person may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to that food analyst or examiner under this regulation, but may, except where—

- (a) that person is the public analyst for the area in question; and
- (b) the sample is submitted for analysis by an authorised officer of a food authority,

demand in advance the payment of such reasonable fee as the food analyst or examiner may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by the food analyst or examiner, but the analysis or examination may be made by any person acting under the direction of the food analyst or examiner.

(8) In any proceedings under the Import Provisions, the production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or
- (b) of a document supplied to the food analyst or examiner by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub#??paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) Any reference in this regulation to a public analyst for a given area shall, where two or more public analysts have been appointed for that area, be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations 1990 <sup>M13</sup> shall apply in relation to a sample procured by an authorised officer of a food authority under regulation [F237] as if it were a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

#### Textual Amendments

**F2** Word in reg. 38(10) substituted (25.1.2010) by [The Official Feed and Food Controls \(Scotland\) Amendment Regulations 2010 \(S.I. 2010/5\)](#), regs. 1, 2(3)

#### Marginal Citations

**M13** S.I. 1990/2463, to which there are amendments not relevant to these Regulations.

### **Powers of entry of authorised officers of a food authority**

**39.**—(1) An authorised officer of a food authority shall, on producing, if so required, some duly authenticated document showing the officer's authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Import Provisions in relation to food;
- (b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and
- (c) to enter any premises for the purpose of the performance by the authority of their functions under the Import Provisions,

but admission to any premises used only as a private dwelling—house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) If a sheriff, magistrate or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation shall continue in force for a period of 1 month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises which the officer has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as the officer may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(7) If a person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, the person making the disclosure is, unless the disclosure was made in the performance of that person's duty, guilty of an offence.

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(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981, to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

#### **Obstruction etc. of officers (imports)**

**40.**—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of the Import Provisions; or
- (b) without reasonable cause, fails to give to any person acting in the execution of the Import Provisions any assistance or information which that person may reasonably require for the performance of that person's functions under the Import Provisions,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

#### **Offences and penalties**

**41.**—(1) Any person who—

- (a) contravenes or fails to comply with any of the specified import provisions;
- (b) contravenes or fails to comply with regulation 26(3), 27(5) or 35(4) or (5);
- (c) contravenes any of the prohibitions in regulation 28(1);
- (d) to the extent that contravention or failure to comply with regulation 29 does not constitute an offence under regulation 40, contravenes or fails to comply with regulation 29; or
- (e) fails to comply with a notice served upon that person under the Import Provisions,

is guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under this Part of these Regulations shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, to a fine or to both.

(3) A person guilty of an offence under regulation 40 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

#### **Time limit for prosecutions (imports)**

**42.**—(1) No prosecution for an offence under this Part of these Regulations which is punishable under regulation 41(2) shall be begun after the expiry of—

- (a) 3 years from the commission of the offence; or

(b) 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor, whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the knowledge of the prosecutor, shall be conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

## **PART 4**

### **RECOVERY OF EXPENSES**

#### **Expenses arising from additional official controls**

**43.** Expenses charged by a competent authority to an operator pursuant to Article 28 of Regulation 882/2004 shall be payable by the operator to that authority on written demand.

#### **Expenses arising in respect of co-ordinated assistance and follow-up by the Commission**

**44.** Expenses charged by a competent authority to a feed or food business pursuant to Article 40(4) of Regulation 882/2004 shall be payable by the feed or food business to that authority on written demand.

## **PART 5**

### **ENFORCEMENT AND SUPPLEMENTARY PROVISIONS**

#### **Offences due to fault of another person**

**45.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

#### **Defence of due diligence**

**46.—(1)** In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the accused's control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless [<sup>F3</sup>at the earlier of]—

- (a) a date at least 7 clear days before the <sup>F4</sup>...trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of the accused, before a court in connection with the alleged offence,

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the accused has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in the accused's possession.

#### Textual Amendments

- F3** Words in reg. 46(2) inserted (25.1.2010) by [The Official Feed and Food Controls \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/5\)](#), **regs. 1, 2(4)(a)**
- F4** Words in reg. 46(2)(a) omitted (25.1.2010) by [The Official Feed and Food Controls \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/5\)](#), **regs. 1, 2(4)(b)**

#### Offences by bodies corporate

**47.—(1)** Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

#### Offences by Scottish partnerships

**48.** Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner, as well as the partnership shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

#### Protection of officers acting in good faith

**49.—(1)** An officer of a relevant body is not personally liable in respect of any act done by that officer—

- (a) in the execution or purported execution of the Official Control Regulations; and
- (b) within the scope of the officer's employment,

if the officer did that act in the honest belief that the officer's duty under the Official Control Regulations required or entitled it to be done.

(2) Nothing in paragraph (1) shall be construed as relieving any relevant body of any liability in respect of the acts of its officers.

(3) Where an action has been brought against an officer of a relevant body in respect of an act done by that officer—

- (a) in the execution or purported execution of the Official Control Regulations; but
- (b) outside the scope of the officer's employment,

the relevant body may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if it is satisfied

that the officer honestly believed that the act complained of was within the scope of the officer's employment.

(4) In so far as a food authority is a relevant body for the purposes of this regulation, a public analyst appointed by a food authority shall be treated for the purposes of this regulation as being an officer of the authority, whether or not the public analyst's appointment is a whole-time one.

(5) In this regulation "relevant body" means a body acting as—

- (a) a competent authority;
- (b) an enforcement authority as defined in regulation 22; or
- (c) a relevant enforcement authority.

### Service of documents

**50.**—(1) Any document which is required or authorised to be served on a person under these Regulations may be served on the person concerned—

- (a) by delivering it to that person;
- (b) in the case of a person that is a body corporate other than a limited liability partnership, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary at that office;
- (c) in the case of a person that is a limited liability partnership, by delivering it to a designated member of the partnership at their registered or principal office or by sending it in a prepaid letter addressed to a designated member of the partnership at that office;
- (d) in the case of a person that is a partnership other than a limited liability partnership, by delivering it to the partnership's principal place of business; or
- (e) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to that person at their usual or last known residence.

(2) Where a document is to be served on the occupier of any premises under these Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises are unoccupied, the document may be served by addressing it to the person concerned in the capacity of "occupier" of the premises (naming them), and—

- (a) by delivering it to some other person at the premises; or
- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

### Amendment to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

**51.** In Schedule 1 (specified feed law) to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 <sup>M14</sup>—

- (a) substitute "The Official Feed and Food Controls (Scotland) Regulations 2009" for "The Official Feed and Food Controls (Scotland) Regulations 2007"; and
- (b) below "Regulation 183/2005" insert "Regulation (EC) 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, in so far as it relates to feed".

#### Marginal Citations

**M14** S.S.I. 2005/608, last amended by S.S.I. 2009/263.

**Status:** Point in time view as at 15/11/2010.

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## Revocation

52. The following Regulations are revoked—

- (a) the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005 <sup>M15</sup>;
- (b) the Official Feed and Food Controls (Scotland) Regulations 2007 <sup>M16</sup>; and
- (c) the Official Feed and Food Controls (Scotland) Amendment Regulations 2008 <sup>M17</sup>.

### Marginal Citations

**M15** [S.S.I. 2005/294](#).

**M16** [S.S.I. 2007/522](#), as amended by [S.S.I. 2008/218](#).

**M17** [S.S.I. 2008/218](#).

St Andrew's House,  
Edinburgh

*SHONA ROBISON*  
Authorised to sign by the Scottish Ministers



## SCHEDULE 1

Regulation 2(1)

### DEFINITIONS OF EU LEGISLATION

“Directive 2004/41” means Directive [2004/41/EC](#) of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives [89/662/EEC](#) and [92/118/EEC](#) and Council Decision [95/408/EC](#)<sup>M18</sup>;

“Regulation 999/2001” means Regulation (EC) No. [999/2001](#) of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies<sup>M19</sup>;

“Regulation 178/2002” means 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;

“Regulation 852/2004” means Regulation (EC) No. [852/2004](#) of the European Parliament and of the Council on the hygiene of foodstuffs<sup>M20</sup> as read with Regulation [2073/2005](#);

“Regulation 853/2004” means Regulation (EC) No. [853/2004](#) of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin<sup>M21</sup> as read with Directive [2004/41](#), Regulation [1688/2005](#), Regulation [2074/2005](#), Regulation [1020/2008](#) and Regulation [1162/2009](#);

“Regulation 882/2004” means Regulation (EC) No. [882/2004](#) of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules<sup>M22</sup> as read with Regulation [2074/2005](#), Regulation [669/2009](#) and Regulation [1162/2009](#);

“Regulation 1688/2005” means Commission Regulation (EC) No. [1688/2005](#) implementing Regulation (EC) No. [853/2004](#) of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs<sup>M23</sup>;

“Regulation 2073/2005” means Commission Regulation (EC) No. [2073/2005](#) on microbiological criteria for foodstuffs<sup>M24</sup>;

“Regulation 2074/2005” means Commission Regulation (EC) No. [2074/2005](#) laying down implementing measures for certain products under Regulation (EC) No. [853/2004](#) of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. [854/2004](#) of the European Parliament and of the Council and Regulation (EC) No. [882/2004](#) of the European Parliament and of the Council, derogating from Regulation (EC) No. [852/2004](#) of the European Parliament and of the Council and amending Regulations (EC) No. [853/2004](#) and (EC) No. [854/2004](#)<sup>M25</sup>;

“Regulation 1020/2008” means Commission Regulation (EC) No. [1020/2008](#) amending Annexes II and III to Regulation (EC) No. [853/2004](#) of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No. [2076/2005](#) as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products<sup>M26</sup>.

“Regulation 669/2009” means Commission Regulation (EC) No. [669/2009](#) implementing Regulation (EC) No. [882/2004](#) of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision [2006/504/EC](#)<sup>M27</sup>; and

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“Regulation 1162/2009” means Commission Regulation (EC) No. 1162/2009 laying down transitional measures for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council <sup>M28</sup>.

#### Marginal Citations

- M18** O.J. No. L 157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (O.J. No. L 195, 2.6.2004, p.12).
- M19** O.J. No. L 147, 31.5.2001, p.1, as last amended by Regulation (EC) No. 220/2009 of the European Parliament and of the Council amending Regulation (EC) No. 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, as regards the implementing powers conferred on the Commission (O.J. No. L87, 31.3.2009, p.155).
- M20** O.J. No. L 139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.2004, p.3) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.26). Regulation (EC) No. 852/2004 was last amended by Regulation (EC) No. 219/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Two (O.J. No. L 87, 31.3.2009, p.109).
- M21** O.J. No. L 139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.2004, p.22) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.26). Regulation (EC) No. 853/2004 was last amended by Regulation (EC) No. 219/2009.
- M22** O.J. No. L 165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.2004, p.1) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.29). Regulation (EC) No. 882/2004 was last amended by Commission Regulation (EC) No. 1029/2008 amending Regulation (EC) No. 882/2004 of the European Parliament and of the Council to update a reference to certain European Standards (O.J. No. L 278, 21.10.2008, p.6).
- M23** O.J. No. L 271, 15.10.2005, p.17.
- M24** O.J. No. L 338, 22.12.2005, p.1, as read with the Corrigenda at O.J. No. L 278, 10.10.2006, p.32 and O.J. No. L 283, 14.10.2006, p.62. Regulation (EC) 2073/2005 was amended by Commission Regulation (EC) No. 1441/2007 amending Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (O.J. No. L 322, 7.12.2007, p.12).
- M25** O.J. No. L 338, 22.12.2005, p.27 as last amended by Commission Regulation (EC) No. 1022/2008 amending Regulation (EC) No. 2074/2005 as regards the total volatile basic nitrogen (TVB-N) limits (O.J. No. L 277, 18.10.2008, p.18).
- M26** O.J. No. L 277, 18.10.2008, p.8.
- M27** O.J. No. L 194, 25.7.2009, p.11.
- M28** O.J. No. L 314, 1.12.2009, p.10.

#### Marginal Citations

- M18** O.J. No. L 157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (O.J. No. L 195, 2.6.2004, p.12).
- M19** O.J. No. L 147, 31.5.2001, p.1, as last amended by Regulation (EC) No. 220/2009 of the European Parliament and of the Council amending Regulation (EC) No. 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, as regards the implementing powers conferred on the Commission (O.J. No. L87, 31.3.2009, p.155).
- M20** O.J. No. L 139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.2004, p.3) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.26). Regulation (EC) No. 852/2004 was last amended by Regulation (EC) No. 219/2009 of the European Parliament and of the Council adapting a number of instruments subject

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to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Two (O.J. No. L 87, 31.3.2009, p.109).

- M21** O.J. No. L 139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.2004, p.22) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.26). Regulation (EC) No. 853/2004 was last amended by Regulation (EC) No. 219/2009.
- M22** O.J. No. L 165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.2004, p.1) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.29). Regulation (EC) No. 882/2004 was last amended by Commission Regulation (EC) No. 1029/2008 amending Regulation (EC) No. 882/2004 of the European Parliament and of the Council to update a reference to certain European Standards (O.J. No. L 278, 21.10.2008, p.6).
- M23** O.J. No. L 271, 15.10.2005, p.17.
- M24** O.J. No. L 338, 22.12.2005, p.1, as read with the Corrigenda at O.J. No. L 278, 10.10.2006, p.32 and O.J. No. L 283, 14.10.2006, p.62. Regulation (EC) 2073/2005 was amended by Commission Regulation (EC) No. 1441/2007 amending Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (O.J. No. L 322, 7.12.2007, p.12).
- M25** O.J. No. L 338, 22.12.2005, p.27 as last amended by Commission Regulation (EC) No. 1022/2008 amending Regulation (EC) No. 2074/2005 as regards the total volatile basic nitrogen (TVB-N) limits (O.J. No. L 277, 18.10.2008, p.18).
- M26** O.J. No. L 277, 18.10.2008, p.8.
- M27** O.J. No. L 194, 25.7.2009, p.11.
- M28** O.J. No. L 314, 1.12.2009, p.10.

## SCHEDULE 2

Regulation 2(1)

### DEFINITION OF RELEVANT FEED LAW

“relevant feed law” means—

- (a) Part IV of the Agriculture Act 1970<sup>M29</sup> in so far as it applies in relation to feeding stuffs;
- (b) [<sup>F5</sup>the Feed (Sampling and Analysis and Specified Undesirable Substances) (Scotland) Regulations 2010];
- (c) the Genetically Modified Animal Feed (Scotland) Regulations 2004<sup>M30</sup>;
- (d) the Food Hygiene (Scotland) Regulations 2006 in so far as they apply in relation to feed;
- (e) the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005<sup>M31</sup>;
- (f) the Feeding Stuff (Scotland) Regulations 2005<sup>M32</sup>; and
- (g) the Guar Gum (Restriction on First Placing on the Market) (Scotland) Regulations 2008<sup>M33</sup>.

#### Textual Amendments

- F5** Words in sch. 2 para. (b) substituted (15.11.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) \(Scotland\) Regulations 2010 \(S.I. 2010/354\)](#), [regs. 1, 23\(2\)](#)

#### Marginal Citations

- M29** 1970 c.40.

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- M30** S.S.I. 2004/433, amended by [S.S.I. 2005/246](#) and 2007/493.  
**M31** [S.S.I. 2005/608](#), amended by [S.S.I. 2005/616](#), 2006/578, 2008/201 and 2009/263.  
**M32** [S.S.I. 2005/605](#), amended by [S.S.I. 2006/16](#), 516 and 578, 2007/492, 2008/215 and 2009/21.  
**M33** [S.S.I. 2008/176](#).

### Textual Amendments

- F5** Words in sch. 2 para. (b) substituted (15.11.2010) by [The Feed \(Sampling and Analysis and Specified Undesirable Substances\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/354\)](#), [regs. 1, 23\(2\)](#)

### Marginal Citations

- M29** [1970 c.40](#).  
**M30** S.S.I. 2004/433, amended by [S.S.I. 2005/246](#) and 2007/493.  
**M31** [S.S.I. 2005/608](#), amended by [S.S.I. 2005/616](#), 2006/578, 2008/201 and 2009/263.  
**M32** [S.S.I. 2005/605](#), amended by [S.S.I. 2006/16](#), 516 and 578, 2007/492, 2008/215 and 2009/21.  
**M33** [S.S.I. 2008/176](#).

## SCHEDULE 3

Regulation 2(1)

### DEFINITION OF RELEVANT FOOD LAW

“relevant food law” means—

- (a) food law in so far as it applies in relation to food, except in so far as it involves—
- (i) the regulation of residues of veterinary medicines and other substances under the [Animals and Animal Products \(Examination for Residues and Maximum Residue Limits\) Regulations 1997](#) <sup>M34</sup>,
  - (ii) the regulation of residues of pesticides under the [Pesticides \(Maximum Residue Levels\) \(Scotland\) Regulations 2008](#) <sup>M35</sup>,
  - (iii) the application of the rules under which a traditional speciality guaranteed may be recognised for certain agricultural products and foodstuffs laid down in [Council Regulation \(EC\) No. 509/2006](#) on agricultural products and foodstuffs as traditional specialities guaranteed <sup>M36</sup>,
  - (iv) the application of the rules on the protection of designations of origin and geographical indications of certain agricultural products and foodstuffs laid down in [Council Regulation \(EC\) No. 510/2006](#) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <sup>M37</sup>,
  - (v) the regulation of organic products under the [Organic Products Regulations 2009](#) <sup>M38</sup>,
  - (vi) the regulation of beef and veal labelling under the [Beef and Veal Labelling \(Scotland\) Regulations 2008](#) <sup>M39</sup>,
  - (vii) the regulation of the import of and trade in products of animal origin—
  - (aa) under the [Products of Animal Origin \(Import and Export\) Regulations 1996](#) <sup>M40</sup>, with the exception of the execution and enforcement of regulation 3 thereof by the Agency,

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- (bb) under the Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2007 <sup>M41</sup>, with the exception of the execution and enforcement of regulation 5 thereof by the Agency;
  - (viii) the matters regulated under Schedule 2 to [<sup>F6</sup>the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010] in so far as that Schedule applies in relation to animals slaughtered for human consumption, together with the matters covered under point 2 of Part I and point 2 of Part II of Chapter A of Annex III to Regulation 999/2001 as read with Commission Decision [2009/719/EC](#) authorising certain Member States to revise their annual BSE monitoring programmes <sup>M42</sup> in so far as those points apply in relation to animals slaughtered for human consumption; and
  - (ix) the regulation of spirit drinks under the Spirit Drinks Regulations 2008 <sup>M43</sup>.
- (b) food law in so far as it applies in relation to materials and articles in contact with food; and
  - (c) food law in so far as it involves the regulation of primary production and those associated operations, listed in point 1 of Part AI of Annex I to Regulation 852/2004, under the Food Hygiene (Scotland) Regulations 2006.

#### Textual Amendments

- F6** Words in [sch. 3](#) substituted (28.5.2010) by [The Transmissible Spongiform Encephalopathies \(Scotland\) Regulations 2010 \(S.S.I. 2010/177\)](#), reg. 1(1), [sch. 9 para. 9](#)

#### Marginal Citations

- M34** S.I. 1997/1729, amended by S.I. 2001/3590 2004/147, 2006/755, 2009/1925 and [S.S.I. 2005/616](#).
- M35** [S.S.I. 2008/342](#).
- M36** O.J. No. L 93, 31.3.2006, p.1.
- M37** O.J. No. L 93, 31.3.2006, p.12, as last amended by Commission Regulation (EC) No. 417/2008 amending Annexes I and II to Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (O.J. No. L 125, 9.5.2008, p.27).
- M38** S.I. 2009/842.
- M39** S.S.I. 2008/418.
- M40** S.I. 1996/3124, last amended by [S.S.I. 2006/3](#)
- M41** S.S.I. 2007/1, amended by [S.S.I. 2007/304](#).
- M42** O.J. No. L 256, 29.9.2009, p.35.
- M43** [S.I. 2008/3206](#).

#### Textual Amendments

- F6** Words in [sch. 3](#) substituted (28.5.2010) by [The Transmissible Spongiform Encephalopathies \(Scotland\) Regulations 2010 \(S.S.I. 2010/177\)](#), reg. 1(1), [sch. 9 para. 9](#)

#### Marginal Citations

- M34** S.I. 1997/1729, amended by S.I. 2001/3590 2004/147, 2006/755, 2009/1925 and [S.S.I. 2005/616](#).
- M35** [S.S.I. 2008/342](#).
- M36** O.J. No. L 93, 31.3.2006, p.1.
- M37** O.J. No. L 93, 31.3.2006, p.12, as last amended by Commission Regulation (EC) No. 417/2008 amending Annexes I and II to Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (O.J. No. L 125, 9.5.2008, p.27).
- M38** S.I. 2009/842.

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- M39** S.S.I. 2008/418.  
**M40** S.I. 1996/3124, last amended by [S.S.I. 2006/3](#)  
**M41** S.S.I. 2007/1, amended by [S.S.I. 2007/304](#).  
**M42** O.J. No. L 256, 29.9.2009, p.35.  
**M43** [S.I. 2008/3206](#).

## SCHEDULE 4

Regulation 3(1)

COMPETENT AUTHORITIES FOR THE PURPOSES OF  
 CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR  
 AS THEY APPLY IN RELATION TO RELEVANT FEED LAW

<i>Column 1 Competent authority</i>	<i>Column 2 Provisions of Regulation 882/2004</i>
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 19(1), (2) and (3), 24, 27, 28, 31(1) and (2)(f), 34, 35(3) and (4) 36, 37(1), 38, 39, 40(2) and (4), 52(1) and 54
The feed authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 27, 28, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54

## SCHEDULE 5

Regulation 3(3)

COMPETENT AUTHORITIES FOR THE PURPOSES OF  
 CERTAIN PROVISIONS OF REGULATION 882/2004 IN SO FAR  
 AS THEY APPLY IN RELATION TO RELEVANT FOOD LAW

<i>Column 1 Competent authority</i>	<i>Column 2 Provisions of Regulation 882/2004</i>
The Agency	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 12, 14, 19(1), (2) and (3), 24, 27, 28, 31, 34, 35(3) and (4), 36, 37(1), 38, 39, 40(2) and (4), 52(1) and 54
The food authority	Articles 3(6), 4(2) to (6), 5(1) to (3), 6, 7, 8(1) and (3), 9, 10, 11(1) to (3) and (5) to (7), 15(1) to (4), 16(1) and (2), 18, 19(1) and (2), 20, 21, 22, 24, 27, 28, 31, 34, 35(3), 36, 37(1), 38, 39, 40(2) and (4) and 54

SCHEDULE 6

Regulations 22 and 41(1)(a)

SPECIFIED IMPORT PROVISIONS

<i>Column 1 Provision of Regulation 669/2009</i>	<i>Column 2 Subject - matter</i>
Article 6, as read with Article 7	Requirement that feed and food business operators or their representatives give adequate prior notification of the estimated date and time of physical arrival of the consignment at the designated point of entry and of the nature of the consignment in the manner indicated in that Article (common entry document to be completed and transmitted at least one working day in advance) and Article 7 (common entry document to be drawn up in the official language of the member State), although the member State may consent to common entry documents being drawn up in another official language of the Community).
Article 8(2) second paragraph	Requirement that the original of the common entry document must accompany the consignment on its onward transport until it reaches its destination as indicated in that document.
Article 11	Requirement that in cases where the special characteristics of the consignment so warrant, feed and food business operators or their representatives make available to the competent authority- <ul style="list-style-type: none"> <li>(a) sufficient human resources and logistics to unload the consignment, in order that the official controls may take place; and</li> <li>(b) the appropriate equipment for sampling for analysis as regards special transport and/or specific packaging forms, insofar as such sampling cannot be representatively performed with standard sampling equipment.</li> </ul>
Article 12 first paragraph	Requirement that consignments must not be split until the increased level of official controls has been completed and the common entry document has been completed by the competent authority.
Article 12 second paragraph	Requirement that in the case of subsequent splitting of the consignment, an authenticated copy of the common entry document must accompany each part of the consignment until it is released for free circulation.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and re-enact with changes the Official Feed and Food Controls (Scotland) Regulations 2007 (the “2007 Regulations”) and apply in relation to Scotland only. The principal changes are that—

- (a) it is provided that a person who contravenes or fails to comply with specified provisions of EU legislation concerning the import of certain types of feed and food of non-animal origin is guilty of an offence;
- (b) it is provided that specified bodies are designated as competent authorities as regards the imports referred to in sub-paragraph (a) of this paragraph;
- (c) it is provided that the Commissioners for Her Majesty's Revenue and Customs, the Food Standards Agency and feed and food authorities may exchange and divulge information;
- (d) it is provided that designated points of entry for the imports referred to in sub-paragraph (a) of this paragraph may be suspended;
- (e) it is provided that expenses may be charged by competent authorities in respect of the increased level of official controls on the imports referred to in sub-paragraph (a) of this paragraph; and
- (f) the definition of “relevant food law” in Schedule 3 is revised.

These Regulations provide for the execution and enforcement of—

- (a) Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, as last amended by Commission Regulation (EC) No. 1029/2008 amending Regulation (EC) No. 882/2004 of the European Parliament and of the Council to update a reference to certain European Standards, in relation to “relevant feed law” and “relevant food law”, which terms are defined in Schedules 2 and 3 respectively. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.2004, p.1), which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.29); and
- (b) Commission Regulation (EC) No. 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC.

These Regulations also impose prohibitions on the introduction of certain feed and food into Scotland in the light of Article 11 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, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptations to the regulatory procedure with scrutiny – Part Four, and as read with Article 10 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (the revised text of that Regulation is now set out in a Corrigendum, O.J. No. L 226, 25.6.2004, p.3, which should be read with a further Corrigendum, O.J. No. L 204, 4.8.2007, p.26). These Regulations—

- (a) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation (EC) No. 882/2004 (regulation 3);



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- (b) provide for the exchange and provision of information by competent authorities (regulation 4);
- (c) enable a competent authority to require a control body to provide information and make records available and provide that a person who—
  - (i) fails to comply with a requirement to provide information or make records available, or
  - (ii) in purported compliance with such a requirement furnishes false or misleading information,is guilty of an offence (regulation 5);
- (d) enable the Scottish Ministers to issue codes of recommended practice to feed authorities and food authorities (regulation 6);
- (e) give the Food Standards Agency the function of monitoring the performance of enforcement authorities in enforcing certain legislation (regulation 7);
- (f) give the Food Standards Agency the power, for the purpose of carrying out the function referred to in sub-paragraph (e) of this paragraph—
  - (i) to require information to be provided and records to be made available (regulation 8), and
  - (ii) to authorise individuals (who may thereby exercise certain powers, including a power of entry) (regulation 9);
- (g) define certain terms used in regulations 7 to 9 (regulation 10);
- (h) provide that a person who—
  - (i) obstructs a person exercising a power to enter premises, take samples or inspect and copy records,
  - (ii) fails to comply with a requirement to provide information, make records available or provide facilities, records, information or other assistance, or
  - (iii) in purported compliance with such a requirement furnishes false or misleading information,is guilty of an offence (regulation 11);
- (i) provide a right of appeal in respect of a decision of the competent authority concerning the approval of certain establishments taken under Article 31 of Regulation (EC) No. 882/2004 (regulations 12 and 13);
- (j) provide that an authorised officer of a competent authority may be accompanied by a member of staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation (EC) No. 882/2004 (regulation 14);
- (k) provide that when an “enforcing officer”, defined in regulation 15(2), enters premises for the purpose of executing and enforcing official controls, the enforcing officer may be accompanied by a Commission expert to enable that expert to carry out functions under Article 45 of Regulation (EC) No. 882/2004 (regulation 15);
- (l) provide that a person who enters premises under the powers referred to in sub-paragraph (j) or (k) of this paragraph and discloses any information obtained on the premises with regard to any trade secret is guilty of an offence unless that person does so in the performance of that person's duty (regulation 16);
- (m) specify the authorities that are responsible for executing and enforcing regulations 5(3), 9(8), 11, 16, 18(8) and 19 (regulation 17);
- (n) give powers of entry to authorised officers of the authorities referred to in sub-paragraph (m) of this paragraph (regulation 18);
- (o) create the offence of obstructing an officer acting in the execution of regulation 14, 15 or 18 (regulation 19);

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- (p) provide penalties for offences under Part 2 of these Regulations (regulation 20);
- (q) provide a time limit for bringing prosecutions for offences under regulation 18(8) (regulation 21);
- (r) make provision for the execution and enforcement of Part 3 of these Regulations, Articles 15 to 24 of Regulation (EC) No. 882/2004 and Regulation (EC) No. 669/2009, together defined in regulation 2(1) as “the Import Provisions” (regulations 23(1) and 24(1));
- (s) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation (EC) No. 669/2009 in relation to feed and food (regulations 23(2), (3) and (4) and 24(2), (3) and (4));
- (t) provide that the Commissioners for Her Majesty's Revenue and Customs are to carry out the functions given to customs services under Article 24 of Regulation (EC) No. 882/2004 and Article 10 of Regulation (EC) (No.) 669/2009, in each case in relation to feed and food (regulation 25);
- (u) provide for the Commissioners for Her Majesty's Revenue and Customs, the Food Standards Agency and feed and food authorities to exchange and divulge information and prohibit, subject to conditions, the disclosure of information received from the Commissioners (regulation 26);
- (v) make provision for the execution and enforcement of the Import Provisions to be deferred until a product reaches its destination (regulation 27);
- (w) in the light of Article 11 of Regulation (EC) No. 178/2002 as read with Article 10 of Regulation (EC) No. 852/2004 (as described above) prohibit the introduction into Scotland of certain feed and food unless specified conditions are met (regulation 28);
- (x) provide for the checking of products that are introduced into Scotland (regulation 29);
- (y) provide for the suspension of designated points of entry (regulation 30);
- (z) provide that an enforcement authority, first, has the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation (EC) No. 882/2004 and, second, is the competent authority for the purposes of Article 22 of that Regulation (regulation 31);
- (aa) provide for the service of notices by an authorised officer of an enforcement authority when the authorised officer proposes to take certain measures or exercise certain powers under Articles 18 and 19 of Regulation (EC) No. 882/2004 (imports of feed and food from third countries) (regulation 32);
- (bb) provide a right of appeal in respect of the service of notices under regulation 32 (regulations 33 and 34);
- (cc) enable the Scottish Ministers or the Food Standards Agency by written declaration to suspend, or impose conditions on, the introduction into Scotland of any product from a third country where they learn or reasonably suspect that any food or feed that has been or may be introduced into Scotland from that third country is likely to constitute a serious risk to animal or public health (regulation 35);
- (dd) provide that the costs incurred by the enforcement authority for which the feed or food business operator or its representative is liable under Article 22 of Regulation (EC) No. 882/2004 (costs incurred by competent authority for the activities referred to in Articles 18 to 21 of that Regulation) are payable by the feed or food business operator or its representative (regulation 36(1));
- (ee) provide that the expenses charged by a competent authority to an operator or its representative under Article 14 of Regulation (EC) No. 669/2009 (fees occasioned by the increased level of official controls provided for in that Regulation) are payable by the operator or its representative (regulation 36(2));

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- (ff) provide for the procurement and analysis of samples of food for the purposes of the execution and enforcement of the Import Provisions (regulations 37 and 38);
- (gg) provide powers of entry for authorised officers of food authorities in relation to the execution and enforcement of the Import Provisions (regulation 39);
- (hh) create the offence of obstructing an officer acting in the execution of the Import Provisions (regulation 40);
- (ii) create offences consisting of contravening or failing to comply with specified provisions of Regulation (EC) No. 669/2009, specified provisions of these Regulations and failing to comply with a notice served under the Import Provisions and provide penalties for offences under Part 3 of these Regulations (regulation 41);
- (jj) provide a time limit for bringing prosecutions for certain offences under Part 3 of these Regulations (regulation 42);
- (kk) provide that expenses charged by a competent authority pursuant to Article 28 of Regulation (EC) No. 882/2004 (expenses arising from additional official controls) are payable by the operator (regulation 43);
- (ll) provide that expenses charged by a competent authority pursuant to Article 40(4) of Regulation (EC) No. 882/2004 (expenses arising from co-ordinated assistance and follow-up by the Commission) are payable by the feed or food business (regulation 44);
- (mm) provide that where the commission of an offence under these Regulations is due to the act or default of some other person that other person is guilty of the offence (regulation 45);
- (nn) provide that in proceedings for an offence under these Regulations it is a defence for the accused to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (regulation 46);
- (oo) provide that where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or a person purporting to act as such, that person as well as the body corporate, is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 47);
- (pp) provide that where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, then that partner as well as the partnership is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 48);
- (qq) provide for the protection of officers acting in good faith (regulation 49);
- (rr) provide for the service of documents (regulation 50);
- (ss) amend the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (regulation 51); and
- (tt) revoke the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005, the Official Feed and Food Controls (Scotland) Regulations 2007 and the Official Feed and Food Controls (Scotland) Amendment Regulations 2008 (regulation 52).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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