
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Scotland only, provide for the execution and enforcement of Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene (O.J. No. L 35, 8.2.05, p.1), (“Regulation 183/2005”) and 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 (O.J. No. L 31, 1.2. 02, p.1), (“Regulation 178/2002”), and also make provision as to administration generally, in particular so as to give effect to 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 (O.J. No. L191, 28.5.04, p.1), (“Regulation 882/2004”) in respect of official controls on feed hygiene and feed safety.

These Regulations do not apply to zootechnical feed additives, coccidiostats or histomonostats or premixtures consisting solely of a combination of those substances.

Part 2 of these Regulations deals with the execution and enforcement of Regulation 183/2005, which repeals Council Directive 95/69/EC and Commission Directive 98/51/EC. (Those Directives were implemented in the United Kingdom by the Feeding Stuffs (Establishments and Intermediaries) Regulations 1999 (S.I. 1999/1872)). Regulation 183/2005 provides that almost all businesses producing, trading in or using animal feed should be either registered, or as the case may be approved, by the competent authorities. The activities to which Regulation 183/2005, and consequently Part 2 of these Regulations, do not apply, are set out in Article 2 of Regulation 183/2005 and include–

- (a) the private domestic production of feed for animals not kept for consumption, or kept for private domestic consumption only;
- (b) the feeding of non food-producing animals;
- (c) the feeding of animals kept for private domestic consumption or for direct supply, by the producer, of small quantities of primary products to the final consumer or to local retailers;
- (d) the direct supply, by the producer, of small quantities of primary produced feed to local farms for use on those farms;
- (e) the retailing of pet food (regulation 3).

In particular provision is made in Part 2 to–

- (a) designate the competent authorities for the purposes of the various functions mentioned in Regulation 183/2005 (regulation 4);
- (b) identify those provisions of Regulation 183/2005 where failure to comply gives rise to an offence, and attach penalties to those offences (regulation 5);
- (c) set out the requirements which must be observed by anyone–
 - (i) notifying the enforcement authority with a view to registering a feed business establishment (regulation 6);
 - (ii) making a declaration of compliance with the conditions of Regulation 183/2005 (regulation 7); or
 - (iii) applying for approval of a feed business establishment (regulation 8);
- (d) lay down the procedures to be followed by an enforcement authority when–

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- (i) suspending the registration or approval of a feed business establishment (regulation 9);
- (ii) lifting the suspension of a registration or approval (regulation 10); or
- (iii) revoking the registration or approval of a feed business establishment (regulation 11);
- (e) set out the requirements to be observed by anyone applying for an amendment to a registration or approval (regulation 12);
- (f) provide for a right of appeal against decisions relating to registrations or approvals taken by enforcement authorities (regulation 13); and
- (g) specify the fees payable by an applicant for approval or amendment to an approval (regulation 14 and Schedule 2).

Part 3 of these Regulations revokes and re-enacts with minor amendments the provisions formerly contained in the Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations 2004 (S.I. 2004/3254) which provided for the execution and enforcement of the feed safety requirements of Regulation 178/2002.

Part 3 applies only to feed for food-producing animals, and makes contravention of various specified provisions of Regulation 178/2002 an offence (regulation 15). The specified provisions are—

- (a) Article 12, which specifies the conditions under which feed may be exported from member States to countries outside the European Community;
- (b) Article 15, which prohibits the marketing or feeding of unsafe feed;
- (c) Article 16, which stipulates that feed must not be advertised, labelled, packaged or otherwise presented in such a way as to mislead consumers;
- (d) Article 18, which requires feed businesses to have systems in place that enable them to identify the person from whom they acquired a product and the person to whom they supplied any product; and
- (e) Article 20, which sets out the various responsibilities of feed business operators, including the duty to withdraw or recall unsafe feed, to destroy it if considered necessary by the competent authority, and to pass on all relevant information and co-operate generally with the competent authority and others in the interests of feed safety.

Part 4 of these Regulations provides for the administration and enforcement of the law relating to animal feed listed in Schedule 1. In so doing these Regulations revoke the Feeding Stuffs (Enforcement) Regulations 1999 (S.I. 1999/2325), re-enact with amendments most of the provisions contained in those Regulations and introduce further provisions needed to comply with the requirements of Regulation 882/2004. Regulation 882/2004 repealed Council Directive [95/53/EC](#) fixing the principles governing the organisation of official inspections in the field of animal nutrition. That Directive was implemented in part by S.I. 1999/2325.

In particular Part 4—

- (a) makes provision for the serving of an improvement notice where a feed business appears to the enforcement authority to be failing to comply with feed law (regulation 17);
- (b) provides for a right of appeal to the sheriff against an improvement notice, and sets out the procedures to be followed (regulation 18);
- (c) allows for the decision of a sheriff under certain provisions of these Regulations to be appealed to the Court of Session (regulation 19);
- (d) specifies that where an appeal is lodged against an improvement notice, the period specified in the notice ceases to run while the appeal is in progress (regulation 20);
- (e) provides for the circumstances in which a feed business prohibition order may be imposed by a court, and the procedures to be followed (regulation 21);

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- (f) provides for the service of emergency prohibition notices by the enforcement authority and emergency prohibition orders by the sheriff in certain circumstances (regulation 22);
- (g) specifies the penalties applicable to offences in relation to improvement notices, prohibition orders, emergency prohibition notices and emergency prohibition orders (regulation 23);
- (h) makes provision for the necessary powers to enable authorised officers of enforcement authorities to enter premises, inspect feed, plant and equipment, documentary records etc, and take samples of feed and copies of records (regulation 24);
- (i) provides authorised officers with the power to seize and detain feed which appears not to comply with feed law, and sets out the procedure to be followed in bringing the matter before the sheriff (regulation 25);
- (j) specifies the procedures to be followed when serving notice under these Regulations (regulation 26);
- (k) sets out certain offences relating to the exercise of an authorised officer's powers, including obstruction or impersonation of an officer, or disclosure of confidential information by an officer (regulation 27); and
- (l) makes provision for the recovery by an enforcement authority of expenditure incurred in consequence of a feed business's non-compliance with feed law (regulation 28).

Additionally, in Part 4 these Regulations—

- (m) apply, as modified, various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (S.I. 1999/1663), (regulation 29);
- (n) lay down procedures relating to the analysis of a feed sample taken by an authorised officer (regulation 30);
- (o) make further general provisions relating to sampling and analysis including the offence of tampering with a sample (regulation 31);
- (p) specify additional circumstances in which the Scottish Ministers may appoint persons to act as authorised officers (regulation 32(1)), and place conditions on an authorised officer acting outside the area of the enforcement authority by which the officer is appointed (regulation 32(2));
- (q) provide for limitations on the liability of an authorised officer or agricultural analyst (regulation 33);
- (r) make provisions relating to various defences to offences under these Regulations (regulation 34);
- (s) provide for the potential personal liability of officers of corporate bodies or partners in Scottish partnerships that contravene these Regulations (regulation 35);
- (t) specify time limits for the initiation of prosecutions (regulation 36); and
- (u) revoke those Regulations or parts of Regulations listed in Schedule 3 (regulation 37).

A full regulatory impact assessment, which includes a compliance cost assessment of the effect that these Regulations will have on business costs 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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