
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, provide for the execution and enforcement of 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. L 165, 30.4.04, p.1) (“Regulation 882/2004”) 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 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

These Regulations also impose prohibitions on the introduction of certain feed and food into Scotland in so far as non compliant with 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 (O.J. No. L 31, 1.2.02, p.1), as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) (“Regulation 178/2002”) 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 (O.J. No. L 139, 30.4.04, p.1; the revised text of that Regulation is now set out in a Corrigendum, O.J. No. L 226, 25.6.04, p.3).

These Regulations also amend in relation to Scotland the General Food Regulations 2004 (S.I.2004/3279) (“the 2004 Regulations”) (which extend to Great Britain) to provide for the execution and enforcement of Article 12 of Regulation 178/2002, which imposes conditions on the export and re-export of food and feed from the Community for placing on the market of third countries, in so far as that Article relates to food. These Regulations also insert a new regulation 6A into the 2004 Regulations which provides a defence in relation to exports in the case of prosecutions for contravening or failing to comply with food law. The defence applies both in relation to items intended for export to a third country and to items intended for export to a member State.

These Regulations cite as enabling powers both section 2(2) of the European Communities Act 1972 (1972 c. 68) and certain sections of the Food Safety Act 1990 (1990 c. 16). The Food Safety Act powers have been exercised to enact regulation 41 of these Regulations, which amends the 2004 Regulations to provide that a person who contravenes or fails to comply with Article 12 of Regulation 178/2002 in so far as it relates to food, is guilty of an offence. The remaining provision of these Regulations were made under section 2(2) of the 1972 Act.

These Regulations—

- (a) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation 882/2004 (regulation 4) and for the appointment of authorised officers of such bodies (regulation 3);
- (b) provide for the exchange and provision of information by competent authorities (regulation 5);
- (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,

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- is guilty of an offence (regulation 6);
- (d) enable the Scottish Ministers to issue codes of recommended practice to feed authorities and food authorities as regards their competent authority functions and the execution and enforcement of Part 3 of these Regulations relating to imports of feed and food of non animal origin (regulation 7);
 - (e) give the Food Standards Agency (“the Agency”) the function of monitoring the performance of enforcement authorities in enforcing certain legislation (regulation 8);
 - (f) give the Agency the power, for the purpose of carrying out the function referred to in sub-paragraph (e) above—
 - (i) to require information to be provided and records to be made available (regulation 9), and
 - (ii) to authorise individuals (who may thereby exercise certain powers, including a power of entry) (regulation 10);
 - (g) define certain terms used in regulations 8 to 10 (regulation 11);
 - (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 12);
 - (i) provide rights of appeal to the sheriff and then to the Court of Session in respect of a decision of the competent authority concerning the approval of certain establishments taken under Article 31 of Regulation 882/2004 (regulations 13 and 14);
 - (j) provide that an authorised officer of a competent authority may be accompanied by the staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation 882/2004 (regulation 15);
 - (k) provide that when an “enforcing officer” (defined in regulation 16(2)) enters premises for the purpose of executing and enforcing official controls that officer may be accompanied by a Commission expert to enable that expert to carry out functions under Article 45 of Regulation 882/2004 (regulation 16);
 - (l) provide that a person who enters premises under the powers referred to in sub-paragraph (j) or (k) above and discloses any information obtained on the premises with regard to any trade secret is guilty of an offence unless the disclosure is made in the performance of that person’s duty (regulation 17);
 - (m) specify which authorities are responsible for executing and enforcing regulations 6(3), 10(8), 12, 17, 19(8) and 20 (regulation 18);
 - (n) give powers of entry to authorised officers of the authorities referred to in sub paragraph (m) above (regulation 19);
 - (o) create the offence of obstructing an officer acting in the execution of regulations 15, 16 or 19 (regulation 20);
 - (p) provide penalties for offences under Part 2 of these Regulations (regulation 21);
 - (q) provide a time limit for bringing prosecutions for certain offences under that Part (regulation 22);

- (r) make provision for the execution and enforcement of Part 3 of these Regulations and Articles 15 to 24 of Regulation 882/2004, together defined in regulation 22 as “the Import Provisions”, relating to imports of feed and food of non animal origin (regulations 24 and 25);
- (s) make provision for the execution and enforcement of import controls to be deferred until a product reaches its destination in the United Kingdom (regulation 26);
- (t) in the light of Article 11 of Regulation 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 27);
- (u) provide for the checking of products that are introduced into Scotland (regulation 28);
- (v) 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 882/2004 and, second, is the competent authority for the purposes of Article 22 of that Regulation (regulation 29);
- (w) provide for the service of notices by an authorised officer of an enforcement authority when that officer wishes to take certain measures or exercise certain powers under Article 19 of Regulation 882/2004 (imports of feed and food from third countries) (regulation 30);
- (x) provide rights of appeal to the sheriff and then to the Court of Session in respect of the service of notices under regulation 30 (regulations 31 and 32);
- (y) enable the Scottish Ministers or the 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 so introduced is likely to constitute a serious risk to animal or public health (regulation 33);
- (z) provide for charges to be payable in relation to controls carried out on consignments (regulation 34);
- (aa) provide for the procurement and analysis of samples of food for the purposes of the execution and enforcement of the Import Provisions (regulations 35 and 36);
- (bb) provide powers of entry for authorised officers of food authorities in relation to the execution and enforcement of the Import Provisions (regulation 37);
- (cc) create the offence of obstructing an officer acting in the execution of the Import Provisions (regulation 38);
- (dd) create offences consisting of contravening or failing to comply with specified regulations and failing to comply with a notice served under the Import Provisions and provide penalties for offences under Part 3 (regulation 39);
- (ee) provide a time limit for bringing certain prosecutions for offences under Part 3 (regulation 40);
- (ff) amend the 2004 Regulations, as described above (regulation 41);
- (gg) 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 42);
- (hh) provide that in proceedings for an offence under these Regulations it is a defence for the accused to prove that all reasonable these Regulations 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 officer as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 44);
- (ii) provide that where an offence under them committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect

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on the part of, a partner, that partner as well as the partnership is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 45);

(jj) provide for the protection of officers acting in good faith (regulation 46);

(kk) provide for the service of documents (regulation 47); and

(ll) make a consequential amendment to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 ([S.S.I. 2005/608](#)) (regulation 48); and

(mm) provide for the revocation of specified instruments to the extent specified (regulation 49).

A full regulatory impact assessment, which includes a compliance cost assessment of the effect which 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