

2006 No. 16

AGRICULTURE

The Feeding Stuffs (Scotland) Amendment and the Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2006

<i>Made</i> - - - -	<i>17th January 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>19th January 2006</i>
<i>Coming into force</i> - -	<i>16th February 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 66(1), 74A and 84 of the Agriculture Act 1970(a) and by section 2(2) of the European Communities Act 1972(b) (in so far as these Regulations cannot be made under the powers of the Agriculture Act 1970 specified above) and of all other powers enabling them in that behalf, after consultation as required by section 84(1) of the Agriculture Act 1970 with such persons or organisations appearing to represent the interests concerned and as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c), hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Feeding Stuffs (Scotland) Amendment and the Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2006 and shall come into force on 16th February 2006.

(2) These Regulations extend to Scotland only.

Amendment of the Feeding Stuffs (Scotland) Regulations 2005

2.—(1) In Schedule 5 (prescribed limits for undesirable substances) to the Feeding Stuffs (Scotland) Regulations 2005(d), Chapter A is amended in accordance with paragraphs (2) to (4).

(a) 1970 c.40. Section 66(1) contains definitions of the expressions “the Ministers”, “prescribed” and “regulations” and was relevantly amended by S.I. 1982/980, 1995/1412, 1996/1342 and S.S.I. 2000/453. Section 74A was inserted by the European Communities Act 1972 (1972 c.68), Schedule 4, paragraph 6. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”).

(b) 1972 c.68; section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3). The function conferred upon a Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(c) 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).

(d) S.S.I. 2005/605.

(2) In relation to the entries for fluorine–

- (a) for “Mineral mixtures for cattle, sheep and goats” in column 2, substitute “Complementary feeding stuffs containing $\leq 4\%$ phosphorus” and opposite that entry, in column 3, for “2000”, substitute “500”; and
- (b) for “Other complementary feeding stuffs” in column 2, substitute “Complementary feeding stuffs containing $> 4\%$ phosphorus” and opposite that entry, in column 3, for “(fluorine content per percentage point phosphorus in the feeding stuff)”, substitute “per 1% phosphorus”.

(3) In relation to the entries for lead, for the exception “– grass meal, lucerne meal or clover meal” in column 2, substitute “– green fodder (including products such as hay, silage, fresh grass, etc.)”.

(4) In relation to the entries for mercury–

- (a) for the exception “– feed materials produced by the processing of fish or other marine animals” in column 2, substitute “– feeding stuffs produced by the processing of fish or other marine animals”; and
- (b) after the exception substituted by paragraph (a) above, insert “– calcium carbonate” and opposite that entry, in column 3, insert “0.3”.

Amendment of the Feeding Stuffs (Sampling and Analysis) Regulations 1999

3.—(1) The Feeding Stuffs (Sampling and Analysis) Regulations 1999(a) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 1 (title, commencement and interpretation), at the end of the definition of Directive 2002/70/EC, insert “as amended by Commission Directive 2005/7/EC(b)”.

(3) In regulation 6, for paragraph (4), substitute–

“(4) Where a sample of a feeding stuff is to be analysed pursuant to–

- (a) section 75(1) (sample analysed at the request of the purchaser) of the Act, or
- (b) section 78(1) (further analysis by Government Chemist) of the Act in so far as that subsection does not relate to official controls,

and neither paragraph (1) nor (3) applies, the analysis shall be carried out in the like manner as that prescribed by Article 11(1)(a) or as appropriate (b) of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure verification of compliance with feed and food law, animal health and animal welfare rules(c).”.

(4) In Schedule 2, Part I (general provisions), at the end, insert–

“4. Assessment of compliance in analysis for undesirable substances

- (a) Subject to paragraph (c), in the case of analysis to detect the presence of one or more of the undesirable substances listed in Schedule 5 to the Feeding Stuffs (Scotland) Regulations 2005(d) (“the Schedule”), a feeding stuff which has been sampled and analysed in accordance with these Regulations does not comply with the relevant prescribed limit or limits set out in the Schedule if, after taking into account expanded measurement uncertainty and correction for recovery in accordance with paragraph (b), the analytical result indicates the presence of an undesirable substance in excess of the maximum content specified for that substance in column 3 of the Schedule.

(a) S.I. 1999/1663, as amended by S.I. 1999/1871, S.S.I. 2000/453, 2001/104, 2002/285 and 2003/277.

(b) O.J. No. L 27, 29.1.05, p.41.

(c) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

(d) S.S.I. 2005/605.

- (b) In assessing compliance for the purposes of paragraph (a), the analysed concentration must be corrected for recovery and the expanded measurement uncertainty subtracted from the analytical result.
- (c) The procedure set out in paragraphs (a) and (b) is only applicable in cases where the method of analysis makes it possible to estimate measurement uncertainty and correction for recovery. It is not possible, for example, in microscopic analysis.”.

(5) In Annex I to Part II (community methods of analysis) of Schedule 2 in relation to the entry regarding dioxins and dioxin-like PCBs—

- (a) in column 2, after “Annex II to Directive 2002/70/EC”, insert “(Point 2 of Annex I was replaced and point 2 of Annex II amended by Directive 2005/7/EC)”; and
- (b) in column 3, opposite the words inserted by sub-paragraph (a), insert “O.J. No. L 27, 29.1.05, p.41.”.

(6) In Schedule 3, Part II (notes for completion of certificate), in paragraph (8)—

- (a) omit “and”, where it appears at the end of sub-paragraph (b); and
- (b) insert, at the end—

“; and

(d) in cases where Schedule 2, Part I, paragraph 4 is applicable, the result—

- (i) corrected or uncorrected for recovery, the manner of reporting and the level of recovery being indicated;
- (ii) expressed as “ $x \pm U$ ”, where x is the analytical result and U is the expanded measurement uncertainty, using a coverage factor of 2 to give a level of confidence of approximately 95%”.

LEWIS MACDONALD

Authorised to sign on behalf of the Scottish Ministers

St Andrew’s House,
Edinburgh
17th January 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Scotland only, amend the Feeding Stuffs (Scotland) Regulations 2005 (“the 2005 Regulations”) and the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (“the 1999 Regulations”).

2. The Regulations implement the following Community measures–

- (a) Commission Directive 2005/6/EC (O.J. No. L 24, 27.1.2005, p.33) amending Directive 71/250/EEC as regards reporting and interpretation of analytical results required under Directive 2002/32/EC;
- (b) Commission Directive 2005/7/EC (O.J. No. L 27, 29.1.2005, p.41) amending Directive 2002/70/EC establishing requirements for the determination of levels of dioxins and dioxin-like PCBs in feedingstuffs; and
- (c) Commission Directive 2005/8/EC (O.J. No. L 27, 29.1.2005, p.44) amending Annex 1 to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed.

3. The Regulations also make consequential amendments to the 1999 Regulations to reflect the fact that as from 1.1.2006 the general obligation on Member States, formerly contained in Council Directive 95/53/EC, to ensure that sampling and analysis carried out in pursuit of official controls follows prescribed Community methods, is now given effect by Article 11 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 191, 28.5.2004, p.1).

4. Regulation 2 of these Regulations implements Commission Directive 2005/8/EC by amending Schedule 5 to the 2005 Regulations in respect of certain entries for lead, fluorine and mercury.

5. In regulation 3 of these Regulations–

- (a) paragraphs (2) and (5) implement Commission Directive 2005/7/EC in transposing by reference the amendments made by that Directive to Commission Directive 2002/70/EC;
- (b) paragraph (3) makes the consequential amendments referred to in paragraph 3 above;
- (c) paragraphs (4) and (6) implement Commission Directive 2005/6/EC by introducing new requirements regarding expanded measurement uncertainty and correction for recovery when analysing and reporting on the analysis of animal feed to determine the levels of undesirable substances.

6. 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.

£3.00

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