
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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