
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 373

The Animal Feed (Scotland) Regulations 2010

PART 1

Introductory and general

Citation, extent and commencement

1. These Regulations may be cited as the Animal Feed (Scotland) Regulations 2010, extend to Scotland only and come into force on 23rd November 2010.

Interpretation and scope

2.—(1) In these Regulations—

“the Act” means the Agriculture Act 1970;

“Directive 82/475” means Commission Directive [82/475/EEC](#) laying down the categories of feed materials which may be used for the purposes of labelling compound feedingstuffs for pet animals(1);

“Directive 2002/32” means Directive [2002/32/EC](#) of the European Parliament and of the Council on undesirable substances in animal feed(2);

“Regulation 1831/2003” means Regulation (EC) No. [1831/2003](#) of the European Parliament and of the Council on additives for use in animal nutrition(3);

“Directive 2008/38” means Commission Directive [2008/38/EC](#) establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes(4);

“Regulation 767/2009” means Regulation (EC) No. [767/2009](#) of the European Parliament and of the Council on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No. [1831/2003](#) and repealing Council Directive [79/373/EEC](#), Commission Directive [80/511/EEC](#), Council Directives [82/471/EEC](#), [83/228/EEC](#), [93/74/EEC](#), [93/113/EC](#) and [96/25/EC](#) and Commission Decision [2004/217/EC](#)(5);

“Regulation 242/2010” means Commission Regulation (EU) No. 242/2010 creating the Catalogue of feed materials(6); and

“feed authority” means an authority identified in section 67(2) (enforcement authorities) of the Act as having the duty to enforce Part IV of the Act within its area.

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- (1) O.J. No. L 213, 21.7.1982, p.27. This Directive was last amended by Commission Directive [98/67/EC](#) (O.J. No. L 261, 24.9.1998, p.10).
- (2) O.J. No. L 140, 30.5.2002, p.10. This Directive was last amended by Commission Directive 2010/6/EU (O.J. No. L 37, 10.2.2010, p.29).
- (3) O.J. No. L 268, 18.10.2003, p.29. This Regulation was last amended by Regulation (EC) No. [767/2009](#).
- (4) O.J. No. L 62, 6.3.2008, p.9. This Directive was last amended by Commission Directive 2008/82 (O.J. No. L 202, 31.7.2008, p.48).
- (5) O.J. No. L 229, 1.9.2009, p.1. This Regulation was last amended by [Commission Regulation \(EC\) No. 568/2010](#) (O.J. No. L 163, 30.6.2010, p.30).
- (6) OJ No. L 77, 24.3.2010, p.17.

(2) Any expression used in these Regulations and in Regulation 1831/2003 or Regulation 767/2009 has the meaning in these Regulations that it bears in the Regulation concerned.

(3) Any reference to an Annex to Directive 82/475, Directive 2002/32, Directive 2008/38, Regulation 767/2009 or Regulation 242/2010 is a reference to that Annex as it may be amended from time to time.

(4) These Regulations do not apply to any feed additive in category (d) or (e) of Article 6(1) of Regulation 1831/2003, with the exception of those in the functional groups listed in paragraph 4(a), (b) and (c) of Annex 1 to that Regulation(7).

PART 2

Marketing and use of feed

Interpretation of this Part and Schedule 1

3. In this Part and in Schedule 1 any reference to a numbered Article or Annex is a reference to the Article or Annex so numbered in Regulation 767/2009.

Enforcement of requirements of Regulation 767/2009

4.—(1) Subject to the transitional provisions contained in Article 32, any person who contravenes or fails to comply with any provision of Regulation 767/2009 specified in Schedule 1 is guilty of an offence.

(2) Where, pursuant to Article 17(2)(c) (specific mandatory labelling requirements for compound feed), the name of a specific feed material may be replaced by the name of the category to which the feed material belongs, only the categories listed in the Annex to Directive 82/475 may be indicated.

Competent authorities for the purposes of Regulation 767/2009

5.—(1) Each feed authority in its area is the competent authority for the purposes of—

- (a) Article 5(3) (responsibilities and obligations of feed businesses), 13(1)(a) (claims) and 17(3) (provision of information in the event of urgency) and Annex VII, Chapter 1, paragraph 8 (verification of labelling information accuracy); and
- (b) Article 13(1)(b) (claims) as the competent authority that may request scientific substantiation of a claim and to whose attention purchasers have the right to bring doubts regarding the truthfulness of a claim.

(2) The Food Standards Agency is the competent authority for the purposes of—

- (a) Article 26(1)(b) (EU catalogue and codes); and
- (b) Article 13(1)(b) (claims) as the competent authority that may submit to the Commission doubts concerning the scientific substantiation of a claim.

(3) The Food Standards Agency and each feed authority in its area is the competent authority for the purposes of Article 5(2) (verification of labelling information accuracy).

(7) Categories (d) and (e) of Article 6(1) comprise respectively zootechnical additives, and coccidiostats and histomonostats. Functional groups listed in paragraphs 4(a), (b) and (c) of Annex I comprise digestibility enhancers, gut flora stabilisers and substances incorporated with the intention of favourably affecting the environment.

PART 3

Feed additives

Interpretation of this Part

6. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 1831/2003.

Enforcement of requirements of Regulation 1831/2003

7.—(1) Any person who contravenes or fails to comply with any provision specified in paragraph (2) is guilty of an offence.

(2) The provisions are—

- (a) Article 3, paragraphs (1) to (4), (placing on the market, processing and use of feed additives), as read with Article 10 (status of existing products);
- (b) Article 12 (post-authorisation monitoring); and
- (c) Article 16, paragraphs (1) to (5) (labelling and packaging of additives and premixtures).

PART 4

Undesirable substances in feed

Interpretation of this Part

8. In this Part—

- (a) any reference to a numbered Annex is a reference to the Annex so numbered in Directive 2002/32; and
- (b) “undesirable substance” means any substance or product, not being a pathogenic agent, which is present in or on a feed and—
 - (i) constitutes a potential danger to human or animal health or to the environment; or
 - (ii) could adversely affect livestock production.

Control of animal feeds containing undesirable substances

9.—(1) Any person who—

- (a) places on the market any feed that is specified in column 2 of Annex I; or
- (b) uses any such feed,

is guilty of an offence if it contains any undesirable substance listed in column 1 of that Annex in excess of the relevant maximum content specified in column 3.

(2) Any person who places on the market or uses any complementary feed is guilty of an offence if—

- (a) having regard to the quantity of it recommended for use in a daily ration, it contains any undesirable substance listed in column 1 of Annex I in excess of the maximum content specified for it in column 3 in relation to complete feeds; and
- (b) there is no provision relating to any complementary feed in the corresponding entry in column 2 of that Annex.

(3) Any person who for the purpose of dilution mixes any feed with a feed that is specified in column 2 of Annex I and which contains any undesirable substance listed in column 1 of that Annex in excess of the maximum content specified for it in column 3 is guilty of an offence.

(4) Any person who places on the market or uses any feed which is not sound and genuine and of merchantable quality is guilty of an offence.

(5) For the purposes of paragraph (4) a feed listed in column 2 of Annex I is not sound, genuine and of merchantable quality if it contains any undesirable substance specified in column 1 of that Annex in excess of the maximum content specified in relation to it in column 3.

(6) Any person who has, for the purpose of a trade or business, possession or control of any of the feeds specified in paragraph (7) shall, if required by an inspector, procure and produce to the inspector an analysis in order to demonstrate that the content of inorganic arsenic in the feed specified in that paragraph is less than 2 parts per million.

(7) The feeds are—

- (a) palm kernel expeller;
- (b) feeds obtained from the processing of fish and other marine animals;
- (c) seaweed meal and feed materials derived from seaweed; and
- (d) complete feeds for fish or for fur-producing animals.

(8) Any person who, without reasonable excuse, fails to comply with a requirement made under paragraph (6) is guilty of an offence.

PART 5

Feeds for particular nutritional purposes

Interpretation of this Part

10. In this Part, “the Annex” means Part B of Annex I to Directive 2008/38, as read with paragraphs 1 and 7 of Part A of that Annex.

Control of feed intended for particular nutritional purposes

11.—(1) Any person who places on the market a feed intended for a particular nutritional purpose is guilty of an offence if the relevant requirements of paragraphs (2) to (9) are not met.

(2) In relation to any particular nutritional purpose specified in column 1 of the Annex—

- (a) the feed must be intended for the animals specified opposite that particular nutritional purpose in column 3 of the Annex; and
- (b) it must be recommended that the feed be used for a period of time falling within the range specified opposite that particular nutritional purpose in column 5 of the Annex.

(3) Where a group of additives is specified in column 2 or 4 of the Annex, the additive used must be authorised as corresponding to the specified essential characteristic.

(4) Where the source of ingredients or analytical constituents is required in column 4 of the Annex, the manufacturer must make a precise declaration (for example the specific name of the ingredient, the animal species or the part of the animal) allowing the evaluation of conformity of the feed with the corresponding essential nutritional characteristics.

(5) Where the declaration of a substance that is also authorised as an additive is required in column 4 of the Annex and is accompanied by the expression “total”, the declared content must

refer to the quantity naturally present where none is added or, as appropriate, the total quantity of the substance naturally present and the amount added as an additive.

(6) The declarations specified in column 4 of the Annex with the reference “if added” must be provided where the ingredient or the additive has been incorporated or increased specifically to enable the achievement of the particular nutritional purpose.

(7) The declarations to be given in accordance with column 4 of the Annex concerning analytical constituents and additives must be quantitative.

(8) Where a feed is intended to meet more than one particular nutritional purpose, it must comply with the corresponding entries in the Annex.

(9) In the case of a complementary feed intended for a particular nutritional purpose, guidance on the balance of the daily ration must be provided in the instructions for use on the label.

PART 6

Administration and enforcement

Penalties for offences under these Regulations

12.—(1) Any person found guilty of an offence under regulation 4(1), 7(1), 9(1) to (4) or 11(1) is liable—

- (a) on summary conviction, to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum, or both; or
- (b) on conviction on indictment, to a term of imprisonment not exceeding three months or to a fine, or both.

(2) Any person found guilty of an offence under regulation 9(8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Duties to enforce

13. It is the duty of each feed authority within its area to execute and enforce the provisions of these Regulations.

PART 7

Amendments and modifications to the Agriculture Act 1970

Amendments and modifications to the Agriculture Act 1970

14.—(1) The Act is amended or modified, as the case may be, in accordance with paragraphs (2) to (9).

(2) In section 66 (interpretation of Part IV)—

- (a) in subsection (1)(8), insert at the appropriate place the following definitions:—

““Regulation (EC) No. 1831/2003” means Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition;”;

(8) Section 66(1) was relevantly amended by S.I. 2004/3254 and S.S.I. 2010/354.

““Regulation (EC) No. 767/2009” means Regulation (EC) No. 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No. 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC;”;

- (b) for subsection (2) substitute—
- “(2) For the purposes of this Part of this Act material shall be treated as sold for use as a fertiliser or feeding stuff whether it is sold to be so used by itself or as an ingredient in something which is to be so used.”.
- (3) In section 68 (duty of seller to give statutory statement)—
- (a) after subsection (5) insert the following subsection:—
- “(5A) Nothing in subsections (1) to (5) applies to anyone to whom the requirements of Article 16 of Regulation (EC) No. 1831/2003 (labelling and packaging of feed additives and premixtures) or of Chapter 4 of Regulation (EC) No. 767/2009 (labelling, presentation and packaging) apply.”; and
- (b) after subsection (6) insert the following subsection:—
- “(7) Failure to comply with the labelling requirements of Article 16 of Regulation (EC) No. 1831/2003 or of Chapter 4 of Regulation (EC) No. 767/2009 shall not invalidate a contract of sale, but such labelling shall, regardless of any contract or notice to the contrary, have effect as a warranty by the person who gives it that the particulars contained in it are correct.”.
- (4) In section 69(1) (marking of material prepared for sale) omit “or feeding stuff”.
- (5) In section 70 (use of names or expressions with prescribed meanings)—
- (a) subsection (1)(a) in so far as it applies in relation to feeding stuffs shall apply as if “under Regulation (EC) No. 767/2009” were substituted for “by regulations made for the purposes of this section”; and
- (b) after subsection (5) insert the following subsection:—
- “(6) Nothing in subsections (2) to (4) of this section shall apply to anyone to whom the labelling requirements of Regulation (EC) No. 767/2009 apply.”.
- (6) In section 71 (particulars to be given of certain attributes if claimed to be present)—
- (a) subsection (4) in so far as it applies in relation to feeding stuffs shall apply as if—
- (i) “the requirements of Article 13 (claims) of Regulation (EC) No. 767/2009” were substituted for “subsection (1) of this section”; and
- (ii) “that Article” were substituted for “that subsection”; and
- (b) after subsection (5) insert the following subsection:—
- “(6) Nothing in subsections (1) to (3) of this section shall apply to anyone to whom Article 13 (claims) of Regulation (EC) No. 767/2009 applies.”.
- (7) Omit sections 73 (deleterious ingredients in feeding stuff) and 73A.
- (8) In section 74 (limits of variation) after subsection (2) insert the following subsection:—
- “(3) Nothing in subsection (2) shall apply to anyone to whom Article 11.5 and Annex IV (permitted tolerances) of Regulation (EC) No. 767/2009 applies.”.
- (9) Section 74A(3) does not apply to regulations concerning feed.

PART 8

Amendments to Regulations

Amendment of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

15.—(1) The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005⁽⁹⁾ are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “agricultural analyst” insert the definition—

““the Animal Feed Regulations” means the Animal Feed (Scotland) Regulations 2010;” and

(b) after the definition of “Regulation 183/2005” insert the definition—

““Regulation 767/2009” means Regulation (EC) No. 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No. 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC;”.

(3) In regulation 15(2)(b) (offences, penalties and enforcement) omit “food-producing”.

(4) For regulation 24(13) (powers of entry for authorised officers) substitute—

“(13) In this regulation—

(a) “compound feeding stuff” bears the same meaning as “compound feed” as defined in Article 3(2)(h) of Regulation 767/2009;

(b) “feeding stuff which is intended for a particular nutritional purpose” bears the same meaning as “feed intended for particular nutritional purposes” as defined in Article 3(2)(o) of that Regulation; and

(c) “prescribed manner” means prescribed by any provision referred to in regulation 29.”.

(5) In each of regulations 34(1) and (2) (defences of fault of another person, mistake etc and export), 35(1) and (3) (defences by corporate bodies or Scottish partnerships) and 36(1) (time limit for prosecutions) after “these Regulations” insert “or the Animal Feed Regulations”.

(6) In Schedule 1 (specified feed law)—

(a) omit “The Feeding Stuffs (Scotland) Regulations 2000”;

(b) for “The Feeding Stuffs (Scotland) Regulations 2005 (as modified by the Feeding Stuffs (Application to Zootechnical Additives etc.) (Scotland) Regulations 2005)” substitute “The Animal Feed (Scotland) Regulations 2010”; and

(c) insert at the end—

“Regulation 767/2009”.

Amendment of the Official Feed and Food Controls (Scotland) Regulations 2009

16.—(1) The Official Feed and Food Controls (Scotland) Regulations 2009⁽¹⁰⁾ are amended in accordance with paragraph (2).

⁽⁹⁾ S.S.I. 2005/608, as amended by S.S.I. 2005/616, 2006/578, 2008/201, 2009/263 and 446, and 2010/354.

⁽¹⁰⁾ S.S.I. 2009/446, as amended by S.S.I. 2010/5, 177 and 354.

(2) In paragraph (f) of Schedule 2 (definition of relevant feed law), for “the Feeding Stuffs (Scotland) Regulations 2005” substitute “the Animal Feed (Scotland) Regulations 2010”.

Revocations

17. The enactments listed in Schedule 2 are revoked.

St Andrew’s House,
Edinburgh
27th October 2010

RICHARD LOCHHEAD
A member of the Scottish Executive