

## **POLICY NOTE**

### **THE ANIMAL FEED (BASIC SAFETY STANDARDS) (SCOTLAND) REGULATIONS 2018**

**SSI 2018/15**

#### **1. Description**

**1.1** The above Instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 74A(1) and 84 of Agriculture Act 1970 (a) section 2(2) of, and paragraph 1(A) of Schedule 2 to the European Communities Act 1972 (b) and all other powers enabling them to do so. The Regulations (hereafter referred to as the Instrument) are subject to negative resolution procedure.

#### **2. Policy Objective**

**2.1** The main purpose of the Instrument is to transpose article 21 of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing previous Euratom Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom. The Council Directive 2013/59/Euratom updates and incorporates provisions from the four above mentioned Directives. Council Directive 2013/59/Euratom provides minimum rules and allows Member States to provide more stringent measures in the subject matter covered by this Directive, without prejudice to free movement of goods and services in the internal market.

#### **3. Matters of special interest to the delegated powers and law reform Committee**

**3.1** Member States are required to bring into force laws, regulations and administrative provisions necessary to comply with the Council Directive 2013/59/Euratom published on the 5 December 2013 (also referred to as the Basic Safety Standards Directive) by the 6 February 2018. The updated Council Directive broadens the application to a range of radiation sources and categorises of exposure: occupational, medical, public and environmental.

**3.2** The Committee may wish to be aware that there are no enforcement issues associated with the execution of these provisions in Scotland. The impact to feed businesses in Scotland is minimal as there should be no deliberate addition of radioactive materials to animal feedingstuffs at any stage of the production process.

We are required to meet the EU obligations and allow for the 3 months standstill period to end and in doing so it meant that we are not able to fully comply with Section 28 (2) of the Interpretation and Legislative (Scotland) Act 2010 (the 28 day rule).

#### **4. Policy Background**

**4.1** For the first time by means of Directives in February 1959, the Community laid down basic standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. These Directives have been revised

several times, most recently by the Council Directive 96/29/Euratom which establishes the basic safety standards and these provisions which apply to normal and emergency situations, have been supplemented by more specific legislation. Council Directive 97/43/Euratom, Council Directive 89/618/Euratom, Council Directive 90/641/Euratom and Council Directive 2003/122/Euratom cover different specific aspects complementary to Directive 96/29/Euratom.

**4.2** The Council Directive 2013/59/Euratom also known as ‘the Basic Safety Standards Directive (2013 BSSD)’ consolidates and updates existing Euratom radiation safety legislation. Council Directive 2013/59/Euratom takes account of developments in the recommendations and standards issued by the International Commission on Radiological Protection and the International Atomic Energy Agency and is available on the Europa website at; <https://ec.europa.eu/energy/sites/ener/files/documents/CELEX-32013L0059-EN-TXT.pdf>.

**4.3** Its scope includes medical, occupational and public radiation exposures and it provides for three different types of exposure situations:

- Existing public exposure situations; including the management of legacy radioactive contaminated land and exposure to naturally occurring radon gas in homes;
- Planned exposure situations; in relation to authorised activities involving radioactive substances, that could arise from, for example power generation or healthcare; and
- Emergency exposure situations; that could arise from an accident (for example).

**4.4** This Instrument will transpose the requirement of the Council Directive 2013/59/Euratom into Scots law and will provide enforcement powers in so far as it relates to animal feeding stuffs and include a reference to the existing enforcement mechanisms and provisions. Whilst it is considered that existing provisions through for example the Food and Environment Protection Act 1985, The Food Safety Act 1990 and a range of EU food and feed safety regulations (for which enforcement provisions already exist in Scotland) provide robust public health protection measures, this Regulation makes certain requirements and obligations explicit in our domestic law. These are outlined in more detail below:

## **5. Legislative Context**

**5.1** These Regulations transpose in Scotland, Article 21 of Council Directive 2013/59/Euratom in so far as it relates to animal feedingstuffs. In addition:

- Regulation 3 (prohibition of practices) requires that that a person must not intentionally add a radioactive substance in the production of feeding stuffs;
- Regulation 4 requires that a person must not import or export any feeding stuff to which a radioactive substance has been deliberately added during its production; Regulation 5 (offences and penalties) provides for an offence to fail to comply with the regulation 3.
- Regulation 6 (defences of fault of another person, etc.) which sets out the defences to the offences set out in regulation 5 and
- Regulation 7 (enforcement) sets out the duty of each feed authority to enforce these Regulations in its area.

**5.2** Most of the provisions in the Instrument are made under sections 74A and 84 of the Agricultural Act 1970. Section 74A gives the Scottish Ministers power to make regulations about the composition or content of animal feed, the importation and exportation of animal feed and offence provisions for any contravention or failure to comply with any prohibition or restriction imposed by such regulations. However, section 74A(3) does not make specific provision for an offence for a contravention of a regulation made in implementation on any EU Instrument. Accordingly section 2(2) of the European Communities Act 1972 has been cited in respect of Regulation 5 (see above).

**5.3** Consequential amendments are also made to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (as amended) and the Official Feed and Food Controls (Scotland) Regulations 2009 (as amended).

## **6. Consultation**

**6.1** Food Standards Scotland carried out a shortened consultation from 13 October to 10 November 2017 on the draft Instrument. A wide range of Scottish stakeholders were included in the consultation including: local authorities, Scottish Government, research and science organisations individual feed businesses and trade bodies. Stakeholders were asked to consider the proposal of prohibiting the intentional addition of radioactive substances to animal feed during production, the draft Instrument, whether there would be any costs to the feed industry or enforcement authorities and whether a full impact assessment would be required.

**6.2** FSS received two responses - one from an enforcement authority and one from the UK Government Chemist. The enforcement authority response referred to a matter which was not within scope of this Instrument and has been referred to the relevant authorities for their consideration. The UK Government Chemist raised specific and technical concerns on possibility of naturally occurring potassium and polonium radioactivity in feed and also the general use of security devices applied to feed. These specific points will be more appropriately addressed by way of guidance in the future. A similar response from the UK Government Chemist was received by the FSA with respect to England, Wales and NI. Apart from these responses no further comments were received. FSS consider the impact to feed businesses in Scotland to be minimal and that these Regulations would not have a negative impact.

**6.3** In October 2017, Scottish Ministers were made aware of the consultation and informed that no Partial Business and Regulatory Impact Assessment would be prepared.

## **7 Other Administrations**

**7.1** The Instrument applies to Scotland only however similar legislation will be introduced in the other UK countries.

## **8 Impact Assessment**

**8.1** As outlined above, prior to the consultation Scottish Ministers were made aware that there was no Business Regulatory Impact Assessment prepared with this Instrument as the impact and financial effects are expected to be minimal. There are no additional costs

envisaged to local authorities enforcing feed law, as they will continue to inspect feed businesses and this will not introduce no new financial burdens.

## **9 Regulating small businesses**

**9.1** The Instrument will apply to all feed establishments involved in the production of feed and also those that import and export of feed.

## **10 Monitoring**

10.1 The effectiveness of this Instrument will be monitored by Food Standards Scotland through on-going liaison with industry and enforcement authorities.

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