

2005 No. 3362 (S.11)

AGRICULTURE, SCOTLAND

**The Feeding Stuff (Application to Zootechnical Additives etc.)
(Scotland) Regulations 2005**

<i>Made</i> - - - -	<i>7th December 2005</i>
<i>Laid before Parliament</i>	<i>12th December 2005</i>
<i>Coming into force</i> - -	<i>3rd January 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 66(1), 68(1) and (1A), 69(1) and (3), 70(1), 71(1), 74(1), 74A, 77(4), 78(6), 79(1), (2) and (9), and 84 of the Agriculture Act 1970(a) (as read with Articles 2 and 6 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002)(b).

In so far as these Regulations cannot be made under the powers in the Agriculture Act 1970 specified above, the Secretary of State makes these Regulations in exercise of her powers as a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals(d), the common agricultural policy of the European Community(e), measures in the veterinary and phytosanitary fields for the protection of public health(f) and the control and regulation of genetically modified organisms(g).

There has been consultation in accordance with the requirements of section 84(1) of the Agriculture Act 1970 or as appropriate of 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(h).

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- (a) 1970 c.40. Section 66(1) contains definitions of the expressions “the Ministers”, “prescribed” and “regulations”. The definition of “the Ministers” was amended by the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), Schedule 5, paragraph 1. Functions of “the Ministers”, so far as exercisable in relation to Scotland and so far as within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c.46) (“the 1998 Act”). By virtue of S.I. 1999/3141, functions of the Secretary of State, the Secretary of State for Scotland and the Secretary of State for Wales, exercisable in relation to Scotland and in so far as not transferred to the Scottish Ministers by the 1998 Act, were transferred to the Minister of Agriculture Fisheries and Food. Section 74A was inserted by the European Communities Act 1972 (1972 c.68), Schedule 4, paragraph 6.
- (b) S.I. 2002/794. Article 2 of this Order had the effect of transferring to the Secretary of State the functions of the Minister of Agriculture Fisheries and Food under Part IV of the Agriculture Act 1970 referred to, including those exercisable in relation to Scotland in so far as not transferred by section 53 of the 1998 Act.
- (c) 1972 c. 68. The function of the Minister of the Crown under section 2(2), in so far as exercisable in relation to Scotland and so far as within devolved competence, was transferred to the Scottish Ministers by section 53 of the 1998 Act. In so far as not so transferred and in so far as exercisable in relation to Scotland, the function is retained by the Secretary of State.
- (d) S.I. 2003/2901
- (e) S.I. 1972/1811, amended by S.I. 1996/266, 2002/794 and 2812.
- (f) S.I. 1999/2027.
- (g) S.I. 1991/755, amended by S.I. 1999/2788.
- (h) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

Title, application and commencement

1. These Regulations—

- (a) may be cited as the Feeding Stuffs (Application to Zootechnical Additives etc.) (Scotland) Regulations 2005;
- (b) apply in relation to Scotland only; and
- (c) come into force on 3rd January 2006.

Interpretation

2. In these Regulations—

“the Act” means the Agriculture Act 1970;

“additive” means a feed additive to which the Additives Regulation applies that is not an excluded additive;

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

“excluded additive” means any of the following—

- (a) coccidiostats;
- (b) histomonostats; or
- (c) any zootechnical additive falling within category (d) of Article 6(1) of the Additives Regulation;

“the Feed Hygiene Regulations” means the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(b);

“the Feeding Stuffs Regulations” means the Feeding Stuffs (Scotland) Regulations 2005(c);

“quasi-medicinal additive” means an excluded additive which is not a non-medicinal zootechnical additive;

“non-medicinal zootechnical additive” means a product falling within category (d) of Article 6(1) of the Additives Regulation that is either—

- (d) a digestibility enhancer;
- (e) a gut flora stabiliser; or
- (f) a substance incorporated with the intention of favourably affecting the environment;

“non-medicinal zootechnical premixture” is a premixture within the meaning given by Article 2(2)(e) of the Additives Regulation, excluding—

- (g) any premixture as defined below, and
- (h) any mixture consisting solely of a combination of quasi-medicinal additives;

“the OFFC Regulations” means the Official Feed and Food Controls (Scotland) Regulations 2005(d); and

“premixture” has the meaning given by Article 2(2)(e) of the Additives Regulation, excluding any mixture consisting solely of a combination of excluded additives.

Application of the Genetically Modified Animal Feed (Scotland) Regulations 2004 to non-medicinal zootechnical additives

3. The Genetically Modified Animal Feed (Scotland) Regulations 2004(e) shall apply to non-medicinal zootechnical additives as they apply to additives.

(a) O.J. No. L 268, 18.10.2003, p.29, as last amended by Regulation (EC) No. 378/2005 of the Commission (O.J. No. L 59, 5/3/2005, p. 8).

(b) S.S.I. 2005/[].

(c) S.S.I. 2005/[].

(d) S.S.I. 2005/[].

(e) S.S.I. 2004/433, amended by S.S.I. 2005/246.

Application of the Feeding Stuffs (Scotland) Regulations 2005 to non-medicinal zootechnical additives

4. The Feeding Stuffs Regulations shall apply to—
- (a) non-medicinal zootechnical additives as they apply to additives; and
 - (b) non-medicinal zootechnical premixtures as they apply to premixtures.

Application of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 to non-medicinal zootechnical additives

- 5.—(1) The Feed Hygiene Regulations shall apply to—
- (a) non-medicinal zootechnical additives as they apply to additives; and
 - (b) non-medicinal zootechnical premixtures as they apply to premixtures.

(2) For the purposes of this regulation, the Feed Hygiene Regulations shall be read as if the expression “specified feed law” as defined in those Regulations means—

- (a) the Act and the Regulations of the European Parliament and of the Council listed in Schedule 1 to the Feed Hygiene Regulations in so far as they apply to non-medicinal zootechnical additives and non-medicinal zootechnical premixtures; and
- (b) the Feeding Stuffs Regulations, the Feed Hygiene Regulations and the OFFC Regulations as they are modified by these Regulations.

Secondary analysis by the Government Chemist

6.—(1) Where a part of a sample sent by an authorised officer for analysis under regulation 30(1)(b) of the Feed Hygiene Regulations, or under that regulation as applied to non-medicinal zootechnical additives and non-medicinal zootechnical premixtures by regulation 5 above, has been analysed and—

- (a) proceedings are intended to be or have been commenced against a person for an offence under specified feed law, and
- (b) the prosecution intends to adduce evidence of the result of the analysis of that part of the sample;

paragraphs (2) to (11) shall apply.

- (2) The authorised officer—
- (a) may of the officer’s own volition;
 - (b) shall if requested by the prosecutor; or
 - (c) shall (subject to paragraph (5)) if requested by the accused,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part of the sample received under paragraph (2) in the manner prescribed by any provision referred to in regulation 29 of the Feed Hygiene Regulations and shall send to the authorised officer a certificate of the analysis which shall be—

- (a) completed in the form set out in Part I of Schedule 3 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999(a) and in accordance with the notes set out in Part II of Schedule 3 to those Regulations; and
- (b) signed by the Government Chemist or by a person authorised by the Government Chemist to sign such a certificate.

(4) The authorised officer shall immediately on receipt supply the prosecutor and the accused with a copy of the Government Chemist’s certificate of analysis.

(a) S.I. 1999/1663, as amended by S.I. 1999/1871 and S.S.I. 2000/453, 2001/104, 2002/285, 2003/277 and 2004/414.

(5) Where a request is made under paragraph (2)(c) the authorised officer may give notice in writing to the accused requesting payment of a fee specified in the notice in respect of the functions mentioned in paragraph (3), and if the specified fee does not exceed either—

- (a) the cost of performing those functions; or
- (b) the appropriate fee for the performance of any similar function under section 78 of the Act,

the authorised officer may, in the absence of agreement by the accused to pay the fee, refuse to comply with the request made under paragraph (2)(c).

(6) In this regulation—

- (a) “accused” includes a person against whom proceedings are intended to be commenced; and
- (b) “the appropriate fee” means such fee as may be fixed in accordance with the provisions of section 78(10) of the Act.

(7) Any analysis required to be made under paragraph (3) may be performed by any person acting under the direction of the Government Chemist.

(8) A certificate of analysis by the Government Chemist shall in any legal proceedings be received as evidence of the facts stated in the certificate if the party against whom it is to be given in evidence—

- (a) has been served with a copy of it not less than 21 days before the hearing; and
- (b) has not, before the seventh day preceding the hearing, served on the other party a notice requiring the attendance of the Government Chemist.

(9) Any document purporting to be a certificate of analysis for the purposes of paragraph (8) shall be deemed to be such a certificate unless the contrary is proved.

(10) For the purposes of this regulation, “specified feed law” shall mean—

- (a) the Act and the Regulations of the European Parliament and of the Council listed in Schedule 1 to the Feed Hygiene Regulations except in so far as they may apply to—
 - (i) quasi-medicinal additives; or
 - (ii) any mixture consisting solely of a combination of quasi-medicinal additives; and
- (b) the Feeding Stuffs Regulations, the Feed Hygiene Regulations and the OFFC Regulations as they are modified by these Regulations.

(11) Subject to paragraph (10), any term used in this regulation and in the Feed Hygiene Regulations has the meaning which that term bears in those Regulations.

Application of the Official Feed and Food Controls (Scotland) Regulation 2005 to non-medicinal zootechnical additives

7.—(1) The OFFC Regulations shall apply to—

- (a) the Act and the Feeding Stuffs (Sampling and Analysis) Regulations 1999 in so far as the Act and those Regulations apply to non-medicinal zootechnical additives and non-medicinal zootechnical premixtures, and
- (b) the Genetically Modified Animal Feed (Scotland) Regulations 2004, the Feeding Stuffs Regulations and the Feed Hygiene Regulations as those regulations are modified by these Regulations,

in the same way as the OFFC Regulations apply to relevant feed law as that expression is defined in those Regulations.

(2) Part 3 of the OFFC Regulations (official controls on feed and food of non-animal origin from third countries) shall apply to—

- (a) non-medicinal zootechnical additives as it applies to additives; and
- (b) non-medicinal zootechnical premixtures as it applies to premixtures.

Revocations

8. The Regulations listed in the Schedule to these Regulations are revoked in so far as they apply in relation to Scotland and to non-medicinal zootechnical additives or non-medicinal zootechnical premixtures.

Signed by authority of the Secretary of State for Health

7th December 2005

Caroline Flint
Parliamentary Under Secretary of State,
Department of Health

SCHEDULE

Regulation 8

REVOCATIONS

The Feeding Stuffs (Establishments and Intermediaries) Regulations 1999**(a)**

The Feeding Stuffs (Enforcement) Regulations 1999**(b)**

The Feeding Stuffs (Safety Requirements for Feed for Food-Producing Animals) Regulations 2004**(c)**

(a) S.I. 1999/1872 as amended by S.S.I. 2000/62 and 453, 2003/101 and 277 and 2005/116.

(b) S.I. 1999/2325 as amended by S.S.I. 2000/62 and 453, 2001/104 and 334, 2002/285, S.I. 2003/1026 and S.S.I. 2003/277.

(c) S.I. 2004/3254.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Scotland only, make provision in relation to those zootechnical feed additives that fall within the categories of digestibility enhancers, gut flora stabilisers or substances which are intended to favourably affect the environment (“non-medicinal zootechnical additives”).

2. These Regulations also make provision in relation to premixtures containing solely non-medicinal zootechnical additives and in relation to the non-medicinal zootechnical additive component of premixtures containing such additives and other feed materials and/or quasi-medicinal additives. (Quasi-medicinal additives are regulated by the Veterinary Medicines Regulations 2005 (S.I. 2005/[2745]).)

3. They provide for the enforcement and execution of Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed (O.J. No. L 268, 18.10.2003, p.1) in so far as it applies to non-medicinal zootechnical additives by applying the Genetically Modified Animal Feed (Scotland) Regulations 2004 (S.S.I. 2004/433) to those additives (regulation 3).

4. They provide for the enforcement and execution of Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition (O.J. No. L 268, 18.10.2003, p.29) (“Regulation 1831/2003”) in relation to non-medicinal zootechnical additives and for the implementation of the other Community Law requirements relating to the labelling of compound feeding stuffs containing additives as implemented by the Feeding Stuff (Scotland) Regulations 2005 (S.S.I. 2005/[605]) by applying those Regulations to those additives (regulation 4).

5. They provide for the enforcement and execution of Regulation (EC) No. 1831/2005 of the European Parliament and of the Council laying down requirements for feed hygiene (O.J. No. L 25, 8.2.2005, p.1), 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, 1.2.2002, p.1) (“Regulation 178/2002”) and make provision as to administration generally in so far as those measures apply to non-medicinal zootechnical additives. They do so by the application of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (S.S.I. 2005/[608]) to those additives (regulation 5).

6. They provide for the enforcement and execution 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) in so far as it applies to non-medicinal zootechnical additives. They also impose prohibitions on the introduction of such additives into Scotland in so far as non-compliant with Article 11 of Regulation 178/2002. They do so by the application of the Official Feed and Food Controls (Scotland) Regulations 2005 (S.S.I. 2005/[616]) to those additives (regulation 7).

7. They lay down procedures relating to secondary analysis of samples taken in connection with the enforcement of the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 by the laboratory of the Government Chemist (regulation 6).

8. They revoke the Regulations listed in the Schedule in so far as they have application to non-medicinal zootechnical additives (regulation 8 and Schedule).

9. A regulatory impact assessment has been produced for the package of measures that implements for Scotland the changes to the authorisation and use of feed additives contained in Regulation 1831/2003. These Regulations form part of that package along with the Feeding Stuffs (Scotland) Regulations 2005. A copy of that assessment has been placed in the Scottish Parliament Information Centre and in the library of each House of Parliament. 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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