

Feed Enforcement (Scotland) Regulations 2018

Summary report of responses to consultation from stakeholders

Food Standards Scotland (FSS) issued a consultation on the Feed Enforcement (Scotland) Regulations 2018. The purpose of the consultation was to provide interested parties and stakeholders with the opportunity to comment on the proposed regulations and the associated partial Business and Regulatory Impact Assessment (BRIA).

1. The regulations amend a number of domestic feed statutory instruments.
2. The key proposals on which the consultation sought views were:
 - the proposed implementation of a centralised model of official control delivery for feed
 - the transfer of competence for feed law from the Local Authorities to Food Standards Scotland
3. FSS invited stakeholders to comment on the BRIA and, in particular, if they agreed with the impact of the proposed Regulations and, if not, provide comments and supporting evidence on any cost implications that may arise.
4. The table below provides the stakeholders' substantive comments. FSS considered responses to the comments and these are summarised in the last column of the table.
5. FSS is grateful to those stakeholders who responded to this consultation - these stakeholders are listed at the end of the document. Full responses are published on Citizen Space.

Summary of substantive comments to the FSS Consultation – The Feed Enforcement (Scotland) Regulations 2018

Q1.			
In order for FSS to have assurance of compliance with feed law, a change of delivery model of feed official controls in Scotland is required. FSS considers that centralisation is the only feasible option available. We invite all stakeholders to comment on the assumption that a centralised model, using local authorities to deliver on a regional basis, is required to achieve effective feed safety controls. If you disagree, please provide comments as to why you consider such a model should not be introduced. If stakeholders consider that alternative model(s) would be effective, it would be helpful to provide evidence to support this.			
Respondent	Method of Response	Comment (summary)	Response
West Lothian Council	Citizen Space	Local Authorities should be appropriately funded to provide feed controls. The proposed funding to set up the regional delivery model is used to strengthen the current Local Authority model.	LAs reported that because funding is not ring-fenced, the money allocated to LAs (£325k originally from FSAS's budget) was not always directed to feed, and was used for other trading standards functions. As a result, there is no guarantee that increased funding through the block grant, which is the route for LA funding, would find its way to the appropriate service.
AIC	Citizen Space	AIC welcome the move towards a centralised approach. Feed business operating in different local authority areas, have had an additional burden of diverging approaches from the different authorities.	Noted
Perth & Kinross Council	Citizen Space	The BRIA states that inspection numbers have decreased but FSS have brought in measures to reduce a number of feed inspections: (i) the Feed Code of Practice reduced frequency of inspection of primary producers from high, medium and low to high and low which reduced a number of farm inspections dramatically.	In 2016/17, some LAs reported having done no inspections. (i) The decline in inspection numbers provided in the Impact Assessment document applied from 2010. The primary production risk rating of 2% and 25% was implemented in 2008/09, based on membership of assurance schemes. In 2012/13, there was a change to how this risk rating was applied, resulting in a reduction of 864 inspections that year. Since 2012/13, there has been a further reduction: the 2016/17 level is

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		(ii) the frequency of inspections has been reduced to accommodate the 'Earned recognition' element.	47% of that in 2012/13. (ii) In Scotland there was an attempt to introduce earned recognition in Scotland in 2016, however, feedback from most LAs during 2016 indicated that ER had not, and would not, be implemented in Scotland, until there was clarity on the new model.
Dumfries & Galloway Council	Email	From the FSS audit process, the current delivery model is not working, and there is significant inconsistency in the level of resource dedicated to this function. FSS funding for feed is failing to reach the front line. The favoured option is where FSS funds directly and works with Local Authorities where there is capacity and competence to deliver.	Noted
South Lanarkshire Council	Email	A centralised model using LAs to deliver on a regional basis is potentially a workable option. There will need to be a clear scheme of delegation showing the relationships between organisations.	Noted - FSS is currently developing the systems to support the new model.

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Q2 (a) Do stakeholders agree that the draft instrument gives effect to the model proposed and does not have any unintended consequences?			
Respondent	Method of Response	Comment (summary)	Response
Perth & Kinross Council	Citizen Space	<p>Disagrees:</p> <p>(i) The Agriculture Act is an overarching piece of legislation. All powers of enforcement are derived from the Agriculture Act. Proposed changes clearly disregard the role of the Agriculture Act.</p> <p>(ii) The proposed regime will not cover feed for non-food producing animals.</p>	<p>(i) An amendment to the Agriculture Act may now be enabled by the Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018. Annex 10 of the Food Law Code of Practice shall be amended in the coming months as part of this project and the on-going review of the Food Law Code of Practice.</p> <p>(ii) Powers for non-food producing animals will be provided to FSS by the Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018:</p> <p>a. Feed Hygiene (183/2005): Regulation 4(3)(a): “The Agency is the competent authority for the purposes of Regulation 183/2005.”</p> <p>b. Marketing and Use of Feed (767/2009): Regulation 7(3): “For regulation 5 (competent authorities for the purposes of Regulation 767/2009) substitute “Food Standards Scotland is the competent authority for the purposes of Regulation 767/2009” and Regulation 7(4): “ In regulation 13 (duties to enforce), for “each feed authority within its area” substitute “Food Standards Scotland”.</p> <p>c. Feed Additives (1831/2003): This is covered as a result of its inclusion under specified feed law for the purposes of regulations 2, 17, 21, 24, 25, 30 and 34 in the Feed Hygiene and Enforcement Regulations 2005.</p>

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		(iii) Under section 67 of the Agriculture Act 1970, the Council is required to appoint a person to act as an Agricultural Analyst and these changes do not relieve feed authority from the requirement to appoint an Agricultural Analysts. Food Standards Scotland will have no powers to appoint an Agricultural Analyst and therefore no ability to submit formal samples.	(iii). Feed authorities will continue to be required to appoint an Agricultural Analyst because they still have obligations under fertiliser legislation. The Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018 will now amend the Agriculture Act so that FSS will assume responsibility for enforcement of Part IV of the Act.
Argyll & Bute Council	Citizen Space	This model transfers a significant part of LA duties to FSS but leaves LAs with certain responsibilities. This should be addressed by amending the Agriculture Act 1970 as soon as the parliamentary timetable allows.	The Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018 will now amend the Agriculture Act so that FSS will assume responsibility for enforcement of Part IV of the Act.

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Q2 (b)			
Do stakeholders agree with the analysis of legislation presented that The Feed Enforcement (Scotland) Regulations 2018 provides sufficient transfer of legal competence from local authorities to FSS to enable the implementation of a centralised feed delivery service?			
Respondent	Method of Response	Comment (summary)	Response
West Lothian Council, Dumfries & Galloway, South Lanarkshire Council	Citizen Space and email	Local authorities appear to be left with some limited responsibilities	The Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018 will now amend the Agriculture Act so that FSS will assume responsibility for enforcement of Part IV of the Act.
Perth & Kinross Council	Citizen Space	Disagree: The Agriculture Act provides legal competence for enforcement of feed law to feed authorities in Scotland. The Food (Scotland) Act 2015 does not enable Food Standards Scotland to carry out enforcement functions.	The Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018 will now amend the Agriculture Act so that FSS will assume responsibility for enforcement of Part IV of the Act. It is not necessary to amend the Food (Scotland) Act.

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Q3(a) The benefits of retaining the ‘status quo’ or ‘do nothing’ option. Consider the impact of implementing a centralised model on feed and food safety and animal health on all stakeholder groups.			
Respondent	Method of Response	Comment (summary)	Response
West Lothian Council	Citizen Space	It is accepted that the status quo is unacceptable, but sufficiently funding each local authority to provide feed controls should have been considered.	LAs reported that because funding is not ring-fenced, the money allocated to LAs (£325k originally from FSAS's budget) was not always directed to feed, and was used for other trading standards functions. As a result, there is no guarantee that increased funding through the block grant, which is the route for LA funding, would find its way to the appropriate service.
Perth & Kinross	Citizen Space	<p>The ‘status quo’ option is not ideal but is less damaging than the proposed model with limited powers.</p> <p>Feed enforcement has suffered neglect locally and nationally as support, guidance and training opportunities were limited or non-existing for several years.</p> <p>The qualification requirements in the Feed Code of Practice changed causing concern by those who had obtained previous qualifications</p> <p>Evidence requested were the BRIA states the new model as a ‘significant aspect in securing future trade deals following the UK exit from EU’.</p>	<p>The Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018 will provide the appropriate powers.</p> <p>LAs are responsible for training officers, although FSA (FSS) provided assistance where possible. FSA (FSS) provided UK wide training, however, uptake was very low in Scotland in later years.</p> <p>The qualifications in the Feed Law Code of Practice (Scotland) 2016 are the same as the qualifications in the first version of the Code (GB) in 2006.</p> <p>Failure to improve feed delivery does not provide the assurance that is a condition of trade, as we have seen during third country missions to the UK in recent years.</p>
South Lanarkshire Council	Email	Retaining the ‘status quo’ means LAs have systems in place and these are integrated with other work and budgets would not be affected, which are low and do not reflect actual costs.	Food primary production is within scope of this work and we expect food and feed primary production inspections to take place on farm at the same time

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Q3(b)			
The approximate financial impact and disbenefits/costs and risks of retaining the ‘status quo’ or ‘do nothing’ option. Consider the impact of implementing a centralised model (as described above) on feed and food safety and animal health on all stakeholder groups.			
Respondent	Method of Response	Comment (summary)	Response
	Citizen Space	Status quo could result in a reduction in LA budgets which could lead to undetected problems in the feed chain.	Noted
West Lothian Council	Citizen Space	Retaining the current model could jeopardise future trade deals at international level and compliance with EU feed law, or equivalent required.	Noted
AIC	Citizen Space	The level of impact is hard to estimate, but a single, coordinated national approach will be beneficial.	Noted
Perth & Kinross Council	Citizen Space	Ineffective enforcement (limited powers, fragmentation) may have an adverse effect on feed and food safety and animal health.	Powers shall be available. Food primary production is within scope of this work and we expect food and feed primary production inspections to take place at the same time.
Argyll & Bute Council	Citizen Space	The current arrangements result in patchy enforcement. Little resource to improve database of feed. Welcome the proposed changes, subject to appropriate funding.	Noted
Dumfries & Galloway Council	Email	Risks of a major incident (under resourced). Current low inspection rate and reactive enforcement may result in issues further down the chain causing costly action for LAs and businesses..	Noted

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Q4
 Scotland's food and feed export market adds considerable value to the economy as a whole and there are a number of factors that can affect the demand and the price of food and feed. An incident similar to those described would have a detrimental effect on trade. Can feed businesses provide an indication of costs associated with a feed incident in Scotland, on the feed industry? Please provide details.

Respondent	Method of Response	Comment	Response
AIC	Citizen Space	If an incident led to other countries banning all feed/ livestock products from Scotland, or the risk of a ban was deemed to be so great that a proactive recall of feed/ livestock products was required, the costs could exceed those estimated for the 2008 recall in Ireland.	Noted

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Q5.			
<p>Feedback from those local authorities that will no longer carry out the delivery functions, indicate that there should be little to no effect on the officers' employment terms or conditions. FSS considers that the new delivery model should in fact benefit officers employed by those authorities and allow them to focus on other non-feed functions.</p> <p>FSS would like to receive information from local authorities in response to this assumption with supporting evidence.</p>			
Respondent	Method of Response	Comment (summary)	Response
West Lothian Council	Citizen Space	This proposal results in reduced financial settlement impacting on staffing. Local government has suffered reduction and the funding, provided by FSS has been spread across administrative, supervisory and frontline functions.	We are aware that funding intended for feed (from FSAS) has been diverted to other services. There is no guarantee that providing additional funding would find its way to feed delivery and so FSS has no option but to fund directly by removing the funding from the block grant.
Argyll & Bute Council	Citizen Space	Concerned by the requirement that an officer requires to spend 0.5 FTE working on feed duties to remain competent.	This FTE level has been removed

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<p>Q6 Agricultural analysts are currently appointed by LAs to carry out feed analysis work. Under the new arrangements, FSS shall appoint analysts. This will be an administrative process only and it is anticipated that samples will continue to be sent to the appropriate analysts in accordance with current arrangements. FSS does not consider there to be any detriment to the Agricultural analysts in Scotland as a result of this proposal, but FSS would be grateful to hear views from Analysts, particularly in relation to staffing of laboratories.</p>			
Respondent	Method of Response	Comment (summary)	Response
	Citizen Space	Small effect on laboratories - lead LAs have a mixture of LAs feeding into different labs, however this should be minimal. There is the opportunity for the labs to work closer together and coordinate feeding stuff analysis and even explore centres of excellence to provide best value.	Noted

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Q7			
<p>Under the current arrangements, LAs are competent to process approval applications, appeals against suspension or revocation of approvals. Under the new arrangements, FSS will be competent. The transition arrangements allow for proceedings raised by, or against, a feed authority, and any application made to a feed authority to be treated as having been made to FSS. No transitional period has been provided for these matters because of the lack of competence of LAs to handle appeals, should they be received.</p> <p>FSS would like to hear local authority views on the transitional arrangements and any difficulties they foresee with such arrangements. Please provide evidence to support these views.</p>			
Respondent	Method of Response	Comment (summary)	Response
West Lothian Council, South Lanarkshire Council	Citizen Space and email	No concerns are anticipated with the transitional arrangement.	Noted
Dumfries & Galloway Council	Email	Approval pre-inspection is essential and FSS will not have done this for existing approvals. However, it is not anticipated that any of the existing approvals in D&G will cause any issues during the transition period. There are also advantages to be gained from the FSS' impartiality.	Noted

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Q8(a) Comments on the financial impact and assumptions made on the development of the model			
Respondent	Method of Response	Comment (summary)	Response
Argyll & Bute Council	Citizen Space	Funding for feed duties must remain constant or increase for participation as a regional authority. Otherwise A & B Council will have to withdraw from arrangement.	Noted
South Lanarkshire Council	Email	Costs seem reasonable and would likely cover but costs for travel and subsistence may need to be considered for the meetings and training. The funding model does not include all costs including full travel costs.	Meetings and training costs are covered in the costing model. The costing model is based on funds provided elsewhere in the UK which includes travel, and can be reviewed as part of a fully costed model.

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Q8(b) Comments on the financial impact and assumptions made on the familiarisation with the model and training			
Respondent	Method of Response	Comment	Response
Perth & Kinross Council	Citizen Space	Staff training time should be met by FSS	Staff training and time for training is included within the costing model.
Argyll & Bute Council	Citizen Space	<p>FSS are not proposing to fund training of officers in the basic qualification to carry out this work.</p> <p>Concerned that the proposed changes to the Trading Standards Qualification Framework do not appear to include a modular element which will allow part-qualified staff to gain a feed qualification.</p> <p>Concern about resilience of the proposed arrangements.</p>	<p>It is the responsibility of local authorities to provide qualified and competent staff to deliver the official controls although FSS may be able to provide support as with other professions.</p> <p>FSS and FSA have asked CTSI to consider the development of a modular feed training programme. It is our intention to replicate the competency framework used in England and Wales which requires officers undertaking official controls of higher risk businesses to be qualified. https://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/feed-law-code-england.pdf (Annex 1)</p> <p>By removing the 0.5 FTE requirement, we are providing more flexibility by allowing a greater number of officers within nominated local authorities to be trained and deliver official controls to ensure maintenance of competence.</p>

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Q9(a)			
FSS would like to hear from local authorities about whether they agree with the assumptions made to calculate the financial impact on local authorities of a handover process for the more complex businesses. Please provide data to support these views			
Respondent	Method of Response	Comment	Response
Perth & Kinross Council	Citizen Space	Handover could only be expected as a matter of goodwill, unless LAs to be compensated by the FSS. Some larger businesses will need more than 4 hours hand over time.	It is our intention that LAs are to be paid for this handover process.
Argyll & Bute Council	Citizen Space	Agree there should be a formal handover process and that the initial inspection may take slightly longer. If this is a significant increase in the time FSS should recompense the LAs.	It is our intention that LAs are to be paid for this handover process.
South Lanarkshire Council	Email	Assumptions are reasonable. Agree there should be flexibility at initial inspection and recognition that this may take longer.	Noted

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Q 9(b)			
FSS would like to hear from industry about whether they agree with the assumptions made to calculate the financial impact on feed businesses			
Respondent	Method of Response	Comment	Response
AIC	Citizen Space	This seems reasonable. Since the officers will be more specialised and carrying out more feed inspections, it may be that there will be time savings.	Noted

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Q 10			
Under the new delivery model, the geographical boundaries are changing and therefore opportunities to carry out other official controls may not be available as this will depend on authorisation to do so by the original LA. It is not known if there is a willingness to do so. It is possible therefore that the new model may result in a slight increase in footfall for non-feed purposes. FSS would like to hear from local authorities about the potential impact of the new feed delivery model to deliver other types of official controls. Please provide data to support these views.			
Respondent	Method of Response	Comment	Response
West Lothian Council	Citizen Space	Do not support the transfer of any other official controls (significant legal, financial, employment implications). Do not anticipate significant increase in footfall as existing functions are currently delivered by a range of professional disciplines.	Noted
Perth & Kinross Council	Citizen Space	PKC carry out food and feed inspections at the same time as farm inspections cover both food and feed aspects. At food manufacturers supplying co-products/feed materials both aspects of food standards and feed are also covered during one inspection. In future separate inspections will be necessary for food and feed.	Food primary production is included within scope of this work, therefore food and feed primary production inspections shall be carried out at the same time.
Argyll & Bute Council	Citizen Space	Argyll & Bute Council would not support the transfer of any other official controls. The slight increase in footfall will be a necessary consequence of the new feed arrangements.	Noted
Dumfries & Galloway Council	Email	Lilley to be higher demand on the feed officer's time and less opportunity to combine feed inspections with other statutory functions. There may be an increase in footfall or, more likely, a reduction in delivery of the other services.	Noted
South Lanarkshire Council	Email	There would need to suitable officer authorisation and arrangements for cost recovery. There may be budgetary constraint to allow this. There may be an increase in footfall.	Noted

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Q 11

The Feed Enforcement (Scotland) Regulations 2018 provides an opportunity to address a historic gap that exists in the Official Feed and Food Controls (Scotland) Regulations 2009. The regulations provide powers for food authorities on the procurement of samples, analysis of samples and powers of entry relating to imports of food of non-animal origin from third countries. However, there are no parallel powers available for feed authorities, and therefore cannot be transferred, under the proposed arrangements, to FSS. Further investigation is required to establish the extent of this gap and its impact. FSS would like to hear from stakeholders on the impact this gap in powers has had to date and what the impact will be, should it be possible to address through the Feed Enforcement (Scotland) Regs 2018. Please provide evidence to support your response.

Respondent	Method of Response	Comment	Response
West Lothian Council	Citizen Space	Not aware of any gaps in powers to date.	Noted
AIC	Citizen Space	FSS should obtain powers	Noted
Dumfries & Galloway Council	Email	To date this gap has not caused any restriction in enforcement activity.	Noted

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Summary of changes made:	
Comment	Response
A number of respondents raised concerns about there being a need to amend the Agriculture Act to change competence from local authorities to FSS.	The Feed Enforcement (Scotland) Regulation 2018, now to be known as the Feed Enforcement (Miscellaneous Amendments) (Scotland) Order 2018, will amend the Agriculture Act. In addition, we will consider and address, as necessary, the identified gap in enforcement powers for imported feed.

Actions to be implemented:
<ul style="list-style-type: none"><li data-bbox="78 236 2190 311">• Review the nominated LA costing model.

List of Respondents:

1	West Lothian Council	31	60
2	Agricultural Industries Confederation	32	61
3	Perth & Kinross Council	33	62
4	Argyll & Bute Council	34	63
5	Dumfries & Galloway Council	35	64
6	South Lanarkshire Council	36	65
7	Anonymous	37	66
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