

The Feed Enforcement (Scotland) Regulations 2018

CONSULTATION SUMMARY PAGE

Date consultation launched:	Closing date for responses:
28 August 2017	20 November 2017

Who will this consultation be of most interest to?

Enforcement authorities, feed businesses and relevant trade bodies. This consultation may also be of interest to consumer groups and others with an interest in feed and animal health and welfare.

What is the subject of this consultation?

To inform stakeholders and seek their views on proposed implementation of a centralised model of official control delivery for feed and to consult on the draft Scottish Statutory Instrument (SSI) (The Feed Enforcement (Scotland) Regulations 2018) providing for the transfer of functions from the Local Authorities to Food Standards Scotland. The proposed Regulations are expected to be in force from early 2018/19.

What is the purpose of this consultation?

To provide stakeholders with an opportunity to comment on the draft SSI (The Feed Enforcement (Scotland) Regulations 2018) which will provide for the transfer of competence for feed law from the Local Authorities to Food Standards Scotland.

Responses to this consultation should be sent to:

Jacqueline Angus
Enforcement Delivery Branch
FOOD STANDARDS SCOTLAND
Tel: 01224 285175
Email: Jacqueline.angus@fss.scot

Postal address:
Pilgrim House
Old Ford Road
Aberdeen
AB11 5RL

Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/> See Annex A for reason.
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If you would prefer to receive future FSS consultations by e-mail,
Or if you no longer wish to receive information on this subject please
notify the named person in this consultation.

The Feed Enforcement (Scotland) Regulations 2018

DETAIL OF CONSULTATION

Food Standards Scotland (FSS) would welcome your comments on the draft Feed Enforcement (Scotland) Regulations 2018 (see Annex B) and the Partial Business and Regulatory Impact Assessment (BRIA – see Annex C)

Introduction

The purpose of the draft Scottish Statutory Instrument (SSI) is to transfer competence for feed law from local authorities (LAs) to FSS and therefore enable the centralised delivery of official controls for feed, in Scotland. The Feed Enforcement (Scotland) Regulations 2018 will amend the following legislation:

The Genetically Modified Animal Feed (Scotland) Regulations 2004

The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005

The Official Controls (Animals, Feed and Food) (Scotland) Regulations 2007

The Official Feed and Food Controls (Scotland) Regulations 2009

The Animal Feed (Scotland) Regulations 2010

Background

During the period 2009 - 2014, the auditors of the European Union and the Food Standards Agency (FSA) identified a number of issues relating to how feed official controls were organised and delivered by local authority trading standards in Scotland, including inspection frequencies not in accordance with risk, lack of feed safety controls, including cross contamination, and concerns about officer competency. In addition, a review of inspection numbers across Scotland from the period 2010/11 to 2015/16 identified a year on year decrease from 3313 to 1327.

FSA undertook a full review of how feed controls were delivered in the UK in 2012 and implementation of the outcomes of the review took place from 2013 in England, Wales and Northern Ireland. Scotland delayed the progress of a new delivery model in order to establish FSS which was tasked with implementation from vesting day.

In September 2015, the FSS Board agreed that as a result of the concerns raised at audit, and evidence from the local authority enforcement returns, the model of delivery of official controls (inspections and sampling etc.) in Scotland should change. A model that has greater accountability and control, and dedicated resource, should be implemented to address concerns raised about the performance of feed official control delivery in Scotland, in line with changes made elsewhere in the UK. In January 2016, the FSS

Board agreed that the executive should develop a centralised model for delivery for implementation. With time required to secure support for the model, and make the necessary legal amendments which are the subject of this consultation, implementation is now planned for early 2018/19.

Proposals

The options being considered are:

Option 1 – *Do nothing.*

Scotland is legally required to provide for the enforcement of EU legislation relating to feed safety and hygiene within *inter alia* EU Regulation No. 183/2005, EU Regulation No. 178/2002 and EU Regulation No. 882/2004. If Food Standards Scotland does not implement an effective model of feed delivery of official controls, this could ultimately result in non-compliance with EU feed law, risking trade and the revenue generated from the feed industry. The feed industry is worth about £153 million to the economy in Scotland. This could be significant in securing future trade deals following the UK's exit from the EU. 'Do nothing' is not an option that would be legally acceptable for the Scottish Government.

Option 2 – Introduce domestic legislation to provide for effective enforcement and delivery of feed official controls

This option describes the implementation of legislation to transfer full competence for feed law to Food Standards Scotland which will give effect to the centralised model of official control delivery and enforcement. FSS currently has some legal competence for feed law; however, it is restricted to administrative functions only.

Using outcomes from stakeholder engagement events, FSS has developed a delivery model making use of the existing experience and competence of local authority officers but operating on a regional basis. FSS, as competent authority, will authorise local authority officers to undertake official controls and enforcement work on its behalf.

Key proposal:

Introduce domestic legislation to transfer full competence for feed law from local authorities to Food Standards Scotland to provide for effective enforcement and delivery of feed official controls.

Impact on Consumers

The option of introducing domestic legislation to transfer competence for feed law from local authorities to Food Standards Scotland, to enable a centralised official control and

enforcement model, ensures that official controls will be delivered as part of a targeted, risk-based programme. This action will ensure that the food and feed chain is protected, which provides assurance of safe food. There are no anticipated costs to consumers as a result of this option.

Impact on Enforcement Authorities

Local authorities are currently responsible for the delivery of official controls on feed. The new proposed model will make use of local authority officers operating on a regional basis. FSS, as competent authority, will authorise local authority officers to undertake official controls and enforcement work on its behalf.

The removal of this function from local authorities will free many of the burdens of delivering feed official controls with dwindling resources and focus the function in a small number of local authorities that are better resourced to deliver the function on FSS's behalf.

Impact on Industry

The implementation of a centralised feed delivery model means that feed businesses will now engage with local authority officers operating regionally on behalf of FSS who will be allocated primarily to feed official controls and enforcement. In some cases, officers will be dedicated feed officers. As FSS is a single body, there will be consistency in advice and a single point of contact.

OFFICIAL FEED AND FOOD CONTROLS (SCOTLAND) REGULATIONS 2009 – IMPORTS OF FEED

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) Regulations 2018. Please provide evidence to support your response.**

Consultation Process

A 12 week consultation is being launched to provide interested parties with the opportunity to comment on these proposals. The consultation will close on 20 November 2017.

Questions asked in this consultation:

1. 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.

2. The SSI is intended to transfer full competence for feed law from local authorities to FSS to give effect to a centralised delivery model of feed official controls for feed businesses in Scotland. It is not possible, in the near future, to transfer competence by amendment to primary legislation (the Agriculture Act). However, an amendment to secondary legislation will provide for the transfer of a significant proportion of the feed functions. In recent years, EC official controls for feed have been accommodated in other statute and by amendment to the Act itself.

a. Do stakeholders agree that the draft instrument gives effect to the model proposed and does not have any unintended consequences?

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?

3. To help inform the Business and Regulatory Impact Assessment, we would like to invite all stakeholders, including local authorities and other Government departments, to comment on the following in relation to retaining the 'status quo' or 'do nothing' option:

a. The benefits 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.

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.

4. 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.

5. 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.

FSS would like to receive information from local authorities in response to this assumption with supporting evidence.

6. 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.

7. 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.

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.

8. Specific financial costs associated with the introduction of the new model are listed below. All costs currently met by local authorities for the delivery of official controls will, under the proposed funding model, be met by FSS in the future. FSS would like to hear from local authorities on the following:

- a. The financial impact and assumptions made on the development of the model*
- b. The financial impact and assumptions made on the familiarisation with the model and training*

9. Feed businesses may now be subject to official controls by an officer who has previously worked in a different local authority. The officer may be unfamiliar with the business and therefore they may have to allocate more time for the initial inspection. There may also be a handover by the original local authority to the new authority.

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.

b. FSS would like to hear from industry about whether they agree with the assumptions made to calculate the financial impact on feed businesses

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.

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) Regulations 2018. Please provide evidence to support your response.

We are particularly keen to hear from Small and Medium Enterprises (SMEs) on any likely impact and would encourage them to comment on all aspects of the proposal.

Business and Regulatory Impact Assessment

The purpose of a Business and Regulatory Impact Assessment (BRIA) is to assess and record the likely costs and benefits of the forthcoming provisions for consumers and enforcement bodies.

Any comments that interested parties are able to provide in relation to the proposed Regulations would be gratefully received.

Following the consultation, we will review the responses received and consider whether any changes are required to the proposed centralised model and legislation.

Responses

This is a 12 week consultation and responses are required by close 20 November 2017. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

We will summarise all comments received and the official response to each will be published on the FSS website within 3 months following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for participating in this public consultation.

Yours sincerely,

Jacqueline Angus
Enforcement Delivery Branch
Food Standards Scotland

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Scottish Statutory Instrument – The Feed Enforcement (Scotland) Regulations 2018

Annex C: Partial Business and Regulatory Impact Assessment

Annex D: List of interested parties

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

Publication of personal data and confidentiality of responses

2. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation. FSS will also publish a summary of responses, which may include full name. Disclosure of any other personal data would be made only upon request for the full consultation response. If you do not want this information to be released, please email openness@fss.scot or return by post to the address given on page 1.
3. In accordance with the provisions of Freedom of Information Act (Scotland) 2002/Environmental Information (Scotland) Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with FSS. However, we will take into account your views when making this decision.
4. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

5. A list of interested parties to whom this letter is being sent appears in Annex D. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
6. Please contact us for alternative versions of the consultation documents in Braille, other languages or audiocassette.
7. Please let us know if you need paper copies of the consultation documents or of anything specified under '**Other relevant documents**'.
8. This consultation has been prepared in accordance with HM Government Code of Practice on Consultation, available at: http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf
9. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

The Seven Consultation Criteria

Criterion 1 — When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 — Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 — Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 — Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 — The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 — Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 — Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

10. Criterion 2 states that Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible. This consultation is not being held for a full 12 weeks in order to achieve the European deadline for implementation of this Regulation
11. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. Please see the Business & Regulatory Impact Assessment at Annex C.

Comments on the consultation process itself

12. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by completing the consultation feedback form attached as Annex F and email to openness@fss.scot or return by post to the address given on page 1.