RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

5th Meeting, 2018 (Session 5)

Wednesday 7 February 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Ofcom**: The Committee will take evidence from—

   Glenn Preston, Scotland Director, Gary Clemo, Connected Nations Project Director, Jonathan Ruff, Connected Nations Scotland 2017 author, and Matthew Bourne, Annual Plan team, Ofcom.

2. **Subordinate legislation**: The Committee will consider the following negative instrument—

   The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 (SSI 2018/15)

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Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
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The papers for this meeting are as follows—

**Agenda item 1**

Cover note 
REC/S5/18/5/1

PRIVATE PAPER 
REC/S5/18/5/2 (P)

**Agenda item 2**

Cover note 
REC/S5/18/5/3
Background

1. Ofcom is the UK regulator for communications, regulating the TV, radio and video-on-demand sectors, fixed-line telecoms, mobiles and postal services, plus the airwaves over which wireless devices operate. For the Rural Economy and Connectivity Committee, the main area of interest is Ofcom’s regulation of fixed-line telecoms and mobile.

2. The Committee will receive an update on OFCOM’s Proposed Annual plan for 2018/19, and its report, Connected Nations 2017: Scotland (published in December 2017), as they relate to connectivity. The Connected Nations report is Ofcom’s annual, in-depth look at the coverage of broadband and mobile networks of the UK.

Memorandum of Understanding

3. At its meeting on 26 October 2016, the Scottish Parliament approved a draft Memorandum of Understanding (MoU) between the UK Government, Scottish Government, Scottish Parliament and Ofcom. A report on the draft MoU was prepared by the Rural Economy and Connectivity Committee.

4. The MoU deals with the provisions in the Scotland Act 2016 and includes a commitment for formal consultative roles for the Scottish Government and the Scottish Parliament in setting the strategic priorities for Ofcom with respect to its activities in Scotland.

Annual Plan

5. On 1 December 2017, Ofcom opened a consultation on its Proposed Annual Plan 2018/19: making communications work for everyone. The consultation closes on 9 February, with the final plan due to be published in March 2018.
Background

1. The Committee will consider the following negative SSI which relates to animal feed:

**Negative:**

- SSI 2018/15: The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 (see Annexe A)

2. Annex A also contains:

- the clerk’s note,
- the Scottish Government policy note,
- correspondence to the Presiding Officer from the Scottish Government, and
- correspondence between the Scottish Government and the Delegated Powers and Law Reform Committee.

Rural Economy and Connectivity Committee Clerks
2 February 2018
Annex A – SSI 2018/15: The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018

Type of instrument: Negative

Laid date: 16 January 2018

Coming into force: 6 February 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument can be annulled if a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

2. When an instrument is laid in breach of the laying requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (which requires that instrument are laid at least 28 days before they come into force), the lead committee has an additional consideration. The lead committee should consider the the explanation given to the Presiding Officer for the breach and may draw the explanation to the attention of the Parliament in any report on the instrument.

Consideration by the Delegated Powers and Law Reform Committee

4. At its meeting on 30 January 2018, the DPLR Committee considered this instrument and drew it to the attention of the Parliament on ground J (breach of the 28 day rule) in its report. The Committee found the failure to comply with laying requirements: “to be acceptable in the circumstances as outlined in correspondence from the Scottish Government to the Presiding Officer on 16 December 2017, supplemented by the written response to the Committee on the Regulations.”

Policy Objectives

5. These Regulations transpose into law article 21 of Council Directive 2013/59/Euratom as it relates to animal feed. That Directive lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation. Article 21 prohibits the deliberate addition of radioactive substances in the production of animal feeding stuffs, and the import or export of such products.

6. The instrument provides for an offence, where a person deliberately adds a radioactive substance in the production of animal feed (regulation 3). It is also an offence if a person imports or exports any feed to which a radioactive substance has been intentionally added during production (regulation 4).

7. The Scottish Government identified in the Policy Note the impact to business in Scotland as minimal “as there should be no deliberate addition of radioactive materials to animal feeding stuffs at any stage of the production process”.

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8. A consultation was carried out on the draft instrument during 13 October to 10 November 2017. Two responses were received. One response was not within scope, and the other was from the UK Government Chemist who raised issues around naturally occurring potassium and polonium radioactivity in feed and the use of security devices applied to feed – these points will be addressed in future guidance.

**Reason for breaching laying rules**

9. The instrument is in breach of the laying requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, which requires that instrument are laid at least 28 days before they come into force. The instrument comes into force on 6 February 2018, which is 18 days after it has been laid.

10. The instrument is required to come into force on 6 February 2018 as this is the date that Members must comply with Council Directive 2013/59/Euratom.

11. A 3 month standstill period was required so that the Commission could consider draft provisions and possibly issue recommendations, before the Regulations are laid.

12. The letter to the Presiding Officer details that originally Food Standards Scotland thought the existing safeguards in legislation would be sufficient. As a result of discussions with colleagues across the UK, the preferred course of action was to create specific legislation. The Scottish Government identified in correspondence to the Delegated Powers and Law Reform Committee that the time needed for those discussions across the UK meant there could not be earlier notification of the draft provisions to the Commission.

13. The policy note, instrument, letter to the Presiding Officer and correspondence between the Scottish Government and the Delegated Powers and Law Reform Committee are attached in this Annex. The instrument and Policy Note are also available online here:


**Recommendation**

14. The Committee is invited to consider:

- the explanation given to the Presiding Officer for the breach of laying requirements; and
- any issues that it wishes to raise in reporting to the Parliament on this instrument.

Rural Economy and Connectivity Committee Clerks

2 February 2018
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


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


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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The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 74A and 84 of the Agriculture Act 1970(a) and section 2(2) of the European Communities Act 1972(b) and all other powers enabling them to do so.

There has been consultation as required by Article 9 of Regulation (EC) 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(c).

Citation and commencement

1. These Regulations may be cited as the Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 and come into force on 6th February 2018.

Interpretation

2.—(1) In these Regulations—

“feed authority” means an authority identified in section 67(2) (enforcement authorities) of the Agriculture Act 1970 as having the duty to enforce Part IV of that Act within its area;

(a) 1970 c.40. Section 66(1) contains definitions of “the Ministers”, “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”). In so far as not transferred and in so far as relating to animal feeding stuffs, which are not veterinary medicinal products or specified feed additives as defined in S.I. 2005/2745, relevant functions were transferred to the Scottish Ministers by S.I. 2006/304. Section 84 was amended by S.I. 2004/3254. Section 74A was inserted by paragraph 6 of schedule 4 of the European Communities Act 1972 (c.68) and was amended by S.I. 2011/1043. Section 84 was amended by S.I. 2004/3254.

(b) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

“radioactive substance” means any substance that contains one or more radionuclides the activity or activity concentration of which cannot be disregarded from a radiation protection point of view.

(2) For the purposes of these Regulations, “import” and “export” are to be construed in accordance with the meanings that “time of importation” and “time of exportation” bear for the purposes of the Customs and Excise Management Act 1979(a).

Prohibition of practices

3. A person must not deliberately add a radioactive substance in the production of feeding stuff.

4. A person must not import or export any feeding stuff to which a radioactive substance has been deliberately added during its production.

Offences and penalties

5. A person who contravenes regulation 3 is guilty of an offence and liable on summary conviction to a fine not exceeding Level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Defences of fault of another person, mistake etc.

6.—(1) Where the commission by any person of an offence under these Regulations or section 74A(3) of the Agriculture Act 1970 by virtue of these Regulations, is due to the act or default of some other person, that other person is guilty of the offence and may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under these Regulations or section 74A(3) of the 1970 Act by virtue of these Regulations, it is, subject to paragraph (3), a defence to prove—

(a) that the commission of the offence was due to a mistake, or reliance on information supplied by another person, or to the act or default of another person, or to an accident or some other cause beyond the accused’s control; and

(b) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused or any other person under the accused’s control.

(3) If in any case the defence provided by paragraph (2) involves an allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the accused is not, without leave of the court, entitled to rely on that defence unless—

(a) at least 7 days before the trial diet (not being a notional diet); or

(b) no more than 28 days after the first appearance of the accused before a court in connection with the alleged offence,

the accused has served on the prosecutor a notice in writing giving such information as the accused has to identify or assist in identifying the other person.

Enforcement

7. It is the duty of a feed authority within its area to enforce these Regulations.

(a) 1979 c.2, section 5.
Amendment of the Official Feed and Food Controls (Scotland) Regulations 2009

8. The Official Feed and Food Controls (Scotland) Regulations 2009(a) are amended as follows.

In schedule 2—

(a) in paragraph (f) omit “and”; and
(b) after paragraph (g) insert—

“; and

(h) the Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018”.

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

9. The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(b) are amended as follows.

In schedule 1, after “Part IV of the Agriculture Act 1970, in so far as it relates to animal feeding stuffs”, insert “The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018”.

FERGUS EWING
A member of the Scottish Government

St Andrew’s House,
Edinburgh
16th January 2018

(a) S.S.I. 2009/446.
(b) S.S.I. 2005/608.
EXPLANATORY NOTE

(This note is not part of the Regulations)


Regulation 3 sets out that a person must not deliberately add a radioactive substance in the production of feed.

Regulation 4 sets out that a person must not import or export any animal feed to which a radioactive substance has been intentionally added during production.

Regulation 5 provides that it is an offence to fail to comply with Regulation 3, punishable on conviction by a fine or imprisonment not exceeding 3 months.

Regulation 6 sets out defences to offences set out in regulation 5 and under section 74A(3) of the Agriculture Act 1970.

Regulation 7 sets out that it is the duty of each feed authority to enforce these Regulations in its area.

Regulation 8 amends schedule 2 of the Official Feed and Food Controls (Scotland) Regulations 2009 (the “2009 Regulations”) (S.S.I. 2009/446). The amendment designates these Regulations as “relevant feed law” for the purposes of the 2009 Regulations.

Regulation 9 amends the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (the “2005 Regulations”) (S.S.I. 2005/608). The amendment designates the 2005 Regulations as “specified feed law” for the purposes of the 2005 regulations so that, among other things, authorised officers may serve improvement notices for failure to comply with regulations 3 and 4 of these Regulations and a person aggrieved by a decision to serve an improvement notice may appeal to the sheriff court. The amendment also allows, if particular requirements are complied with, a court to impose a prohibition order/emergency prohibition order on a feed business operator for failure to comply with regulations 3 or 4, and allows authorised officers to enter non-dwellings to investigate non-compliance with regulation 3 or 4 and to inspect, take samples, and to detain or seize products.
LETTER TO THE PRESIDING OFFICER FROM THE SCOTTISH GOVERNMENT

16 January 2018

Dear Presiding Officer,

THE ANIMAL FEED (BASIC SAFETY STANDARDS) (SCOTLAND) REGULATIONS 2018 (SSI 2018/15)

The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 are made by Scottish Ministers under sections 74A and 84 of Agriculture Act 1970 and section 2(2) of the European Communities Act 1972.

These Regulations are subject to the negative resolution procedure. Unfortunately, although these Regulations need to come into force on 6 February 2016 in order to comply with our EU obligations, they could not be delayed until today and thus breach the requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 for instruments to be laid at least 28 days before they are due to come into force. As required by section 31(3) of the 2010 Act, I am writing to you to explain why the laying requirements have not been complied with.

These Regulations transpose Article 21 (prohibition of practices) of Council Directive 2013/59/Euratom\(^1\) in relation to animal feed. Article 106 of that Directive requires Member States to bring into force laws necessary to comply with the Directive by 6 February 2018. Article 33 of the Euratom Treaty requires Member States to communicate draft provisions to the Commission and allows the Commission to issue any recommendations on such drafts within 3 months of that date. The UK Government notified on behalf of the UK Government and the devolved administrations the draft transposing measures of Council Directive 2013/59/Euratom as they apply to the deliberate addition of radiological substances to animal feed on 13 October 2017. The effect of this 3 month standstill period in which the Commission can issue recommendations is that the Regulations cannot be laid until 15 January.

Ideally, the Commission would have been notified earlier, thus allowing the 3 month period to expire 28 days (or indeed preferably 40 days) before the coming into force date. Given the delay, we sought to aid Scottish Parliament lawyers in considering the regulations by sharing a draft of the Instrument on 11 January 2018.

Food Standards Scotland (FSS) did not originally anticipate that implementation of this Article would require the making of an explicit statutory offence relating to animal feed as it was thought that the considerable safeguards in the existing food and feed legislation law would suffice. However, following prolonged discussions with colleagues across the UK, it was agreed that the preferred course of action would be to make such specific statutory provisions.

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\(^1\) of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom
FSS consulted on these regulations during November 2017 and is satisfied from stakeholder responses that there will be no adverse impact.

I trust you will find this helpful.

Timothy Glennie
Solicitors Food, Children, Education, Health and Social Care Division
CORRESPONDENCE BETWEEN THE SCOTTISH GOVERNMENT AND THE DELEGATED POWERS AND LAW REFORM COMMITTEE

Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 (SSI 2018/15)

On 18 January 2018, the Scottish Government was asked:

1. A letter of 16th January has been sent from the Solicitors Food, Children, Education, Health and Social Care Division of the Scottish Government to the Presiding Officer, to explain why section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 28 day rule") has not been complied with. The letter explains that the UK Government notified, on behalf of the UK Government and the devolved administrations, the draft transposing measures of Council Directive 2013/59/Euratom as they apply to the deliberate addition of radiological substances to animal feed, on 13 October 2017. Due to the "3 months standstill period" referred to in the letter, it also explains that regulations required to be laid on 16th January, which involved the breach of the 28 day rule given that a commencement date of 6th February 2018 was required for this instrument.

To assist the Committee, please explain why in the circumstances the UK Government required to make the notification as described above on 13 October, or whether the notification could have been made on an earlier date, which in turn could have meant that the instrument could have been laid on an earlier date, and so to comply with the 28 day rule?

2. Regulation 5 provides that a person who contravenes regulation 3 (deliberate addition of a radioactive substance in the production of feeding stuff) is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 3 months. The penalty for contravening regulation 4 (import or export of feeding stuff to which a radioactive substance has been deliberately added during production) appears to be specified in section 74A(3) of the Agriculture Act 1970, but "or to both" is added in that subsection, so that both a fine and imprisonment may be imposed.

(i) Please clarify therefore whether the policy intention is that the penalty for contravening regulation 3 is the alternative of a fine or imprisonment, or otherwise whether it is intended that either or both may be imposed?

(ii) If the former, please explain the difference in approach. If the latter, is corrective action proposed?

The Scottish Government responded as follows:

1. Food Standards Scotland did not originally anticipate that implementation of Article 21(prohibition of practices) of Council Directive 2013/59/Euratom in relation to animal feed would require the making of an explicit statutory offence relating to animal feed as it was thought that the considerable safeguards in the existing food and feed legislation law would suffice. However, following prolonged discussions with colleagues across the UK, it was agreed that the preferred course of action
would be to make such specific statutory provisions. Unfortunately the matter was not resolved in sufficient time to allow for an earlier notification of the relevant technical standard which would have ensured that all Parliamentary timetables were respected. The Scottish Government takes seriously its responsibility to make sure that the timetable for notification of a technical standard takes account of the timescales required for Scottish Parliament scrutiny and apologises that this was not possible in this case.

2. As the Committee has noted, the penalty for contravening regulation 4 (import or export of feeding stuff to which a radioactive substance has been deliberately added during production) is specified in section 74A(3) of the Agriculture Act 1970 as a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months, or both.

Under section 74A(4) there are certain powers to make regulations in implementation of an EU Instrument but these powers do not extend to prohibiting the deliberate addition of radioactive substances in the production of feeding stuffs. Accordingly, regulations 3 and 5 are made under section 2(2) of the European Communities Act 1972. Paragraph 1(1)(d) of Schedule 2 to that Act provides for restrictions on the penalties applicable to new criminal offences created under section 2(2). The view taken at the time of making these Regulations was that it could not be punishable by both a fine not exceeding level 5 and a term of imprisonment not exceeding three months. On further consideration, however, it is accepted that this is an overly restrictive view. The Scottish Government will amend these Regulations at the earliest suitable opportunity.