businesscompanion
trading standards law explained

Supplying surplus food and co-products as feed

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Although the United Kingdom left the European Union (EU) in 2021, certain pieces of legislation (known as 'assimilated law') continue to apply until such time as they are replaced by new UK legislation, revoked or permitted to expire. This means that our guidance still contains references to legislation that originated from the EU.

This guidance is for Scotland

Businesses (including retailers) may supply surplus food products that do not meet commercial standards, or by-products from the manufacturing process (known as co-products) for use in animal feed.

All businesses that supply any surplus food and/or co-product of food for animal feed must be registered with their local authority as a feed business operator and must comply with current feed labelling, documentation and hygiene requirements. This applies whether food products are supplied via a food processor or sent direct to farms. Businesses providing food products for pet food are also covered by these requirements.

Where appropriate, it is particularly important that systems are in place to ensure that products which are prohibited for use in animal feeds (in particular, animal products such as meat and fish) do not enter the

farmed livestock feed chain.

Definitions

Co-product

A co-product is an ingredient that has been extracted or used during the manufacturing process, and is not used in the final product. Examples include rape seeds from oil production or spent grain / draff from the brewing industry.

Surplus food product

A surplus food product is an item of food that is being disposed of by a business for commercial reasons. Examples include foods that have not sold before their best-before date or potatoes not meeting commercial standards.

Risks

There are risks associated with the supply of surplus food and co-products for a number of reasons - for example:

- businesses are likely to handle a range of products, many of which are not permitted in animal feed
- food businesses focus on their core functions relating to food production and the risks relevant to animal feed may not be fully understood
- material destined for animal feed is often managed alongside other disposal streams, which creates an added risk around separation, contamination, storage and transportation

Responsibilities

Businesses that dispose of co-products and surplus food as animal feed must ensure compliance, where appropriate, with Annex II to assimilated Regulation (EC) No 183/2005 *laying down requirements for feed hygiene* as required by the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 (please see the link in 'Key legislation' below).

The main requirements of assimilated Regulation (EC) No 183/2005 are:

- registration as a feed business operator with the local authority, usually the Trading Standards service
- a feed safety management system based upon the principles of HACCP (see below) must be in place; it must relate to the manufacture (where applicable), storage, transport and supply of animal feed
- a quality control system must be in place with appropriate checks to ensure surplus food and co-products are of the required quality and are not contaminated. Risks must be minimised to avoid contamination, cross-contamination and general adverse effects on the safety and quality of the product. A person responsible for production and quality control must be designated
- the presence of prohibited and undesirable substances, as well as other contaminants, must be monitored and controlled

- traceability must be maintained, from the receipt of raw goods through to the onward supply of animal feed to other businesses
- feed businesses must have sufficient staff with clearly documented and communicated roles, and the necessary skills to ensure that only safe and legal feed is supplied. An organisational chart must be in place
- storage and transport facilities should be clean and protected from environmental risks / contamination
- a complaint and recall procedure must be in place. The recall system must include the need to notify Food Standards Scotland and the local authority of any product recalls or risks to animal or human health
- facilities and equipment must support the safe, clean production of feed and permit adequate cleaning and/or disinfection. Drainage facilities must be adequate so as to avoid the risk of contamination. All facilities, including equipment, storage and their surroundings should be kept clean and the design and layout of the premises should allow appropriate cleaning and disinfection. Facilities must have adequate natural and/or artificial lighting. Scales and metering devices must be tested for accuracy regularly
- an effective pest control programme is required, including steps to minimise access for pests
- water used in feed manufacture is required to be suitable for animals
- the isolation, identification and disposal of waste must be adequate to prevent adverse contamination of feed

Other requirements are as follows:

- food intended to be supplied as feed must be safe for the intended species and must not be mouldy or contaminated with foreign bodies etc
- surplus food and co-products must be correctly labelled as required by the Animal Feed (Scotland) Regulations 2010 and assimilated Regulation (EC) No 767/2009 *on the placing on the market and use of feed*
- the use and supply of animal by-products (ABP) as farm animal feed may be subject to separate registration and approval requirements (including milk and dairy products)
- the processing of ABP as pet food is subject to separate approval requirements

Feed safety

Feed is deemed to be unsafe for its intended use if it is considered to:

- have adverse effects on human and animal health
- make food derived from food-producing animals unsafe for human consumption

Only approved additives may be used in animal feed, and they may only be used up to a specified limit. More information on additives can be found on the Food Standards Agency website.

Undesirable substances such as arsenic, lead, mercury and cadmium, as well as dioxins, aflatoxins, certain pesticides and botanical impurities, are restricted by the Animal Feed (Scotland) Regulations 2010.

Prohibited materials include:

- faeces
- urine
- separated digestive tract content
- hide treated with tanning substances
- seeds and other similar material treated with plant protection products
- wood (including sawdust)

- urban / household waste
- packaging from the use of products from the agri-food industry, and parts thereof

HACCP ('hazard analysis and critical control points')

Feed businesses must have in place a written plan, based upon the principles of HACCP. This plan must be maintained and kept up to date.

A full HACCP system will analyse every step of the feed activities under the control of the feed business to identify hazards that may occur and implement controls (critical control points). The seven steps to HACCP may be briefly described as follows:

- conduct a hazard analysis to find any potential hazards that could occur during production. A hazard is something that might be harmful and may involve either microbiological, chemical or physical contamination. Determine what controls you can put in place to eliminate the hazards or reduce them to a safe, acceptable level
- determine the critical control points (CCP). Decide which of these controls are critical to ensuring feed safety. A control is critical if the hazard will not be removed at any later stage of production
- establish critical limits applicable to the CCPs - that is, establish criteria to separate acceptability from unacceptability
- establish a system to monitor controls of the CCPs. Once controls have been put in place, they should be monitored on a regular basis to ensure they work effectively. It is not necessary to check controls on every occasion a particular process is carried out, provided you are sure that the frequency of checks will enable any problems to be identified before there is a risk to feed safety
- establish the corrective action to be taken when monitoring identifies that a particular CCP is not under control. You and your staff must be clear on what action should be taken when monitoring shows that there may be a problem
- review your system and verify its effectiveness. Once established, the system must be reviewed with procedures in place to ensure that the HACCP system is working and is verified as effective. Reviews and verification should take place on a regular basis when any operations of the business change or when problems are identified
- establish documentation in the form of records and procedures in accordance with these principles

The Agricultural Industries Confederation (AIC) has produced *The Application of HACCP Principles: A Practical Guide for the Agri-Food Supply Chain*, which is designed for use both by businesses for which HACCP may be a completely new concept and also for those with prior experience of it. Access to the guide is limited to AIC members.

The Food Standards Agency (FSA) website also has information on HACCP. Please also refer to the Food Standards Scotland guidance for food and drink businesses supplying into the animal feed chain.

Businesses must apply a HACCP system appropriate to the feed activities carried out.

Traceability

The traceability of feed, approved additives and premixtures must be established at all stages of production, processing and distribution. Feed business operators must be able to identify any person who has supplied them with a food, a feed or any substance intended to be, or expected to be, incorporated into a feed. They must also be able to identify the other businesses to which their products have been supplied.

Complaints and recall procedures

Where a business has reason to suspect that a feed is unsafe, it must initiate recall procedures and withdraw the feed from the market. The competent authority must also be notified.

Feed business operators must implement a system for registering and processing complaints. They must also have in place, where this proves necessary, a system for the prompt recall of products within the distribution network. A written procedure must be in place that identifies the destination of any recalled products.

Unsafe feed must be destroyed unless other avenues are agreed in advance with the competent authority. The feed must undergo a quality-control reassessment before it is put back into circulation.

More information on food incidents, product withdrawals and recalls can be found on the Food Standards Scotland website.

Labelling

Co-products and surplus food usually consist of a single product, which is therefore classed as a 'feed material'.

Any products supplied must be accompanied with a product label containing the following labelling information:

- the term 'feed material'
- type of feed material, such as 'brewers' grains'
- business name and address
- list of any additives under the title 'additives', including the species or categories of animals for which the feed material is intended (where the additives in question have not been authorised for all animal species or have been authorised with maximum limits for some species). Instructions for proper use where a maximum amount of the additives in question is set. The minimum storage life for additives (other than technological additives)
- establishment approval number (if available)
- batch or lot reference number
- net quantity
- moisture content, if over 14% (this may vary depending on any compulsory declarations required)
- compulsory declaration as required by assimilated Regulation (EC) No 767/2009 (Annex V) and assimilated Regulation (EU) No 68/2013 *on the Catalogue of feed materials* (Part C of the Annex). The links can be found in 'Key legislation' below

Exemptions:

- in cases where, before each transaction, the purchaser has stated in writing that they do not require the approval number of the business, batch or lot reference number, net quantity, moisture content and compulsory declaration, it does not need to be provided. A transaction may consist of several consignments
- the approval number of the business, batch or lot reference number, net quantity, moisture content and compulsory declaration are not mandatory for feed materials that do not contain additives (with the exception of preservatives and silage additives) and are produced and delivered by a feed business to a feed user involved in primary production for use within their own holding - for example, a farm growing potatoes and supplying them for feed to a local cattle farm for use on that farm

If a business chooses to provide labelling information voluntarily, it must comply with the general labelling principles laid down in assimilated Regulation (EC) No 767/2009.

Separate labelling and record keeping requirements apply to ABPs; more information on ABP categories, site approval, hygiene and disposal is available on the GOV.UK website.

Further information

National Trading Standards (NTS) has produced a flyer for businesses.

Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see 'Trading Standards: powers, enforcement and penalties'.

In this update

No major changes.

Last reviewed / updated: October 2024

Key legislation

- assimilated Regulation (EC) No 178/2002 *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*
- Feed (Hygiene and Enforcement) (Scotland) Regulations 2005
- assimilated Regulation (EC) No 183/2005 *laying down requirements for feed hygiene*
- assimilated Regulation (EU) No 767/2009*on the placing on the market and use of feed*
- assimilated Regulation (EC) No 1069/2009*laying down health rules as regards animal by-products and derived products not intended for human consumption (Animal by-products Regulation)*
- Animal Feed (Scotland) Regulations 2010
- Animal By-Products (Enforcement) (Scotland) Regulations 2013
- assimilated Regulation (EU) No 68/2013 *on the Catalogue of feed materials*

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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