

Delegated Powers and Law Reform Committee

21st Meeting, 2023 (Session 6) Tuesday, 20 June 2023

Instrument Responses

Feed Additives (Form of Provisional Authorisations) (Cobalt(II) Compounds) (Scotland) Regulations 2023 (SSI 2023/170)

On 8 June 2023, the Committee asked the Scottish Government:

There are two points in relation to the enabling power on which more information would be appreciated. First, it appears that this instrument is effectively a renewal of an existing authorisation. Article 4 of the parent Regulation (Regulation (EC) No. 1831/2003) provides that an authorisation shall not be renewed except on the grounds and procedures set out in that Regulation (or in accordance with a provision of another Regulation which is not relevant here). The procedure provided for renewal of an authorisation is set out in article 14. The enabling power for the present instrument (article 15) is intended not for renewals but for use where urgent authorisation is needed. Second, article 15 permits the provisional authorisation of an additive for a maximum period of 5 years. It appears that the relevant additives have already been authorised for (at least) a 10 year period, from 15 July 2013 to 14 July 2023 under [Commission Implementing Regulation \(EU\) No 601/2013](#). The use of the urgent authorisation power in this instance will result in the additives having been authorised for much longer than 5 years.

In each of schedules 1 to 4, footnote 3 provides:

“Details of the analytical methods are available at the following address of the European Commission’s Joint Research Centre: https://joint-research-centre.ec.europa.eu/publications/fad-cobaltgroup_en.”

This webpage says “page not found”. Is this an incorrect website address? In the absence of the information that would have been available on this webpage, are the schedules sufficiently clear as regards what the authorised analytical methods are?

Could further explanation please be provided as to why the present instrument is an appropriate use of the enabling power?¹

Please confirm whether any corrective action is proposed, and if so, what action and when.

¹ This part of the question was withdrawn before the Scottish Government responded, noting that a technical issue with accessing the link through the PDF file was resolved.

On 13 June 2023, the Scottish Government responded:

Addressing your first point, this SSI is not a renewal of existing authorisations. The act of provisional authorisation in terms of Article 15 of the Regulation (EC) 1831/2003 (“the feed additives regulation”) was made administratively by the Minister on 30 May 2023. The Minister has decided that the period of provisional authorisation will be from 15 July 2023 to 14 July 2026. This SSI exercises the power in Article 15 to prescribe the form of provisional authorisations in regulations, which is found in the schedules of the SSI. The SSI itself does not authorise, rather it facilitates that authorisation.

By way of background, due to an oversight by the previous consortium of applicants, no cobalt compound feed additive renewals applications were received on time in GB, NI and in the EU. As you say, renewals are dealt with under Article 14 of the feed additive regulations and must be sent to the appropriate authority at the latest one year before the expiry date of the authorisation. As the statutory requirements under Article 14 could not be met, an application for new authorisation in terms of Article 9 was received. This application is currently being considered in the usual manner by Food Standards Scotland. The existing authorisation lapses on 14 July 2023 and once the authorisation has expired, products containing these cobalt compounds feed additives cannot be lawfully placed on the market, processed or used. The effective withdrawal of these feed additives would have a serious negative impact on the welfare of animals in Scotland. Further detail on the risk to animal welfare is set out in the Policy Note. The Minister exercised the power in Article 15 and provisional authorisation was made to ensure the protection of animal welfare in terms of the power in that Article.

Addressing your second point, the Minister has exercised the Article 15 powers administratively and made provisional authorisation for a period of 3 years, which runs from the date of the expiry of the previous substantive authorisation. This period is within the statutory time limit of 5 years. As noted above, the SSI itself does not provisionally authorise, rather it facilitates that determination by prescribing the form of provisional authorisation.

We agree that an Article 9 authorisation is valid for 10 years (Art 9(7)). The relevant cobalt compound feed additives are currently subject to such an authorisation which will end on 14 July 2023. They will no longer be subject to an Article 9 authorisation at that point in time.

“Provisional authorisation” under Article 15 can be distinguished from “authorisation” under Article 9 as they are dealt with under different powers and are distinguished in name as being different forms of authorisation and there are different considerations that apply to each. There is nothing in Regulation (EC) 1831/2003 that requires aggregation of periods of authorisation under Article 9 with periods of provisional authorisation under Article 15 such that there is a legal limit of 10 years applied to both forms of authorisation added together. Equally there is no restriction on the kind of additive which can be provisionally authorised. There is no exclusion for example of additives that have been previously authorised under Article 9.