SCOTTISH STATUTORY INSTRUMENTS

2009 No. 446

The Official Feed and Food Controls (Scotland) Regulations 2009

PART 3

OFFICIAL CONTROLS ON FEED AND FOOD OF NON–ANIMAL ORIGIN FROM THIRD COUNTRIES

Interpretation of this Part of these Regulations

22. In this Part of these Regulations—

"authorised officer", in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Import Provisions;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"enforcement authority" means the feed authority or the food authority;

"feed" does not include additives of a type mentioned in Article 6(1)(e) of or paragraph 4(d) of Annex I to Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition(**1**) or any premixture consisting solely of a combination of such additives;

"outside Scotland enforcement authority" means the body responsible for enforcing the legislation in force with respect to imported products in any part of the United Kingdom except Scotland;

"product" means feed or food whose import is regulated by Article 15 of Regulation 882/2004 (official controls on feed and food of non–animal origin not included in the scope of Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries(**2**)) and includes those composite products and foodstuffs which are not required to be subject to veterinary checks as provided in Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC(**3**);

"the relevant territories" means the territories referred to in Annex I to Regulation 882/2004; and

"specified import provision" means any provision of Regulation 669/2009 that is specified in Column 1 of Schedule 6 and whose subject-matter is described in Column 2 of that Schedule.

(**1**) O.J. No. L 268, 18.10.2003, p.29, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (O.J. No. L 188, 18.7.2009, p.14).

(**2**) O.J. No. L 24, 30.1.98, p.9, as last amended by Council Directive 2006/104/EC adapting certain Directives in the field of agriculture (veterinary and phytosanitary legislation), by reason of the accession of Bulgaria and Romania (O.J. No. L 363, 20.12.2006, p.352).

(**3**) O.J. No. L 116, 4.5.2007, p.9.

Feed enforcement responsibilities and competent authority status

23.—(1) Each feed authority shall execute and enforce the Import Provisions in its area in relation to feed.

(2) The feed authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant feed law.

(3) A feed authority's designation as a competent authority pursuant to paragraph (2) shall extend to its area only.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant feed law.

Food enforcement responsibilities and competent authority status

24.—(1) Each food authority shall execute and enforce the Import Provisions in its area in relation to food.

(2) The food authority is designated as the competent authority for the purposes of the provisions of Regulation 669/2009 apart from Article 19 in so far as those provisions apply in relation to relevant food law.

(3) A food authority's designation as a competent authority pursuant to paragraph (2) shall extend to its area only.

(4) The Agency is designated as the competent authority for the purposes of Article 19 of Regulation 669/2009 in so far as it applies to relevant food law.

Functions of the Commissioners

25. The Commissioners shall carry out the functions given to customs services under Article 24 of Regulation 882/2004 and Article 10 of Regulation 669/2009, in each case in relation to feed and food.

Exchange of information

26.—(1) The Commissioners, the Agency and any enforcement authority may exchange information for the purposes of the Import Provisions, and may divulge information to the bodies defined as enforcement authorities in the provisions corresponding to Part 3 of these Regulations in England, Wales or Northern Ireland for the purposes of the Import Provisions or the provisions corresponding to the Import Provisions in those jurisdictions.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners, the Agency or any enforcement authority to disclose information.

(3) No person, including a servant of the Crown, may disclose any information received from the Commissioners under paragraph (1) if—

(a) the information relates to a person whose identity—

(i) is specified in the disclosure; or

(ii) can be deduced from the disclosure;

(b) the disclosure is for a purpose other than the purposes specified in paragraph (1); and

(c) the Commissioners have not given their prior consent to the disclosure.

Deferred execution and enforcement

27.—(1) Subject to paragraph (6), where—

(a) a product from a third country has entered Scotland;

(b) customs examination of that product has been completed or has been deferred until it reaches its place of destination elsewhere in the United Kingdom;

(c) an authorised officer of the enforcement authority for the place of entry has on reasonable grounds issued an authorisation confirming that—

(i) examination of the product for the purposes of the Import Provisions should be deferred until the product arrives at its destination elsewhere in Scotland, or

(ii) such examination should take place when the product arrives at its destination elsewhere in the United Kingdom under legislation with respect to imported products in force there; and

(d) a person importing the product gives that authorised officer an undertaking in writing as to the matters specified in paragraph (2),

the enforcement authority for the place in which the destination is located, if in Scotland, shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives there.

(2) The undertaking shall—

(a) state the destination of the product; and

(b) confirm that—

(i) the container containing the product has been sealed and will not be opened until it has reached that destination;

(ii) the opening of the container has been authorised by the enforcement authority for the place in which the destination is located, if it is in Scotland or the outside Scotland enforcement authority if the destination is not in Scotland; and

(iii) the container will be available at that destination for examination under the Import Provisions or, as the case may be, legislation with respect to imported products in force elsewhere in the United Kingdom.

(3) Where an authorised officer of an enforcement authority issues an authorisation pursuant to paragraph (1)(c), that officer shall—

(a) (if the product's place of destination is within Scotland) notify the enforcement authority for that place or (if the product's place of destination is in any other part of the United Kingdom) notify the outside Scotland enforcement authority—

(i) that the product (so described as to enable it to be identified) has not been examined under the Import Provisions; and

(ii) if customs examination of the product has been deferred, of that fact; and

(b) send the relevant authority a copy of any undertaking given pursuant to paragraph (1)(d).

(4) Where a product has been sent to a destination in Scotland from another part of the British Islands and examination of that product has been deferred under legislation with respect to imported products in force there, the enforcement authority for the place of destination shall become responsible for enforcing and executing the Import Provisions with respect to that product once it arrives in Scotland.

(5) No person shall breach an undertaking given under paragraph (1)(d).

(6) The deferred execution and enforcement provisions set out in this regulation are subject to any official controls that take place pursuant to Article 15(5) of Regulation 882/2004.

Prohibition on introduction of certain feed and food

28.—(1) The following are prohibited—

(a) the introduction into Scotland from a third country of specified feed that fails to comply with feed safety requirements;

(b) the introduction into Scotland from elsewhere in the relevant territories of specified feed that originates in a third country and fails to comply with feed safety requirements;

(c) the introduction into Scotland from a third country of specified food that fails to comply with—

(i) food safety requirements; or

(ii) the requirements of Articles 3 to 6 of Regulation 852/2004; and

(d) the introduction into Scotland from elsewhere in the relevant territories of specified food that originates in a third country and fails to comply with—

(i) food safety requirements; or

(ii) the requirements of Articles 3 to 6 of Regulation 852/2004.

(2) In this regulation—

(a) "specified feed" means feed that is a product; and

(b) "specified food" means food that is a product.

Checks on products

29.—(1) The person responsible for introducing any product into Scotland shall permit an authorised officer of an enforcement authority to carry out checks in relation to the product pursuant to Article 16 of Regulation 882/2004.

(2) When an authorised officer is carrying out checks in relation to a product pursuant to Article 16 of Regulation 882/2004, the person introducing the product shall provide the facilities and assistance which the authorised officer reasonably requires to carry them out.

(3) An authorised officer of an enforcement authority carrying out an identity check or a physical check on a product in accordance with Article 16 of Regulation 882/2004 shall be entitled to require that the check takes place at a specified place.

Suspension of designation of points of entry

30.—(1) Where the Agency is satisfied that—

(a) the continued operation of a designated point of entry presents a serious risk to public or animal health; or

(b) at a designated point of entry, there has been a serious breach of the minimum requirements for designated points of entry laid down in Article 4 of Regulation 669/2009,

(2) It may suspend the designation of the point of entry either in full or in part by service on the operator of the point of entry of a written notice to that effect.

(3) Upon service of a notice under paragraph (1), the point of entry shall cease to be a designated point of entry to the extent specified in that notice until it is again so designated in accordance with Article 17(1) of Regulation 882/2004.

Detention, destruction, special treatment, re–dispatch and other appropriate measures and costs

31.—(1) An enforcement authority shall have the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation 882/2004 if the conditions set out in those Articles are fulfilled.

(2) The enforcement authority shall be the competent authority for the purposes of Article 22 of Regulation 882/2004.

Notices pursuant to Articles 18 and 19 of Regulation 882/2004 (imports of feed and food from third countries)

32.—(1) If an authorised officer of an enforcement authority proposes to place a consignment of feed or food under official detention under Article 18 or 19(1) of Regulation 882/2004 the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

(2) If an authorised officer of an enforcement authority proposes to take any of the measures referred to in Article 19(1)(a) or (b) of Regulation 882/2004 in respect of feed or food the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it after the feed or food business operator has been heard as provided in Article 19.

(3) If an authorised officer of an enforcement authority proposes to take any action referred to in Article 19(2) of Regulation 882/2004 in respect of feed or food the officer shall serve a notice to that effect on the feed or food business operator, as the case may be, responsible for it.

Right of appeal in respect of notices served under regulation 32

33.—(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve a notice under regulation 32 may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be 1 month from the date on which the notice was served on the person desiring to appeal.

(4) Where on an appeal under paragraph (1) the sheriff determines that the decision of the authorised officer of the enforcement authority is incorrect, the authority shall give effect to that determination.

Appeal to Court of Session against dismissal of appeal under regulation 33

34. A person who is aggrieved by the sheriff's dismissal of an appeal under regulation 33(1) may appeal to the Court of Session.

Serious risk to animal or public health

35.—(1) Where the Scottish Ministers or the Agency learns or has reasonable grounds to suspect that any food or feed that has been or may be introduced into Scotland from a third country is likely to constitute a serious risk to animal or public health, they each have the power to issue a written declaration suspending or imposing conditions on the introduction into Scotland of any product from the whole or any part of that third country.

(2) Such a declaration shall be published in such manner as the Scottish Ministers or the Agency, as the case may be, thinks fit and shall specify the product and the third country or part thereof concerned.

(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof shall specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration.

(5) Where a declaration is in force imposing conditions on the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration unless the product complies with conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

Costs and fees

36.—(1) The costs incurred by the enforcement authority for which the feed or food business operator or its representative is liable under Article 22 of Regulation 882/2004 shall be payable by the feed or food business operator or its representative on the written demand of the enforcement authority.

(2) The fees required to be collected by a competent authority under Article 14 of Regulation 669/2009 shall be payable by the feed or food business operator, subject to the increased level of official controls provided for in that Regulation, or its representative, on the written demand of the competent authority.

Procurement by authorised officers of samples with regard to food

37. An authorised officer of a food authority may, for the purposes of the execution and enforcement by that authority of the Import Provisions—

(a) purchase a sample of any food, or any substance capable of being used in the preparation of food;

(b) take a sample of any food, or any such substance, which—

(i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption; or

(ii) is found by the officer on or in any premises which the officer is authorised to enter by or under regulation 39;

(c) take a sample from any food source, or a sample of any contact material, which is found by the officer on or in any such premises; and

(d) take a sample of any article or substance which is found on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions.

Analysis etc. of samples

38.—(1) An authorised officer of a food authority who has procured a sample under regulation 37 shall—

(a) if the officer considers that the sample should be analysed, submit it to be analysed by a public analyst;

(b) if the officer considers that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it —

(a) to be analysed by the public analyst for the area in which the purchase was made; or

(b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner determines (for any reason) that that food analyst or examiner is unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by the food analyst or examiner to such other food analyst or examiner as that person may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to that food analyst or examiner under this regulation, but may, except where—

(a) that person is the public analyst for the area in question; and

(b) the sample is submitted for analysis by an authorised officer of a food authority,

demand in advance the payment of such reasonable fee as the food analyst or examiner may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by the food analyst or examiner, but the analysis or examination may be made by any person acting under the direction of the food analyst or examiner.

(8) In any proceedings under the Import Provisions, the production by one of the parties—

(a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or

(b) of a document supplied to the food analyst or examiner by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) Any reference in this regulation to a public analyst for a given area shall, where two or more public analysts have been appointed for that area, be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations 1990(**4**) shall apply in relation to a sample procured by an authorised officer of a food authority under regulation 35 as if it were a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

Powers of entry of authorised officers of a food authority

39.—(1) An authorised officer of a food authority shall, on producing, if so required, some duly authenticated document showing the officer's authority, have a right at all reasonable hours—

(a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Import Provisions in relation to food;

(**4**) S.I. 1990/2463, to which there are amendments not relevant to these Regulations.

(b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and

(c) to enter any premises for the purpose of the performance by the authority of their functions under the Import Provisions,

but admission to any premises used only as a private dwelling–house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) If a sheriff, magistrate or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) and either—

(a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or

(b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation shall continue in force for a period of 1 month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises which the officer has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

(a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and

(b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as the officer may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) may—

(a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of the Import Provisions; and

(b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(7) If a person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, the person making the disclosure is, unless the disclosure was made in the performance of that person's duty, guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981, to enter any premises—

(a) on which an animal or bird affected with any disease to which that Act applies is kept; and

(b) which is situated in a place declared under that Act to be infected with such a disease.

Obstruction etc. of officers (imports)

40.—(1) Any person who—

(a) intentionally obstructs any person acting in the execution of the Import Provisions; or

(b) without reasonable cause, fails to give to any person acting in the execution of the Import Provisions any assistance or information which that person may reasonably require for the performance of that person's functions under the Import Provisions,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

(a) furnishes information which that person knows to be false or misleading in a material particular; or

(b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Offences and penalties

41.—(1) Any person who—

(a) contravenes or fails to comply with any of the specified import provisions;

(b) contravenes or fails to comply with regulation 26(3), 27(5) or 35(4) or (5);

(c) contravenes any of the prohibitions in regulation 28(1);

(d) to the extent that contravention or failure to comply with regulation 29 does not constitute an offence under regulation 40, contravenes or fails to comply with regulation 29; or

(e) fails to comply with a notice served upon that person under the Import Provisions,

is guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under this Part of these Regulations shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years, to a fine or to both.

(3) A person guilty of an offence under regulation 40 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

Time limit for prosecutions (imports)

42.—(1) No prosecution for an offence under this Part of these Regulations which is punishable under regulation 41(2) shall be begun after the expiry of—

(a) 3 years from the commission of the offence; or

(b) 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor,

whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the knowledge of the prosecutor, shall be conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.