
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 255

The TSE (Scotland) Regulations 2002

Part VIII

Community controls, offences, penalties and enforcement

Community controls: powers of inspectors

95.—(1) An inspector shall, on producing, if required to do so, some duly authenticated document showing the authority of that inspector, have the right at all reasonable hours to enter any premises (excluding premises used only as a dwelling) for any purpose in relation to the checks and assistance referred to in Article 21 of the Community TSE Regulation.

(2) If a sheriff or justice of the peace, on sworn information in writing—

- (a) is satisfied that there are reasonable grounds for entry into any premises for any purpose as is mentioned in paragraph (1) above; and
- (b) is satisfied either that—
 - (i) 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
 - (ii) 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 temporarily absent,

the sheriff or justice of the peace may by signed warrant authorise an inspector to enter the premises, if need be by using reasonable force.

(3) The occupier of premises entered by an inspector under this regulation or by virtue of a warrant issued under it, and the employees of that occupier and any person on the premises who is or has been in possession or charge of any mammalian meat and bone meal or processed animal protein, any animal or carcase which is or has been on the premises, or any specified risk material which is or has been on the premises, shall—

- (a) provide such reasonable facilities and reasonable assistance to the inspector and comply with such reasonable requirements as the inspector considers necessary for any purpose in relation to the checks and assistance referred to in Article 21 of the Community TSE Regulation; and
- (b) if required by an inspector, give such information as that occupier possesses as to—
 - (i) any mammalian meat and bone meal or processed animal protein, any animal or carcase, or any specified risk material, which is or has been on the premises;
 - (ii) any animal or carcase with which any mammalian meat and bone meal or processed animal protein, any animal or carcase, or any specified risk material, which is or has been on the premises may have come into contact; and
 - (iii) the location, transport and movement of any mammalian meat and bone meal or processed animal protein, any animal or carcase, or any specified risk material, which is or has been in the possession or charge of the occupier.

(4) An inspector entering any premises by virtue of this regulation, or of a warrant issued under it may be accompanied by—

- (a) such other person as that inspector considers necessary to give that inspector such assistance as that inspector considers necessary; and
- (b) a representative of the European Commission acting for the purpose of the Community TSE Regulation or the Community Transitional Measures.

(5) If an inspector enters any unoccupied premises, that inspector shall leave them as effectively secured against unauthorised entry as that inspector found them.

Obstruction

96.—(1) No person shall—

- (a) intentionally obstruct any person acting in the execution of these Regulations;
- (b) without reasonable cause, fail to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require for the purpose of carrying out the functions of that person under these Regulations; or
- (c) furnish to any person acting in the execution of these Regulations any information which that person so furnishing knows to be false or misleading in a material particular.

(2) Nothing in paragraph (1)(b) above or in any other provision of these Regulations requiring the giving of assistance or information shall be construed as requiring any person to answer any question if to do so might incriminate that person.

Offences and penalties

97.—(1) If a person contravenes or fails to comply with any provision of these Regulations or a direction of the Scottish Ministers or the Agency under regulation 72 above, that person shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(2) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with the functions of management of the member as if the member were a director of the body corporate.

Offences due to fault of another person and defence of due diligence

98.—(1) Where the commission by any person of an offence under any of the provisions of these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph of this regulation whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under any of the provisions of these Regulations, it shall, subject to paragraph (3) below, be a defence for the person charged to prove that all reasonable precautions were taken and all due diligence exercised to avoid the commission of the offence by the person charged or by a person under the control of such person.

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

- (a) seven clear days before the trial diet; or
- (b) one month after the first appearance of that person before a court in connection with the alleged offence,

that person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the possession of the person charged.

(4) In paragraph (3) above any reference to appearing before a court shall be construed as including a reference to being brought before a court.

Enforcement

99.—(1) Part II and Part IV of these Regulations shall be enforced—

- (a) in relation to premises which are—
 - (i) licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995;
 - (ii) licensed under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(1);
 - (iii) licensed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(2);
 - (iv) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(3); and
 - (v) combined premises as defined in the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(4),by the Agency or by the Scottish Ministers; and
- (b) in relation to any other premises, by the local authority.

(2) The other Parts of these Regulations shall be enforced by the local authority.

(3) The Scottish Ministers may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on a local authority under this regulation shall be discharged by the Scottish Ministers and not by the local authority.

(1) S.I.1995/540, amended by S.I. 1995/1763, 2148, 2200 and 3205, 1997/1729 and S.S.I. 2001/62, 171 and 288 and 2002/87 and 234.

(2) S. I. 1995/2148, amended by S.I. 1995/3205 and S.S.I. 2000/02.

(3) S. I. 1994/3082, amended by S.I. 1995/539, 1763, 2200 and 3205, 1996/683 and 1499 and S.S.I. 2000/62, 171 and 288 and 2001/160, 358, 394 and 429 and 2002/35.

(4) S. I. 1995/3205, amended by S.I. 1996/3124, S.S.I. 2000/62, 171 and 288, 2001/358, 394 and 429 and 2002/35.