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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 616**

**The Official Feed and Food Controls  
(Scotland) Regulations 2005**

**PART 5**

**ENFORCEMENT AND SUPPLEMENTARY PROVISIONS**

**Offences due to fault of another person**

**42.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

**Defence of due diligence**

**43.—(1)** In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the accused's control.

(2) If in any case the defence provided by paragraph (1) 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 accused shall not, without leave of the court, be entitled to rely on that defence unless at the earlier of—

- (a) a 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 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 identifying or assisting in the identification of that other person as was in the accused's possession.

**Offences by bodies corporate**

**44.—(1)** Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate is to be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) "director", in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry

or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### **Offences by Scottish partnerships**

**45.** Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is to be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

### **Protection of officers acting in good faith**

**46.—(1)** An officer of a competent authority, a relevant enforcement authority or an enforcement authority within the meaning of regulation 23, is not personally liable in respect of any act done by that officer—

(a) in the execution or purported execution of the Official Controls Regulations; and

(b) within the scope of the officer's duties,

if the officer did that act in the honest belief that the officer's duties under the Official Controls Regulations required or entitled it to be done.

(2) Nothing in paragraph (1) shall be construed as relieving any such authority of any liability in respect of the acts of its officers.

(3) Where an action has been brought against an officer in respect of an act done by that officer outside the scope of the officer's duties referred to in paragraph (1)(a) above, the authority concerned may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if it is satisfied that the officer honestly believed that the act complained of was within the scope of the officer's duties.

(4) A public analyst appointed by a food authority shall be treated for the purposes of this regulation as being an officer of that authority, whether or not that analyst's appointment is a whole-time one.

### **Service of documents**

**47.—(1)** Any document which is required or authorised under these Regulations to be served on a person may be served—

(a) by delivering it to that person;

(b) in the case of an incorporated company or body, by delivering it to its secretary at its registered or principal office, or by sending the document in a prepaid letter addressed to its secretary at that office; or

(c) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to that person at that person's usual or last known residence.

(2) Where a document is to be served on the occupier of any premises under these Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises are unoccupied, the document may be served by addressing it to the person concerned in the capacity of "occupier" of the premises (naming them), and—

(a) by delivering it to some other person at the premises; or

(b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

### **Consequential amendment**

**48.**—(1) The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005(1) are amended as provided in paragraph (2).

(2) In Schedule 1 (specified feed law) after the entry for “The Feed (Hygiene and Enforcement) (Scotland) Regulations 2005” insert the entry “The Official Feed and Food Controls (Scotland) Regulations 2005(2)”.

### **Revocations**

**49.** The instruments specified in Column 1 of Schedule 6 are revoked to the extent specified in Column 3 of that Schedule.

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(1) S.S.I. 2005/608.  
(2) S.S.I. 2005/616.