

SCOTTISH STATUTORY INSTRUMENTS

**2006 No. 543**

**The EC Fertilisers (Scotland) Regulations 2006**

**PART IV**

**Approved laboratories, treatment of samples and further controls**

**Approved laboratories**

<sup>F1</sup>16. ....

**Textual Amendments**

**F1** Reg. 16 omitted (31.12.2020) by virtue of [The Fertilisers and Pesticides \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments etc.\) Regulations 2019 \(S.S.I. 2019/25\)](#), regs. 1, **2(7)**; 2020 c. 1, Sch. 5 para. 1(1)

**Treatment of samples**

**17.** In any proceedings for an offence under these Regulations (including an application to a sheriff under regulation 18(1)(b)) to which the content of a fertiliser is relevant—

- (a) a court shall not conclude that a sample is representative of the fertiliser unless the sample—
  - (i) has been taken in accordance with Annex IV (methods of sampling and analysis); and
  - (ii) has been subjected to analysis in accordance with Annex IV in a laboratory listed in accordance with Article 30 <sup>F2</sup>...;
- (b) a certificate given by a person that that person is an inspector and took a sample in accordance with Annex IV shall, unless the contrary is proved, be taken as evidence of that person being an inspector and having done so;
- (c) a certificate given by an operator of a laboratory that the laboratory is approved for the purposes set out in Article 30(1) and that a sample was analysed in accordance with Annex IV shall, unless the contrary is proved, be evidence of the laboratory being so approved and the analysis having been so carried out; and
- (d) the combination of the certificates referred to in paragraphs (b) and (c) shall, unless the contrary is proved, be taken as evidence that a sample is representative of the fertiliser.

**Textual Amendments**

**F2** Words in [reg. 17\(a\)\(ii\)](#) omitted (31.12.2020) by virtue of [The Fertilisers and Pesticides \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments etc.\) Regulations 2019 \(S.S.I. 2019/25\)](#), regs. 1, **2(8)**; 2020 c. 1, Sch. 5 para. 1(1)

## Remedial action and seizure

**18.**—(1) Where an inspector has reasonable grounds to believe that a fertiliser designated as [F3 a UK] fertiliser is one in relation to which an offence under these Regulations has been committed the inspector may—

- (a) serve on the person whom the inspector considers to be in charge of the fertiliser a notice requiring that person to take such action as is specified in the notice; or
- (b) seize and retain the fertiliser and having done so shall make an application to a sheriff seeking its destruction or disposal.

(2) Where an inspector has served a notice under paragraph (1)(a)—

- (a) the notice shall specify the grounds for the inspector's belief; and
- (b) the action that may be specified is action to ensure that the fertiliser is removed from the market and not placed on the market again until it can be so placed without an offence under these Regulations being committed.

(3) Where an inspector has seized fertiliser under paragraph (1)(b)—

- (a) the inspector shall retain the fertiliser until the application to the sheriff is withdrawn or finally determined;
- (b) the inspector shall inform the person whom the inspector considers may be liable to prosecution under these Regulations of the grounds for the inspector's belief that an offence has been committed and that an application is to be made to the sheriff seeking destruction or disposal of the fertiliser;
- (c) the person in question may attend before the sheriff who deals with the application and shall be entitled to be heard and may call witnesses; and
- (d) if the sheriff finds that the fertiliser is one in relation to which an offence under these Regulations has been committed—
  - (i) the sheriff shall order that it be destroyed or disposed of in an appropriate manner; and
  - (ii) the sheriff may order that any expenses reasonably incurred in connection with the destruction or disposal shall be defrayed by the person in question.

(4) Any person who fails to comply with a notice given under paragraph (1)(a) shall be guilty of an offence.

### Textual Amendments

- F3** Words in [reg. 18\(1\)](#) substituted (31.12.2020) by [The Fertilisers and Pesticides \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments etc.\) Regulations 2019 \(S.S.I. 2019/25\)](#), [regs. 1, 2\(9\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

## Safeguard measures

**19.**—(1) Where the Scottish Ministers identify a risk of the type described in Article 15 (safeguard clause) in relation to a fertiliser they may, by notice served on the person whom they consider to be in charge of the fertiliser, direct that person to take such action for mitigation or elimination of the risk as is specified in the direction.

(2) If the Scottish Ministers consider that a direction should be given to a number of persons and that the most efficient way of bringing it quickly to their attention would be publicising it by other means then the direction may be given to them by publicising it by those other means.

(3) Any person who fails to comply with a direction shall be guilty of an offence unless the direction has been withdrawn.

(4) In any proceedings for an offence under paragraph (3) it shall be a defence for the person charged to show that they were—

- (a) not in charge of the fertiliser; or
- (b) not aware of the direction.

**Changes to legislation:**

There are currently no known outstanding effects for the The EC Fertilisers (Scotland) Regulations 2006, PART IV.