

2006 No. 543

AGRICULTURE

The EC Fertilisers (Scotland) Regulations 2006

Made - - - - - *9th November 2006*

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Coming into force - - *4th December 2006*

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The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the EC Fertilisers (Scotland) Regulations 2006 and shall come into force on 4th December 2006.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Community Regulation” means Regulation (EC) 2003/2003 of the European Parliament and of the Council of 13th October 2003 relating to fertilisers^(b);

“inspector” means a person appointed under regulation 11(2) or 14(3);

“operator” means a person to whom an approval has been issued and not withdrawn in respect of a laboratory—

(a) pursuant to regulation 16(1); or

(b) as described in regulation 16(3); and

“premises” includes any land, building, vehicle or trailer, container, stall or moveable structure, ship or other vessel, or aircraft.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) O.J. No. L 304, 21.11.03, p.1 as amended by Commission Regulation (EC) No. 2076/2004 (O.J. No. L 359, 4.12.2004, p.25).

(2) In these Regulations–

- (a) a reference to a numbered Article or numbered Annex is a reference to the Article in, or Annex to, the Community Regulation so numbered;
- (b) any reference to a numbered regulation is a reference to the regulation so numbered in these Regulations;
- (c) any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation in which that paragraph occurs unless the reference is expressly stated to relate to a paragraph of an Article in the Community Regulation; and
- (d) words or expressions that are used in the Community Regulation and these Regulations have the same meaning in these Regulations as in the Community Regulation.

PART II

Composition, labelling and records

Types of fertiliser for which the designation “EC fertiliser” may be used

3.—(1) No manufacturer shall place on the market a fertiliser designated as an “EC fertiliser” unless–

- (a) it is of a type listed in Annex I (list of types of EC fertilisers); and
- (b) the manufacturer is established in accordance with Article 4 (establishment within the Community).

(2) Any manufacturer who contravenes paragraph (1) shall be guilty of an offence.

Tolerances

4. Any manufacturer who–

- (a) places on the market a fertiliser designated as an EC fertiliser the content of which does not comply with the provisions in respect of tolerances set out in paragraphs (1) and (3) of Article 13 (tolerances); or
- (b) fails to comply with Article 13(2),

shall be guilty of an offence.

General provisions relating to the marking, identification, labelling and packaging of EC fertilisers

5.—(1) Any manufacturer who places on the market a fertiliser designated as an EC fertiliser shall be guilty of an offence unless the identification markings relating to it–

- (a) are borne as specified in paragraph (1) of Article 9 (markings);
- (b) comply with Article 9(2);
- (c) include an expression of contents as specified in paragraphs (1)(a) and (d), (4), (5) and (6) of Article 6 (compulsory statements);
- (d) include the additional instructions called for by Article 9(3), if it is a fluid fertiliser; and
- (e) have been provided as required by paragraph (1) of Article 7 (identification).

(2) In addition to the requirements of paragraph (1), any manufacturer who places on the market a packaged fertiliser designated as an EC fertiliser shall be guilty of an offence unless–

- (a) the identification markings appear as specified in the first sentence of Article 7(2);
- (b) the packaging and labelling of the fertiliser complies with paragraphs (1) and (2) of Article 10 (labelling);
- (c) the packaging complies with Article 12 (packaging); and

(d) the language in which those identification markings appear complies with Article 11 (languages).

(3) In addition to the requirements of paragraph (1), any manufacturer who places on the market a bulk fertiliser designated as an EC fertiliser shall be guilty of an offence unless—

- (a) the identification markings appear as specified in the second sentence of Article 7(2);
- (b) a copy of the documents containing the identification markings meets the requirements of Article 10(3); and
- (c) the language in which the identification markings appear complies with Article 11.

Additional provisions relating to the marking and identification of inorganic primary nutrient fertilisers

6. Any manufacturer who places on the market a fertiliser—

- (a) that is designated as an EC fertiliser;
- (b) that is a fertiliser of the type described in Article 16 (scope); and
- (c) for which a declaration of calcium, magnesium, sodium and sulphur content is made other than—
 - (i) in accordance with Articles 17 (declaration of secondary nutrients in primary nutrient fertilisers), 18 (calcium, magnesium, sodium and sulphur) and 19 (identification); and
 - (ii) as specified in Article 6(2)(c),

shall be guilty of an offence.

Additional provisions relating to the marking and identification of inorganic secondary nutrient fertilisers

7. Any manufacturer who places on the market a fertiliser that is—

- (a) designated as an EC fertiliser;
- (b) a fertiliser of the type described in Article 20 (scope); and
- (c) not marked in accordance with Article 21 (identification) or for which a declaration of calcium, magnesium, sodium and sulphur content is made otherwise than as specified in Article 6(2)(c),

shall be guilty of an offence.

Additional provisions relating to the marking, identification and packaging of inorganic micro-nutrient fertilisers

8. Any manufacturer who places on the market a fertiliser that is—

- (a) designated as an EC fertiliser;
- (b) a fertiliser of the type described in Article 22 (scope); and
- (c) not marked in accordance with Article 23 (identification) or not packaged in accordance with Article 24 (packaging),

shall be guilty of an offence.

Records

9. Any manufacturer who fails to comply with the requirements of Article 8 (traceability) shall be guilty of an offence.

Compliance notices

10.—(1) This regulation applies where the Scottish Ministers are of the opinion that a manufacturer is placing on the market fertiliser that does not comply with the Community Regulation but that manufacturer has not committed an offence under regulations 3 to 9.

(2) If the Scottish Ministers are of the opinion described in paragraph (1) they may serve a notice in writing on the manufacturer giving reasons why they are of that opinion and requiring that manufacturer to take such steps as are specified in the notice within such period (being not less than 14 days, except in an emergency) as is so specified.

(3) The steps referred to in paragraph (2) are those that the Scottish Ministers regard as appropriate to cause them to cease to be of the opinion referred to in paragraph (1).

(4) Any manufacturer who fails to comply with a notice served under paragraph (2) shall be guilty of an offence unless the notice has been withdrawn.

PART III

Enforcement

Enforcement authorities

11.—(1) These Regulations and the Community Regulation shall be enforced by the council.

(2) The council shall appoint inspectors for the purposes of these Regulations.

(3) For the purposes of this Part “the council” means the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(a) for the local government area designated by section 1(2) of, and Part I of Schedule 1 to, that Act.

Powers of entry

12.—(1) An inspector shall, on producing, if so required, some duly authenticated document of authority, have a right at all reasonable hours to enter any premises for the purpose of ensuring that the provisions of these Regulations or the Community Regulation are being complied with.

(2) An inspector may be accompanied by—

- (a) such other persons as the inspector considers necessary; and
- (b) any representative of the European Commission acting for the purpose of enforcement of the Community Regulation.

(3) Admission to any premises used only as a private dwellinghouse shall not be demanded under paragraph (1) unless 24 hours notice of the intended entry has been given to the occupier, or the entry is in accordance with a warrant granted under this regulation.

(4) If a sheriff or a justice of the peace is satisfied that there are reasonable grounds for entry into any premises for the purposes of the enforcement of these Regulations or the Community Regulation and—

- (a) admission has been refused or a refusal is expected and (in either case) that notice of intention to apply for a warrant has been given to the occupier;
- (b) asking for admission or the giving of a notice of intention to apply for a warrant would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the sheriff or the justice of the peace may by warrant authorise the inspector to enter the premises, by reasonable force if necessary.

(a) 1994 c.39.

(5) A warrant granted under this regulation shall continue in force for one month or until the purpose for which the warrant was granted has been fulfilled, whichever period is shorter.

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

Powers of inspectors

13.—(1) An inspector entering premises under regulation 12 may—

- (a) inspect the premises and any plant, machinery or equipment;
- (b) search the premises;
- (c) inspect any material and take samples in the manner prescribed in Annex IV (methods of sampling and analysis);
- (d) examine or seize any documents or records (including financial records);
- (e) carry out any inquiries, examinations and tests;
- (f) have access to, and inspect and copy any documents or records (in whatever form they are held) required to be kept by the Community Regulation, or remove such records to enable them to be copied provided they are returned as soon as reasonably practicable;
- (g) have access to, 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
- (h) seize any computer and associated equipment for the purpose of printing or copying documents or records provided they are returned as soon as reasonably practicable.

(2) For the purposes of paragraph (1)(f) and (g) an inspector—

- (a) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to give such assistance as the inspector may reasonably require; and
- (b) where a record is kept by means of a computer, may require the record to be produced in a form in which it may be taken away.

Special provisions relating to compliance notices

14.—(1) The council shall give the Scottish Ministers, on demand, such information as the Scottish Ministers consider that they require in order to exercise their functions under regulation 10.

(2) Where the Scottish Ministers suspect that a person has failed to comply with a notice served under regulation 10(2), they may require the council to take steps to find out whether such a failure has occurred.

(3) Where a council fails to take any step required of it under paragraph (2), the Scottish Ministers may appoint a person, who shall be deemed an inspector for the purposes of these Regulations, for the purpose of taking those steps and the costs of the Scottish Ministers incurred in relation to the appointment and the taking of those steps shall be recoverable from the council, on demand.

Obstruction

15.—(1) Any person who—

- (a) intentionally obstructs a person acting in the execution of these Regulations;
- (b) without reasonable cause, fails to give a person acting for the purposes of these Regulations assistance or information which that person may reasonably require for the performance of their functions under these Regulations; or
- (c) provides a person acting for the purposes of these Regulations with information which the person providing the information knows to be false or misleading,

shall be guilty of an offence.

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

PART IV

Approved laboratories, treatment of samples and further controls

Approved laboratories

16.—(1) The Scottish Ministers shall be responsible for the grant and withdrawal of approvals of laboratories for the purposes of paragraph (1) of Article 30 (approved laboratories) and a person may apply to the Scottish Ministers, in such form as they may require, for a laboratory to be so approved.

(2) In deciding whether to grant or withdraw approval of a laboratory pursuant to paragraph (1), the Scottish Ministers shall take into account the actual and expected competence of the laboratory to check compliance of fertilisers designated as EC Fertilisers in accordance with the requirements specified in Article 30(1) and section B of Annex V.

(3) An approval of a laboratory for the purposes of Article 30(1) granted by the Secretary of State for Environment, Food and Rural Affairs prior to the coming into force of these Regulations shall continue to have effect unless withdrawn pursuant to paragraph (1) of this regulation.

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(2) or (5);
- (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.

Remedial action and seizure

18.—(1) Where an inspector has reasonable grounds to believe that a fertiliser designated as an EC 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.

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.

PART V

Penalties and defence of due diligence

Penalties and defence of due diligence

20.—(1) A person convicted of an offence under these Regulations 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 both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

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

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

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

(4) Subject to paragraphs (5) and (6), in any proceedings for an offence under any provision of these Regulations, it shall be a defence for the person charged to prove that all reasonable precautions were taken and all due diligence exercised to avoid commission of the offence by that person or by another person under that person's control.

(5) If in any case the defence provided by paragraph (4) involves the allegation that the commission of the offence was due to—

- (a) an act or default of another person; or
- (b) 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, not less than seven clear days before the trial diet, the person charged 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.

(6) A person shall not be entitled to the defence in paragraph (4) by reason of reliance on information supplied by another person unless that person shows that it was reasonable in all the circumstances to have relied on the information having regard to—

- (a) the steps that the person charged took, or which might reasonably have been taken, to verify the information; and
- (b) whether there was any reason to disbelieve the information.

(7) In paragraph (2), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

PART VI

Disapplication of legislation

Disapplication of offence provisions

21. Where an act or omission is an offence under these Regulations it shall not be an offence under Part IV of the Agriculture Act 1970(a) or under the Fertilisers Regulations 1991(b).

(a) 1970 c.40.

(b) S.I. 1991/2197 as amended by S.I. 1995/16, S.I. 1997/1543 and S.I. 1998/2024.

Disapplication of sampling and analysis provisions

22. The Fertilisers (Sampling and Analysis) Regulations 1996^(a) shall not apply to any sampling or analysis of fertilisers carried out for the purposes of these Regulations.

St Andrew's House,
Edinburgh
9th November 2006

ROSS FINNIE
A member of the Scottish Executive

^(a) S.I. 1996/1342.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, are made under section 2(2) of the European Communities Act 1972 and implement in Scotland Regulation (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (O.J. No. L 304, 21.11.2003, p.1.) (“the Community Regulation”).

The Regulations create offences for breaches of the Community Regulation by manufacturers of fertilisers. “Manufacturer” is defined in Article 2 of the Community Regulation.

The Regulations describe the types of fertiliser that may be designated as an “EC fertiliser” (regulation 3).

Regulation 4 makes provision in respect of compliance with the provisions on tolerances set out in the Community Regulation.

General provisions for the identification, marking, labelling and packaging of fertilisers designated as EC fertilisers are applied by regulation 5. The Regulations also apply additional requirements for the marking and identification of inorganic primary nutrient fertilisers (regulation 6) and inorganic secondary nutrient fertilisers (regulation 7) as well as additional provisions relating to the marking, identification and packaging of inorganic micro-nutrient fertilisers (regulation 8).

Manufacturers are required to keep the records described in Article 8 of the Community Regulation (regulation 9).

In the event that a fertiliser designated as an EC fertiliser fails to comply with the requirements of the Community Regulation in a manner which is not an offence under these Regulations, the Scottish Ministers may serve a compliance notice (regulation 10). Further provisions relating to compliance notices are set out in regulation 14.

Local authorities are responsible for enforcing these Regulations (regulation 11) with powers of entry set out in regulation 12, powers of inspectors set out in regulation 13 and offences in relation to obstruction of persons acting in the execution of these Regulations set out in regulation 15.

Provisions relating to the approval of laboratories competent to analyse samples for the purposes of the Community Regulation are set out in regulation 16 and specific provisions for the treatment of samples are contained in regulation 17.

Inspectors have the power to require remedial action to be taken in respect of a fertiliser designated as an EC fertiliser where it is believed that an offence under the Regulations has been committed, or to seize the fertiliser for the purposes of making an application to a sheriff for its destruction or disposal (regulation 18).

Regulation 19 provides the Scottish Ministers with a power to give directions for the mitigation or elimination of risk in circumstances where they have justifiable grounds for believing that an EC designated fertiliser, although complying with the requirements of the Community Regulation, constitutes a risk to safety or health of humans, animals or plants or a risk to the environment.

Penalties for offences under the Regulations are established by regulation 20. Regulation 20 also provides for a due diligence defence in proceedings for offences under the Regulations.

Regulation 21 provides that an act or omission which is an offence under the Regulations is not an offence under Part IV of the Agriculture Act 1970 (c.40) or the Fertilisers Regulations 1991 (S.I. 1991/2197) and regulation 22 provides that the requirements of the Fertilisers (Sampling and Analysis) Regulations 1996 (S.I. 1996/1342) do not apply to sampling or analysis carried out for the purposes of these Regulations.

No regulatory impact assessment has been prepared in respect of these Regulations.

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