

2008 No. 342

AGRICULTURE

PESTICIDES

**The Pesticides (Maximum Residue Levels) (Scotland)
Regulations 2008**

Made - - - - *15th October 2008*

Laid before the Scottish Parliament *20th October 2008*

Coming into force - - *18th November 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972^(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references to Regulation (EC) No. 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC^(b) to be construed as references to that instrument as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 and come into force on 18th November 2008.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“inspector” means any person appointed by the Scottish Ministers to be an inspector for the purposes of these Regulations; and

“Regulation 396/2005” means Regulation (EC) No. 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a). 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. Paragraph 1A of Schedule 2 to the European Communities Act 1972 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(b) O.J. No. L 70, 16.3.2005, p.1 as amended by O.J. No. L 29, 2.2.2006, p.3, O.J. No. L 58, 1.3.2008, p.1, O.J. No. L 76, 19.3.2008, p.31 and O.J. No. L 97, 9.4.2008, p.67.

(2) Any reference in these Regulations to Regulation 396/2005 is a reference to that Regulation as amended from time to time.

(3) Expressions used in both these Regulations and Regulation 396/2005 have the same meaning in these Regulations as they have in Regulation 396/2005.

(4) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000(a).

Notices

3. Any notice under these Regulations—

- (a) must be in writing;
- (b) may be subject to conditions; and
- (c) may be amended, suspended or revoked by a notice issued by an inspector.

Designated national authority

4. The Scottish Ministers are the designated national authority for the purposes of Article 38 of Regulation 396/2005.

Functions of the member State

5. The functions of the member State in Regulation 396/2005 are to be exercised by the Scottish Ministers.

Compliance with maximum residue levels

6. It is an offence for any person, without reasonable excuse, to—

- (a) place, or cause or permit any other person to place, on the market as food or feed; or
- (b) feed, or cause or permit any other person to feed, to any animal,

any product covered by Annex I to Regulation 396/2005 in breach of Article 18(1) of that Regulation as read with Article 20 of that Regulation.

Prohibition on processing and mixing products

7. It is an offence for any person, without reasonable excuse, to process or mix, or cause or permit any other person to process or mix, any products specified in Article 19 of Regulation 396/2005 in breach of that Article.

Powers of inspectors

8. Schedule 1 (powers of inspectors) has effect.

Obstruction

9. It is an offence—

- (a) intentionally to obstruct any person acting in the execution of these Regulations;
- (b) knowingly to give any information that is false or misleading to any person acting in the execution of these Regulations;
- (c) intentionally to fail to disclose any material particular to any person acting in the execution of these Regulations; or

(a) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

- (d) to fail, without reasonable excuse—
 - (i) to give any assistance or information that any person acting in the execution of these Regulations may require; or
 - (ii) to produce any record that any person acting in the execution of these Regulations may require to be produced,for the performance of that person’s functions under these Regulations.

Offences by bodies corporate and Scottish partnerships

10.—(1) If an offence under these Regulations committed by a body corporate or a Scottish partnership is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer’s part,

the officer as well as the body corporate or Scottish partnership, as the case may be, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body.

(3) “Officer”—

- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) in relation to a Scottish partnership, means a partner.

Penalties

11. A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

Revocations

12. Schedule 2 (revoked instruments) has effect.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
15th October 2008

Powers of inspectors

Powers of entry

1.—(1) An inspector may, on producing (if so required) a duly authenticated authorisation, enter any premises at any reasonable hour for the purpose of ensuring that the provisions of these Regulations are being complied with.

(2) Admission to any premises used only as a private dwelling house may not be demanded as of right 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 paragraph.

(3) If a justice, on receipt of sworn information in writing, is satisfied that there are reasonable grounds for entry onto any premises for the purposes of the enforcement of these Regulations, and either—

- (a) admission has been refused, or a refusal is expected, and (in either case) that notice to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, 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 justice may by signed warrant, authorise the inspector to enter the premises, if need be, by reasonable force.

(4) A warrant under this paragraph is valid for the period of one month from the date upon which it is signed.

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

(6) In this paragraph—

“justice” means a sheriff, stipendiary magistrate or justice of the peace; and

“premises” includes any place, vehicle, trailer, container, stall, moveable structure, ship, vessel, marine structure, hovercraft or aircraft.

Powers of an inspector

2.—(1) An inspector entering premises under paragraph 1 may—

- (a) take onto those premises any person, equipment or materials that the inspector considers necessary for the enforcement of these Regulations;
- (b) open any container;
- (c) carry out any searches, inspections, measurements and tests;
- (d) take samples;
- (e) have access to, and inspect and copy any books, documents or records (in whatever form they are held) relating to these Regulations and remove them to enable them to be copied;
- (f) photograph or copy anything whose production the inspector has power to require under sub-paragraph (e);
- (g) photograph anything which the inspector has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations;
- (h) seize any computers and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable.

(2) Any person who accompanies an inspector in accordance with this paragraph may perform any of the inspector's functions but only under the supervision of that inspector.

Power of officer to use reasonable force

3. An inspector may use reasonable force, if necessary, in the performance of any of his or her functions under these Regulations.

Seizure or disposal of products

4. If any product to which Regulation 396/2005 applies contains a quantity of pesticide residue greater than that permitted under that Regulation, an inspector may—

- (a) seize or dispose of the consignment containing that product, or any part of it, or require the owner or person appearing to be in charge of it to dispose of it; or
- (b) direct the owner or any person appearing to be in charge of it to take such remedial action as appears to the inspector to be necessary.

Information notice

5. An inspector may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified.

Enforcement and prohibition notices

6.—(1) An inspector may serve a notice on any person who contravenes, or who the inspector has reasonable grounds to suspect may contravene, these Regulations—

- (a) requiring that person to act in accordance with these Regulations; or
- (b) prohibiting that person from acting in contravention of these Regulations.

(2) The notice must give reasons for serving it and, if appropriate, specify what action should be taken and give time limits.

Compliance with notices

7.—(1) It is an offence for any person on whom a notice is served under these Regulations to fail to comply with the provisions of that notice.

(2) Such a notice must be complied with at the expense of the person on whom it is served and, if it is not complied with, an inspector may arrange for it to be complied with at the expense of that person.

SCHEDULE 2

Regulation 12

Revoked instruments

The following Regulations are revoked–

<i>Title</i>	<i>Number</i>
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2005	S.S.I. 2005/599
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2006	S.S.I. 2006/151
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 2) Regulations 2006	S.S.I. 2006/312
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 3) Regulations 2006	S.S.I. 2006/548
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2007	S.S.I. 2007/142
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 2) Regulations 2007	S.S.I. 2007/306
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 3) Regulations 2007	S.S.I. 2007/481
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment (No. 4) Regulations 2007	S.S.I. 2007/523
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2008	S.S.I. 2008/65

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce the provisions of Regulation (EC) No. 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/41/EEC (“Regulation 396/2005”).

Regulation 4 designates the Scottish Ministers as the national authority for the purposes of Article 38 of Regulation 396/2005. Regulation 5 provides that the functions of the member State under Regulation 396/2005 are to be exercised by the Scottish Ministers.

Regulation 6 creates an offence of placing, or causing or permitting to be placed, on the market as food or feed, or feeding or causing or permitting to be fed, to an animal, any product covered by Annex I to Regulation 396/2005, if that product contains pesticide residue levels in excess of those specified in Article 18(1) of that Regulation, as read with Article 20(1). Regulation 7 creates an offence of processing or mixing, or causing or permitting to be processed or mixed, certain products with a view to placing them on the market as food or feed, or feeding them to animals.

Regulation 8 and Schedule 1 set out the powers of inspectors.

Regulation 11 provides that any person guilty of an offence under these Regulations is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

A Regulatory Impact Assessment (RIA) was prepared in respect of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Regulations 2005 (SSI 2005/599), which this instrument revokes and replaces. That RIA provides a basis for establishing the effect that this instrument will have on the costs of business and the voluntary sector. Copies of the RIA can be obtained from the Scottish Government Rural Directorate, Room 259, Pentland House, Robb’s Loan, Edinburgh EH14 1TY. A copy of the RIA has been placed in the Scottish Parliament Information Centre.

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