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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 446**

**The Official Feed and Food Controls  
(Scotland) Regulations 2009**

**PART 5**

**ENFORCEMENT AND SUPPLEMENTARY PROVISIONS**

**Offences due to fault of another person**

**45.** 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 shall be 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**

**46.—(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 [<sup>F1</sup>at the earlier of]—

- (a) a date at least 7 clear days before the <sup>F2</sup>...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.

**Textual Amendments**

- F1** Words in reg. 46(2) inserted (25.1.2010) by [The Official Feed and Food Controls \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/5\)](#), **regs. 1, 2(4)(a)**
- F2** Words in reg. 46(2)(a) omitted (25.1.2010) by [The Official Feed and Food Controls \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/5\)](#), **regs. 1, 2(4)(b)**

**Offences by bodies corporate**

**47.—(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 shall be deemed to be guilty of that offence and shall be 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**

**48.** 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 shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

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

**49.—**(1) An officer of a relevant body is not personally liable in respect of any act done by that officer—

- (a) in the execution or purported execution of the Official Control Regulations; and
- (b) within the scope of the officer's employment,

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

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

(3) Where an action has been brought against an officer of a relevant body in respect of an act done by that officer—

- (a) in the execution or purported execution of the Official Control Regulations; but
- (b) outside the scope of the officer's employment,

the relevant body 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 employment.

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

(5) In this regulation “relevant body” means a body acting as—

- (a) a competent authority;
- (b) an enforcement authority as defined in regulation 22; or
- (c) a relevant enforcement authority.

### **Service of documents**

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

- (a) by delivering it to that person;

- (b) in the case of a person that is a body corporate other than a limited liability partnership, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary at that office;
- (c) in the case of a person that is a limited liability partnership, by delivering it to a designated member of the partnership at their registered or principal office or by sending it in a prepaid letter addressed to a designated member of the partnership at that office;
- (d) in the case of a person that is a partnership other than a limited liability partnership, by delivering it to the partnership's principal place of business; or
- (e) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to that person at their 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.

### **Amendment to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005**

**51.** In Schedule 1 (specified feed law) to the Feed (Hygiene and Enforcement) (Scotland) Regulations 2005 <sup>M1</sup>—

- (a) substitute “ The Official Feed and Food Controls (Scotland) Regulations 2009 ” for “The Official Feed and Food Controls (Scotland) Regulations 2007”; and
- (b) below “Regulation 183/2005” insert “ Regulation (EC) 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, in so far as it relates to feed ”.

#### **Marginal Citations**

**M1** S.S.I. 2005/608, last amended by S.S.I. 2009/263.

### **Revocation**

**52.** The following Regulations are revoked—

- (a) the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005 <sup>M2</sup>;
- (b) the Official Feed and Food Controls (Scotland) Regulations 2007 <sup>M3</sup>; and
- (c) the Official Feed and Food Controls (Scotland) Amendment Regulations 2008 <sup>M4</sup>.

#### **Marginal Citations**

**M2** S.S.I. 2005/294.

**M3** S.S.I. 2007/522, as amended by S.S.I. 2008/218.

**M4** S.S.I. 2008/218.

**[<sup>F3</sup>Transitional and savings provisions applying to feed**

**53.**—(1) The validity, effect or consequences of anything done under these Regulations as they had effect immediately before Food Standards Scotland becomes the feed authority is not affected by Food Standards Scotland becoming the feed authority.

(2) Any inspection, investigation or legal proceedings commenced prior to Food Standards Scotland becoming the feed authority is not affected by Food Standards Scotland becoming the feed authority.

(3) Any inspection, investigation or legal proceeding commenced prior to Food Standards Scotland becoming the feed authority may be continued after that date as if the amendments to these Regulations coming into force on that day had not been made.

(4) Any liability to a penalty for an offence committed before Food Standards Scotland becoming the feed authority is not affected by Food Standards Scotland becoming the feed authority.

(5) Despite the Agency becoming the feed authority, these Regulations as they had effect before that day continue to have effect for the purposes of investigating any offence referred in paragraph (4).]

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**Textual Amendments**

**F3** [Reg. 53](#) inserted (1.4.2021) by [The Feed \(Transfer of Functions\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/467\)](#), regs. 1(2), **6(7)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Official Feed and Food Controls (Scotland) Regulations 2009, PART 5.