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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 85**

**The Aquatic Animal Health (Scotland) Regulations 2009**

**PART 6**

**ENFORCEMENT, APPEALS AND PENALTIES**

**Entry and inspection of land and premises**

**35.**—(1) An inspector may, on producing some duly authenticated document showing the inspector's authority if required, enter and inspect any land or premises at any reasonable time for the purposes of administering and enforcing these Regulations.

(2) An inspector may be accompanied by—

- (a) such persons, equipment and vehicles as the inspector considers necessary;
- (b) a representative of the European Commission acting for the purposes of Directive [2006/88/EC](#).

(3) An inspector may not enter any premises which are a dwelling unless a justice of the peace has issued a warrant authorising the inspector to do so.

(4) A justice of the peace may only issue such a warrant if satisfied that there is good reason to believe that the inspector will not be able to administer or enforce these Regulations without the warrant.

(5) A warrant issued under paragraph (3) remains in force—

- (a) for one month; or
- (b) until the purpose for which it is issued has been fulfilled,

whichever is the sooner.

**Search and examination of land and premises**

**36.** Where an inspector exercises the power conferred by regulation 35, the inspector may—

- (a) search the land or premises for any item, including any aquatic animal or water;
- (b) examine anything that is—
  - (i) on the land or premises;
  - (ii) attached to or otherwise forms part of the land or premises.

**Production of documents**

**37.** For the purposes of administering or enforcing these Regulations, an inspector may require any person—

- (a) to produce any document or record that is in that person's possession or control;
- (b) to render any such document or record on a computer system into a visible and legible form, including requiring it to be produced in a form in which it may be taken away.

### **Seizure of items**

**38.**—(1) This regulation applies where an inspector exercises the powers conferred by regulation 36 or 37.

(2) An inspector may—

- (a) seize, detain or remove any item which is on the land or premises;
- (b) take copies of or extracts from any document or record found on the land or premises.

(3) The power conferred in paragraph (2)(a) shall be construed as including power to take and examine samples of any aquatic animal or water.

(4) An inspector to whom any document or record has been produced in accordance with a requirement imposed under regulation 37 may—

- (a) seize, detain or remove that document or record;
- (b) take copies of or extracts from that document or record.

(5) If, in the opinion of the inspector, it is not for the time being practicable for the inspector to seize and remove any item, the inspector may require any person on the land or premises to secure that the item is not removed or otherwise interfered with until such time as the inspector may seize and remove it.

(6) The powers conferred by this regulation may only be exercised—

- (a) for the purposes of determining whether an offence under these Regulations has been committed; or
- (b) in relation to an item which an inspector reasonably believes to be evidence of the commission of an offence under these Regulations.

(7) Any item seized by an inspector may be disposed of as the competent authority thinks fit.

(8) It is an offence not to comply with a requirement imposed by an inspector under paragraph (5).

### **Enforcement notices**

**39.**—(1) Where the competent authority considers that any person has not complied with, is not complying with, or is not likely to comply with, the conditions of an authorisation under Part 2 or a requirement under these Regulations, it may serve that person with an enforcement notice.

(2) An enforcement notice must state—

- (a) the steps which the relevant person must take or is prohibited from taking;
- (b) the date by which the steps must be taken;
- (c) the reasons for the service of the notice and for the requirements in it;
- (d) that there is a right of appeal under regulation 40.

(3) Where an inspector considers that a requirement in an enforcement notice has not been complied with, the inspector may—

- (a) take such steps as the inspector considers necessary—
  - (i) to ensure compliance with the requirements of the notice; or
  - (ii) to remedy the consequences of the failure to carry them out;
- (b) recover any expenses reasonably incurred in so doing from any person who has failed to comply with the notice.

(4) It is an offence not to comply with an enforcement notice.

## Appeals

- 40.**—(1) A person may appeal to the competent authority against any of the following—
- (a) refusal to grant an authorisation under regulation 8;
  - (b) any condition to which an authorisation is subject;
  - (c) any amendment made to an authorisation under regulation 9 or any decision not to grant an amendment under that regulation;
  - (d) suspension or revocation of an authorisation under regulation 10 or 11;
  - (e) service of an enforcement notice under regulation 39.
- (2) An appellant may within 21 days beginning with the date on which the relevant event occurs, serve the competent authority with a written notice that the appellant wishes to—
- (a) appear before and be heard by an independent person appointed by the competent authority; or
  - (b) provide written representations to the competent authority.
- (3) Where an appellant gives notice under paragraph (2)(a)—
- (a) the competent authority must appoint an independent person to hear representations and specify a time limit within which representations to that person must be made;
  - (b) if the appellant so requests, the hearing must be in public;
  - (c) the person appointed must report to the competent authority; and
  - (d) if the appellant so requests, the competent authority must provide a copy of the appointed person’s report to the appellant.
- (4) Where an appellant provides written representations under paragraph (2)(b)—
- (a) the competent authority must appoint an independent person to consider the representations; and
  - (b) the requirements in paragraph (3)(c) and (d) apply.
- (5) The competent authority must give the appellant written notice of its final decision and the reasons for it.

## Obstruction

- 41.** It is an offence—
- (a) to intentionally obstruct any person acting in the execution of these Regulations;
  - (b) to fail without reasonable cause to give to such person any assistance or information which that person may reasonably require for the purposes of that person’s functions under these Regulations; or
  - (c) to knowingly or recklessly give false or misleading information to such person.

## Offences by bodies corporate

- 42.**—(1) Where an offence under these Regulations committed—
- (a) by a body corporate, is shown to have been committed with the consent or connivance of, or is attributable to any neglect on the part of a person who—
    - (i) is a director, manager, secretary or other similar person of the body corporate; or
    - (ii) was purporting to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of a person who—

- (i) is a partner, or
- (ii) was purporting to act in that capacity; or
- (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is concerned in the management or control of the association, or
  - (ii) was purporting to act in the capacity of a person so concerned,the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence, and is liable to be proceeded against and punished accordingly.
- (2) For the purposes of this regulation, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### **Penalties**

- 43.** A person who is 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.