
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 325

The Bananas (Enforcement of Quality Standards) (Scotland) Regulations 2011

PART 3

Powers of authorised officers

Powers of entry

6.—(1) An authorised officer may enter any premises at any reasonable hour for the purposes of the enforcement of these Regulations.

(2) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.

(3) An authorised officer may be accompanied by any other persons and any equipment as the authorised officer considers necessary.

(4) If a sheriff, a stipendiary magistrate or a justice of the peace, on information in writing sworn on oath, is satisfied that there are reasonable grounds for entry into any premises for the purposes of enforcing these Regulations, and—

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

the sheriff, stipendiary magistrate or justice of the peace may by a signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(5) A warrant granted under paragraph (4) is valid for a period of one month.

(6) An authorised officer who enters, by virtue of this regulation, any premises which are unoccupied or the occupier of which is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

(7) It is an offence for a person who has obtained confidential information in the course of acting for the purposes of the enforcement of these Regulations to disclose that information, whether it was obtained on premises entered under or by virtue of these Regulations or otherwise, unless the disclosure is made in the performance of that person's duty or in accordance with section 17(2) of the Anti-terrorism, Crime and Security Act 2001(1).

Other powers

7.—(1) An authorised officer who has lawfully entered premises for the purpose of the enforcement of these Regulations, may for that purpose—

- (a) require any person to provide such assistance, information or facilities as the authorised officer may reasonably require;
 - (b) make any enquiries, observe any activity or process, and take photographs;
 - (c) inspect and search the premises;
 - (d) inspect any machinery or equipment and any other article on the premises;
 - (e) inspect and take samples of any bananas found on the premises;
 - (f) identify, with demarcation tape or other material, bananas or a specific lot of bananas which are found not to be compliant with the EU banana quality standards;
 - (g) inspect, seize and detain any container used in connection with bananas;
 - (h) have access to, inspect and copy any label, notice, document or record (in whatever form they are held) and remove them to enable them to be copied or require copies to be made;
 - (i) detach, or give permission to be detached, any non compliance label or stop notice label when the reasons for their being affixed no longer apply;
 - (j) have access to, inspect and check the data on, and operation of, any computer and any associated apparatus or material that is or has been in use in connection with a label, notice, document or record mentioned in this regulation, including data relating to deleted files and activity logs; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance (including the provision of passwords) as may reasonably be required and, where these items are kept by means of a computer, may require them to be produced in a visible and legible form in which they may be taken away;
 - (k) seize any computers and associated equipment for the purpose of copying any data, but only if that authorised officer has a reasonable suspicion that an offence under these Regulations has been committed, and provided they are returned as soon as practicable; and
 - (l) seize and detain any items in sub-paragraph (h) if the authorised officer has reason to believe that they may be required as evidence in any court or other proceedings under these Regulations.
- (2) An authorised officer must—
- (a) as soon as is reasonably practicable, provide to the person appearing to be responsible for any items that that authorised officer seizes and detains under paragraph (1) a written receipt identifying those items; and
 - (b) as soon as is reasonably practicable after deciding that those items are no longer required, return them, apart from those to be used as evidence in any court or other proceedings under these Regulations.

Power to affix labels – bulk samples

8. Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, takes a bulk sample of bananas from a specific lot⁽²⁾ and finds those bananas not to be compliant with the EU banana quality standards, the power to affix—

(2) The methodology to be applied is set out in Article 17 of, and Annex V to, Commission Implementing Regulation (EU) No. 543/2011 (O.J. No. L 157, 15.06.2011, p.1, as last amended by Commission Regulation (EU) No. 905/2010 (O.J. No. L 268, 12.10.2010, p.19). See also [Commission Regulation \(EC\) No. 2898/95](#) which in relation to verification of

- (a) a non compliance label under regulation 9 or 10; or
- (b) a stop notice label under regulation 13;

may be exercised in relation to all or any of the bananas or containers of bananas within that lot in the same way as in relation to the bulk sample taken.

Power to affix a non compliance label

9.—(1) Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any bananas which—

- (a) have affixed to them a label or are accompanied by a notice or a document required by the EU banana quality standards; or
- (b) are in a container to which such a label is affixed or which is accompanied by such a notice or document,

indicating in either case that one of the situations in paragraph (2) or (3) applies, an authorised officer may amend or cancel the label, notice or document and may affix to the bananas, or, as the case may be, to the notice or container, a non compliance label.

(2) Situation 1 is where the label, notice or document indicates—

- (a) that the bananas are of a particular class under the EU banana quality standards; but
- (b) the authorised officer has reasonable cause to believe that the bananas are of an inferior class under those standards.

(3) Situation 2 is where the label, notice or document indicates—

- (a) that the bananas are of a particular class under the EU banana quality standards; but
- (b) the authorised officer has reasonable cause to believe that the bananas do not comply with any class under those standards.

(4) For the purposes of this regulation and regulation 10, a non compliance label must be —

- (a) in the form set out in Part I of Schedule 2; and
- (b) completed in accordance with Part II of that Schedule.

10. Where an authorised officer, who has lawfully entered premises for the purpose of the enforcement of these Regulations, finds any bananas, or container holding bananas, which—

- (a) do not have a label required by the EU banana quality standards affixed to them;
- (b) are not accompanied by a notice or document required by the EU banana quality standards;
- (c) have a label required by the EU banana quality standards affixed to them, but the label appears to the authorised officer to be incorrect (other than in relation to a particular class under the EU banana quality standards), or to have been altered or defaced; or
- (d) are accompanied by a notice or document required by the EU banana quality standards but which appears to the authorised officer to be incorrect (other than in relation to a particular class under the EU banana quality standards), or to have been altered or defaced with the result that it is incorrect,

the authorised officer may, as appropriate, amend or cancel the label, notice or document and may affix to those bananas, or, as the case may be, to the container, a non compliance label.

conformity referred to Commission Regulation (EEC) No. 2251/92 (O.J. No. L 219, 4.8.1992, p.9). Commission Regulation (EEC) No. 2251/92 was repealed by Commission Regulation (EC) No. 1148/2001 (O.J. No. L 156, 13.6.2001, p.9) which was then repealed by Commission Regulation (EC) No. 1580/2007 as now repealed by Commission Implementing Regulation (EU) No.543/2011.

Requirement to serve a notice in terms of regulation 9 or 10

11.—(1) If an authorised officer deems it appropriate to affix a non compliance label to any bananas or container holding bananas, the officer must, at the same time serve a written notice on the owner of the bananas or an agent or employee of the owner, advising of the reasons for non compliance and clearly indicating—

- (a) in the case where regulation 9 applies, which of the situations contained in paragraph (2) or (3) of that regulation is applicable;
- (b) in the case where regulation 10 applies, which of the circumstances contained in paragraphs (a) to (d) of that regulation is applicable.

(2) Any notice issued by an authorised officer in terms of this regulation must, in addition to the information required in terms of paragraph (1)(a) or (b) (as applicable), also contain the following information—

- (a) the notice shall be named “Notice of non compliance with EU quality standards for bananas”;
- (b) reference to the Bananas (Enforcement of Quality Standards) (Scotland) Regulations 2011;
- (c) a reference number to correspond with the compliance check, to be entered on the non compliance label affixed to the bananas or, as the case may be, to the container;
- (d) the name and address of the trader or importer or exporter responsible for the bananas;
- (e) reasons for the non compliance with the EU banana quality standards;
- (f) a warning that it is an offence in terms of these Regulations to display or offer for sale, deliver or market in any other manner bananas in contravention of or in non compliance with the EU banana quality standards;
- (g) origin of the bananas claimed;
- (h) class of bananas claimed/attained;
- (i) quantity of the consignment;
- (j) signature of the authorised officer;
- (k) date, time and place of the compliance check; and
- (l) an official stamp bearing the number identifying the authorised officer.