
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 177

**The Marketing of Fruit Plant and Propagating
Material (Scotland) Regulations 2017**

PART 4

Enforcement and administration etc.

Inspectors

18.—(1) The Scottish Ministers must appoint inspectors for the purposes of enforcing these Regulations.

(2) An inspector has the powers set out in schedule 8.

Notices

19.—(1) Any notice served under these Regulations must be in writing and may—

- (a) contain conditions; and
- (b) be amended, suspended or revoked in writing at any time.

(2) A notice may be served on a person by—

- (a) delivering it to that person;
- (b) leaving it at that person's proper address; or
- (c) sending it by post or by electronic means to the person's proper address.

(3) In the case of a body corporate, a notice may be served on or given to an officer of that body.

(4) In the case of a partnership, a notice may be served on or given to a partner or person having control or management of the partnership.

(5) In the case of an unincorporated association, a notice may be served on or given to an officer or a member of the governing body of the association or any other person having management responsibilities in respect of the association.

(6) For the purposes of this regulation and section 7 of the Interpretation Act 1978(1) (service of documents by post) in its application to this regulation, "proper address" means—

- (a) in the case of a body corporate or an officer of that body—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the officer;
- (b) in the case of a partnership or a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of the partner or the person having that control or management;

(c) in the case of an unincorporated association or an officer of the association—

- (i) the principal office of the association; or
- (ii) the email address of the officer;

(d) in any other case, a person's last known address or email address.

(7) For the purposes of paragraph (6), the principal office of a body corporate registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

(8) If the name or address of any occupier of premises on whom a notice is to be served or given under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

(9) A notice may specify that a person in receipt of it must immediately inform an inspector of its safe receipt.

(10) In this regulation—

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“officer”, in relation to a body corporate, means any director, manager, secretary or other similar officer of the body corporate; and

“partnership” includes a Scottish partnership, but does not include a limited liability partnership.

Offences and penalties

20.—(1) A person commits an offence if that person does not comply with—

- (a) an information notice served under paragraph 2 of schedule 8;
- (b) a movement notice served under paragraph 3 of schedule 8;
- (c) an enforcement notice served under paragraph 4(1)(a) of schedule 8; or
- (d) a prohibition notice served under paragraph 4(1)(b) of schedule 8.

(2) A person who commits an offence under these Regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate, Scottish partnerships and unincorporated associations

21.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body; or
 - (ii) where the affairs of the body are managed by its members, a member;

- (b) in relation to a Scottish partnership, a partner; and
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Arrangements for official measures

22.—(1) Subject to paragraph (2), the Scottish Ministers may make such arrangements as they consider necessary or desirable with any person (“A”) for the purpose of enabling A to carry out official measures on the Scottish Ministers’ behalf.

(2) The Scottish Ministers must not make any arrangement under paragraph (1) unless satisfied that A will not—

- (a) derive any private gain from any official measures that A is to carry out under the arrangement; or
- (b) carry out any official measures under the arrangement except under the supervision of the Scottish Ministers.

(3) The Scottish Ministers may include in any arrangement under paragraph (1) such conditions as they consider necessary or desirable for the purposes referred to in that paragraph and paragraph (2), including conditions—

- (a) specifying—
 - (i) the official measures that A must carry out;
 - (ii) the species of plant material in respect of which A may carry out the official measures;
 - (iii) the methods to be used in connection with the carrying out of the official measures by A;
 - (iv) the fees that A may charge in relation to the carrying out of the official measures by A;
 - (v) the records that A must keep in connection with the carrying out of the official measures by A;
- (b) prohibiting A from—
 - (i) charging fees in relation to the official measures that A carries out under the arrangement except to the extent that these do not exceed the costs that A incurs in carrying them out;
 - (ii) carrying out the official measures except under the supervision of the Scottish Ministers;
- (c) prohibiting A from making any further arrangement with any other person (“B”) for any purpose in connection with the carrying out of the official measures that A has arranged with the Scottish Ministers under paragraph (1) to carry out, unless—
 - (i) the Scottish Ministers have approved the proposed conditions of the further arrangement and A has received the prior written approval of the Scottish Ministers to make the further arrangement;
 - (ii) the further arrangement includes a condition prohibiting B from making any subsequent arrangement for any purpose connected with the carrying out of the official measures in respect of which the Scottish Ministers made the arrangement under paragraph (1) with A;
 - (iii) the further arrangement includes an acknowledgment by A that the Scottish Ministers may vary, revoke or suspend the further arrangement if it appears to

the Scottish Ministers that B is not complying, or has failed to comply, with any condition of the further arrangement; and

- (iv) the further arrangement includes the conditions specified in sub-paragraphs (a) and (b) of this paragraph and for these purposes references in those sub-paragraphs to A are to be construed as references to B and references to “the arrangement” are to be construed as references to the further arrangement.

(4) The Scottish Ministers must not approve the making of any further arrangement under (3)(c)(i) unless satisfied that B will not—

- (a) derive any private gain from any official measures that B is to be authorised to carry out under the further arrangement; or
- (b) carry out any official measures under the further arrangement except under the supervision of the Scottish Ministers.

(5) The Scottish Ministers may, by giving notice to A or B (as the case may be), vary, suspend or revoke an arrangement under paragraph (1) or further arrangement under paragraph (3)(c)(i), or any conditions of an arrangement or further arrangement made under this regulation.

(6) A notice given under paragraph (5) must specify—

- (a) in the case of a variation or revocation, the date from which the variation or revocation takes effect;
- (b) in the case of a suspension, the period during which the suspension has effect.

(7) When a variation, revocation or suspension has effect, the Scottish Ministers may, for any purposes in relation to these Regulations, continue to have regard to such of the official measures carried out under an arrangement (or further arrangement) which was varied, revoked or suspended as appear to the Scottish Ministers to be official measures carried out in accordance with the provisions of these Regulations.

(8) In this regulation, “official measures” include official inspections.