
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 349

The Marketing of Bananas (Scotland) Regulations 2012

PART 5

Additional enforcement provisions

Obstruction

16. A person is guilty of an offence if the person—

- (a) obstructs an authorised officer acting for the purpose of the enforcement of these Regulations, or a person accompanying such an authorised officer under regulation 6(3);
- (b) fails without reasonable excuse to give an authorised officer acting for the purpose of the enforcement of these Regulations any assistance or information or to provide any record or facilities that the authorised officer may reasonably require; or
- (c) supplies to an authorised officer acting for the purpose of the enforcement of these Regulations, any information knowing it to be false or misleading.

Offence due to act or default of another person

17.—(1) Where the commission by a person (“A”) of an offence under these Regulations is due to an act or default of another person (“B”), B is guilty of the offence.

(2) Proceedings may be taken against B whether or not proceedings are taken against A.

Defences

18.—(1) Except in respect of the offences in regulation 16, it is a defence for a person charged with an offence under these Regulations (“C”) to prove that the person’s actions were carried out with lawful authority or that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(2) Where C wishes to rely on the defence provided by paragraph (1), C must serve on the prosecutor a written notice of that fact in accordance with paragraph (4).

(3) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or default of another person, C is not, without leave of the court, entitled to rely on that defence unless C has served on the prosecutor a written notice in accordance with paragraph (4) giving such information identifying or assisting in the identification of that person as was then in C’s possession.

(4) The notice must be served—

- (a) where an intermediate diet is held, at or before that diet; or
- (b) where such a diet is not to be held, no later than 10 clear days before the trial diet.

Offences by bodies corporate

19.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
- (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;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (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.

Penalties

20. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.