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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 307**

**The Animal By-Products (Enforcement)  
(Scotland) Regulations 2013**

**PART 6**

**Enforcement**

**Enforcement authority**

**22.**—(1) These Regulations are enforced by—

- (a) subject to paragraph (2), a local authority; or
- (b) in relation to a food hygiene establishment, the Scottish Ministers.

(2) The Scottish Ministers may direct, in relation to a particular case or cases of a particular description, that the Scottish Ministers will enforce these Regulations in place of the local authority.

(3) In paragraph (1)(a) “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(1)</sup>.

(4) In paragraph (1)(b), “food hygiene establishment” means an establishment referred to in regulation 5(2)(a) of the Food Hygiene (Scotland) Regulations 2006<sup>(2)</sup> in respect of which the Food Standards Agency has enforcement functions under those Regulations.

(5) A body exercising functions by virtue of paragraph (1) or (2) is referred to in these Regulations as an enforcement authority.

**Authorised person**

**23.**—(1) An enforcement authority may authorise in writing such persons as the authority considers appropriate to act for the purpose of enforcing these Regulations.

(2) A person authorised under paragraph (1) is referred to in these Regulations as an authorised person.

**Powers of authorised person**

**24.** An authorised person may, on production, if so required, of his or her duly authenticated authorisation, exercise any of the powers specified in regulations 25 and 27.

**Powers of entry and additional powers**

**25.**—(1) For the purpose of ensuring that the EU Control Regulation, the EU Implementing Regulation and these Regulations are complied with, an authorised person may enter any premises (excluding any premises used only as a private dwelling house) at any reasonable hour.

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(1) 1994 c.39, amended by the Environment Act 1995 (c.25), section 120(1) and Schedule 22, paragraph 232(1).

(2) S.S.I. 2006/3.

- (2) The authorised person may in relation to the power under paragraph (1)—
- (a) be accompanied by such other persons as the authorised person considers necessary (including, where there is reasonable cause to anticipate any serious obstruction in the execution of the authorised person's duty, a constable);
  - (b) take any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (c) carry out any examination and investigation as may in the circumstances be necessary;
  - (d) as regards any premises which the authorised person has power to enter, direct that those premises, or part of them, are left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (e) take such measurements and photographs and make such recordings as are considered necessary for the purpose of any examination or investigation under sub-paragraph (c);
  - (f) in the case of any articles or substances found in or on any premises which the authorised person has power to enter—
    - (i) take samples;
    - (ii) test any sample or subject any sample to any process, where it appears that it has or is likely to cause harm to human health or to the health of animals or plants;
    - (iii) take possession of any sample and retain it for so long as is necessary for any of the following purposes:—
      - (aa) to examine it and to exercise the power under head (ii);
      - (bb) to ensure that it is not tampered with before examination of it is completed; or
      - (cc) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
  - (g) require the production of or, where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
  - (h) require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by this regulation; or
  - (i) mark any animal or animal by-product as the authorised person considers necessary.
- (3) Where an authorised person proposes to exercise the power in paragraph (2)(f)(ii) in the case of any article or substance found in or on any premises, the authorised person must—
- (a) if so requested by a person who at the time is present and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power, to be done in that person's presence; and
  - (b) consult such persons as appear to the authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which is proposed under that power.
- (4) Where an authorised person in respect of the power in paragraph (2)(f)(iii)—
- (a) proposes to exercise that power, the authorised person must before taking possession, if it is practicable to do so, give to a responsible person at the premises a portion of the sample, marked in a manner sufficient to identify it; or

(b) exercises that power, the authorised person must leave a notice giving particulars of the article or substance sufficient to identify it and stating that possession has been taken under that power, such notice to be left either—

(i) with a responsible person; or

(ii) if that is impracticable, fixed in a conspicuous place at those premises.

(5) Nothing in this regulation compels the production by any person of information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

## **Warrant**

**26.**—(1) If a sheriff, stipendiary magistrate or justice of the peace, on information in writing sworn on oath, is satisfied that there are reasonable grounds for entry into any premises by an authorised person under regulation 25 and—

(a) entry has been refused, or a refusal is reasonably expected, and the authorised person has given notice of his or her intention to apply for an entry warrant to the occupier; or

(b) a request for entry, or the giving of such a notice, would defeat the object of entry; or

(c) entry is urgently required; or

(d) the premises are unoccupied or the occupier is temporarily absent ,

the sheriff, stipendiary magistrate or justice may by signed warrant, valid for a period of one month, authorise the authorised person to enter the premises, if need be by reasonable force.

(2) An authorised person who enters, by virtue of this regulation, any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

## **Notices served by an authorised person**

**27.**—(1) An authorised person may serve a notice in accordance with paragraph (2) where that person—

(a) considers that there is a contravention of, or failure to comply with, an animal by-product requirement; or

(b) reasonably suspects that, as a result of such a contravention or failure to comply, premises constitute a risk to human or animal health.

(2) A notice may be served on the occupier of any premises or the person in charge of the premises—

(a) requiring the disposal and, where applicable, storage pending such disposal of animal by-products and derived products;

(b) requiring the cleansing and disinfection of any premises and, where applicable, the method for such cleansing and disinfection; or

(c) prohibiting animal by-products and derived products being—

(i) brought on to any premises;

(ii) brought on to any premises unless in accordance with conditions specified in the notice; or

(iii) brought on to any premises until the satisfactory completion of any cleansing and disinfection requirements specified in any notice under sub-paragraph (b).

(3) A notice served under paragraph (2) must be complied with at the expense of the person on whom the notice is served, and if it is not complied with, an authorised person may arrange for it to be complied with at the expense of the person on whom the notice was served.

(4) Paragraph (1) does not apply where Article 46(1) of the EU Control Regulation (suspensions, withdrawals and prohibitions on operations) applies.

(5) Failure to comply with a notice served under paragraph (2) is an offence.

**Power to share information for enforcement purposes**

**28.**—(1) Information sent to, or acquired, in compliance or purported compliance with the obligations of the EU Control Regulation and the EU Implementing Regulation or as a result of enforcing these Regulations may be shared, in accordance with paragraph (2), where it has been so received by—

- (a) the competent authority;
- (b) an enforcement authority; or
- (c) an authorised person.

(2) Where an authority or person within paragraph (1) has received information in accordance with that paragraph, then such an authority or person may share such information with any other—

- (a) competent authority;
- (b) enforcement authority; or
- (c) authorised person,

appointed within the United Kingdom for the purposes of implementing or enforcing the EU Control Regulation and the EU Implementing Regulation.

(3) Information received in accordance with paragraph (2) must only be used for the purposes of enforcing these Regulations.

(4) For the purposes of this regulation, “an enforcement authority” includes the Food Standards Agency.