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STATUTORY INSTRUMENTS

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**2013 No. 2952**

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

**PART 6**

**Enforcement**

**Enforcement authority**

**21.**—(1) Regulation 10 is enforced by—

- (a) in relation to any slaughterhouse, cutting plant or game-handling establishment, the Food Standards Agency; and
- (b) in relation to any other premises, the Food Standards Agency or the food authority in whose area the premises are situated.

(2) Otherwise these Regulations are enforced by—

- (a) the relevant local authority;
- (b) the port health authority in relation to—
  - (i) the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984<sup>(1)</sup>); or
  - (ii) a port health district constituted by order under section 2(3) of that Act; or
- (c) the Secretary of State in relation to a food hygiene establishment.

(3) Sub-paragraphs (a) and (b) of paragraph (2) do not apply where the Secretary of State directs that the enforcement duty is to be exercised in relation to cases of a particular description or any particular case by the Secretary of State.

(4) For the purposes of paragraph (2)(c) or where the Secretary of State makes a direction under paragraph (3), the Secretary of State may delegate to the Director of Public Prosecutions functions in relation to the prosecution of an offence under these Regulations.

(5) In paragraph (2)(a) “local authority” means—

- (a) where there is a unitary authority, within the meaning of the Local Government Changes for England Regulations 1994<sup>(2)</sup>, that authority;
- (b) where there is not a unitary authority—
  - (i) in a metropolitan district, the council of that district;
  - (ii) in a non-metropolitan county, the council of that county or the council of a district within the county area;
  - (iii) in each London borough, the council of that borough;
- (c) in the City of London, the Common Council; or

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(1) 1984 c. 22.

(2) S.I. 1994/867, to which there are amendments not relevant to these Regulations.

- (d) the Council of the Isles of Scilly.
- (6) In paragraph (2)(b) “port health authority” means—
  - (a) in relation to the London port health district, the Common Council of the City of London; or
  - (b) in relation to any other port health district, the port health authority for that district.
- (7) In paragraph (1)(b), “food authority” means the authorities referred to in section 5(1) of the Food Safety Act 1990<sup>(3)</sup> other than—
  - (a) the council of a non-metropolitan county; and
  - (b) the Treasurers of the Inner and Middle Temple.
- (8) In paragraph 2(c) “food hygiene establishment” means an establishment referred to in Regulation 5(2) of the Food Hygiene (England) Regulations 2006 in respect of which the Food Standards Agency has enforcement functions under those Regulations.

### **Authorised person**

**22.** An enforcement authority may authorise in writing such persons as the authority considers appropriate to act for the purpose of enforcing these Regulations.

### **Powers of entry and additional powers**

- 23.—**(1) An authorised person may, on production of that person’s authority if so required for the purpose of enforcing these Regulations, the EU Control Regulation and the EU Implementing Regulation—
- (a) enter and inspect premises (except premises used wholly or mainly as a dwelling-house) at any reasonable hour;
  - (b) take such other persons and any equipment or materials as necessary;
  - (c) make such examination or investigation as necessary;
  - (d) direct that the 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 article or substance found in or on the premises—
    - (i) take samples;
    - (ii) test or subject it to any process, where it appears that it has caused or is likely to cause harm to human health or to the health of animals or plants;
    - (iii) take possession of it and retain it for so long as is necessary—
      - (aa) to examine it and to exercise the power within paragraph (ii);
      - (bb) to ensure that it is not tampered with before examination of it is completed; and
      - (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

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(3) 1990 c. 16.

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 by this regulation; or
- (i) mark any animal or animal by-product as the authorised person considers necessary.
- (j) An authorised officer entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.
- (k) An authorised office may be accompanied by such other persons as the authorised officer considers necessary.

(2) Where an authorised person proposes to exercise the power in paragraph (1)(f)(ii), 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;
- (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.

(3) Where an authorised person proposes to exercise the power in paragraph (1)(f)(iii), the authorised person must, if it is practicable to do so, take a sample of the article or substance and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(4) Where an authorised person exercises the power in paragraph (1)(f)(iii), 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, either—

- (a) with a responsible person; or
- (b) if that is impracticable, fixed in a conspicuous place at those premises.

(5) Nothing in this regulation compels the production by any person of a document which that person would be entitled to withhold production of on the grounds of legal professional privilege on an order for discovery in an action in the High Court.

## **Warrant**

**24.**—(1) If, in relation to the power to enter premises under regulation 23, a justice of the peace, on written information on oath—

- (a) is satisfied that there are reasonable grounds to believe that any information or material relevant to the examination or investigation under regulation 23(1)(c) is on any such premises; and
- (b) is satisfied that—
  - (i) entry to such premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant has been given to the occupier; or
  - (ii) an application for entry, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that such premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant, which continues in force for a period of one month, authorise an authorised person to enter the premises, if necessary by force.

(2) If, in relation to premises used wholly or mainly as a dwelling-house, a justice of the peace on written information on oath—

- (a) is satisfied that there are reasonable grounds to believe that information or material relevant to an examination or investigation for the purpose of enforcing the EU Control Regulation, the EU Implementing Regulation or these Regulations is on such premises; and
- (b) is satisfied that—
  - (i) entry to such premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant has been given to the occupier; or
  - (ii) an application for entry, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that such premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant, which continues in force for a period of one month, authorise an authorised person to enter such premises, if necessary by force, and inspect them.

(3) Where an authorised person has been authorised under paragraph (2) to enter by warrant, the authorised person has the powers conferred by regulation 23(1)(b) to (i).

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

**25.**—(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 contravention or failure to comply, premises constitute a risk to human or animal health.

(2) Notices may be served on the occupier of any premises, or the person in charge of or responsible for the premises or any animal by-product—

- (a) requiring the disposal and, where applicable, storage pending such disposal of—
  - (i) animal by-products and derived products;
  - (ii) material in premises to which paragraph (1)(b) applies;
- (b) requiring the cleansing and disinfection of premises to which paragraph (1)(b) applies and, where applicable, specifying the method for such cleansing and disinfection;
- (c) prohibiting animal by-products and derived products being—
  - (i) moved in or brought on to premises;
  - (ii) moved in or brought on to premises unless in accordance with conditions specified in the notice, including a condition as to the satisfactory completion of the cleansing and disinfection in accordance with a notice as provided in 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 that person.

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

(5) Any person on whom a notice is served who intentionally contravenes or fails to comply with the provisions of that notice is guilty of an offence.

**Power to disclose information for enforcement purposes**

**26.—(1)** This regulation applies to information received by an enforcement authority or an authorised person in the course of enforcing these Regulations.

(2) That person may disclose the information to any comparable enforcement authority or authorised person (appointed elsewhere within the United Kingdom to enforce the EU Control Regulation and the EU Implementing Regulation) for the purposes of their enforcement role.