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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 421**

**The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019**

**PART 11**

**Offences**

**General**

- 37.**—(1) A person commits an offence if the person contravenes or fails to comply with—
- (a) paragraphs 2 or 4 of schedule 1,
  - (b) paragraphs 2(1), (2), (3) or (4) or 4(1) of schedule 2,
  - (c) regulations 24(1), 25(1) or 26(1),
  - (d) regulation 27(2),
  - (e) a provision of the EU Plant Health Regulation specified in Part 1 of schedule 3,
  - (f) a provision of the Official Controls Regulation specified in Part 2 of schedule 3 in so far as it applies to plants, plant products or other objects which are subject to an EU plant health rule,
  - (g) a provision in other EU legislation specified in Part 3 of schedule 3,
  - (h) a provision of an EU instrument specified in schedule 4.
- (2) But paragraph (1) does not apply to anything done under, or in accordance with—
- (a) an authorisation or permit which is granted under these Regulations or has effect under or by virtue of these Regulations,
  - (b) an approval granted under regulation 13(6) or an approval referred to in regulation 53(1),
  - (c) a notice which is given by a plant health inspector or the Scottish Ministers under these Regulations, or has effect under or by virtue of these Regulations.

**Failure to comply with requirements of notices etc.**

- 38.** A person commits an offence if the person fails to comply with—
- (a) a provision or condition of a notice which has been served on the person under these Regulations or has effect under or by virtue of these Regulations,
  - (b) a provision or condition of an authorisation or permit which has been granted to the person under these Regulations or has effect under or by virtue of these Regulations,
  - (c) a provision or condition of a direction given under these Regulations.

**Defence: reasonable excuse for failure to comply with requirements of notices etc.**

**39.** It is a defence for a person charged with an offence under regulation 37 or 38 to show that the person had a reasonable excuse for contravening or failing to comply with the prohibition or requirement in question.

**Provision of false or misleading information**

**40.—**(1) A person commits an offence if, for the purposes of obtaining an authorisation or a permit or procuring the issue of a plant passport or certificate, the person—

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular,
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular,
- (c) intentionally fails to disclose any material information.

(2) In this regulation “certificate” means a certificate referred to in Articles 100, 101 and 102 of the EU Plant Health Regulation.

**Improper use of plant passports or certificates**

**41.—**(1) A person commits an offence if the person—

- (a) dishonestly issues a plant passport or a certificate,
- (b) dishonestly alters a plant passport or a certificate,
- (c) dishonestly re-uses a plant passport or a certificate.

(2) In this regulation, “certificate” has the same meaning as in regulation 40.

**Obstruction etc.**

**42.—**(1) A person commits an offence if the person—

- (a) intentionally obstructs a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations,
- (b) fails to give to a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations any assistance or information which the inspector or authorised person may reasonably require for those purposes,
- (c) fails to produce a document or record when required to do so by a plant health inspector or authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) In paragraph (1), “authorised person” means a person authorised by the Scottish Ministers.

**Defence: reasonable excuse for obstruction etc.**

**43.** It is a defence for a person charged with an offence under regulation 42 to show that the person had a reasonable excuse for the obstruction or failure in question.

**Offence relating to the disclosure of information held by Revenue and Customs**

**44.** A person commits an offence if the person discloses any information received from the Commissioners for Her Majesty’s Revenue and Customs under regulation 33(1) and—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure,
- (b) the disclosure is for a purpose other than specified in regulation 33(1), and
- (c) the Commissioners have not given their prior consent to the disclosure.

**Defence: lawful disclosure of information held by Revenue and Customs**

**45.** It is a defence for a person charged with an offence under regulation 44 to prove that the person reasonably believed that—

- (a) the disclosure was lawful, or
- (b) the information had previously been made available lawfully.

**Offences by bodies corporate, etc.**

**46.**—(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 the 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, or
- (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**

**47.**—(1) A person guilty of an offence under regulation 37(1), 38, 40(1), 41(1) or 42(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under regulation 44 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).