
STATUTORY INSTRUMENTS

2011 No. 881

**The Animal By-Products (Enforcement)
(England) Regulations 2011**

PART 5

Enforcement

Enforcement authority

21.—(1) These Regulations are enforced by—

- (a) the 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⁽¹⁾), 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.

(2) Paragraph (1)(a) and (b) does 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.

(3) In paragraph (1)(a) “local authority” means—

- (a) where there is a unitary authority, within the meaning of the Local Government Changes for England Regulations 1994⁽²⁾, 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
- (d) the Council of the Isles of Scilly.

(4) In paragraph (1)(b) “port health authority” means—

- (i) in relation to the London port health district, the Common Council of the City of London; or
- (ii) in relation to any other port health district, the port health authority for that district.

(1) 1984 c. 22.

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

(5) In paragraph (1)(c), “food hygiene establishment” means an establishment referred to in regulation 5(2) of the Food Hygiene (England) Regulations 2006(3) 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—

- (a) enter and inspect premises (except a dwelling-house) at all reasonable hours;
- (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 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.

(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;

(3) S.I. 2006/14, to which there are amendments not relevant to these Regulations.

- (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 in respect of the power in paragraph (1)(f)(iii)—
 - (a) proposes to exercise that power, the authorised person must, if it is practicable to do so, take a sample of it and 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, 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.
- (4) 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 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 and 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 in 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 the premises—

- (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) (suspensions, withdrawals and prohibitions on operations) of the EU Control Regulation applies.

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.

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