
WELSH STATUTORY INSTRUMENTS

2011 No. 600

**The Animal By-Products (Enforcement)
(Wales) 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 a port health district constituted by order under section 2(3) of the 1984 Act; or
- (c) the Welsh Ministers in relation to a food hygiene establishment.

(2) Paragraph (1)(a) or (1)(b) does not apply where the Welsh Ministers direct that the enforcement duty is to be exercised in relation to a particular case by the Welsh Ministers.

(3) In paragraph (1)(a) “local authority” means in relation to an area the county council or county borough council for that area;

(4) In paragraph (1)(b) “port health authority” means in relation to any port health district, the port health authority for that district.

(5) In paragraph (1)(c), “food hygiene establishment” means an establishment referred to in regulation 5(2) of the Food Hygiene (Wales) Regulations 2006(1) in respect of which the Food Standards Agency has enforcement functions under those Regulations.

(6) In these Regulations—

- (a) “the 1984 Act” means the Public Health (Control of Disease) Act 1984(2);
- (b) a body exercising functions under paragraph (1) or paragraph (2) is an “enforcement authority”.

Authorised person

22.—(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) In these Regulations, a person authorised under paragraph (1) is an “authorised person”.

Powers of authorised person

23. An authorised person may, on production, if so required, of his or her authority, exercise any of the powers specified in regulation 24 and regulation 26.

(1) S.I.2006/31 (W.5), to which there are amendments not relevant to these Regulations.

(2) 1984 c. 22.

Powers of entry and additional powers

24.—(1) For the purpose of ensuring that the EU Control Regulation, the EU Implementing Regulation and these Regulations are complied with an authorised person has the power to enter premises at all reasonable hours.

- (2) An authorised person may where exercising the power under paragraph (1)—
- (a) be accompanied by such other persons as the authorised person considers necessary;
 - (b) take any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) make such 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 or subject it 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 it and retain it for so long as is necessary for any of the following purposes—
 - (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 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;
 - (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, 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 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 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

25.—(1) If, in relation to the power to enter premises under regulation 24, 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 24(2)(c) is on any such premises; and
- (b) is also satisfied that—
 - (i) admission 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) on application for admission, 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 under the justice's hand, which continues in force for a period of one month, authorise an authorised person to enter the premises, if need be by force.

Notices served by an authorised person

26.—(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) where applicable, 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) brought on to premises;
 - (ii) brought on to premises unless in accordance with conditions specified in the notice;

(iii) moved on to or in the premises referred to in paragraph (1)(b) until 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) of the EU Control Regulation applies.

Power to share information for enforcement purposes

27.—(1) Information sent to, or acquired, in compliance or purported compliance with the obligations of the EU Control Regulation as read with 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 a body within paragraph (1) has received information in accordance with that paragraph, then such a body may share such information with another—

- (a) competent authority appointed within the United Kingdom for the purpose of implementing the EU Control Regulation;
- (b) enforcement authority;
- (c) authorised person; or
- (d) enforcement authority or authorised person appointed within the United Kingdom for the purpose of enforcing the EU Control 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.