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WELSH STATUTORY INSTRUMENTS

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**2009 No. 793**

**The Eggs and Chicks (Wales) Regulations 2009**

**PART 4**

Miscellaneous provisions

**Powers of authorised officers**

**13.**—(1) An authorised officer may direct any person to leave undisturbed, for so long as reasonably necessary for the purpose of any examination or investigation—

- (a) eggs;
- (b) eggs for hatching;
- (c) packs or other containers for eggs, eggs for hatching or chicks;
- (d) labels or documents relating to eggs, eggs for hatching or chicks; and
- (e) any premises on or in which any eggs, eggs for hatching or chicks, any packs or other containers for eggs, eggs for hatching or chicks, and any labels or documents relating to such eggs or chicks are found.

(2) If an examination or investigation will not be carried out immediately after a direction has been given under paragraph (1), an authorised officer may apply tape to the packs or other containers for eggs or eggs for hatching that are subject to that direction, or otherwise secure them pending the examination or investigation.

(3) An authorised officer may direct any person to ensure that any—

- (a) eggs;
- (b) eggs for hatching;
- (c) packs or other containers for eggs, eggs for hatching or chicks; or
- (d) labels or documents relating to eggs, eggs for hatching or chicks,

which do not comply in any respect with the requirements of any provision mentioned in Schedule 2 (as regards eggs for hatching and chicks) or 3 (as regards other eggs), comply with those requirements before being removed from any land, vehicle or trailer, except as may be otherwise directed in writing by an authorised officer.

(4) An authorised officer may seize any computer and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable and, in any event, within 28 days.

(5) Where an authorised officer exercises the power under paragraph (4), the authorised officer must notify the person in charge of the premises from which the equipment is seized of the right of appeal conferred by regulation 18.

(6) Except as stated in paragraph (3), any direction given by an authorised officer under paragraph (1) or (3) can be given orally or in writing but any direction given orally must be confirmed in writing as soon as practicable and, in any event, within 24 hours.

(7) An authorised officer must not exercise the powers under paragraphs (1) to (4) except on the production, if so required, of a duly authenticated document showing the authority of the officer.

(8) A person is guilty of an offence if that person—

- (a) without reasonable excuse, fails to comply with any requirement imposed on that person by a direction given by an authorised officer under paragraph (1);
- (b) unless authorised to do so, in writing, by an authorised officer, interferes with any packs or containers that have been secured by an authorised officer under paragraph (2); or
- (c) without reasonable excuse, fails to comply with any requirement imposed on that person by a direction given by an authorised officer under paragraph (3).

### **Record-keeping requirements**

**14.**—(1) The Welsh Ministers may direct any person carrying on any activity regulated by a provision mentioned in Schedule 2 or 3 to comply with any of the requirements specified in paragraph (2).

(2) The requirements are—

- (a) to keep, or cause to be kept, such records as the Welsh Ministers may reasonably require for the purposes of enforcing any such provision;
- (b) to provide the Welsh Ministers with such information derived from such records as the Welsh Ministers may require at the times specified in the notice; and
- (c) to retain such records for such period as the Welsh Ministers may reasonably require.

(3) But the Welsh Ministers must not give a direction under paragraph (1) unless the records to which the direction relates are of a type that are often kept by persons carrying on any activity regulated by a provision mentioned in Schedule 2 or 3 (whether or not kept by the person to whom the direction will be given) and—

- (a) the direction will be given on or before 17 October 2009 and the Welsh Ministers reasonably suspect that the person to whom the direction will be given has contravened, or failed to comply with, any provision mentioned in Schedule 2 or 3 since the coming into force of these Regulations;
- (b) the direction will be given on or before 17 October 2009, the person to whom the direction will be given has been convicted of an offence under regulation 4 or 7 of these Regulations since the coming into force of these Regulations, and the Welsh Ministers reasonably suspect that, since the conviction, that person—
  - (i) has continued to contravene, or fail to comply with, the provision mentioned in Schedule 2 or 3 to which the conviction relates; or
  - (ii) has contravened, or failed to comply with, some other provision mentioned in Schedule 2 or 3;
- (c) the direction will be given on or after 18 October 2009 and the Welsh Ministers reasonably suspect that the person to whom the direction will be given has contravened, or failed to comply with, any provision mentioned in Schedule 2 or 3 within the six month period immediately before the direction is given; or
- (d) the direction will be given on or after 18 October 2009, the person to whom the direction will be given has been convicted of an offence under regulation 4 or 7 of these Regulations within the six month period immediately before the giving of the direction, and the Welsh Ministers reasonably suspect that, since the conviction, that person —
  - (i) has continued to contravene, or fail to comply with, the provision mentioned in Schedule 2 or 3 to which the conviction relates; or

(ii) has contravened, or failed to comply with, some other provision mentioned in Schedule 2 or 3.

(4) Any direction given by the Welsh Ministers under paragraph (1) must be in writing.

(5) A person is guilty of an offence if, without reasonable excuse, that person fails to comply with any requirement imposed on that person by a direction given by the Welsh Ministers under paragraph (1).

### **Obstruction**

**15.**—(1) A person is guilty of an offence if that person—

- (a) intentionally obstructs an authorised officer acting in the execution of these Regulations;
- (b) without reasonable excuse, fails to give an authorised officer acting in the execution of these Regulations any assistance or information which is reasonably required for the performance of the authorised officer's functions under these Regulations;
- (c) gives to an authorised officer acting in the execution of these Regulations any information which that person knows, or ought reasonably to know, to be false or misleading; or
- (d) fails to produce a record when required to do so by an authorised officer acting in the execution of these Regulations.

(2) Nothing in paragraph (1)(b) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

### **Enforcement**

**16.**—(1) Each food authority must—

- (a) enforce the provisions mentioned in Schedule 3, as read with regulation 7, insofar as they apply to—
  - (i) the retail sale of eggs within their area; and
  - (ii) the sale of eggs to a mass caterer in their area;
- (b) enforce the provisions of regulation 13(8)—
  - (i) in the case of a direction given by an authorised officer who is authorised by the food authority; and
  - (ii) in the case of a pack or container secured by an authorised officer who is authorised by the food authority; and
- (c) enforce the provisions of regulation 15(1) in the case of an obstruction of an authorised officer who is authorised by the food authority.

(2) The Welsh Ministers may enforce the provisions mentioned in Schedule 3, as read with regulation 7, insofar as they apply to the retail sale of eggs or the sale of eggs to a mass caterer.

(3) The Welsh Ministers must—

- (a) enforce the provisions mentioned in Schedule 2, as read with regulation 4;
- (b) enforce the provisions mentioned in Schedule 3, as read with regulation 7, insofar as they do not apply to the retail sale of eggs or the sale of eggs to a mass caterer;
- (c) enforce the provisions of regulation 13(8)—
  - (i) in the case of a direction given by an authorised officer who is authorised by the Welsh Ministers; and
  - (ii) in the case of a pack or container secured by an authorised officer who is authorised by the Welsh Ministers;

- (d) enforce the provisions of regulation 14(5); and
  - (e) enforce the provisions of regulation 15(1) (a) to (d) in the case of an obstruction of an authorised officer who is authorised by the Welsh Ministers.
- (4) In this regulation—
- “retail sale” (“*manwerthu*”) means any sale other than a sale for use or resale in the course of a trade or business; and
  - “sale” (“*gwerthu*”) includes possession for sale and offer, exposure and advertising for sale.

### **Duty to give assistance and provide information**

17. Each enforcement authority must give such assistance and information to any other enforcement authority as that other authority may reasonably require for the purpose of their duties under these Regulations.

### **Appeals**

18.—(1) Any person who is aggrieved by a decision specified in paragraph (2) may appeal against that decision to a magistrates' court.

- (2) A specified decision for the purpose of paragraph (1) is—
- (a) a decision by the Welsh Ministers to refuse to register an establishment as a pedigree breeding establishment, other breeding establishment or hatchery under Article 2(1) of Commission Regulation (EC) No. 617/2008, or to withdraw such a registration;
  - (b) a decision by the Welsh Ministers to refuse to authorise an undertaking as a packing centre to grade eggs under the first sub-paragraph of Article 5(2) of Commission Regulation (EC) No. 589/2008, or to withdraw such an authorisation; and
  - (c) a decision by an authorised officer to seize any computer or associated equipment under regulation 13(4).

(3) Section 37(3), (5) and (6) of the Act has effect in relation to an appeal under this regulation as it has effect in relation to an appeal under that section, but with the omission—

- (a) in subsection (3), of the words “, or an appeal to such a court for which provision is made by regulations under Part II of this Act,”;
- (b) of subsection (5)(b), and the word “or” immediately preceding it; and
- (c) in subsection (6)(a), of the words “or to the sheriff”.

(4) The withdrawal of an authorisation or registration referred to in paragraph (2) do not take effect until the time for appealing against it has expired, and, if an appeal is lodged, until the appeal is finally disposed of, withdrawn or struck out for want of prosecution.

### **Penalty**

19. A person guilty of an offence specified in regulation 4, 7, 13(8), 14(5) or 15(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Extended period for bringing prosecutions**

20.—(1) Proceedings for an offence under these Regulations may be commenced within the period of one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge.

(2) But no such proceedings are to be commenced by virtue of paragraph (1) more than three years after the commission of the offence.

- (3) For the purposes of this regulation—
- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor’s opinion to warrant the proceedings came to the prosecutor’s knowledge is conclusive evidence of that fact; and
  - (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

### **Application of various provisions of the Act**

**21.**—(1) The following provisions of the Act apply for the purposes of these Regulations with the modifications specified in paragraph (2)—

- section 3 (presumptions that food intended for human consumption);
- section 20 (offences due to fault of another person);
- section 21(1) (defence of due diligence);
- section 29 (procurement of samples);
- section 30(8) (documentary evidence);
- section 32(1) to (8)(2) (powers of entry);
- section 36 (offences by bodies corporate);
- section 36A(3) (offences by Scottish partnerships);
- section 44 (protection of officers acting in good faith);
- section 46(1) (expenses of authorised officers); and
- section 50(4) (service of documents).

(2) The modifications are—

- (a) construe any reference in the provisions specified in paragraph (1) to the Act (or a Part of the Act) as a reference to these Regulations, and also, in relation to section 32(1)(a), construe the reference to “the provisions of this Act” as a reference to the provisions mentioned in Schedules 2 and 3;
- (b) construe any reference in the provisions specified in paragraph (1) to an authorised officer, or an officer of an enforcement authority or food authority, as a reference to an authorised officer as defined in regulation 3(1) of these Regulations;
- (c) in relation to section 20, construe the reference to the section as including a reference to that section as applied to these Regulations by paragraph (1);
- (d) in relation to section 21(2), replace the words “section 14 or 15 above” with the words “these Regulations”;
- (e) in relation to section 29—
  - (i) in paragraph (b)(ii), construe the reference to section 32 as including a reference to section 32 as applied to these Regulations by paragraph (1); and
  - (ii) in paragraph (d), omit the words “or of regulations or orders made under it”;
- (f) in relation to section 30(8)(a), omit the words “under subsection (6) above”;
- (g) in relation to section 32—
  - (i) in subsection(1)(a), omit the words “, or of regulations or orders made under it”;

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(1) Section 21(2) was amended by S.I.2004/3279.

(2) Section 32 was amended by paragraph 18 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16).

(3) Section 36A was inserted by paragraphs 7 and 16 of Schedule 5 to the Food Standards Act 1999.

(4) Section 50 was amended by paragraph 18 of Schedule 16 to the Deregulation and Contracting Out Act 1994.

- (ii) in subsection (4), construe the reference to the section as including a reference to that section as applied to these Regulations by paragraph (1);
- (iii) in subsection (5), construe the reference to the section as including a reference to that section as applied to these Regulations by paragraph (1) and construe the reference to “a food business” as including a hatchery;
- (iv) in subsection (6)(a), omit the words “or of regulations or orders made under it”; and
- (v) in subsection (7), construe the reference to the section as including a reference to that section as applied to these Regulations by paragraph (1); and
- (h) in relation to section 44, construe any reference to a food authority as a reference to an enforcement authority.

### **Transitional provision**

**22.** Any written authority granted to any person to act in matters arising under or in relation to the Eggs (Marketing Standards) Regulations 1995<sup>(5)</sup> has effect as if it referred to these Regulations.

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(5) S.I. 1995/1544, amended by S.I. 1996/1725, 1997/1414, 1998/1665, 2006/1540.