SCOTTISH STATUTORY INSTRUMENTS

2005 No. 496

ANIMALS

ANIMAL HEALTH

The Salmonella in Broiler Flocks (Sampling Powers) (Scotland) Regulations 2005

Made - - - -	*6th October 2005*
Laid before the Scottish Parliament	*7th October 2005*
Coming into force - -	*14th November 2005*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Salmonella in Broiler Flocks (Sampling Powers) (Scotland) Regulations 2005 and shall come into force on 14th November 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

"broiler chicken" means any bird of the species *Gallus gallus* bred for meat;

"the Commission Decision" means Commission Decision 2005/636/EC dated 1 September 2005 (**b**) concerning a baseline survey on the prevalence of salmonella in broiler flocks of *Gallus gallus*;

"faecal and environmental material" means faeces from broiler chickens, or other material which may have come into contact with such faeces or with broiler chickens, or a mixture of such faeces and such other material, and any other material which the Technical Specifications require to be sampled;

"inspector" means an inspector appointed by the Scottish Ministers or by a local authority for the purpose of these Regulations;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**c**);

"person" in regulations 4(1)(f) and 7(1) does not include a body corporate or a partnership;

(**a**) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**b**) O.J. No. L 228, 3.9.05, p.14.

(**c**) 1994 c. 39.

"premises" includes land with or without buildings but does not include any place used only as a dwelling*;*

"the Technical Specifications" means those technical specifications referred to at Article 5 of the Commission Decision having been presented to the European Commission's Standing Committee on the Food Chain and Animal Health on 19 July 2005 which are entitled *"*Baseline Survey on the Prevalence of *Salmonella* in Broiler Flocks of *Gallus gallus* in the EU – Technical Specifications".

Selection of Premises

3. The Scottish Ministers shall be responsible for selection of premises for sampling for the purposes of the Commission Decision.

Powers of inspectors

4.—(1) An inspector in taking samples for the purposes of the Commission Decision and in accordance with the Technical Specifications shall, on giving notice in writing to the occupier or person in charge of premises selected in terms of regulation 3 and on producing, if requested, some duly authenticated document showing that inspector's authority, have the right to–

(a) enter those premises at all reasonable hours;

(b) make inquiries of any person (whether on those premises or not);

(c) examine, retain or copy any records including computerised records which may appear to that inspector to be relevant;

(d) take and retain such samples, including samples of faecal and environmental material, as well as any other samples that that inspector considers necessary for the purposes of the Commission Decision;

(e) be accompanied by such vehicles and equipment as that inspector considers necessary;

(f) be assisted by such other persons as that inspector considers necessary; and

(g) require the occupier or person in charge of those premises or any employee or agent of that occupier or person to provide such assistance, co-operation, information and documentation including records, computerised or otherwise, as may reasonably be required by that inspector.

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

Notices

5.—(1) A notice in writing to be given to any person under regulation 4 may be given–

(a) by delivering it to that person; or

(b) by leaving it, or sending it in a pre-paid envelope addressed to that person, at the usual or last known place of business or residence of that person, or in the case of a body corporate or partnership at any place of business or the registered office of that body corporate or partnership.

(2) A notice in writing given under regulation 4(1) may be sent to a person as an electronic communication as defined in the Electronic Communications Act 2000(**a**) which has been recorded and is consequently capable of being reproduced, only if that person has consented to the use of that method of communication.

(3) A notice in writing sent to a person as an electronic communication shall be regarded as sent when the text of it is received in a legible form.

(**a**) 2000 c.7.

Offences

6. Any person who–

(a) intentionally obstructs an inspector or any person assisting an inspector acting in the execution of these Regulations;

(b) knowingly provides to an inspector or any person assisting an inspector acting in the execution of these Regulations any information which is false or misleading; or

(c) without reasonable excuse, fails to produce a record or other information when required to do so to an inspector or any person assisting an inspector acting in the execution of these Regulations,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Corporate bodies and partnerships

7.—(1) Where a body corporate or a partnership is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of–

(a) any director, manager, secretary or other similar officer of the body corporate;

(b) any person who was purporting to act in any such capacity; or

(c) in the case of a partnership, a partner or any person who was purporting to act as such,

that person, as well as the body corporate or partnership, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1), "director", in relation to a body corporate whose affairs are managed by its members, includes a member of the body corporate.

Enforcement

8.—(1) Subject to paragraph (2) these Regulations shall be executed and enforced by the local authority.

(2) The Scottish Ministers may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under paragraph (1) shall be discharged by the Scottish Ministers and not by the local authority.

ROSS FINNIE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th October 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement Commission Decision 2005/636/EC concerning a baseline survey on the prevalence of salmonella in flocks of broilers (O.J. No. L 228, 3.9.05, p.14) in accordance with certain technical specifications referred to in Article 5 of the Commission Decision.

The text of the technical specifications can be found in a paper entitled 'Baseline Survey on the prevalence of *Salmonella* in broiler flocks of *Gallus gallus* in the EU' to be found at http://europa.eu.int/comm/food/food/biosafety/salmonella/tech_spec_sanco-1688-2005_rev1_en.pdf.

These Regulations–

(a) provide for selection of premises for sampling by the Scottish Ministers (regulation 3);

(b) provide powers for inspectors for the purposes of sampling to enter premises, to make inquiries, examine records, take samples and require assistance for the purpose of these Regulations (regulation 4);

(c) set out requirements for notices in writing (regulation 5);

(d) prescribe offences and penalties, including penalties for corporate bodies (regulations 6 and 7);

(e) provide for enforcement by the local authority except where the Scottish Ministers otherwise direct (regulation 8).

A Regulatory Impact Assessment has not been prepared for these Regulations.

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