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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 277**

**ANIMALS**

**ANIMAL HEALTH**

**The TSE (Scotland) Amendment Regulations 2004**

<i>Made</i>	- - - -	<i>9th June 2004</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th June 2004</i>
<i>Coming into force</i>	- -	<i>20th July 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the TSE (Scotland) Amendment Regulations 2004 and shall come into force on 20th July 2004.

**Amendment of the TSE (Scotland) Regulations 2002**

2.—(1) The TSE (Scotland) Regulations 2002<sup>(2)</sup> are amended in accordance with the following provisions of this regulation.

(2) Immediately after regulation 84, insert—

**“Enforcement of Annex VII to the Community TSE Regulation**

**84A.** Schedule 6A (enforcement of Annex VII to the Community TSE Regulation) shall have effect.”.

(3) Immediately after Schedule 6, insert the Schedule 6A set out in the Schedule to these Regulations.

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(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) S.S.I. 2002/255, as amended by S.S.I. 2003/198 and 411.

St Andrew's House, Edinburgh  
9th June 2004

*ROSS FINNIE*  
A member of the Scottish Executive

SCHEDULE

Regulation 2(3)

“SCHEDULE 6A

Regulation 84A

Enforcement of Annex VII to the Community TSE Regulation(3)

PART I

CONFIRMATION OF DISEASE

**Competent authority for Annex VII of the Community TSE Regulation**

1.—(1) The Scottish Ministers shall be the competent authority for the purposes of Annex VII (other than paragraphs 1(a) and 2(a) of that Annex) and shall exercise the powers and duties imposed on the member State in that Annex.

(2) In this Schedule, “Annex VII” means Annex VII to the Community TSE Regulation as amended by Commission Regulation (EC) No. 1494/2002(4), Commission Regulation (EC) No. 260/2003(5) and Commission Regulation (EC) No. 1915/2003(6).

**Confirmation of TSE in sheep**

2.—(1) Following the confirmation of TSE in sheep on a holding under Article 13 of the Community TSE Regulation, the Scottish Ministers, after—

(a) carrying out the inquiry specified in Article 13(1)(b) of that Regulation and in paragraph 1 of Annex VII, and

(b) genotyping the animals (if necessary) in accordance with Part V of these Regulations, shall decide which of the options set out in paragraphs 2(b)(i) and (ii) of Annex VII to exercise.

(2) The Scottish Ministers shall serve a notice on the occupier of the holding informing the occupier of which of the options in those paragraphs they intend to exercise.

(3) The notice shall specify—

(a) the identity of the animals to be killed and destroyed;

(b) the identity of the animals (if any) to be slaughtered for human consumption;

(c) the identity of the animals (if any) that may be retained;

(d) the particular ova and embryos that must be destroyed;

(e) the time limit for complying with the notice; and

(f) the right of the person receiving the notice to apply for the exercise of a derogation under paragraph 14 below.

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(3) This Schedule enforces Annex VII (other than paragraphs 1(a) and 2(a) to Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (O.J. No. L 147, 31.5.01, p.1). Annex VII was amended by Commission Regulation (EC) No. 1494/2002 (O.J. No. L 225, 22.8.02, p.3), Commission Regulation (EC) No. 260/2003 (O.J. No. L 37, 13.02.03, p.7) and replaced in its entirety by Commission Regulation (EC) No. 1915/2003 (O.J. No. L 283, 31.10.03, p.29).

(4) O.J. No. L 225, 22.8.02, p. 3.

(5) O.J. No. L 37, 13.02.03, p.7.

(6) Commission Regulation (EC) No. 1915/2003 amending Annexes VII, VIII and IX to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards the trade and import of ovine and caprine animals and the measures following the confirmation of transmissible spongiform encephalopathies in bovine, ovine and caprine animals (O.J. No. L 283, 31.10.03, p. 29).

### **Confirmation of TSE in goats**

3. Following the confirmation of TSE in goats on a holding under Article 13 of the Community TSE Regulation, the Scottish Ministers, after carrying out the inquiry specified in Article 13(1)(b) of that Regulation and in paragraph 1 of Annex VII, shall serve a notice on the occupier of the holding informing the occupier that they intend to kill and destroy all the goats on the holding and all caprine embryos and ova from those animals in accordance with paragraph 2(b)(i) of Annex VII.

### **Infected animals from another holding**

4. In the case of infected animals introduced from another holding the Scottish Ministers may act in accordance with paragraphs 2 and 3 above, taking account of the results of any inquiry and genotyping referred to in those paragraphs, at the holding of origin in addition to, or instead of, the holding on which the infection was confirmed.

### **Common grazing**

5. In the case of infected animals on common grazing, the Scottish Ministers may limit a notice under paragraph 2 or 3 above to an individual flock in accordance with paragraph 2(b)(iii), second sentence of Annex VII.

### **Confirmation of BSE in sheep or goats**

6. Following the confirmation of BSE in sheep or goats on a holding, the Scottish Ministers, after carrying out the inquiry specified in Article 13(1)(b) of the Community TSE Regulation and in paragraph 1 of Annex VII, shall serve a notice on the occupier of the holding informing the occupier of the intention of the Scottish Ministers to kill and destroy the animals and all embryos and ova from those animals in accordance with paragraph 2(c) of Annex VII.

### **Time for review**

7. The Scottish Ministers shall not proceed with a notice served under this Part until after the end of the 21 day period for review under Part III of this Schedule or, if there is such a review, until they have given the person aggrieved notification of their final determination.

### **Subsequent occupiers**

8. If an occupier of a holding served with a notice under this Part transfers a holding affected by such a notice to another occupier, failure by the original occupier to ensure that the subsequent owner is made aware of the existence and contents of any such notice shall be an offence.

## **PART II**

### **MOVEMENT OF ANIMALS**

#### **Scope of measures in this Part**

9. This Part shall have effect as soon as a notice has been served under Part I of this Schedule, irrespective of any review of such a notice.

#### **Introduction of animals on to a holding**

10. Any person who introduces an animal on to a holding in contravention of paragraph 3.1 of Annex VII shall be guilty of an offence.

#### **Use of ovine germinal products**

11. Any person who uses ovine germinal products in contravention of paragraph 3.2 of Annex VII shall be guilty of an offence.

#### **Movement of animals from a holding**

12. Any person who moves an animal from a holding in contravention of paragraph 5 of Annex VII shall be guilty of an offence.

#### **Time of movement restrictions**

13. For the purposes of paragraph 6 of Annex VII the relevant dates shall be established by the Scottish Ministers giving written notification of those dates to the occupier of the holding.

#### **Derogations**

14.—(1) In accordance with paragraph 4 of Annex VII, the occupier of a holding may apply to the Scottish Ministers asking them to permit before 1 January 2006 the introduction of non-pregnant ewe lambs of an unknown genotype as envisaged in that paragraph.

(2) In accordance with paragraph 7 of Annex VII, the occupier of a holding may apply to the Scottish Ministers in writing asking them to exercise one of the options permitted under that paragraph.

(3) An application under this paragraph shall be in writing and shall set out in full the reasons for the application.

(4) After they have considered an application under this paragraph, the Scottish Ministers shall serve a notice on the applicant giving their decision, which must either—

- (a) consent to the application;
- (b) consent in part to the application; or
- (c) refuse the application.

## **PART III**

### **REVIEW**

#### **Notices**

15. A notice served under any provision of this Schedule (other than one under paragraph 14(4)(a) above) shall—

- (a) give the reasons for the decision of the Scottish Ministers; and
- (b) explain the right of the person receiving the notice to make written representations to the Scottish Ministers within a period of 21 days beginning with the day on which the notice is served and to be heard by an independent person or persons appointed by the Scottish Ministers.

*Status: This is the original version (as it was originally made).*

## Review

16.—(1) A person on whom a notice is served under any provision of this Schedule (other than one under paragraph 14(4)(a) above) may within a period of 21 days beginning with the day on which the notice is served—

- (a) make written representations to the Scottish Ministers requesting a review of the decision on the basis of those representations; and
- (b) give notice of whether or not that person wishes to appear before an independent person appointed by the Scottish Ministers.

(2) Where the person aggrieved gives notice of their wish to appear before and be heard by such an independent person—

- (a) the Scottish Ministers shall appoint such an independent person or persons to hear representations and specify a time limit within which representations to the independent person must be made;
- (b) the independent person or persons shall not, except with the consent of the person aggrieved, be an officer of the Scottish Ministers;
- (c) if the person aggrieved so requests the hearing shall be in public; and
- (d) if the person aggrieved so requests, the Scottish Ministers shall send to that person a copy of the report of the independent person or persons.

(3) The independent person or persons shall conduct the hearing in such form and manner as that person considers or those persons consider fit and thereafter shall report to the Scottish Ministers as to the findings of fact of that person or those persons and the recommendation of that person or those persons as to how to determine the review.

(4) The Scottish Ministers, having had regard to the written representations and the report (if any), shall determine the outcome of the review and shall give to the person aggrieved written notification of their final determination and the reasons for it.

## PART IV COMPENSATION

### Compensation

17.—(1) Compensation for animals and products destroyed under this Schedule shall be payable by the Scottish Ministers as specified in the following table:

<i>Animal or product</i>	<i>Compensation (£)</i>
Sheep (over 12 months old) or goat (over 12 months old).	90 or 30*
Lamb (under 12 months old) or kid (under 12 months old).	50 or 25**
Embryos.	150
Ova.	5

\* In the case of a female sheep in respect of which the Scottish Ministers have granted a derogation under paragraph 14 above the compensation shall be £30 if it is killed after the first year of the period of that derogation.

\*\* Where the Scottish Ministers have granted a derogation under paragraph 14(2) above in respect of a ram, the compensation for a lamb in that flock shall be £25 if it is killed after the first year of the period of that derogation.

(2) If the owner of an animal considers this compensation to be unreasonable the owner may so notify the Scottish Ministers.

(3) Following such notification the owner may obtain, at the expense of the owner, a valuation of the animal from a valuer nominated by the President of the Institute of Auctioneers and Appraisers in Scotland.

(4) The owner must accept the valuer nominated under paragraph (3) and pay the valuer's fee.

(5) The valuer shall value the animal at a value which might reasonably have been obtained for it at the time of valuation from a buyer in the open market if the animal was not from a flock affected by a TSE.

(6) The valuer shall submit that valuation and any other relevant information and documentation to the owner and the Scottish Ministers.

(7) The valuation shall be binding on both the owner and the Scottish Ministers.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the TSE (Scotland) Regulations 2002 ([S.S.I. 2002/255](#)) (“the principal Regulations”).

They make provision for the enforcement in Scotland of Annex VII (other than paragraphs 1(a) and 2(a)) to Regulation ([EC](#)) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ No. L 147, 31.5.2001, p. 1) (“the Community TSE Regulation”). Annex VII was replaced by Commission Regulation ([EC](#)) No. 1915/2003 of the European Parliament and of the Council as regards the trade and import of ovine and caprine animals and the measures following the confirmation of transmissible spongiform encephalopathies in bovine, ovine and caprine animals (OJ No. L 283, 31.10.2003, p. 29).

These Regulations add a new Schedule 6A to the principal Regulations. That Schedule provides that the Scottish Ministers are the competent authority for the purposes of Annex VII to the Community TSE Regulation (paragraph 1 of the Schedule).

They make provision for notifications to be given and procedures to be followed on confirmation of transmissible spongiform encephalopathies in sheep and goats (paragraphs 2 to 7). These include an offence of failure to transmit a notice served on a holding to a new occupier of the holding (paragraph 8).

Part II of the Schedule regulates the movement of sheep and goats following notification under Part I (paragraphs 9 to 13) and provides for potential derogations specified in Annex VII to the Community TSE Regulation (paragraph 14).

Part III provides a procedure for review of notices served under the Schedule.

Part IV specifies compensation for animals, embryos and ova destroyed in accordance with the Schedule.

**Status:** *This is the original version (as it was originally made).*

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY