

2004 No. 388

EUROPEAN COMMUNITIES

ANIMALS

**Transmissible Spongiform Encephalopathy (Amendment)
Regulations (Northern Ireland) 2004**

Made - - - - - 10th September 2004

Coming into operation 4th October 2004

The Department of Agriculture and Rural Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures in the veterinary and phytosanitary fields for the protection of public health, in exercise of the powers conferred on it by the said section 2(2), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Transmissible Spongiform Encephalopathy (Amendment) Regulations (Northern Ireland) 2004 and shall come into operation on 4th October 2004.

Amendment to the Transmissible Spongiform Encephalopathy Regulations (Northern Ireland) 2002

2. The Transmissible Spongiform Encephalopathy Regulations (Northern Ireland) 2002(c) are amended in accordance with these Regulations.

3. After regulation 86 there shall be inserted –

“Enforcement of Annex VII to the Community TSE Regulation

86A. Schedule 6A (enforcement of Annex VII to the Community TSE Regulation) shall have effect.”.

4. For paragraph 13(2) of Part III of Schedule 1 there shall be substituted the following paragraph –

“(2) A return shall be furnished to the Department within 7 days from the end of the week to which that return relates, by a person or persons operating a market in animals at any of the following places, that is to say –

- Ballyclare
- Ballymoney

(a) S.I. 2000/2812
(b) 1972 c. 68
(c) S.R. 2002 No. 225 as amended by S.R. 2003 No. 509

Markethill
Omagh
Saintfield”.

5. After Schedule 6 there shall be inserted the following Schedule –

“SCHEDULE 6A

ENFORCEMENT OF ANNEX VII TO THE COMMUNITY TSE REGULATION(a)

PART I

Competent authority

1. The Department shall be the competent authority for the purposes of Annex VII (other than paragraph 1(a) or 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 (“Annex VII”) and shall exercise all powers and duties conferred or imposed on the Member State in that Annex.

Confirmation of TSE in sheep

2.—(1) In the case of confirmation of TSE in sheep on a holding under Article 13 of Regulation (EC) No. 999/2001, the Department, after –

- (a) carrying out the inquiry specified in Article 13(1)(b) of that Regulation and in paragraph 1(b) of Annex VII, and
- (b) sampling the animals in accordance with Part V of these Regulations to establish their genotype (if this is necessary),

shall decide which option set out in paragraphs 2(b)(i) and (ii) of Annex VII it intends to exercise.

(2) The Department shall serve a notice on the occupier of the holding in question informing him which of the options in those paragraphs it intends 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 identity of any ova and embryos that must be destroyed;
- (e) the time limit for complying with the notice; and
- (f) the right to apply for a derogation in accordance with paragraph 14.

Confirmation of TSE in goats

3. In the case of confirmation of TSE in goats on a holding under Article 13 of Regulation (EC) No. 999/2001, the Department, after carrying out the inquiry specified in Article 13(1)(b) of that Regulation and in paragraph 1(b) of Annex VII, shall serve a notice on the occupier of the holding informing him that it intends to kill and destroy all the goats

(a) 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. L147, 31.5.2001, p. 1). Annex VII to that Regulation was first replaced in respect of ovine and caprine animals by Commission Regulation (EC) No. 260/2003 amending Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards the eradication of transmissible spongiform encephalopathies in ovine and caprine animals and rules for the trade in live ovine and caprine animals and bovine embryos (O.J. No. L37, 13.02.2003, p. 7) and replaced again by Commission Regulation (EC) No. 1915/2003 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. L283, 31.10.2003, p. 29) and further replaced by Commission Regulation (EC) No. 1492/2004 as regards eradication measures for transmissible spongiform encephalopathies in ovine and caprine animals and rules for the trade in live embryos of ovine and caprine animals (O.J. No. L274, 24.8.2004, p. 3)

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 Department may act in accordance with paragraphs 2 and 3 at the holding of origin of those animals in addition to, or instead of, the holding on which infection was confirmed.

Common grazing

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

Confirmation of BSE in sheep or goats

6. In the case of confirmation of BSE in sheep or goats on a holding, the Department, after carrying out the inquiry specified in Article 13(1)(b) of Regulation (EC) No. 999/2001 and paragraph 1(b) of Annex VII, shall serve a notice on the occupier of the holding informing him of its intention to kill and destroy the animals, embryos and ova in accordance with paragraph 2(c) of Annex VII.

Time for appeals

7. The Department shall not proceed with the notice served under this Part until after the 21 day period for the appeal under Part III is completed or, if there is an appeal, until the appeal is determined.

Subsequent occupiers

8. If there is a change in occupation of any holding to which a notice under this Part relates, the previous occupier shall ensure that the subsequent occupier is made aware of the existence and contents of any notice, and failure to do so shall be an offence.

PART II

MOVEMENT OF ANIMALS

Scope

9. This Part shall have effect after a notice has been served under Part I irrespective of any appeal against the notice.

Introduction of animals on to a holding

10. Any person who introduces an animal on to a holding in contravention of paragraph 4 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 5 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 7 of Annex VII shall be guilty of an offence.

Time of movement restrictions

13. For the purposes of paragraph 8 of Annex VII the relevant dates shall be established by the Department giving written notification of the date to the occupier of the holding.

Derogations

14.—(1) In accordance with paragraph 6 of Annex VII the occupier of a holding may apply to the Department for a derogation under that paragraph.

(2) In accordance with paragraph 9 of Annex VII, the occupier of a holding may apply to the Department asking it 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 it has considered the application the Department shall serve a notice on the applicant giving its decision, which shall state that it either –

- (a) consents to the application;
- (b) consents in part to the application; or
- (c) refuses the application.

PART III

APPEALS

Notices

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

- (a) give the reasons for its decision; and
- (b) explain the right of the person receiving the notice to make written representations to the Department and to be heard by an independent person appointed by the Department.

Appeals

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

- (a) provide written representations to the Department concerning its decision; and
- (b) provide notice of whether or not he wishes to appear before an independent person appointed by the Department.

(2) Where an appellant gives notice of his wish to appear before and be heard by an independent person –

- (a) the Department shall appoint such an independent person to hear representations and shall specify a time limit within which representations must be made;
- (b) the appointed person shall not, except with the consent of the appellant, be an officer of the Department;
- (c) if the appellant so requests the hearing shall be in public;
- (d) if the appellant so requests, the Department shall furnish to him a copy of the report of the person so appointed.

(3) The independent person shall report to the Department.

(4) The Department shall give to the appellant written notification of its final determination and the reasons for it.

PART IV

COMPENSATION

Compensation

17.—(1) The Department shall pay to the owner of animals, killed and destroyed, and products destroyed, under this Schedule the compensation specified in relation thereto in the following table (as read with the notes thereto) –

<i>Animal or product</i>	<i>Compensation (£)</i>
Pure bred sheep or goats	Market value of animal
Ordinary sheep in lamb and ordinary goats in kid (a)	140
Ordinary adult sheep and goats (a) (b) (c)	90
Ordinary lambs or kids (a) (c) (d)	50
Embryos	150
Ova	5

- (a) "Ordinary" in relation to an animal means that it is not pure-bred.
- (b) In the case of a female sheep in respect of which the Department has granted a derogation under paragraph 6 or 9 of Annex VII the compensation shall be £30 if it is killed after the first year of the derogation period.
- (c) "Adult" in relation to a sheep or goat means aged 12 months or more and "lamb" or "kid" means respectively a sheep or goat under 12 months of age.
- (d) Where the Department has granted a derogation in accordance with paragraph 9 of Annex VII in respect of any ram in a flock, the compensation for any lamb in that flock killed after the first year of the period of derogation shall be £25.

(2) For the the purposes of this paragraph, the market value of an animal shall be the price that might reasonably have been obtained for it at the time of valuation by a buyer in the open market if the animal was not from a flock affected by TSE.

(3) The market value of an animal shall be determined by agreement between the owner and the Department and where such agreement is reached it shall be final and binding on the Department and the owner.

(4) Where no such agreement is reached the market value shall be determined by the Department.

(5) If the owner of an animal considers the compensation determined under the foregoing paragraphs is unreasonable, he shall notify the Department.

(6) Upon receipt of a notification from an owner of animals under paragraph (5), the Department shall submit a list of independent valuers approved by it to the owner who shall obtain, at his own expense, a valuation of the animals from one of those valuers.

(7) The independent valuer shall notify the valuation to the Department and the owner, and that valuation shall be final and binding upon both the Department and the owner."

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 10th September 2004.

(L.S.)

Tony McCusker

A senior officer of the Department of Agriculture and Rural Development

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Transmissible Spongiform Encephalopathy Regulations (Northern Ireland) 2002 (S.R. 2002 No. 225). They make provision for the enforcement 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 (O.J. No. L147, 31.5.2001, p. 1). Annex VII to that Regulation was first replaced in respect of ovine and caprine animals by Commission Regulation (EC) No. 260/2003 amending Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards the eradication of transmissible spongiform encephalopathies in ovine and caprine animals and rules for the trade in live ovine and caprine animals and bovine embryos (O.J. No. L37, 13.02.2003, p. 7). The Annex was subsequently replaced by Commission Regulation (EC) No. 1915/2003 (O.J. No. L283, 31.10.2003, p. 29) and Commission Regulation (EC) No. 1492/2004 (O.J. No. L274, 24.08.2004, p. 3).

They add a new Schedule 6A to the Regulations. Part I of this Schedule provides that the Department is the competent authority for the purposes of Annex VII to the EU Regulation (paragraph 1 of the Schedule). It makes provision for notices to be served and procedures to be followed following confirmation of TSE in sheep and goats (paragraphs 2 to 8).

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

Part III provides an appeals procedure against notices served under the Schedule.

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

An additional amendment to the markets listed in Schedule 1, Part III 13(2) of the Transmissible Spongiform Encephalopathy Regulations (Northern Ireland) 2002 is included. These markets are required to submit returns on a weekly basis to the Department, to facilitate the calculation of the indicative market price used in compensation for TSE suspects. Not all those markets currently listed trade in the categories of animals for which a return requires to be furnished. To address this issue and achieve a more accurate reflection of market prices Enniskillen market is replaced by Saintfield market.

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