
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 445

**The Products of Animal Origin (Third
Country Imports) (Scotland) Regulations 2002**

PART I

INTRODUCTION

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002 and shall come into force on 1st October 2002.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Agency” means the Food Standards Agency;

“the Animal By-Products Order” means the Animal By-Products Order 1999(1);

“Article 9 product” means a product from a third country which is first introduced into the relevant territories at one border inspection post but is intended for import via another, as described (in relation to consignments) in Article 9(1) of Directive 97/78/EC, whether or not the product is transhipped or unloaded at the first border inspection post;

“authorised officer” means a person authorised by the Scottish Ministers, a local authority or the Agency, either generally or specifically, to act in matters arising under these Regulations, whether or not that person is an officer of the Scottish Ministers or local authority or of the Agency;

“border inspection post” means—

- (a) premises designated and approved for the time being in accordance with Article 6(2) or 6(4) of Directive 97/78/EC as an inspection post for the carrying out of veterinary checks on products arriving from third countries at the border of a member State;
- (b) a border inspection post in the Republic of Iceland or the Kingdom of Norway which is included in the list contained in point 39 in Part 1.2 of Chapter I of Annex I to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(2), as amended by any decision of the EFTA Surveillance Authority fixing the border inspection posts for the EFTA States which is adopted before the date on which these Regulations are made; and

(1) S.I.1999/646, amended by S.S.I. 2001/171 and 2002/255.

(2) O.J. No. L 1, 3. 1.94, p.3.

(c) an inspection post for the carrying out by or on behalf of the authorities of the Principality of Andorra or of the Faeroe Islands of veterinary checks on products arriving there from third countries;

“border inspection post of destination” means the border inspection post via which an Article 9 product is intended for import;

“border inspection post of introduction” means the border inspection post at which an Article 9 product is first introduced into the relevant territories;

“carrier who has for the time being charge of” a product, consignment or part of a consignment includes the driver of any vehicle, the pilot of any aircraft and the master of any vessel transporting the same;

“certificate of veterinary clearance” means a certificate issued by an official veterinary surgeon or an official fish inspector in, or as near as may be to, the form set out as Sheet 2 in Schedule 1;

“the Commissioners” means the Commissioners of Customs and Excise;

“Community establishment of origin” means the premises located in a member State at which a returned product attained the form in which it was originally exported from the relevant territories;

“consignment” means a quantity of products of the same type, covered by the same veterinary certificate or veterinary document, or other document provided for by veterinary legislation, conveyed by the same means of transport and coming from the same third country or part of a third country;

“corporate officer” means a director, secretary or other similar officer of a body corporate, or a person who purports to act in any such capacity;

“the Customs Code” means Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code⁽³⁾;

“the customs territory of the Community” has the same meaning as in Article 3 of the Customs Code;

“customs warehouse” means a warehouse which fulfils the conditions of Articles 98 to 113 of the Customs Code, in which goods are stored subject to the customs warehousing procedure referred to in those Articles;

“Decision 93/13/EEC” means Commission Decision 93/13/EEC laying down the procedures for veterinary checks at Community border inspection posts on products from third countries⁽⁴⁾;

“destination establishment”, in relation to a product, means the establishment identified in the “country of destination” entry on the notice of the product’s introduction or presentation given pursuant to regulation 17;

“Directive 92/118/EEC” means Council Directive 92/118/EEC laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC⁽⁵⁾;

“Directive 97/78/EC” means Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries⁽⁶⁾;

(3) O.J. No. L 302, 19.10.92, p.1, as last amended by Regulation (EC) No. 2700/2000 of the European Parliament and of the Council (O.J. No. L 311, 12.12.2000, p.17).

(4) O.J. No. L 9, 15.1.93, p.33, as last amended by Commission Decision 96/32/EC (O.J. No. L 9, 12.1.1996, p.9).

(5) O.J. No. L 62, 15.3.93, p.49, as last amended by Commission Decision 2001/7/EC (O.J. No. L 2, 5.1.2001, p.27).

(6) O.J. No. L 24, 30.1.98, p.9.

“documentary check” means the examination of the veterinary certificates or veterinary documents or other documents accompanying a consignment, carried out in accordance with Article 4(3) of Directive 97/78/EC and Annex A to Decision 93/13/EEC;

“fishery products” means—

- (a) all seawater and freshwater animals, whether or not live, including—
 - (i) aquaculture animals and aquaculture products as defined in Article 2 of Council Directive 91/67/EEC concerning the animal health conditions governing the placing on the market of aquaculture animals and products(7);
 - (ii) bivalve molluscs as defined in Article 2(1) of Council Directive 91/492/EEC laying down the health conditions for the production and the placing on the market of live bivalve molluscs(8);
 - (iii) echinoderms, tunicates and marine gastropods; and
 - (iv) fishery products and aquaculture products as defined in Article 2 of Council Directive 91/493/EEC laying down the health conditions for the production and the placing on the market of fishery products(9); and
- (b) all parts of such seawater and freshwater animals,
but excludes aquatic mammals and frogs and parts thereof;

“free circulation” has the same meaning as in Articles 23(2) and 24 of the Treaty establishing the European Community;

“free warehouse” and “free zone” have the same meanings as in Title IV, Chapter 3, Section 1 of the Customs Code;

“hay” means any grass, clover, lucerne or sainfoin which has been dried either naturally or artificially, and includes any product which is obtained by so drying any grass, clover, lucerne or sainfoin;

“identity check” means a check by visual inspection to ensure that the veterinary certificates or veterinary documents or other documents accompanying a consignment tally with the products comprised in the consignment, carried out in accordance with Article 4(4)(a) of Directive 97/78/EC and Annex A to Decision 93/13/EEC;

“import”, as a verb means release for free circulation within the meaning of Article 79 of the Customs Code;

“import conditions” in relation to a product, means the conditions laid down for the import of that product in any directive, decision or regulation listed in Schedule 2, including—

- (a) conditions as to the country or establishment of origin of the product;
- (b) specific requirements laid down for the import of that product into a particular member State or a particular area of a member State; and
- (c) conditions laid down for the import of that product for specific purposes;

“intermediate storage warehouse” means cold storage facilities approved for intermediate storage of products as referred to in Chapter 10 of Annex I to Directive 92/118/EEC;

“introduce” means bring into, and a person introduces a product into a territory, or area, if—

- (a) that person brings it into that territory or area as its owner;
- (b) that person brings it into that territory or area as a carrier; or
- (c) a carrier brings it into that territory or area on that person’s instructions,

(7) O.J. No. L 46, 19.2.91, p.1, as last amended by Council Directive 98/45/EC (O.J. No. L 189, 3.7.98, p.12).

(8) O.J. No. L 268, 24.9.91, p.1, as last amended by Council Directive 97/79/EC (O.J. No. L 24, 30.1.98, p.31).

(9) O.J. No. L 268, 24.9.91, p.15, as last amended by Council Directive 97/79/EC (O.J. No. L 24, 30.1.98, p.31).

but a product on board a means of transport operating internationally and intended for consumption by the crew or passengers of that means of transport is not introduced into a territory or area if it is not unloaded, or if it is transferred directly from one means of transport operating internationally to another at the same port or airport and under supervision, within the meaning of Article 4(13) of the Customs Code, by the Commissioners;

“justice of the peace” means a full justice as defined by section 9(12) of the District Courts (Scotland) Act 1975⁽¹⁰⁾;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹¹⁾;

“non-conforming product” means a product which does not comply with the import conditions;

“official fish inspector” means an environmental health officer appointed as an official fish inspector by a local authority pursuant to regulation 6(2)(b);

“official veterinary surgeon” means a veterinary surgeon who has participated in a special training programme referred to in Article 27 of Directive 97/78/EC and who is appointed by the Scottish Ministers pursuant to regulation 6(1)(a) or by a local authority pursuant to regulation 6(2)(a);

“operator” means—

- (a) in relation to a border inspection post, the person who provides premises and other facilities for the carrying out of veterinary checks at that border inspection post; and
- (b) in relation to a Community establishment of origin, an intermediate storage warehouse or a destination establishment, the person who occupies the same for the purposes of that person’s business;

“owner”, in relation to a product, consignment or part of a consignment, means the person in whom the property in the product or consignment is for the time being vested;

“person appearing to have charge” of a product, consignment or part of a consignment means any person, including a carrier, who appears to have possession, custody or control thereof;

“person responsible for” a product, consignment, or part of a consignment means—

- (a) the person bringing the product, consignment or part into the customs territory of the Community, referred to in Article 38(1) of the Customs Code;
- (b) any person who assumes responsibility for the carriage of the product, consignment or part after it has been brought into the customs territory of the Community, referred to in Article 38(2) of the Customs Code;
- (c) a person in whose name the person described in sub-paragraph (a) or sub-paragraph (b) above acts, referred to in Article 44(2)(b) of the Customs Code;
- (d) the person holding the product, consignment or part in temporary storage, referred to in Article 51(2) of the Customs Code;
- (e) any person who has made, or is capable of making, a customs declaration within the meaning of Article 64 of the Customs Code, covering the product, consignment or part; and
- (f) where a person referred to in sub-paragraph (a), (b), (c), (d) or (e) above has appointed a representative in that person’s dealings with the customs authorities, within the meaning of Article 5 of the Customs Code, who is given, or assumes, responsibility for ensuring that the product, consignment or part undergoes veterinary checks, that representative;

⁽¹⁰⁾ 1975 c. 20. The definition of “full justice” was inserted by section 8 of the [Bail, Judicial Appointments etc. \(Scotland\) Act 2000 \(asp 9\)](#), section 8.

⁽¹¹⁾ 1994 c. 39.

“physical check” means a check on the product itself (which may include checks on packaging and temperature and also sampling and laboratory testing) carried out in accordance with Article 4(4)(b) of, and Annex III to, Directive 97/78/EC and Annex C to Decision 93/13/EEC;

“premises” includes any construction, installation, container or means of transport;

“product” means—

(a) any product of animal origin covered by the directives listed in Schedule 3;

(b) hay; and

(c) straw;

“the regulatory functions” means the functions assigned by these Regulations to authorised officers, official veterinary surgeons, official fish inspectors and assistants appointed pursuant to regulation 6;

“relevant document” means any required document and any other veterinary, commercial or other certificate or document relating to a product, including the manifest of any sea-going vessel or aircraft;

“the relevant territories” means an area comprising the territories of the member States, as listed in Annex I to Directive 97/78/EC, the territory of the Republic of Iceland, the territory of the Kingdom of Norway (except Svalbard), the Principality of Andorra and the Faeroe Islands;

“required document” means any original veterinary certificate, original veterinary document or other original document required in relation to a product by virtue of any directive, decision or regulation listed in Schedule 2;

“returned product” means a product originally exported from the customs territory of the Community which is returned there because it has been refused by a third country;

“ships' store” means closed premises referred to in Article 13(1)(c), or a specially approved warehouse referred to in Article 13(2)(a), of Directive 97/78/EC;

“straw” means any green cereal which has been dried either naturally or artificially and includes any product (other than grain) which is obtained by drying any green cereal;

“third country” means a country not comprised in the relevant territories;

“transhipped product” means an Article 9 product which is transhipped or unloaded in the way described (in relation to consignments) in Article 9(1) of Directive 97/78/EC at its border post of introduction;

“transit” means transit from one third country to another, passing through one or more member States, under the external transit procedure referred to in Articles 91 to 97 of the Customs Code;

“transit product” means a product originating in a third country which, according to the information forwarded in advance referred to in Article 3(3) of Directive 97/78/EC, will undergo transit;

“veterinary check” means any check provided for in Directive 97/78/EC including a documentary check, an identity check and a physical check.

(2) Products introduced into Scotland from the Republic of Iceland, other than fishery products, are regarded as introduced from a third country.

(3) For the purposes of these Regulations, fishery products which are first landed in Scotland from a vessel flying the flag of a third country are introduced into Scotland from a third country when they are first so landed.

(4) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made.

(5) Any reference in these Regulations to a numbered regulation (with no corresponding reference to a specific instrument) or a numbered Part is a reference to the regulation or Part so numbered in

these Regulations and any reference to a numbered Schedule is a reference to the Schedule to these Regulations so numbered.

Exemptions

3.—(1) These Regulations do not apply to products introduced into Scotland from a third country with the previous written authorisation of the Scottish Ministers or the Agency, as trade samples, for exhibition or for particular studies or analyses.

(2) Part III, with the exception of regulations 15, 21 and 25, and Parts IV to IX, do not apply to any product the total weight of which does not exceed one kilogram and which is introduced into Scotland—

- (a) in the personal luggage of a traveller and intended for that person's own consumption; or
- (b) by post or carrier and addressed to a private individual in the relevant territories otherwise than by way of trade or as a trade sample,

where such products either come from a third country or part of a third country which satisfies the conditions laid down in paragraph (3) or have undergone heat treatment in a hermetically sealed container to an Fo value of 3,00 or more.

(3) The conditions referred to in paragraph (2) are that the third country or part of a third country—

- (a) appears on a list of third countries or parts of third countries from which member States shall authorise the importation of the product or products concerned, established by a Community instrument in force on the date on which these Regulations are made; and
- (b) is not one from which importation of the product or products concerned is prohibited by any Community instrument in force on that date.

PART II

ENFORCEMENT

Enforcement authorities

4. These Regulations shall be executed and enforced—

- (a) by the Scottish Ministers at a border inspection post within Scotland designated and approved for veterinary checks only on products referred to in Annex I of Directive 92/118/EEC which are not intended for human consumption;
- (b) by the Agency at—
 - (i) premises required to be licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995(**12**), the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(**13**) or the Wild Game Meat (Hygiene and Inspection) Regulations 1995(**14**); and
 - (ii) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(**15**), or the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(**16**); and

(12) S.I. 1995/539, amended by S.I. 1995/1763 and 2200 and 1996/1148 and 2235, 1997/1729 and 2074 and S.S.I. 2000/62, 171 and 288, 2001/160, 358, 394 and 429 and 2002/35 and 234.

(13) S.I. 1995/540, amended by S.I. 1995/1763, 2200 and 3205, 1997/1729 and S.S.I. 2000/62, 171 and 288 and 2002/87 and 234.

(14) S.I. 1995/2148, amended by S.I. 1995/3205 and S.S.I. 2000/62.

(15) S.I. 1994/3082, amended by S.I. 1995/539, 1763, 2200 and 3205, 1996/1499 and 1999/683 and S.S.I. 2000/62, 171 and 288 and 2001/160, 358, 394 and 429 and 2002/35.

(16) S.I. 1995/3205, amended by S.I. 1996/3124, S.S.I. 2000/62, 171 and 288, 2001/358, 394 and 429 and 2002/35.

- (c) subject to regulation 5(1) by the local authority at any border inspection post in its area, except a border inspection post referred to in paragraph (a), and elsewhere in its area, except at premises referred to in paragraph (b).

Enforcement by an authorised officer or the Agency in place of local authority

5.—(1) If the Scottish Ministers consider that a local authority is failing or has failed to execute or enforce these Regulations generally, or in any class of cases, or in an individual case, they may empower an authorised officer or the Agency to execute or enforce them in place of that local authority.

(2) The Scottish Ministers or the Agency may recover from the local authority concerned any expenses reasonably incurred by them or it under paragraph (1).

Appointment of official veterinary surgeons and official fish inspectors

6.—(1) The Scottish Ministers shall appoint—

- (a) an official veterinary surgeon to carry out the regulatory functions at any border inspection post within Scotland designated and approved for veterinary checks only on products referred to in Annex I of Directive 92/118/EEC which are not intended for human consumption; and
- (b) such appropriately trained assistants for each official veterinary surgeon appointed pursuant to sub-paragraph (a) as may be necessary for the proper and expeditious performance of the regulatory functions.

(2) A local authority shall appoint—

- (a) an official veterinary surgeon to carry out the regulatory functions at each border inspection post in its area, other than a border inspection post referred to in sub-paragraph (1)(a);
- (b) an official fish inspector to carry out the regulatory functions in relation to fishery products at each border inspection post in its area, other than a border inspection post referred to in sub-paragraph (1)(a); and
- (c) such appropriately trained assistants for each official veterinary surgeon appointed pursuant to sub-paragraph (2)(a), and each official fish inspector appointed pursuant to sub-paragraph (2)(b), as may be necessary for the proper and expeditious performance of the regulatory functions.

Exercise of enforcement powers

7. An official veterinary surgeon, an official fish inspector or an authorised officer may, at all reasonable hours and on producing, if so required, some duly authenticated document showing authority, exercise the powers conferred by regulations 8 and 9 for the purpose of—

- (a) executing or enforcing these Regulations;
- (b) executing or enforcing any declaration made by the Scottish Ministers or the Agency pursuant to regulation 54;
- (c) ascertaining whether these Regulations are being or have been complied with; or
- (d) verifying the identity, origin or destination of any product.

Powers of entry and inspection

8.—(1) An official veterinary surgeon, official fish inspector or authorised officer may—

- (a) enter any border inspection post within Scotland or other land or premises (except premises used only as a dwelling house) and inspect the same and anything therein or thereon;
- (b) open any bundle, package, packing case, or item of personal luggage, or require any person in possession of or accompanying the same to open it;
- (c) inspect the contents of any bundle, package, packing case or item of personal luggage opened pursuant to sub-paragraph (b);
- (d) inspect any product, including its packaging, seals, marking, labelling and presentation, and any plant or equipment used for or in connection with any product; and
- (e) take samples of any product.

(2) Where an official veterinary surgeon, official fish inspector or authorised officer takes a sample of a product otherwise than in the course of a physical check carried out pursuant to regulation 19(1), that veterinary surgeon, inspector or officer may serve notice on the person appearing to that veterinary surgeon, inspector or officer to have charge of the consignment which includes the product, requiring that the consignment or part thereof be stored until that veterinary surgeon, inspector or officer serves a further notice that the same may be removed, under the supervision of the veterinary surgeon, inspector or officer, as the case may be, at such place and under such conditions as may be directed in the notice; and the costs of such storage shall be paid by the recipient of the notice or the person responsible for the consignment.

(3) An official veterinary surgeon, official fish inspector or authorised officer entering any land or premises pursuant to sub-paragraph (1)(a) may be accompanied by—

- (a) other persons acting under the instructions of that veterinary surgeon, inspector or officer;
- (b) one or more representatives of the European Commission; and
- (c) one or more representatives of the authorities of a third country, appointed and acting in accordance with the provisions of one of the equivalence decisions listed in Schedule 4.

Powers in relation to documents

9. An official veterinary surgeon, official fish inspector or authorised officer may—

- (a) require any person appearing to that veterinary surgeon, inspector or officer to have charge of a product, any person responsible for a product and any corporate officer, employee or agent of any such persons, to produce any relevant document in the possession or under the control of that person relating to the product, and to supply such additional information in the possession or under the control of that person relating to the product as the veterinary surgeon, inspector or officer may reasonably request;
- (b) examine any relevant document relating to a product and, where it is kept by means of a computer, have access to and inspect and check the operation of any computer and associated apparatus or material which is or has been used in connection with that relevant document;
- (c) make and retain such copies as the official veterinary surgeon, official fish inspector or authorised officer may think fit of any relevant document relating to a product; and
- (d) seize and retain any relevant document relating to a product which the official veterinary surgeon, official fish inspector or authorised officer has reason to believe may be required as evidence in proceedings under these Regulations, and, where any such relevant document is kept by means of a computer, require it to be produced in a form in which it may be taken away.

Protection of officials acting in good faith

10.—(1) No authorised officer, official veterinary surgeon, official fish inspector, or assistant appointed pursuant to regulation 6 shall be personally liable in respect of any act done in the performance or purported performance of the regulatory functions within the scope of that officer's, veterinary surgeon's, inspector's or assistant's employment if it was done in the honest belief that a duty under these Regulations required or entitled such an act.

(2) Paragraph (1) shall not relieve the Scottish Ministers, a local authority or the Agency from any liability in respect of acts of their or its officers.

Entry warrants

11. If a sheriff or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any land or premises by an official veterinary surgeon, official fish inspector or authorised officer for any of the purposes specified in regulations 7, 8, or 9 and either—

- (a) that entry has been refused, or a refusal is reasonably expected, and that notice of the intention to apply for an entry warrant has been given to the occupier; or
- (b) that a request for entry, or the giving of such a notice, would defeat the object of entry, or that entry is urgently required, or that the land or premises are unoccupied, or the occupier is temporarily absent, and it would defeat the object of entry to await the occupier's return,

the sheriff or justice may issue a warrant valid for a period of no more than one month authorising the official veterinary surgeon, official fish inspector or authorised officer to enter the land or premises, if need be by reasonable force.

Local authority returns

12.—(1) For each border inspection post in its area, a local authority shall submit to the Scottish Ministers a return comprising—

- (a) the total number of consignments checked, categorised by groups of products and by country of origin;
- (b) a list of consignments of which samples were taken and the results of any test or analysis of each sample; and
- (c) a list of consignments required to be re dispatched or destroyed pursuant to regulation 21 by the official veterinary surgeon or official fish inspector, together with, in each case, their country of origin, establishment of origin (if known), a description of the product concerned and the reason for refusal.

(2) The Scottish Ministers shall determine how frequently the returns referred to in paragraph (1) are to be submitted and what period of time they are to cover.

Suspension of border inspection posts

13.—(1) If the Scottish Ministers are satisfied that—

- (a) the continued operation of a border inspection post within Scotland presents a serious risk to public or animal health; or
- (b) there has been at a border inspection post within Scotland a serious breach of the requirements for the approval of border inspection posts laid down in Annex II to Directive 97/78/EC or the Annex to Commission Decision [2001/812/EC](#) laying down requirements

for the approval of border inspection posts responsible for veterinary checks on products introduced into the Community from third countries⁽¹⁷⁾,

they shall serve on the operator of the border inspection post concerned a written notice stating that the approval of the premises as a border inspection post in accordance with Article 6(2) or 6(4) of Directive 97/78/EC is suspended.

(2) Upon service of a notice pursuant to paragraph (1) the premises shall cease to be a border inspection post, notwithstanding that it may still appear on the list of border inspection posts referred to in Article 6(2) or 6(4) of Directive 97/78/EC, until it is again designated and approved in accordance with Article 6 (2) or 6(4).

Regulatory functions of official fish inspectors

14. In Parts III to VIII and XII, where a fishery product is concerned, the expression “official veterinary surgeon” shall be construed as indicating an official fish inspector.

PART III

PROVISIONS APPLICABLE TO PRODUCTS IN GENERAL

Prohibition of non-conforming products

15.—(1) Without prejudice to regulation 22 of the Dairy Products (Hygiene) Regulations 1995⁽¹⁸⁾, no person shall introduce a non-conforming product into Scotland from a third country, or a non-conforming product originating in a third country into Scotland from elsewhere in the relevant territories unless—

- (a) it is a transit product; or
- (b) its destination establishment is a warehouse in a free zone, a free warehouse or a customs warehouse approved pursuant to Article 12(4)(b) of Directive 97/78/EC, or a ships' store complying with Article 13 of Directive 97/78/EC, located (in each case) outside the United Kingdom.

(2) No person shall introduce a product into Scotland from a third country from which importation of that product is prohibited by any Community instrument in force on the date on which these Regulations are made.

Introduction of products at border inspection posts

16.—(1) No person shall introduce a product into Scotland from a third country except at a border inspection post designated and approved for veterinary checks on that product.

(2) Where the border inspection post of introduction of an Article 9 product is outside the United Kingdom, and its border inspection post of destination is in Scotland, no person shall introduce it into Scotland except at a border inspection post designated and approved for veterinary checks on that product.

Advance notice of introduction or presentation

17.—(1) No person shall—

- (a) introduce a product into Scotland from a third country; or

⁽¹⁷⁾ O.J. No. L 306, 23.11.2001, p.28.

⁽¹⁸⁾ S.I. 1995/1086, amended by S.I. 1996/1499 and 1699, 1997/1729 and 1998/2424.

- (b) introduce into Scotland an Article 9 product whose border inspection post of destination is in Scotland,

unless notice of its introduction has been given pursuant to this regulation to the official veterinary surgeon at a border inspection post designated and approved for veterinary checks on that product and a copy of it has been sent to the office of the Commissioners responsible for the area in which that border inspection post is situated.

(2) Where the border inspection post of introduction and the border inspection post of destination of an Article 9 product are both in Scotland, no person shall present the product to a border inspection post unless notice of its presentation has been given pursuant to this regulation to the official veterinary surgeon at a border inspection post of destination designated and approved for veterinary checks on that product and a copy of it has been sent to the office of the Commissioners responsible for the area in which that border inspection post is situated.

(3) The notice referred to in paragraphs (1) and (2)–

- (a) shall be in the form set out as Sheet 1 in Schedule 1 or shall consist of a detailed description of the product in writing or in computerised or other electronic form, containing at least the particulars appearing on that form;
- (b) shall be in English and also in an official language of the country of destination in the relevant territories referred to in the notice, if other than the United Kingdom;

(c) shall arrive at the border inspection post–

- (i) at least six hours, in the case of a product introduced by air, and
- (ii) at least 24 hours, in any other case,

before the product is presented to the official veterinary surgeon at the border inspection post pursuant to regulation 18;

(d) in the case of a notice given to a border inspection post of destination, shall specify what checks have been carried out at the border inspection post of introduction.

(a) (4) (a) In paragraph (3)(1)(i) “hours” means hours during which the border inspection post is open for the presentation of products to the official veterinary surgeon pursuant to regulation 18; and

(b) in paragraph(3)(1)(ii), “24 hours” excludes days on which such a post is not open for these purposes.

Presentation of products at border inspection posts

18.—(1) Any person responsible for a product which is introduced into Scotland from a third country, or for an Article 9 product whose border inspection post of destination is in Scotland which is introduced into Scotland, shall present the product and the required documents, or ensure that the same are presented, without delay to the official veterinary surgeon at the inspection facility of the border inspection post to which notice of the introduction or presentation of the product was given pursuant to regulation 17.

(2) Where the border inspection post of introduction of an Article 9 product is in the United Kingdom and its border inspection post of destination is in Scotland, any person responsible for the product after its removal from the border inspection post of introduction shall present the product and the required documents, or ensure that the same are presented, without delay to the official veterinary surgeon at the inspection facility of the border inspection post of destination to which notice of the product’s presentation was given pursuant to regulation 17.

(3) A person who presents a product, other than a transit product or a product to which Part VII applies pursuant to paragraph (1) or (2) shall present the required documents relating thereto drawn up in English.

(4) A person who presents pursuant to paragraph (1) or (2) a transit product or a product to which Part VII applies accompanied by required documents in a language other than English, shall present at the same time a translation of the required documents into English, authenticated as accurate by an appropriately qualified expert.

Veterinary checks

19.—(1) Subject, in the case of transhipped products, to regulation 34, any person required by virtue of regulation 18 to present a product and the required documents, or to ensure that the same are presented, to an official veterinary surgeon shall permit the official veterinary surgeon, or an assistant appointed pursuant to regulation 6(1)(b) or 6(2)(c), to carry out on the product or the required documents, as the case may be—

- (a) a documentary check;
- (b) an identity check; and
- (c) subject to regulations 37, 42 and 46, a physical check,

and shall render such assistance as the official veterinary surgeon or assistant may reasonably request to enable the carrying out of any of the said checks.

(2) When a sample of a product is taken in the course of a physical check, no person shall remove the product or cause it to be removed from the border inspection post at which it was presented until the official veterinary surgeon has authorised its removal by issuing a certificate of veterinary clearance for the product or for the consignment or part consignment which includes the product.

(3) Pending removal pursuant to paragraph (2) the person responsible for the consignment which includes the product shall store it under the supervision of the official veterinary surgeon at such place and under such conditions as the official veterinary surgeon may direct and shall pay the costs of such storage.

Certificate of veterinary clearance to accompany consignment

20.—(1) The person responsible for a consignment or part of a consignment in respect of which a certificate of veterinary clearance has been issued, and any carrier who has or takes charge of it, shall ensure that the certificate of veterinary clearance accompanies the consignment or part—

- (a) in the case of a consignment or part intended for import, and subject to regulation 33(3), until the consignment or part first reaches, after import, premises where products are stored, processed, handled, bought or sold; and
- (b) in all other cases until the consignment or part is no longer subject to supervision by the customs authorities, within the meaning of Article 4(13) of the Customs Code.

(2) The person who occupies for the purposes of the business of that person the premises referred to in paragraph (1)(a) shall take possession of the certificate of veterinary clearance referred to in paragraph (1) and retain the same at the premises for a period of not less than one year commencing with the day following its arrival there.

Products which fail veterinary checks

21.—(1) This regulation applies, subject to regulation 22—

- (a) where, following a veterinary check at a border inspection post, the official veterinary surgeon there decides that a product (other than a transit product which fulfils the requirements of Part VI or a product whose destination establishment is referred to in Regulation 15(1)(b)) is a non-conforming product, or that there is some other irregularity in relation to the product; and

- (b) where, following a veterinary check on a product located away from a border inspection post (other than a transit product which fulfils the requirements of Part VI or a product whose destination establishment is referred to in regulation 15(1)(b)), an authorised officer decides that the product is a non-conforming product.
- (2) If paragraph (1)(a) applies, the official veterinary surgeon shall serve a notice on the person responsible for the product, and if paragraph (1)(b) applies, the authorised officer shall serve a notice on the person appearing to that officer to have charge of the product, requiring that person either–
- (a) to redispach the product from the border inspection post, or, if paragraph (1)(b) applies, from a border inspection post indicated in the notice, by the mode of transport by which it was introduced into Scotland, to a destination, agreed with the official veterinary surgeon or the authorised officer, located in a third country within a period of not more than sixty days commencing with the day following the service of the notice; or
 - (b) to destroy the product without undue delay by rendering or incineration in accordance with the Animal By-Products Order in the facilities provided for that purpose nearest to the border inspection post or, if paragraph (1)(b) applies, nearest to the location of the product.
- (3) The product must be destroyed in accordance with paragraph (2)(b) where–
- (a) its redispach is precluded on animal or public health grounds by the results of a veterinary check, or by any animal or public health requirement laid down in a Community instrument in force on the date on which these Regulations are made, or is otherwise impossible;
 - (b) the sixty day period referred to in paragraph (2)(a) has elapsed; or
 - (c) the person responsible for the product or, if paragraph (1)(b) applies, the owner of the product, agrees immediately to its destruction.
- (4) The person responsible for, or, if paragraph (1)(b) applies, the owner of, a product in respect of which a notice has been served pursuant to paragraph (2) shall ensure that it is stored until redispach or destruction under the supervision of the official veterinary surgeon or the authorised officer at such place and under such conditions as may be directed in the notice.
- (5) In paragraph (1)(a) “other irregularity” in relation to a product means–
- (a) its introduction into Scotland from a third country, or its presentation to a border inspection post of destination in Scotland, without notice given pursuant to regulation 17;
 - (b) any false or misleading information contained in a notice given pursuant to regulation 17;
 - (c) any false or misleading information given pursuant to regulation 41 or 45;
 - (d) any error, omission or false or misleading information in a required document, and any discrepancy between a required document and–
 - (i) the notice of the introduction or presentation of the product given pursuant to regulation 17;
 - (ii) the product itself; or
 - (iii) the seals, stamps, marks or labels on the product, on the consignment which includes the product or on the container holding the product or the consignment;
 - (e) any defect in the product rendering it unfit for the purpose for which, according to the required documents, it is intended;
 - (f) any defect in the seals, stamps, marks or labels referred to in paragraph (5)(d)(iii), including, in the case of a wrapped or packaged product, any contravention of the labelling requirements laid down for that product in any directive, decision or regulation listed in Schedule 2;
 - (g) in the case of a product intended for import, any indication in the required documents that the product does not comply with the import conditions; and

(h) in the case of a non-conforming product which is a transit product, or a product whose destination establishment is referred to in regulation 15(1)(b), any contravention of the requirements laid down for that non-conforming product in any directive, decision or regulation listed in Schedule 2.

(6) Any person who is aggrieved by a decision referred to in paragraph (1) (a) or (b) may within the period of 28 days after the date when that person is notified of the outcome of that decision appeal to the sheriff by way of summary application.

(7) Pending the determination of an appeal pursuant to paragraph (6), paragraph (4) shall apply to the storage of the product concerned.

Treatment as animal by-products

22. Paragraphs (2), (3) and (4) of regulation 21 shall not apply where—

- (a) in the opinion of the official veterinary surgeon or the authorised officer the product concerned presents no risk to animal or public health; and
- (b) the official veterinary surgeon or the authorised officer has authorised that the product be consigned for one of the uses specified in article 5(1)(d), (e), (f) or (g) of the Animal By Products Order.

Products containing unauthorised substances and excess residues

23.—(1) In this regulation—

- (a) “maximum residue limit” means a maximum residue limit listed in Annex I or Annex III to Council Regulation (EEC) No. 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin⁽¹⁹⁾; and
- (b) “unauthorised substance” has the same meaning as “unauthorised substance or product” in Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC⁽²⁰⁾.

(2) This regulation applies where a veterinary check on a consignment from a particular establishment of origin in a third country reveals the presence of an unauthorised substance, or reveals that a maximum residue limit has been exceeded, but no Community measures have yet been adopted in response to this.

(3) In the circumstances described in paragraph (2), paragraphs (1), (4), (5), (6) and (7) shall apply to those of the next ten consignments introduced into the United Kingdom from that establishment which are introduced into Scotland.

(4) The official veterinary surgeon at the border inspection post at which any such consignment is introduced shall, by notice served on the person responsible for the consignment, take charge of it and check the residues in the consignment by taking and analysing a representative sample of the products comprised in it.

(5) Upon service of a notice under paragraph (4), the person responsible for the consignment shall lodge with the official veterinary surgeon a deposit or guarantee sufficient to assure payment of all charges payable in accordance with Part IX for veterinary checks carried out on the consignment, including the taking of samples, and any laboratory test or analysis carried out on any sample taken.

⁽¹⁹⁾ O.J. No. L 224, 18.8.90, p.1, as last amended by Commission Regulation (EC) No. 1879/2001 (O.J. No. L 258, 27.09.2001, p.11).

⁽²⁰⁾ O.J. No. L 125, 23.5.96, p.10.

(6) If any veterinary check carried out on the consignment reveals the presence of unauthorised substances or their residues or reveals that a maximum residue limit has been exceeded, the official veterinary surgeon shall—

- (a) endorse on the required documents relating to the consignment a clear indication of the reasons for rejecting it; and
- (b) redispach the consignment, or such part of it as the official veterinary surgeon considers affected by the presence of unauthorised substances or their residues or by excess residues, accompanied by the required documents, to its third country of origin.

(7) The cost of redispaching and transporting the consignment or part to its third country of origin shall be paid by the consignor whose name appears on the notice of the consignment's introduction given pursuant to regulation 17.

Consignments and products illegally introduced

24.—(1) This regulation applies—

- (a) where a consignment or product is introduced into Scotland from a third country but is not presented pursuant to regulation 18;
- (b) where a consignment or product originating in a third country has been introduced into Scotland from elsewhere in the relevant territories, but has not been presented at a border inspection post there;
- (c) where the border inspection post of destination of a consignment of Article 9 products is in Scotland but the consignment is not presented there in accordance with regulation 18(1); and
- (d) where a consignment introduced into Scotland is presented to the official veterinary surgeon at a border inspection post not designated and approved for veterinary checks on the products comprised therein.

(2) In the circumstances described in paragraph (1)(a), (b) and (c) an authorised officer shall, by notice served on the person appearing to that officer to have charge of it, and, in the circumstances described in paragraph (1)(d), the official veterinary surgeon shall, by notice served on the person responsible for it, take charge of the consignment or product and either—

- (a) redispach it, by the mode of transport by which it was first introduced into the relevant territories, to a destination, agreed with the owner in the circumstances described in paragraph (1)(a), (b) and (c), or with the person responsible for the consignment, in the circumstances described in paragraph (1)(d), located in a third country within a period of not more than sixty days commencing with the day following the service of the notice; or
- (b) destroy it without undue delay in accordance with the Animal By-Products Order by rendering or incineration in the facilities provided for that purpose nearest to the place at which the authorised officer or official veterinary surgeon takes charge of it.

Products dangerous to animal or public health

25. If an official veterinary surgeon or an authorised officer considers that a consignment or product from a third country presents a risk to animal or public health that veterinary surgeon or officer shall, by notice served on the person appearing to that veterinary surgeon or officer to have charge of it, take charge of it and destroy it without delay in accordance with regulation 24(2)(b).

Serious or repeated infringements

26.—(1) Where the Scottish Ministers or the Agency reasonably conclude, on the basis of the results of veterinary checks, that products from a particular third country, part of a third country

or establishment in a third country are implicated in serious or repeated infringements of any requirement laid down in a Community instrument relating to animal or public health, paragraphs (2), (3) and (4) shall apply to those of the next ten consignments introduced into the United Kingdom from that third country, part of a third country or establishment, as the case may be, which are introduced into Scotland.

(2) The official veterinary surgeon at the border inspection post at which any such consignment is introduced shall, by notice served on the person responsible for the consignment, take charge of it and carry out a physical check thereon, including the taking of samples and laboratory tests and analyses.

(3) Upon service of a notice under paragraph (2) the person responsible for the consignment shall lodge with the official veterinary surgeon a deposit or guarantee sufficient to assure payment of all charges payable in accordance with Part IX for veterinary checks carried out on the consignment, including the taking of samples, and any laboratory test or analysis carried out on any sample taken.

(4) If any veterinary check carried out on the consignment reveals an infringement of any requirement laid down in a Community instrument relating to animal health, the official veterinary surgeon shall either redispach or destroy the consignment in accordance with regulation 24(2).

Invalidation of veterinary documents

27. Where an official veterinary surgeon or an authorised officer serves a notice requiring redispach of a product pursuant to regulation 21(2)(a), or takes charge of a consignment pursuant to regulation 24(2), any person who has possession or control of the required documents relating to that product or consignment shall immediately submit them to the official veterinary surgeon or authorised officer, as the case may be, for invalidation.

Costs in respect of products re-dispatched or disposed of

28.—(1) The person responsible for the product or consignment concerned or, where a notice has been served on the person appearing to have charge of the product or consignment, the owner of the product or consignment, shall pay on demand the costs of storing, transporting, redispaching, disposing of and destroying any product or consignment re-dispatched or destroyed pursuant to regulation 21, 24, 25 or 26.

(2) Any cost referred to in paragraph (1) which is paid by an official veterinary surgeon, an authorised officer, the Scottish Ministers, a local authority or the Agency shall be reimbursed on demand by the person responsible for, or the owner of, the product or consignment.

PART IV

ON-BOARD CATERING SUPPLIES

Disposal of unused catering supplies

29.—(1) Part III shall not apply to products on board any means of transport operating internationally and intended for consumption by the crew or passengers of that means of transport which are introduced into Scotland.

(2) Any person who introduces into Scotland a product referred to in paragraph (1) or catering waste derived from such a product shall dispose of the same, or ensure that the same is disposed of, without delay in accordance with the Animal By-Products Order, by a method specified in article 5(1)(a), (b) or (c) of that Order.

PART V

PRODUCTS INTENDED FOR IMPORT

Retention of documents at border inspection posts

30. Where a documentary check has been carried out at a border inspection post on a product intended (whether directly or ultimately) for import, the person who presented the required documents relating to that product pursuant to regulation 18(1) shall surrender the same to the official veterinary surgeon at that border inspection post.

Evidence of certification of, and payment for, veterinary checks

31. Where a certificate of veterinary clearance has been issued certifying that a consignment is fit for import, the person responsible for the consignment shall supply the Commissioners with evidence satisfactory to them that—

- (a) the certificate has been issued; and
- (b) all charges payable in accordance with Part IX for veterinary checks carried out on the consignment, including sampling, and for any test or analysis carried out on any samples taken, have been paid, or payment thereof has been assured by a deposit or guarantee satisfactory to the person to whom, pursuant to regulation 48(2), the charges are payable.

Products not intended for the United Kingdom

32. Where—

- (a) notice of introduction of a product has been given pursuant to regulation 17;
- (b) that notice specifies a member State other than the United Kingdom as the country of destination; and
- (c) a certificate of veterinary clearance has been issued in respect of that product, authorising its import –
 - (i) into that member State or a particular area thereof in accordance with specific requirements; or
 - (ii) for specific purposes in accordance with conditions,which requirements or conditions are laid down for products imported into that member State or particular area, or for products imported for those specific purposes, in any directive, decision or regulation listed in Schedule 2,

no person shall, without reasonable excuse, prevent or delay the transport of that product to that member State.

Products transported under supervision

33.—(1) This regulation applies to products intended for import which are required by any directive, decision or regulation listed in Schedule 2 to be transported under veterinary supervision from the border inspection post at which they are first introduced into the relevant territories to their destination establishment.

(2) No person shall remove a product to which this regulation applies from a border inspection post unless it is contained in a leak-proof container or means of transport which has been sealed by an officer of the Commissioners or by the official veterinary surgeon at that border inspection post.

(3) The person responsible for a product to which this regulation applies and any carrier who has charge of it for the time being shall ensure that the product is transported without delay to its

destination establishment, and that the certificate of veterinary clearance issued in respect of the product accompanies it until it reaches its destination establishment.

(4) Where a certificate of veterinary clearance has authorised import of a product to which this regulation applies for specific purposes as described in regulation 32(c)(ii), the person responsible for the product and any carrier who has charge of it for the time being shall ensure that it remains under the supervision of the Commissioners in accordance with the T5 procedure provided for in Articles 471 to 495 of Commission Regulation (EEC) No. 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code(21) until it reaches its destination establishment.

(5) An operator of a destination establishment or an intermediate storage warehouse shall give immediate written notification to the veterinary officer who is responsible on behalf of the Scottish Ministers or the Agency for the destination establishment or intermediate storage warehouse, as the case may be, of the arrival there of any product to which this regulation applies.

(6) An operator of a destination establishment and, if different, the person responsible for a product to which this regulation applies shall ensure that any such product undergoes at the destination premises the treatment prescribed for it by the relevant directive, decision or regulation listed in Schedule 2.

Transshipment of products intended for import

34.—(1) This regulation applies to transhipped products where the border inspection post of introduction is in Scotland.

(2) As soon as a product to which this regulation applies arrives at the border inspection post of introduction, the person responsible for the product shall notify the official veterinary surgeon there in writing, or in computerised or other electronic form, of the exact location of the product, of the estimated time of its transshipment or unloading, and of its border inspection post of destination.

(3) Where, according to the notice given pursuant to paragraph (2), a product to which this regulation applies is transhipped—

- (a) from one aircraft to another, either directly or after being unloaded in a customs controlled area at the border inspection post of introduction for less than twelve hours; or
- (b) from one sea-going vessel to another, either directly or after being unloaded in an area as aforesaid for less than seven days,

any person required by regulation 18 to present the product and its required documents, or to ensure that they are presented, to the official veterinary surgeon at the border inspection post of introduction, shall, if the official veterinary surgeon considers that the product presents a risk to animal or public health, permit the official veterinary surgeon, or an assistant appointed pursuant to regulation 6(1)(b) or (2)(c), to carry out a documentary check on the required documents.

(4) Where a product to which this regulation applies is proposed to be unloaded from an aircraft for twelve hours or more, the person responsible for the product shall ensure that it is stored for not more than 48 hours under the supervision of the official veterinary surgeon at the border inspection post of introduction in a customs controlled area there and is then reloaded onto an aircraft for onward transport to its border inspection post of destination.

(5) Where a product to which this regulation applies is proposed to be unloaded from a sea-going vessel for seven days or more, the person responsible for the product shall ensure that it is stored for not more than twenty days under the supervision of the official veterinary surgeon at the border inspection post of introduction in a customs controlled area there and is then reloaded onto a sea-going vessel for onward transport to its border inspection post of destination.

(21) O.J. No. L 253, 11.10.93, p.1 as last amended by Commission Regulation (EC) No. 444/2002 (O.J. No. L 68, 12.3.2002, p.11).

(6) Any person required by regulation 18 to present a product to which paragraph (4) or paragraph (5) applies and its required documents to the official veterinary surgeon at a border inspection post of introduction shall permit the official veterinary surgeon there, or an assistant appointed pursuant to regulation 6(1)(b) or (2)(c), to carry out a documentary check on the required documents and, if the official veterinary surgeon considers that the product presents a risk to animal or public health, an identity check of the product against the required documents and a physical check of the product.

(7) Where a product to which paragraph (4) applies is stored for more than 48 hours after unloading, or a product to which paragraph (5) applies is stored for more than twenty days after unloading, any person required by regulation 18 to present the product and its required documents to the official veterinary surgeon at the border inspection post of introduction, shall permit the official veterinary surgeon there, or an assistant appointed pursuant to regulation 6(1)(b) or (2)(c), to carry out in all cases, in addition to the documentary check provided for in paragraph (6), an identity check of the product against the required documents and a physical check of the product.

PART VI

TRANSIT PRODUCTS

Border inspection posts of entry and exit

35. In this Part of these Regulations—

“border inspection post of entry” means the border inspection post at which a transit product enters the customs territory of the Community; and

“border inspection post of exit” means the border inspection post through which a transit product is intended to leave the customs territory of the Community, as specified in the certificate of veterinary clearance relating thereto.

Prior authorisation of transit

36. No person shall introduce a transit product into Scotland from a third country unless the official veterinary surgeon at the border inspection port of entry has previously authorised the transit of that product in writing.

Physical check of transit products

37. Any person required by regulation 18 to present a transit product, or ensure that it is presented, to the official veterinary surgeon at the border inspection post of entry need permit the official veterinary surgeon, or an assistant appointed pursuant to regulation 6(1)(b) or (2)(c), to carry out a physical check on the transit product only if the official veterinary surgeon considers that it presents a risk to animal or public health or reasonably suspects some other irregularity, as defined in regulation 21(5), in relation to the transit product.

Movement of transit products

38.—(1) No person shall remove, or cause to be removed, a transit product from the border inspection post of entry unless the person responsible for the product has given a written undertaking to the official veterinary surgeon there to observe and perform the requirements of regulation 39.

(2) Where, at any time after removal from a border inspection post of entry, a transit product is transported through Scotland by road, rail, waterway or air—

- (a) the person responsible for the transit product and any carrier who has charge of it for the time being shall ensure that it is conveyed in a vehicle or container sealed by the customs or veterinary authorities responsible for the border inspection post of entry, accompanied by its required documents, any translations required under regulation 18(4) and its certificate of veterinary clearance, to the border inspection post of exit under the supervision of the Commissioners in accordance with the external transit procedure referred to in Articles 91 to 97 of the Customs Code;
 - (b) no person shall break the seals on the vehicle or container in which the transit product is conveyed, or unload the transit product, or split the consignment or part consignment which includes the transit product, or subject the transit product to any form of handling; and
 - (c) the person responsible for the transit product and any carrier who has charge of it for the time being shall ensure that it leaves the customs territory of the Community at the border inspection post of exit not more than 30 days after removal from the border inspection post of entry (excluding the day of removal).
- (3) No person shall introduce a transit product into a free zone, a free warehouse or a customs warehouse in Scotland.

Disposal of returned transit products

39.—(1) If a transit product is returned to Scotland after leaving the customs territory of the Community, the person responsible for the transit product shall either—

- (a) redispach the transit product from the border inspection post to which it is returned to a third country by the mode of transport by which it was returned within sixty days of its return (excluding the day of return); or
 - (b) if the circumstances described in paragraph (2) apply, destroy the product without undue delay by rendering or incineration in accordance with the Animal By-Products Order in the facilities provided for that purpose nearest to the border inspection post to which the product is returned.
- (2) The transit product shall be destroyed in accordance with paragraph (1)(b) where—
- (a) redispach of the product is precluded on animal or public health grounds by the results of a physical check, or by any animal or public health requirement laid down in a Community instrument in force on the date on which these Regulations are made, or is otherwise impossible;
 - (b) the sixty day period referred to in paragraph (1)(a) has expired; or
 - (c) the person responsible for the transit product agrees immediately to its destruction.

(3) Any person who has possession or control of the required documents relating to a transit product to which paragraph (1) applies, or of the certificate of veterinary clearance relating thereto, shall submit them for invalidation to the official veterinary surgeon at the border inspection post to which the product is returned.

(4) The person responsible for a transit product to which paragraph (1) applies shall store it until redispach or destruction under the supervision of the official veterinary surgeon at the border inspection post to which the product is returned at such place and in such conditions as the official veterinary surgeon may direct.

(5) The person responsible for a transit product to which paragraph (1) applies shall pay the costs of storing, transporting, redispaching and destroying it.

PART VII

PRODUCTS INTENDED FOR WAREHOUSES OR SHIPS' STORES

Application of Part VII

- 40.** This Part of these Regulations applies to products whose destination establishment is—
- (a) a warehouse in a free zone, a free warehouse or a custom warehouse, located in the customs territory of the Community; or
 - (b) the store of a ship complying with Article 13 of Directive 97/78/EC located outside the United Kingdom.

Additional information to be given in advance

41.—(1) No person shall introduce a product to which this Part applies into Scotland, or present such a product to a border inspection post of destination in Scotland, unless the official veterinary surgeon to whom notice of the product's introduction or presentation is given pursuant to regulation 17 has been informed—

- (a) whether the product is intended ultimately for import;
- (b) if not, whether it is a transit product; and
- (c) whether the product complies with the import conditions.

(2) The information in paragraph (1)(a), (b) and (c) shall be given in writing and may be included in the notice of the product's introduction or presentation given pursuant to regulation 17.

Physical check of non-conforming products

42. Where the required documents indicate that a product to which this Part applies is a non-conforming product, any person required by regulation 18 to present it, or ensure that it is presented, to the official veterinary surgeon at a border inspection post need permit the official veterinary surgeon, or an assistant appointed pursuant to regulation 6(1)(b) or (2)(c), to carry out a physical check on the product only if the official veterinary surgeon considers that it presents a risk to animal or public health.

Exclusion of non-conforming products from warehouses

43. No person shall introduce a non-conforming product into a warehouse in a free zone, a free warehouse or a customs warehouse in Scotland.

PART VIII

PRODUCTS RETURNED FROM THIRD COUNTRIES

Meaning of “export certificate”

44. In this Part of these Regulations “export certificate” means a certificate attesting that a returned product complies with animal or public health standards, issued to facilitate its original export from the customs territory of the Community by the authority responsible for monitoring such standards at the returned product's Community establishment of origin.

Additional documentation for returned products

45. Any person who presents pursuant to regulation 18 a returned product and its required documents to an official veterinary surgeon shall present with the required documents—

- (a) the export certificate relating to the returned product or a copy authenticated as true by the authority which issued it;
- (b) a statement of the reasons why the returned product was refused by the third country; and
- (c) a declaration by the person responsible for the returned product that, since the returned product was originally exported from the customs territory of the Community, the import conditions relating to storage and transport have been complied with in relation to the returned product; and either
 - (i) in the case of a returned product not originally exported in a sealed container, a declaration by the person responsible for the returned product that it has not undergone any handling other than, in the case only of packaged products, loading and unloading of unopened packages; or
 - (ii) in the case of a returned product originally exported in a sealed container, a declaration by the carrier who introduces it into Scotland that it has not been unloaded from the container in which it was exported, or otherwise handled.

Physical check of returned products

46. Any person required by regulation 18 to present a returned product, or ensure that it is presented, to the official veterinary surgeon at a border inspection post need permit the official veterinary surgeon, or an assistant appointed pursuant to regulation 6(1)(b) or (2)(c), to carry out a physical check on the returned product only if the official veterinary surgeon has reasonable grounds for believing—

- (a) that these Regulations have not been, or are not being, complied with in relation to the returned product;
- (b) that the returned product does not comply with the import conditions; or
- (c) that the identity or destination of the returned product does not correspond with the information given on any relevant document.

Movement of returned products

47.—(1) No person shall remove, or cause to be removed, a returned product from a border inspection post without the written authorisation of the official veterinary surgeon there.

(2) No person shall remove a returned product from a border inspection post unless it is contained in a leak-proof container or means of transport which has been sealed by an officer of the Commissioners or by the official veterinary surgeon at that border inspection post.

(3) The person responsible for a returned product removed in accordance with paragraphs (1) and (2), and any carrier who has charge of it for the time being shall ensure that—

- (a) it is conveyed directly to its Community establishment of origin in the sealed leak-proof container or means of transport referred to in paragraph (2); and
- (b) the certificate of veterinary clearance issued in respect of the returned product accompanies it until the returned product reaches its Community establishment of origin.

(4) No person shall break the seals on the container or means of transport in which the returned product is conveyed, or unload the returned product, or split the consignment or part consignment which includes the returned product, or subject the returned product to any form of handling, until it reaches its Community establishment of origin.

(5) The operator of the Community establishment of origin shall give immediate written notification of the arrival there of the returned product to the veterinary officer who is responsible on behalf of the Scottish Ministers or the Agency for that establishment.

PART IX

CHARGES FOR VETERINARY CHECKS

Payment of charges

48.—(1) A charge, calculated in accordance with regulations 49 and 50 and Schedule 5 and subject to regulation 53, shall be made for veterinary checks carried out at a border inspection post within Scotland.

(2) The charge shall be made by and payable to the Scottish Ministers, a local authority or the Agency, whichever is responsible, pursuant to regulations 4 and 5, for executing and enforcing these Regulations at the border inspection post where the veterinary check is carried out.

Calculation of charges

49. The charges imposed for veterinary checks under regulation 48 shall be sufficient to cover the costs listed in Part I of Schedule 5 and shall be calculated in accordance with Part II, III, IV or V, as the case may be, of Schedule 5.

Conversion of charges to sterling

50. Charges expressed in euros in Schedule 5 shall be converted to pounds sterling at the rate of conversion published in the “C” Series of the Official Journal of the European Communities in September of the calendar year preceding that in which the relevant veterinary check was carried out.

Liability for charges

51. The person responsible for a consignment shall pay on demand the charge made for any veterinary check carried out on the consignment.

Information relating to charges

52.—(1) The Scottish Ministers, a local authority or the Agency shall, if so requested in writing, supply to any person who presents products pursuant to regulation 18, or to any organisation representing such persons, details of the calculations which they or it uses to determine charges for veterinary checks and shall take into account any representations made by such person or organisation in determining such charges.

(2) If requested in writing so to do by the Scottish Ministers or the Agency, a local authority shall provide the Scottish Ministers or the Agency, as the case may be, with such information as they or it may require relating to the calculation of charges for veterinary checks, and with copies of any written representations made by persons or organisations referred to in paragraph (1).

Appeals against charges

53.—(1) Any person who has paid a charge for a veterinary check to a local authority may, within 28 days of the charge being paid, appeal on the ground that the amount of the charge is unreasonable—

- (a) to the Scottish Ministers, where the charge is for a veterinary check carried out otherwise than in relation to any function of the Agency; and

(b) to the Agency, where the charge is for a veterinary check carried out in relation to any function of the Agency.

(2) Where there is an appeal under paragraph (1), the Scottish Ministers or the Agency, as the case may be, shall afford an opportunity to the appellant and to the local authority to make representations and if, on consideration of the circumstances and such representations, they are satisfied that the amount of the charge is unreasonable, they shall so inform the local authority, and the local authority shall recalculate the amount of the charge in accordance with any directions given by the Scottish Ministers or the Agency and repay to the person who has paid the charge the difference between the original charge and the recalculated charge.

(3) Any person who has paid a charge for a veterinary check to the Scottish Ministers or the Agency may, within 28 days of the charge being paid, appeal to an independent person appointed by the Scottish Ministers on the ground that the amount of the charge is unreasonable.

(4) The terms of appointment and the remuneration of the independent person referred to in paragraph (3) shall be determined by the Scottish Ministers.

(5) Where there is an appeal under paragraph (3), the independent person shall afford an opportunity to the appellant and to the Scottish Ministers to make representations and if, on consideration of the circumstances and such representations, he or she is satisfied that the amount of the charge is unreasonable, he or she shall so inform the Scottish Ministers, and the Scottish Ministers shall recalculate the amount of the charge in accordance with any directions given by the independent person and repay to the person who has paid the charge the difference between the original charge and the recalculated charge.

(6) Any person who is aggrieved by a decision referred to in paragraphs (3) or (5) may, within the period of 28 days after the date when that person is notified of the outcome of that decision, appeal to the sheriff by way of summary application, and the sheriff may on consideration of the circumstances and of any representations made to him or her, make such order as the sheriff thinks fit.

PART X

EMERGENCY DECLARATIONS

Disease outbreaks in third countries

54.—(1) Where the Scottish Ministers or the Agency learn of, or have reasonable grounds to suspect, the presence in any third country of a disease referred to in Council Directive [82/894/EEC](#) on the notification of animal diseases within the Community⁽²²⁾, a zoonosis or other disease or phenomenon or circumstance liable to present a serious threat to animal or public health, they or it may by declaration suspend, or impose conditions on, the introduction into Scotland of any product from the whole or any part of that third country.

(2) Such a declaration shall be in writing and shall be published in such manner as the Scottish Ministers or the Agency, as the case may be, think fit and shall specify the products and the third country or part thereof concerned.

(3) A declaration which imposes conditions on the introduction of any product from a third country or part thereof shall specify those conditions.

(4) Where a declaration is in force suspending the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration.

(22) O.J. No. L 378, 31.12.82, p.58 as last amended by Commission Decision [2000/556/EC](#) (O.J. No. L 235, 19.9.2000, p.27).

(5) Where a declaration is in force which imposes conditions on the introduction of any product, no person shall introduce that product into Scotland if it originates in the third country or part thereof specified in the declaration unless the product complies with the conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

PART XI

OFFENCES AND PENALTIES

Obstruction

55.—(1) No person shall—

- (a) intentionally obstruct any person in the exercise of a power conferred by regulation 8 or 9 or in the performance of any other regulatory function;
- (b) without reasonable cause, fail to comply with a requirement made pursuant to regulation 8 or 9, or fail to give to any person exercising a power conferred by those regulations or performing any of the regulatory functions such assistance or information as that person may reasonably require for the purpose of exercising the power or performing the function of that person;
- (c) furnish to any person exercising a power conferred by regulation 8 or 9 or performing any of the regulatory functions any information which that person so furnishing knows to be false or misleading.

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

Contraventions

56. Any person who contravenes a provision of the Regulations listed in Schedule 6, or fails to comply with a notice served upon that person pursuant to regulation 8(2) or regulation 21(2) shall be guilty of an offence.

Defence of due diligence

57.—(1) In any proceedings for an offence of contravening a provision of the Regulations listed in Part I of Schedule 6, it shall be a defence for the person charged to prove that all reasonable precautions were taken and all due diligence exercised to avoid the commission of the offence by the person charged or by a person under the control of such person.

(2) If in any case the defence provided by paragraph (1) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence, unless at the earlier of—

- (a) a date seven clear days before the trial diet (not being a notional trial diet); or
- (b) a date twenty eight days after the first appearance of that person, before a court in connection with the alleged offence,

that person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the possession of the person charged.

(3) In paragraph (2) above any reference to appearing before a court shall be construed as including a reference to being brought before a court.

Penalties

58.—(1) A person guilty of the offence of contravening regulation 55(1)(a) or (1)(b) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

(2) A person guilty of any other offence under these Regulations shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

Offences by bodies corporate

59.—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

PART XII

NOTICES AND DECISIONS

Form and content of notices

60. Any notice served by the Scottish Ministers, the Agency, an official veterinary surgeon, an official fish inspector or an authorised officer pursuant to a provision of these Regulations shall be in writing and may be made subject to conditions and may be amended, suspended or revoked in writing at any time.

Service of notices

61.—(1) Any notice or other document to be given or served on any person under or in relation to these Regulations may be given or served either—

- (a) by delivering it to that person;
- (b) in the case of an incorporated body, by delivering it or sending it by post to their secretary or clerk at their registered or principal office; or
- (c) in the case of any other person, by leaving it, or sending it by post to that person, at the usual or last known address of that person.

(2) Where a notice or other document is to be given or served on the owner, proprietor, operator or occupier of any premises and it is not practicable after reasonable enquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied,

the document may be given or served by addressing it to the person concerned by the description of “owner”, “proprietor”, “operator” or “occupier” of the premises (naming them) and—

- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

(3) Where the person to be served is a company registered, or a partnership carrying on business, outside the United Kingdom, and the company or partnership has an office within the United Kingdom, the principal office of that company or partnership for the purposes of paragraph (1) shall be its principal office within the United Kingdom.

(4) If the person to be served with any such notice has furnished the person by whom the notice is to be served with an address pursuant to any provision of these Regulations, that address shall be treated as the proper address of the person to be served for the purposes of this regulation.

(5) For the purposes of this regulation, “posting” a notice means sending it pre-paid by a postal service which seeks to deliver documents by post within the United Kingdom no later than the next working day in all or the majority of cases, and to deliver documents by post outside the United Kingdom within such period as is reasonable in all the circumstances.

Notification of decisions

62. Where, under any provision of these Regulations, a decision is taken in relation to a product or consignment, the person taking the decision shall, if so requested, notify the person responsible for the product or consignment in writing of the decision and the reasons for it, together with details of that person’s right of appeal against the decision including the procedure and time limits applicable.

PART XIII

DISAPPLICATIONS AND CONSEQUENTIAL AMENDMENTS

Disapplication of existing provisions

63.—(1) The Importation of Animal Products and Poultry Products Order 1980(**23**) shall not apply to products to which these Regulations apply, except in respect of the products referred to in regulation 3(1) and (2).

(2) The provisions listed in column 1 of Schedule 7 shall not apply, to the extent indicated in the corresponding entry in column 3 of that Schedule, in respect of products to which these Regulations apply.

Consequential amendments

64. The consequential amendments set out in Schedule 8 shall have effect.

St Andrew’s House,
Edinburgh
29th September 2002

ROSS FINNIE
A member of the Scottish Executive