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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 411**

**The Animal By-Products (Scotland) Regulations 2003**

**PART 1**

**Introductory provisions**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Animal By-Products (Scotland) Regulations 2003, and, subject to paragraph (2), shall come into force on 1 October 2003.

(2) Regulation 12 shall come into force on 1st January 2004.

(3) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“approval” and “authorisation” mean an approval or authorisation granted by the Scottish Ministers;

“the Community Regulation” means Regulation (EC) No. 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption<sup>(1)</sup> as amended by and as read with—

- (a) Commission Regulation (EC) No. 808/2003 amending Regulation (EC) No. 1774/2002 of the European Parliament and of the Council laying down health rules concerning animal by-products not intended for human consumption<sup>(2)</sup>;
- (b) Regulation (EC) 811/2003<sup>(3)</sup>;
- (c) Regulation (EC) 813/2003<sup>(4)</sup>;
- (d) Commission Decision 2003/320/EC on transitional measures under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the use in feed of used cooking oil<sup>(5)</sup>;
- (e) Commission Decision 2003/321/EC on transitional measures under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the processing standards for mammalian blood<sup>(6)</sup>;
- (f) Commission Decision 2003/326/EC on transitional measures under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the separation of Category 2 and Category 3 oleochemical plants<sup>(7)</sup>; and

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(1) O.J. No. L 273, 10.10.2002, p.1.

(2) O.J. No. L 117, 13.5.2003, p. 1.

(3) This Regulation is defined later in this paragraph.

(4) This Regulation is defined later in this paragraph.

(5) O.J. No. L 117, 13.5.2003, p. 24.

(6) O.J. No. L 117, 13.5.2003, p. 30.

(7) O.J. No. L 117, 13.5.2003, p. 42.

- (g) Commission Decision [2003/327/EC](#) on transitional measures under Regulation (EC) [No. 1774/2002](#) of the European Parliament and of the Council as regards the low capacity incineration or co-incineration plants which do not incinerate or co-incinerate specified risk material or carcasses containing them<sup>(8)</sup>;

“inspector” means—

- (a) a person appointed as such for the purposes of these Regulations by the Scottish Ministers; and
- (b) a person appointed as such for the purposes of these Regulations by a local authority in relation to its enforcement responsibilities under these Regulations;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(9)</sup>;

“Regulation (EC) 811/2003” means Commission Regulation (EC) [No. 811/2003](#) implementing Regulation (EC) [No. 1774/2002](#) of the European Parliament and of the Council as regards the intra-species recycling ban for fish, the burial and burning of animal by-products and certain transitional measures<sup>(10)</sup>;

“Regulation (EC) 813/2003” means Commission Regulation (EC) [No. 813/2003](#) on transitional measures under Regulation (EC) [No. 1774/2002](#) of the European Parliament and of the Council as regards the collection, transport and disposal of former foodstuffs<sup>(11)</sup>; and

“poultry” includes birds of all species including wild birds.

(2) Expressions defined in the Community Regulation have the same meaning in these Regulations, and Category 1 material, Category 2 material and Category 3 material comprise the animal by-products set out in Articles 4, 5 and 6 respectively of the Community Regulation.

(3) Unless the context otherwise requires, any reference in these Regulations—

- (a) to a numbered regulation is a reference to the regulation so numbered in these Regulations;
- (b) to a numbered paragraph is a reference to the paragraph so numbered in the regulation, Schedule or part of a Schedule in which that reference occurs; and
- (c) to a numbered Schedule is a reference to the Schedule to these Regulations so numbered.

(4) Any person appointed by the Scottish Ministers or a local authority to be an inspector for the purposes of the Animal Health Act 1981<sup>(12)</sup> or the Animal By-Products Order 1999<sup>(13)</sup> shall be deemed to have been appointed by the Scottish Ministers or that authority to be an inspector for the purposes of these Regulations.

(5) Other than in relation to the issuing of an approval, authorisation, registration, notice or instructions in accordance with regulation 3, any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000<sup>(14)</sup>, which has been recorded and is consequently capable of being reproduced.

<sup>(8)</sup> O.J. No. L 117, 13.5.2003, p. 44.

<sup>(9)</sup> 1994 c. 39.

<sup>(10)</sup> O.J. No. L 117, 13.5.2003, p. 14.

<sup>(11)</sup> O.J. No. L 117, 13.5.2003, p. 22.

<sup>(12)</sup> 1981 c. 22.

<sup>(13)</sup> S.I. 1999/646, amended by S.S.I. 2001/171 and 2002/255.

<sup>(14)</sup> 2000 c. 7.

### **Approvals etc.**

3. Any approval, authorisation, registration, notice or instructions issued under these Regulations or the Community Regulation shall be in writing, and may be made subject to such conditions as are necessary to—

- (a) ensure that the provisions of the Community Regulation and these Regulations are complied with; and
- (b) protect public and animal health.

## **PART 2**

### **Collection, transportation, storage, handling, processing and disposal of animal by-products**

#### **Category 1 material**

4.—(1) Any person who possesses or has control over any Category 1 material and who fails to comply with Article 4(2) or Article 4(3) of the Community Regulation shall be guilty of an offence.

(2) For the purposes of Article 4(2)(b) of the Community Regulation, the material may be processed using any of the processing methods 1 to 5.

(3) This regulation shall not apply in relation to material referred to in Article 4(1)(e) of the Community Regulation (catering waste from means of transport operating from outside the Community).

#### **Category 2 material**

5.—(1) Any person who possesses or has control over any Category 2 material and who fails to comply with Article 5(2), Article 5(3) or Article 5(4) (other than the provision in Article 5(4) relating to export) of the Community Regulation shall be guilty of an offence.

(2) For the purposes of Article 5(2)(b) of the Community Regulation, the material may be processed using any of the processing methods 1 to 5.

(3) For the purposes of Article 5(2)(e) of the Community Regulation, the animal by-products specified in that sub-paragraph may be applied to land, provided that the Scottish Ministers have not imposed any restrictions relating to animal health in relation to those by-products.

#### **Category 3 material**

6. Any person who possesses or has control over any Category 3 material and who fails to comply with Article 6(2) or Article 6(3) of the Community Regulation shall be guilty of an offence.

#### **Mixing mammalian and non-mammalian animal by-products**

7. Where mammalian by-products and non-mammalian by-products are mixed, the mixture shall be regarded as mammalian by-products.

#### **Collection, transportation and storage**

8.—(1) Any person who fails to comply with Article 7(1), 7(2) or 7(5) of the Community Regulation shall be guilty of an offence.

(2) For the purposes of paragraph (1), if different categories of animal by-products are transported on one vehicle but in different containers or compartments, and complete separation of the different

kinds of by-products cannot be guaranteed, the by-products transported shall be treated as the highest risk category of the by-products transported.

(3) In accordance with Article 7(6) of the Community Regulation, the provisions of Article 7 shall not apply in relation to manure transported within the United Kingdom.

## PART 3

### Restrictions on access to animal by-products and their use

#### Access to animal by-products

9.—(1) No person shall feed any animal by-product (other than liquid milk or colostrum used on the farm of origin) to any farmed animal, or any other ruminant animal, pig or poultry, unless it has been processed in a Category 3 approved processing plant.

(2) No person shall allow any farmed animal, or any other ruminant animal, pig or poultry, to have access to any animal by-product (other than milk, colostrum or manure) unless it has been—

- (a) processed in an approved processing plant;
- (b) treated in an approved biogas or composting plant; or
- (c) (in the case of digestive tract content) applied to land at least three weeks before the access.

(3) Subject to paragraph (4), no person shall bring any animal by-product (other than milk, colostrum, manure or digestive tract content) on to any premises where any farmed animal, or any other ruminant animal, pig or poultry, is kept, unless it has been—

- (a) processed in an approved processing plant; or
- (b) treated in an approved biogas or composting plant.

(4) Paragraph (3) shall not apply to—

- (a) animal by-products brought on to premises in a vehicle which enters the premises in order to collect other animal by-products, provided that the animal by-products brought onto the premises are not removed from the vehicle while it is on the premises; or
- (b) animal by-products brought on to collection centres, petfood plants, incinerators or other approved premises which are situated on the same premises as the animals specified in that paragraph and which were in operation on 1st November 2002, provided that the animals do not have access to the animal by-products.

(5) No person shall allow any animals to have access to material in a biogas or composting plant, except in the case of wild birds which may be allowed access to such material during the secondary or subsequent phase of composting.

(6) This regulation does not prohibit feeding animal by-products to animals under Article 23(2) of the Community Regulation as implemented by regulation 26(3) of these Regulations.

(7) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

(8) In this regulation “animal by-product” includes catering waste of all kinds, including catering waste to which the Community Regulation does not apply because of Article 1(2)(e) of that Regulation.

#### Restrictions on use

10. Subject to regulation 12(1), any person who fails to comply with Article 22(1) of the Community Regulation shall be guilty of an offence.

### **Pasture Land**

**11.**—(1) For the purposes of Article 22(1)(c) of the Community Regulation, pasture land is land that is intended to be used for grazing or cropping for feedingstuffs following the application or deposit of organic fertilisers and soil improvers within a period of—

- (a) two months in the case of pigs; or
- (b) three weeks in the case of other farmed animals.

(2) Any person who—

- (a) uses pasture land for grazing within the period specified in paragraph (1); or
- (b) feeds to pigs or other farmed animals within that period anything cropped from pasture land during that period,

shall be guilty of an offence.

### **Intra-species recycling of fish**

**12.**—(1) Notwithstanding regulation 10, it shall not be an offence under these Regulations to feed fish with processed animal protein derived from the bodies or parts of bodies of fish (other than farmed fish of the same species) if this is done in accordance with Articles 2 to 4 of, and Annex I to, Regulation (EC) 811/2003(15).

(2) The Scottish Ministers shall be the competent authority for the purposes of Article 5 of Regulation (EC) 811/2003.

## **PART 4**

### **Approved premises and competent authorities**

#### **The competent authority**

**13.**—(1) The Scottish Ministers shall be the competent authority for the purposes of granting approvals for the purposes of Chapter III and Chapter IV of the Community Regulation, the Annexes to that Regulation, and these Regulations.

(2) They shall also be the competent authority for—

- (a) checking intermediate plants in accordance with Articles 10(2)(d) and 10(3)(d) of the Community Regulation;
- (b) checking storage plants in accordance with Article 11(2)(b) of that Regulation;
- (c) validating and checking Category 1 and Category 2 processing plants in accordance with Articles 13(2)(c) and 13(2)(e) of that Regulation, supervising Category 1, 2 and 3 plants in accordance with Annex V, Chapter IV, paragraph 1 to that Regulation, and validating those plants in accordance with Annex V, Chapter V, paragraph 1 to that Regulation;
- (d) authorising the temporary use of a Category 2 processing plant for the processing of Category 1 material in accordance with Annex VI, Chapter 1, paragraph 2 to that Regulation;
- (e) checking oleochemical plants in accordance with Article 14(2)(d) of that Regulation and the person to whom records shall be produced in accordance with Article 14(2)(c) of that Regulation;

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(15) O.J. No. L 117, 13.5.2003, p. 14.

- (f) checking biogas plants and composting plants in accordance with Article 15(2)(c) of that Regulation;
- (g) validating and checking Category 3 processing plants in accordance with Article 17(2)(c) and 17(2)(e) of that Regulation;
- (h) authorising the temporary use of a Category 3 processing plant for the processing of Category 1 or Category 2 material in accordance with Annex VII, Chapter 1, paragraph 2 to that Regulation, or the use of a Category 2 processing plant as a collection centre in accordance with Annex IX, paragraph 3 to that Regulation;
- (i) receiving records relating to a petfood or technical plant which must be produced in accordance with Article 18(2)(a)(iv) of that Regulation;
- (j) recognising laboratories for the purposes of analysing samples from petfood and technical plants in accordance with Article 18(2)(a)(iii) of that Regulation, receiving information under Article 18(2)(a)(v) of that Regulation, and checking petfood plants and technical plants in accordance with Article 18(2)(b) of that Regulation;
- (k) carrying out inspection and supervision in accordance with Article 26 of that Regulation;
- (l) giving instructions for the purposes of Annex II, Chapter II, paragraph 4 to that Regulation(16);
- (m) the presentation of commercial documents under Annex II, Chapter V to that Regulation;
- (n) authorising a representative point in the combustion chamber of an incinerator in accordance with Annex IV, Chapter II, paragraph 3 to that Regulation, and inspecting them in accordance with Annex IV, Chapter VII, paragraph 8 to that Regulation(17); and
- (o) authorising specific requirements in accordance with Annex VI, Chapter II, Part C, paragraphs 14 and 15 to that Regulation(18).

### Approval of premises

- 14.—(1) No person shall operate any—
- (a) category 1, 2 or 3 intermediate plant;
  - (b) storage plant;
  - (c) incineration or co-incineration plant;
  - (d) category 1 or category 2 processing plant;
  - (e) category 2 or category 3 oleochemical plant;
  - (f) biogas or composting plant;
  - (g) category 3 processing plant; or
  - (h) petfood or technical plant,

for the storage, processing, treatment, disposal or use of animal by-products, unless the premises, the operator of the premises and any equipment are approved for that purpose in accordance with the Community Regulation and these Regulations.

- (2) The operator of approved premises shall ensure that—
- (a) the premises are maintained and operated in accordance with—
    - (i) any conditions of approval; and

(16) This paragraph was added to Annex II, Chapter II by Commission Regulation (EC) No. 808/2003 amending Regulation (EC) No. 1774/2002 of the European Parliament and of the Council laying down health rules concerning animal by-products not intended for human consumption (O.J. No. L 117, 13.5.2003, p. 1).

(17) Chapter VII was added to Annex IV by Commission Regulation (EC) No. 808/2003.

(18) Paragraph 14 was substituted by Commission Regulation (EC) No. 808/2003.

- (ii) the requirements of the Community Regulation and these Regulations; and
  - (b) any person employed by that operator, and any person permitted to enter the premises, complies with those conditions and requirements.
- (3) The operator of a high capacity incineration plant shall dispose of the ash in accordance with Annex IV, Chapter VII, paragraph 4 to the Community Regulation in the same way as the operator of a low capacity incineration plant.
- (4) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

### **Biogas and composting plants**

**15.**—(1) The provisions of Part 1 of Schedule 1 shall apply in a biogas and composting plant used for treating any animal by-products (including catering waste) in addition to the requirements of paragraphs 1 to 11 of Annex VI, Chapter II to the Community Regulation.

(2) In accordance with Article 6(2)(g) of, and Annex VI, Chapter II, paragraph 14 to, the Community Regulation—

- (a) catering waste shall be treated in a biogas or composting plant either in accordance with Annex VI, Chapter II, paragraphs 12 or 13 to the Community Regulation or in accordance with Part II of Schedule 1; and
  - (b) any other animal by-product treated in a biogas or composting plant shall be treated in accordance with Annex VI, Chapter II, paragraphs 12 or 13 to the Community Regulation.
- (3) Any person who fails to comply with this regulation shall be guilty of an offence.

### **Composting catering waste on the premises on which it originates**

**16.** In accordance with Article 6(2)(g) of, and Annex VI, Chapter II, paragraph 14 to, the Community Regulation, the provisions of that Chapter and of regulation 14(1)(f) do not apply to the composting of Category 3 catering waste on the premises on which it originates, provided that—

- (a) the decomposed material is only applied to land at those premises;
- (b) no ruminant animals or pigs are kept at the premises; and
- (c) if poultry is kept at the premises, the material is composted in a secure container which prevents the poultry having access to it during decomposition.

### **Processing and intermediate plants' own checks**

**17.**—(1) Any person who fails to comply with Article 25(1) of the Community Regulation shall be guilty of an offence.

(2) Any person who fails to comply with Article 25(2) of the Community Regulation shall be guilty of an offence.

(3) The operator shall record the action taken in accordance with Article 25(2) of the Community Regulation, and failure to do so shall be an offence.

### **Sampling at processing plants**

**18.**—(1) If a processing plant is processing Category 1 or 2 material and the processed material is to be sent to landfill (or in the case of Category 2 material, a biogas or composting plant), the operator shall not less than once every week—

- (a) take from the outlet of the cooker in which the material is processed a sample of at least 50 grams of processed material; and

- (b) send the sample to a laboratory approved under regulation 21 to test it for *Clostridium perfringens*.
- (2) In the case of Category 3 processing plants, where the processed material is intended for use in feedingstuffs, the operator shall—
  - (a) take a representative sample of the material on each day that that the material is consigned from the premises; and
  - (b) send the sample to a laboratory approved under regulation 21 to test it for *Salmonella* and *Enterobacteriaceae*.
- (3) In the case of Category 3 processing plants, where the processed material is not intended for use in feedingstuffs, the operator shall—
  - (a) take a sample, not less than once every week, of the material that is consigned from the premises; and
  - (b) send the sample to a laboratory approved under regulation 21 to test it for *Salmonella* and *Enterobacteriaceae*.
- (4) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

#### **Sampling at biogas and composting plants**

**19.**—(1) In the case of biogas and composting plants, the operator shall, at intervals specified in the approval, take a representative sample of material that has been treated to the time temperature parameters specified in Part 2 of Schedule 1 or in the Community Regulation and send it for testing for *Salmonella* and *Enterobacteriaceae* (or, in the case of material derived from catering waste, *Salmonella* only) in a laboratory approved under regulation 21 to carry out those tests.

(2) No person shall consign any material from a biogas or composting plant until the results of the test are received from the laboratory.

(3) In the event of tests establishing that treated material does not comply with the limits in Annex VI, Chapter II, paragraph 15 to the Community Regulation, the operator shall—

- (a) immediately notify the Scottish Ministers, giving full details of the failure, the nature of the sample and the batch from which it was derived;
- (b) ensure that no digestion residue or compost suspected or known to be contaminated is moved from the premises unless—
  - (i) it has been re-treated under the supervision of the Scottish Ministers and resampled and re-tested by the Scottish Ministers, and the re-testing has shown that the re-treated digestion residue or compost complies with the standards in the Community Regulation; or
  - (ii) it is consigned for processing or incineration at an approved processing plant or incinerator or (in the case of catering waste) it is consigned to landfill; and
- (c) record the action taken in accordance with this regulation.

(4) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

#### **Samples sent to laboratories**

**20.**—(1) Whenever an operator sends a sample to a laboratory in accordance with this Part, the operator shall send with the sample the following information in writing—

- (a) the name and address of the premises at which the sample was taken;



- (b) the date on which the sample was taken; and
- (c) the description and identity of the sample.

(2) No person shall tamper with a sample taken under these Regulations with intent to affect the result of the test.

(3) The operator shall keep a record of all results of laboratory tests.

(4) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

### **Laboratories**

**21.**—(1) The Scottish Ministers shall approve laboratories under this regulation to carry out one or more of the tests referred to in this regulation if they are satisfied that those laboratories have the necessary facilities, personnel and operating procedures to do so.

(2) In deciding whether to grant or continue an approval, the Scottish Ministers may require the laboratory to successfully undertake any quality control tests as they reasonably think fit.

(3) The operator of a laboratory approved under this regulation carrying out tests for the purposes of these Regulations or the Community Regulation shall do so in accordance with this regulation, and failure to do so shall be an offence.

(4) A test for *Clostridium perfringens* shall be carried out in accordance with the method in Schedule 2 or (if specified in the approval) with a method which conforms with ISO 7937/1997 (BS-EN 13401:1999) (Enumeration of *Clostridium perfringens*) or equivalent<sup>(19)</sup>.

(5) A test for *Salmonella* shall be carried out in accordance with the method in Schedule 2 or (if specified in the approval) with a method which conforms with—

- (a) ISO 6579/2002 (BS-EN 12824:1998) (Detection of *Salmonella*) or equivalent<sup>(20)</sup>; or
- (b) NMKL 71: 1993 or equivalent<sup>(21)</sup>.

(6) A test for Enterobacteriaceae shall be carried out in accordance with the method in Schedule 2 or (if specified in the approval) with a method which conforms with ISO 7402/1993 (BS 5763: Part 10: 1993) (Enumeration of Enterobacteriaceae) or equivalent<sup>(22)</sup>.

(7) Where tests are carried out for the detection of any of the following, the operator of a laboratory approved under this regulation shall immediately notify the Scottish Ministers and the operator of the premises if—

- (a) the tests fail to establish that the material is free from *Clostridium perfringens*;
- (b) the tests fail to establish that the material is free from *Salmonella*; or
- (c) the material successfully passes the test for Enterobacteriaceae in paragraph 5 of Part 3 of Schedule 2,

and failure to so notify shall be an offence.

(8) The operator of a laboratory approved under this regulation shall in relation to processed material notify the Scottish Ministers immediately after the last day of each month of the number, type and results of tests carried out during that month, and failure to do so shall be an offence.

(9) Reprocessing in accordance with Article 25(2)(c) and (d) of the Community Regulation shall be carried out under the supervision of the Scottish Ministers.

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<sup>(19)</sup> Published by the British Standards Institute, British Standards House, 389 Chiswick High Road, London W4 4AL.

<sup>(20)</sup> Published by the British Standards Institute; see above.

<sup>(21)</sup> Published by the British Standards Institute, British Standards House, 389 Chiswick High Road, London W4 4AL.

<sup>(22)</sup> Published by the British Standards Institute; see above.

(10) If the sample has been sent to the approved laboratory from premises outside Scotland, the requirements in this regulation to notify the Scottish Ministers shall be construed as a requirement to notify the competent authority for the premises from which the sample was sent.

## PART 5

### Placing animal by-products and processed products on the market

#### **Placing on the market of processed animal protein and other processed products that could be used as feed material**

22. Any person who places on the market processed animal protein or other processed products that could be used as feed material which do not meet the requirements of Article 19 of the Community Regulation shall be guilty of an offence.

#### **Placing on the market of petfood, dogchews and technical products**

23.—(1) Any person who places on the market petfood, dogchews or technical products (other than fat derivatives produced from Category 2 material) or those animal by-products referred to in Annex VIII to the Community Regulation, which do not meet the requirements of Article 20(1) of that Regulation shall be guilty of an offence.

(2) Any person who places on the market fat derivatives produced from category 2 material which do not meet the requirements of Article 20(3) of the Community Regulation shall be guilty of an offence.

#### **Placing on the market of compost or digestion residues for use on agricultural land**

24. Any person who places on the market compost or digestion residues for use on agricultural land shall ensure that it is labelled or accompanied by documentation in such a way that the attention of the recipient is drawn to the requirements of regulation 11 (provisions relating to pasture land) and any person who fails to do so shall be guilty of an offence.

## PART 6

### Derogations

#### **Competent authority for Chapter V of the Community Regulation**

25. The Scottish Ministers shall be the competent authority for the purposes of Chapter V of the Community Regulation (derogations).

#### **Derogations regarding the use of animal by-products**

26.—(1) The use of animal by-products for diagnostic, educational or research purposes is permitted if it is in accordance with an authorisation.

(2) The use of animal by-products for taxidermy is permitted if—

- (a) it is in accordance with an approval of the Scottish Ministers; and
- (b) it is in an approved technical plant.

(3) The feeding of animal by-products specified in Article 23(2)(b) of the Community Regulation to—

- (a) zoo animals;
- (b) circus animals;
- (c) reptiles and birds of prey other than zoo or circus animals;
- (d) fur animals;
- (e) wild animals the meat of which is not destined for human consumption;
- (f) dogs from recognised kennels or recognised packs of hounds; or
- (g) maggots for fishing bait,

is permitted if it is in accordance with an authorisation.

(4) The Scottish Ministers shall maintain a register of premises used for the feeding of such animal by-products to zoo or circus animals, dogs from recognised kennels or recognised packs of hounds and maggots for fishing bait.

(5) The register specified in the previous paragraph shall contain the following information:—

- (a) the name of the operator;
- (b) the address of the premises; and
- (c) the business carried on at the premises.

(6) Any person who uses animal by-products for any of the purposes in this regulation other than in accordance with an authorisation shall be guilty of an offence.

### **Collection centres**

**27.**—(1) For the purposes of Article 23(2) of the Community Regulation, no person shall operate a collection centre, as defined in Annex I to the Community Regulation, for the purposes of feeding animal by-products to—

- (a) dogs from recognised kennels or recognised packs of hounds; or
- (b) maggots for fishing bait,

unless the premises and the operator of the premises are authorised.

(2) The operator of the approved premises shall ensure that—

- (a) the premises are maintained and operated in accordance with—
  - (i) the conditions of the authorisation; and
  - (ii) the requirements of the Community Regulation and these Regulations; and
- (b) any person employed by the operator, and any person invited to the premises, complies with those conditions and requirements.

(3) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

### **Burial of pet animals**

**28.** In accordance with Article 24(1)(a) of the Community Regulation, dead pet animals may be buried.

### **Remote areas**

**29.**—(1) For the purposes of Article 24(1)(b) of the Community Regulation it shall not be an offence under these Regulations for animal by-products to be disposed of as waste by burning or burial on site (as defined in Part A of Annex II to Regulation (EC) 811/2003) where they originate

in the remote areas specified in Schedule 3, provided that this is done in accordance with Part C of Annex II to Regulation (EC) 811/2003<sup>(23)</sup>.

(2) The Scottish Ministers shall be the competent authority for the purposes of Article 7 of, and Part C of Annex II to, Regulation (EC) 811/2003.

#### **Burning or burial in the event of a disease outbreak**

**30.**—(1) For the purposes of Article 24(1)(c) of the Community Regulation, if there is an outbreak of a disease mentioned in List A of the International Office of Epizootic Diseases, it shall not be an offence under these Regulations for animal by-products to be disposed of as waste by burning or burial on site (as defined in Part A of Annex II to Regulation (EC) 811/2003) if the animal by-product is transported, and buried or burnt, in accordance with—

- (a) a notice given by the Scottish Ministers under Article 24(1)(c) authorising disposal in accordance with that provision; and
- (b) the provisions of Article 6 of, and Part B of Annex II to, Regulation (EC) 811/2003.

(2) The Scottish Ministers shall be the competent authority for the purposes of Article 6 of, and Part B of Annex II to, Regulation (EC) 811/2003.

#### **Burning and burial of bees and apiculture products**

**31.** In accordance with Article 8 of Regulation (EC) 811/2003, bees and Category 2 apiculture products may be disposed of by burial or burning on site if this is done in accordance with that Article.

## **PART 7**

### **Records**

#### **Records**

**32.** Any record required to be kept under these Regulations shall be kept for at least two years.

#### **Records for consigning, transporting or receiving animal by-products**

**33.** Any person who fails to comply with Article 9(1) of the Community Regulation shall be guilty of an offence.

#### **Records for burning or burial of animal by-products**

**34.** Any person who fails to comply with Article 9 of Regulation (EC) 811/2003 shall be guilty of an offence.

#### **Records for disposal or use on premises**

**35.**—(1) Subject to paragraph (2), an operator of any premises who disposes or uses any animal by-product (other than manure or material excluded from the Community Regulation by Article 1(2) of that Regulation) or processed product on the premises shall make on disposal or use a record of each disposal or use, showing the date on which the animal by-product or processed product was disposed of or used and the quantity and description of the material disposed of or used, and failure to do so shall be an offence.

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(23) O.J. No. L 117, 13.5.2003, p.14.

(2) The requirement in paragraph (1) shall not apply to disposal on the premises by feeding of animal by-products or processed products to reptiles and birds of prey other than zoo or circus animals.

#### **Delivery records to be kept by operators of biogas and composting plants**

**36.** The operator of any biogas or composting plant receiving catering waste shall record—

- (a) the date on which the catering waste was delivered to the premises;
- (b) the quantity and description of the catering waste, including a statement of whether measures were taken at source to ensure that meat was not included in the waste; and
- (c) the name of the haulier,

and failure to do so shall be an offence.

#### **Treatment records for biogas and composting plants**

**37.** The operator of a biogas or composting plant treating catering waste or other animal by-products shall record—

- (a) the dates on which the material is treated;
- (b) a description of the material treated;
- (c) the quantity of material treated;
- (d) the result of all checks carried out at the critical points identified under paragraph 4 of Part 1 of Schedule 1; and
- (e) sufficient information to show that the material has been treated to the required parameters,

and failure to do so shall be an offence.

#### **Records for approved laboratories**

**38.** The operator of a laboratory approved under regulation 21 shall record—

- (a) the name and address of the premises at which the sample was taken;
- (b) the date on which the sample was taken;
- (c) the description and identity of the sample;
- (d) the date on which the sample was received at the laboratory;
- (e) the date on which the sample was tested at the laboratory; and
- (f) the result of the test,

and failure to do so shall be an offence.

#### **Records to be kept for consignments of compost or digestion residue**

**39.—(1)** Subject to paragraph (2), the occupier of premises on which ruminant animals, pigs or poultry are kept shall record—

- (a) the date on which compost or digestion residue is brought on to those premises;
- (b) the quantity and description of the compost or digestion residue;
- (c) the land to which the compost or digestion residue is applied;
- (d) the date of such application; and
- (e) the date on which the land is first cropped or the date on which ruminant animals, pigs or poultry are allowed access to the land, whichever is the sooner,

and failure to do so shall be an offence.

(2) The requirement in paragraph (1) to keep records shall not apply in the case of any supply of compost or digestion residue for use at any premises used only as a dwelling.

## PART 8

### Administration and enforcement

#### Grant of approvals

**40.**—(1) The Scottish Ministers shall grant an approval if they are satisfied that the requirements of the Community Regulation and these Regulations will be complied with.

(2) An approval shall specify—

- (a) the address of the premises and the operator of the premises;
- (b) the parts of the premises in which the animal by-products may be received and processed or treated; and
- (c) the equipment, the methods in accordance with which, and the parameters within which, the animal by-products must be processed or treated.

(3) If the Scottish Ministers refuse to grant the approval, or approve it subject to a condition, they shall by notice in writing served on the applicant—

- (a) give the reasons for that refusal or condition; and
- (b) explain the rights of the applicant to make written representations to the Scottish Ministers within the period of 21 days beginning with the date on which the notice is served and to be heard by an independent person appointed by the Scottish Ministers.

#### Suspension, amendment or revocation of approvals, authorisations and registrations

**41.**—(1) The Scottish Ministers, by notice in writing served on the operator, shall—

- (a) suspend an approval or authorisation if they are satisfied that any of the conditions under which the approval was granted are not fulfilled; and
- (b) suspend or amend an approval or authorisation if they are satisfied that the provisions of the Community Regulation or these Regulations are not being complied with.

(2) A suspension or amendment under paragraph (1)—

- (a) shall have immediate effect if the Scottish Ministers consider that this is necessary for the protection of public or animal health; or
- (b) otherwise shall not have effect for a period of at least 21 days following the date of service of the notice.

(3) The notice shall—

- (a) specify the date on which it takes effect;
- (b) give the reasons for the suspension or amendment (and, in a case under paragraph (2)(a), the reasons why immediate suspension or amendment is considered necessary); and
- (c) explain the rights of the operator of the premises to make written representations to the Scottish Ministers within a period of 21 days beginning with the date on which the notice is served and to be heard by an independent person appointed by the Scottish Ministers.

(4) Where there is a review under regulation 42, the suspension or amendment shall cease to have effect until the final determination by the Scottish Ministers in accordance with that review, unless

the Scottish Ministers reasonably consider it is necessary for the protection of public or animal health for the amendment or suspension to have effect from an earlier date, which must be specified in a notice in writing to the operator giving the reasons why this is reasonably considered necessary.

(5) The Scottish Ministers may by notice in writing served on the operator revoke an approval if they are satisfied, taking into account all the circumstances of the case, that the premises will not be operated in accordance with these Regulations and the Community Regulation—

- (a) following a review in accordance with regulation 42 which upholds a suspension; or
- (b) after a period of at least 21 days following the date of service of the notice of suspension where there has been no such review.

(6) Where an authorisation of premises has been revoked under this regulation, the Scottish Ministers may remove the entry in the register relating to those premises from the register maintained under regulation 26(4).

## **Review**

**42.**—(1) An applicant or operator on whom a notice is served under regulations 40 or 41 may within the period of 21 days beginning with the date on which the notice is served—

- (a) make written representations to the Scottish Ministers; and
- (b) give notice of whether or not that person wishes to appear before and be heard by an independent person appointed by the Scottish Ministers.

(2) Where the applicant or operator gives notice of their wish to appear before and be heard by an independent person appointed for the purpose—

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

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

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

(5) The Scottish Ministers shall be responsible for meeting the reasonable fees and expenses of the independent person in relation to the review except where the Scottish Ministers—

- (a) confirm the notice served under regulations 40 or 41; and
- (b) are satisfied it is reasonable in all the circumstances for the applicant or operator to bear some or all of the fees and expenses.

(6) Where the Scottish Ministers are satisfied that it is reasonable in all the circumstances for the applicant or operator to bear some or all of the reasonable fees and expenses of the independent person, they shall give notice to the applicant or operator of the full amount or the proportion which they are satisfied the applicant or operator should bear.

(7) The applicant, operator and the Scottish Ministers shall each be responsible for their own costs incurred in relation to the review.

**Notice requiring the disposal of animal by-products or catering waste**

43. If an inspector considers it necessary for animal or public health purposes or if any provision of these Regulations or the Community Regulation is not being complied with, the inspector may—

- (a) serve a notice on any person in possession or control of any animal by-product requiring that person to dispose of it as may be specified in the notice; or
- (b) serve a notice on the occupier of any premises prohibiting animal by-products being brought on to the premises, or only permitting this in a way specified in the notice.

**Cleansing and disinfection**

44.—(1) If an inspector reasonably suspects that any vehicle, container or premises to which these Regulations or the Community Regulation apply constitutes an animal or public health risk, the inspector may serve a notice on the person in charge of the vehicle or container, or on the occupier of the premises, requiring the vehicle, container or premises to be cleansed and disinfected.

(2) The notice may—

- (a) specify the method of cleansing and disinfection;
- (b) specify the method of disposal of any material remaining in the vehicle, container or premises; and
- (c) prohibit the movement of any animal by-product into the vehicle or container or on to the premises until such time as the required cleansing and disinfection has been satisfactorily completed.

**Compliance with notices**

45.—(1) Any notice served under these Regulations shall be complied with at the expense of the person on whom the notice is served, and if it is not complied with, an inspector may arrange for it to be complied with at the expense of that person.

(2) Any person on whom a notice is served who contravenes or fails to comply with the provisions of that notice shall be guilty of an offence.

**Powers of entry**

46.—(1) An inspector shall, on producing, if so required, some duly authenticated document showing the authority of that inspector, have a right at all reasonable hours, to enter any premises (excluding any premises used only as a dwelling) for the purpose of administering and enforcing these Regulations and the Community Regulation.

(2) An inspector may—

- (a) seize any animal by-products and dispose of them as necessary;
- (b) carry out any inquiries, examinations and tests;
- (c) take any samples;
- (d) have access to, and inspect and copy any records (in whatever form they are held) kept under these Regulations or the Community Regulation, or remove such records to enable them to be copied;
- (e) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to provide such assistance as the inspector



may reasonably require and, where a record is kept by means of a computer, may require the records to be produced in a form in which they may be taken away;

- (f) mark any animal, animal by-product or thing for identification purposes;
- (g) be accompanied by—
  - (i) such other persons as the inspector considers necessary; and
  - (ii) any representative of the European Commission acting for the purpose of the Community Regulation.

(3) Any person who defaces, obliterates or removes any mark applied under paragraph (2)(f) shall be guilty of an offence.

(4) If an inspector enters any unoccupied premises, that inspector shall leave them as effectively secured against unauthorised entry as they were before entry.

(5) For the purposes of this regulation, 'premises' includes any vehicle or container.

#### **Obstruction, reasonable assistance and information**

47.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of these Regulations;
- (b) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require for the purpose of carrying out the functions of that person under these Regulations;
- (c) furnishes to any person acting in the execution of these Regulations any information which is known to be false or misleading in a material particular; or
- (d) fails to produce a record when required to do so to any person acting in the execution of these Regulations,

shall be guilty of an offence.

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

#### **Penalties and offences by bodies corporate**

48.—(1) A person guilty of an 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 both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) 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 officer or 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.

(3) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (2) 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.

**Enforcement**

**49.**—(1) These Regulations shall be enforced by the Scottish Ministers in relation to—

- (a) premises which are licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995(**24**);
- (b) premises which are licensed under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(**25**);
- (c) premises which are licensed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(**26**);
- (d) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(**27**); and
- (e) combined premises as defined in the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(**28**).

(2) Other than as specified in paragraph (1), these Regulations shall be enforced by the local authority.

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

**Transitional provisions**

**50.**—(1) Schedule 4 shall have effect.

(2) Part 1 of Schedule 4 (intra-species recycling ban for fish) shall cease to have effect on 1st January 2004.

(3) Part 2 of Schedule 4 (collection, transport and disposal of former foodstuffs of animal origin) shall cease to have effect on 1st January 2006.

(4) Part 3 of Schedule 4 (used cooking oil in animal feed) shall cease to have effect on 1st November 2004.

(5) Part 4 of Schedule 4 (mammalian blood) shall cease to have effect on 1st January 2005.

(6) Part 5 of Schedule 4 (oleochemical plants using rendered fats from Category 2 and 3 materials) shall cease to have effect on 1st November 2005.

(7) Part 6 of Schedule 4 (low capacity incineration or co-incineration plants which do not incinerate or co-incinerate specified risk materials or carcasses containing them) shall cease to have effect on 1st January 2005.

**Amendments**

**51.**—(1) The TSE (Scotland) Regulations 2002(**29**) are amended in accordance with the provisions of Part 1 of Schedule 5.

(2) The consequential amendments set out in Part 2 of Schedule 5 shall have effect.

(24) S.I. 1995/539 as amended by S.I. 1995/1763, 2148, 2200, 3124 and 3189, 1996/1148 and 2235, S.I. 1997/1729 and 2074, and S.S.I. 2000/171, 288 and 2001/160, 358, 394 and 429, and 2002/35 and 234.

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

(26) S.I. 1995/2148 as amended by S.I. 1995/3205 and S.S.I. 2000/62.

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

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

(29) S.S.I. 2002/255, amended by S.S.I. 2003/198.

## **Revocations**

**52.** The Orders and Regulations specified in the first column of Schedule 6 are revoked to the extent specified in the corresponding entry in the third column of that Schedule.

St Andrew's House, Edinburgh  
4th September 2003

*ROSS FINNIE*  
A member of the Scottish Executive