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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 411**

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

**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(1);
- (b) premises which are licensed under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(2);
- (c) premises which are licensed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(3);
- (d) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(4); and
- (e) combined premises as defined in the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(5).

(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.

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(1) 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.

(2) 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.

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

(4) 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.

(5) 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.

### **Amendments**

**51.**—(1) The TSE (Scotland) Regulations 2002<sup>(6)</sup> 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.

### **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.

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<sup>(6)</sup> [S.S.I. 2002/255](#), amended by [S.S.I. 2003/198](#).