

2005 No. 502

ANIMALS

ANIMAL HEALTH

**The Animals and Animal Products (Import and Export)
(Scotland) Amendment (No. 2) Regulations 2005**

Made - - - - - *6th October 2005*

Laid before the Scottish Parliament *7th October 2005*

Coming into force - - - *14th November 2005*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 56(1) and (2) of the Finance Act 1973(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Animals and Animal Products (Import and Export) (Scotland) Amendment (No. 2) Regulations 2005 and shall come into force on 14th November 2005.

Amendment to the Animals and Animal Products (Import and Export) (Scotland) Regulations 2000

2.—(1) The Animals and Animal Products (Import and Export) (Scotland) Regulations 2000(c) are amended in accordance with the following paragraphs of this Regulation.

(2) In regulation 1(2) (citation, commencement, interpretation and extent) after the definition of “border inspection post” insert—

““Council Directive 90/539/EEC” means Council Directive 90/539/EEC on animal health conditions governing intra-Community trade in and imports from third countries of, poultry and hatching eggs(d) as amended by and read with the provisions listed in paragraph 6 of Part I of Schedule 3;”.

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

(b) 1973 c.51. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of Article 2(2) of the Scotland Act (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820) and the functions of the Minister transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The requirement to obtain the consent of the Treasury was removed by section 55 of the Scotland Act 1998.

(c) S.S.I. 2000/216, amended by S.S.I. 2000/300, 2002/125 and 196 and 2005/278.

(d) O.J. No. L 303,31.10.90, p.6.

(3) After regulation 5(4) (exports) insert–

“(5) No person shall export to another member State any hatching eggs, day old chicks or poultry to which Article 6 of Council Directive 90/539/EEC applies, unless they originate from an establishment which–

(a) is a member of the monitoring scheme, known as the Poultry Health Scheme, operated by the Scottish Ministers in accordance with Schedule 3A to these Regulations; and

(b) conforms with the requirements of Annex II to Council Directive 90/539/EEC.

(6) Where, on 13th November 2005, the Scottish Ministers have allocated a distinguishing number to an establishment in accordance with Article 6.1(a) of Council Directive 90/539/EEC that establishment shall be treated as a member of the Poultry Health Scheme operated by the Scottish Ministers in accordance with Schedule 3A to these Regulations.

(7) An establishment to which paragraph (5)(a) applies is to be considered an approved establishment for the purposes of Article 6(1)(a) of Council Directive 90/539/EEC.”.

(4) After regulation 9 (approval of centres and teams) insert–

“Approval of laboratories

9A.—(1) The Scottish Ministers shall approve laboratories in accordance with Schedule 3B to these Regulations for the purposes of carrying out the tests for Mycoplasma infections required under Chapter III of Annex II to Council Directive 90/539/EEC.

(2) Where, on 13th November 2005, a laboratory was approved by the Scottish Ministers for the purposes of carrying out the tests for Mycoplasma infections required under Chapter III of Annex II to Council Directive 90/539/EEC that laboratory shall be treated as a laboratory approved in accordance with Schedule 3B to these Regulations.

(3) The tests for Salmonella infections required under Chapter III of Annex II to Council Directive 90/539/EEC shall be carried out by laboratories authorised under article 2(1) of the Poultry Breeding Flocks and Hatcheries Order 1993(a).”.

(5) For regulation 33(1) (penalties) substitute–

“(1) A person contravening any provision of these Regulations, except paragraph 6 of Part I of Schedule 3A and paragraph 2 of Part I of Schedule 3B, or any notice served under any such provision shall be guilty of an offence.”.

(6) For paragraph 6 of Part I of Schedule 3 (poultry and hatching eggs) substitute–

“Poultry and hatching eggs

6. Council Directive 90/539/EEC on animal health conditions governing intra-community trade in, and imports from third countries of, poultry and hatching eggs (O.J. No. L 303,31.10.90, p.6) as amended by, and as read with:

Council Directive 90/425/EEC (O.J. No. L 224, 18.8.90, p.29);

Council Directive 91/494/EEC (O.J. No. L 268, 24.9.91, p.35);

Council Directive 91/496/EEC (O.J. No. L 268, 24.9.91, p.56);

Council Directive 92/65/EEC (O.J. No. L 268, 14.9.92, p.54);

Commission Decision 92/340/EEC (O.J. No. L 188, 8.7.92, p.34);

Commission Decision 92/369/EEC (O.J. No. L 195, 14.7.92, p.25);

Council Directive 93/120/EEC (O.J. No. L 340, 31.12.93, p.35);

(a) S.I. 1993/1898.

The Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (O.J. No. C241, 29.8.94, p.21);

Council Decision 95/410/EC (O.J. No. L 243, 11.10.95, p.25) as amended by Council Decision 98/227/EC (O.J. No. L 87, 21.4.97, p.77);

Commission Decision 97/278/EC (O.J. No. L 110, 26.4.97, p.77);

Council Directive 99/90/EC (O.J. No. L 300, 23.11.1999, p.19);

Commission Decision 2000/505/EC (O.J. No. L 201, 9.8.2000, p.8);

Commission Decision 2001/867/EC (O.J. No. L 323, 7.12.2001, p.29);

Commission Decision 2003/644/EC (O.J. No. L 228, 12.9.2003, p.29); and

Commission Decision 2004/235/EC (O.J. No. L 72, 11.3.2004, p.86),

as read with the European international instruments.

Relevant provisions: Articles 6 to 11, 12.1, and 15 to 17–

- (a) the official health certification accompanying breeding poultry exported from Scotland to Finland or Sweden must contain the statement that they have been tested for salmonella with negative results in accordance with Commission Decision 2003/644/EC of 8th September 2003;
- (b) the official health certification accompanying day-old chicks exported from Scotland to Finland or Sweden must contain the statement that they come from flocks which have been tested for salmonella with negative results in accordance with Commission Decision 2003/644 of 8th September 2003;
- (c) the official health certification accompanying laying hens exported from Scotland to Finland or Sweden must contain the statement that they have been tested for salmonella with negative results in accordance with Commission Decision 2004/235/EC of 11th March 2004; and
- (d) the official health certification accompanying poultry for slaughter exported from Scotland to Finland or Sweden must contain the statement that they have undergone microbiological testing with negative results in accordance with Council Decision 95/410/EC of 22nd June 1995.”.

(7) After Schedule 3 insert the Schedules set out in the Schedule to these Regulations.

(8) For paragraph 8 of Part II of Schedule 5 (poultry) substitute–

“Poultry

8. Council Directive 90/539/EEC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs (O.J. No. L 303, 31.10.90, p.6) as amended by, and as read with–

Council Directive 91/494/EEC (O.J. No. L 268, 24.9.91, p.35);

Council Directive 91/496/EEC (O.J. No. L 268, 24.9.91, p.56);

Council Directive 92/65/EEC (O.J. No. L 268, 14.9.92, p.54);

Commission Decision 92/340/EEC (O.J. No. L188, 8.7.92, p.34);

Commission Decision 92/369/EEC (O.J. No. L 195, 14.7.92, p.25);

Council Directive 93/120/EEC (O.J. No. L 340, 31.12.93, p.35);

Commission Decision 96/482/EC (O.J. No. L 196, 7.8.96, p.13);

Commission Decision 96/628/EC (O.J. No. L 282, 1.11.96, p.73);
Council Directive 99/89/EC (O.J. No. L 300, 23.11.99 p.17);
Council Directive 99/90/EC (O.J. No. L 300. 23.11.1999, p.19);
Commission Decision 2000/505/EC (O.J. No. L 201, 9.8.2000, p.8);
Commission Decision 2002/183/EC (O.J. No. L 61, 2.3.2002, p.56);
Commission Decision 2002/542/EC (O.J. No. L 176, 5.7.2002, p.43); and
Commission Decision 2004/118/EC (O.J. No. L 36, 7.2.2004, p.34),

as read with the European international instruments.

Relevant provisions: Articles 20, 21.1, 22.1, 23, 24, 27.2 and 28.”.

St Andrew's House,
Edinburgh
6th October 2005

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

Regulation 2(7)

Schedules to be inserted into the Animals and Animal Products (Import and Export) (Scotland) Regulations 2000–

“SCHEDULE 3A

Regulation 5(5)

THE POULTRY HEALTH SCHEME

PART I

MEMBERSHIP

1. Any reference to “the Directive” in this Part of this Schedule is a reference to Council Directive 90/539/EEC.
2. An application for an establishment to become a member of the Poultry Health Scheme (“the scheme” in this Schedule) must be accompanied by the registration fee, the details of which are set out in Part II of this Schedule.
3. The Scottish Ministers shall grant membership of the scheme to an establishment if–
 - (a) they are satisfied, following an inspection by a veterinary inspector who is a member of the State Veterinary Service, that–
 - (i) the establishment meets the requirements regarding facilities in Chapter II of Annex II to the Directive; and
 - (ii) the operator of the establishment will comply, and ensure that the establishment complies, with the requirements of point 1 of Chapter I of Annex II to the Directive; and
 - (b) the operator of the establishment, having been notified that the Scottish Ministers are satisfied that the requirements in sub-paragraph (a) are met, has paid the annual membership fee, the details of which are set out in Part III of this Schedule.
4. The disease surveillance programme referred to in paragraph (b) of point 1 of Chapter I of Annex II to the Directive shall consist of the disease surveillance measures specified in Chapter III of Annex II to the Directive, together with any additional testing requirements that a veterinary inspector notifies in writing to the operator of an establishment as being requirements that the inspector considers are necessary to avoid the spreading of contagious disease through intra-Community trade, taking into account the particular circumstances at that establishment.
5. On receipt of the first annual membership fee, the Scottish Ministers shall issue the establishment’s membership certificate, which shall include the establishment’s membership number.
6. The operator of an establishment which is a member of the scheme shall pay the annual membership fee each year, and shall pay any re-inspection fee, the details of which are set out in Part IV of this Schedule, when it becomes due.
7. In order to ensure that establishments and operators of those establishments continue to meet the requirements of the scheme, and generally to ensure compliance with the Directive–

- (a) a veterinary inspector shall carry out an annual inspection of the establishment; and
- (b) a veterinary inspector shall carry out any additional inspections (insofar as not provided for under paragraph 9) which the Scottish Ministers consider necessary.

8. The operator of an establishment shall notify the Scottish Ministers if ownership or control of the establishment changes.

9.—(1) Without prejudice to any action which may be taken under paragraph 10, where at the annual inspection of an establishment, the establishment or the operator of that establishment do not appear to the Scottish Ministers to meet the requirements for membership of the scheme or of the Directive a veterinary inspector who is a member of the State Veterinary Service shall carry out such additional inspections (“re-inspections”) as the Scottish Ministers consider necessary to ensure compliance with those requirements.

(2) If a re-inspection is carried out—

- (a) a fee shall be charged for each re-inspection; and
- (b) such a fee shall become due upon receipt of an invoice for that fee by the operator of that establishment.

10. The Scottish Ministers—

- (a) shall suspend, revoke or restore membership of the scheme in accordance with Chapter IV of Annex II to the Directive (references to “withdrawal” in that Chapter shall be read as references to “revocation” for the purposes of this paragraph); and
- (b) may suspend or revoke membership of the scheme if—
 - (i) an establishment is in breach of any of the requirements regarding facilities in Chapter II of Annex II to the Directive;
 - (ii) the operator or the establishment is in breach of any of the requirements in point 1 of Chapter I of Annex II to the Directive;
 - (iii) ownership or control of an establishment changes; or
 - (iv) the operator has not paid the annual membership fee or if a re-inspection fee remains unpaid for 30 days or more after becoming due.

PART II

REGISTRATION FEE

11. The Scottish Ministers shall—

- (a) determine the registration fee on the basis of available information as to the cost attributable to each application of the items listed in paragraph 13; and
- (b) publish the current registration fee on the website of the Scottish Executive^(a).

12. The registration fee shall be payable to the Scottish Ministers in respect of each establishment for which an application is made and shall be non-refundable.

13. The items referred to in paragraph 11(a) are—

- (a) the salaries and fees, together with overtime payments and employers’ national insurance and superannuation contributions, of—
 - (i) any person involved directly in processing applications for membership of the scheme;

(a) www.scotland.gov.uk.

- (ii) any person engaged in managing the processing of such applications; and
- (iii) any veterinary inspector who is a member of the State Veterinary Service who carries out an inspection at an applicant establishment;
- (b) recruiting and training the staff referred to in sub-paragraph (a);
- (c) travel and related incidental expenses incurred in processing applications for membership of the scheme (including inspecting establishments), except where incurred by a person attending his normal place of work;
- (d) office accommodation, equipment and services for the staff referred to in sub-paragraph (a), including depreciation of office furniture and equipment and the cost of information technology and stationery;
- (e) provision of protective clothing and equipment used in inspecting establishments, and laundering, cleansing or disinfecting that protective clothing;
- (f) provision of payroll and personnel services in connection with the employment of the staff referred to in sub-paragraph (a); and
- (g) any other incidental expenses incurred in connection with the processing of applications for membership of the scheme.

PART III

ANNUAL MEMBERSHIP FEE

14. There shall be two rates for the annual membership fee; a higher rate which includes the cost of an annual inspection by a veterinary inspector who is a member of the State Veterinary Service, and a lower rate which does not include the cost of such an inspection.

15. The lower rate shall be payable—

- (a) the first time the annual membership fee is paid (the cost of the first annual inspection having been included in the registration fee); and
- (b) in subsequent years where the operator of the establishment has elected for the inspection to be carried out by a veterinary inspector who is not a member of the State Veterinary Service (in which case the cost of the inspection is payable directly to the veterinary inspector by the operator).

16. The Scottish Ministers shall—

- (a) determine the two rates of the annual membership fee on the basis of available information as to the cost attributable to each establishment of the items listed in paragraph 18; and
- (b) publish the current rates of the annual membership fee on the website of the Scottish Executive.

17. The annual membership fee shall be payable to the Scottish Ministers in respect of each establishment and shall be non-refundable.

18. The items referred to in paragraph 16(a) are—

- (a) salaries and fees, together with overtime payments and employers' national insurance and superannuation contributions, of—
 - (i) any person directly involved in the administration of the scheme (including corresponding with and responding to queries from members, producing guidance, and arranging inspections of establishments);
 - (ii) any person engaged in managing the administration of the scheme; and

- (iii) any veterinary inspector who is a member of the State Veterinary Service who carries out the annual inspection of an establishment or additional inspections;
- (b) recruiting and training the staff referred to in sub-paragraph (a);
- (c) travel and related incidental expenses incurred in the administration of the scheme (including inspections of establishments), except where incurred by a person attending his normal place of work;
- (d) office accommodation, equipment and services for staff referred to in sub-paragraph (a), including depreciation of office furniture and equipment and the cost of information technology and stationery;
- (e) provision of protective clothing and equipment, where applicable, used in carrying out inspections of establishments, and laundering, cleansing or disinfecting such protective clothing;
- (f) provision of payroll and personnel services in connection with the employment of staff referred to in sub-paragraph (a); and
- (g) any other incidental expenses incurred in connection with the administration of the scheme.

19. The items listed in paragraph 18 shall not include any expense which relates to the administration of, travel to and from, and attendance at the inspections insofar as that expense is recoverable under paragraph 9 of Part I of this Schedule.

PART IV

RE-INSPECTION FEE

20. The re-inspection fee provided for under paragraph 9 of Part I of this Schedule shall be composed of—

- (a) a charge for the veterinary inspector's time spent at the establishment carrying out the re-inspection, the rate for which charge shall be £45 per hour or part thereof; and
- (b) a charge for mileage, that is for each mile travelled by the veterinary inspector between his ordinary place of work and the establishment in order to carry out the re-inspection, the rate of which charge shall be 33 pence per mile.

21. The Scottish Ministers may, using such criteria as they consider appropriate in all these circumstances, reduce the charge for mileage under paragraph 20(b) in respect of any particular re-inspection in order to avoid an over-recovery of mileage costs incurred for a journey in the course of which other official activity is undertaken in addition to that re-inspection.

APPROVAL OF LABORATORIES UNDER THE POULTRY HEALTH SCHEME

PART I

APPROVAL

1. The Scottish Ministers may approve any laboratory that they consider to be suitable for the purpose of carrying out Mycoplasma testing under the Poultry Health Scheme.
2. The operator of a laboratory approved under paragraph 1 shall, by such date specified by the Scottish Ministers, pay the annual approval fee determined under Part II of this Schedule.
3. For the purpose of deciding whether to grant, revoke or suspend an approval under paragraph 1, the Scottish Ministers may require the laboratory to undergo such inspections and quality assurance testing as they consider necessary.
4. The Scottish Ministers may, by notice in writing to the operator, revoke or suspend an approval under paragraph 1, where—
 - (a) the annual approval fee remains unpaid for 30 days or more after becoming due;
 - (b) it appears to them that inspection or testing of the laboratory for the purpose of this Schedule has been obstructed by the operator or any staff of the operator of the laboratory; or
 - (c) following any inspection or testing, the Scottish Ministers consider that the laboratory is no longer suitable for the purpose of carrying out the purpose specified.

PART II

ANNUAL APPROVAL FEE

5. The Scottish Ministers shall—
 - (a) determine the annual approval fee on the basis of available information as to the cost attributable to each laboratory of the items listed in paragraph 7; and
 - (b) publish the current annual approval fee on the website of the Scottish Executive.
6. The annual approval fee shall be payable to the Scottish Ministers in respect of each approved laboratory and shall be non-refundable.
7. The items referred to in paragraph 5(a) are—
 - (a) the salaries and fees, together with overtime payments and employers' national insurance and superannuation contributions, of—
 - (i) any person directly involved in the administration of the approval of laboratories;
 - (ii) any person engaged in the management or administration of this work; and
 - (iii) any person who carries out inspections of laboratories ;
 - (b) recruiting and training the staff referred to in sub-paragraph (a);

- (c) travel and related incidental expenses incurred in the administration of the approval of laboratories (including carrying out inspections), except where incurred by a person attending his normal place of work.;
- (d) office accommodation, equipment and services for staff involved in the administration of approval of laboratories, including depreciation of office furniture and equipment and the cost of information technology and stationery;
- (e) provision of protective clothing and equipment used in carrying out inspections of laboratories, and laundering, cleansing or disinfecting such protective clothing;
- (f) provision of quality assurance testing samples, assessment of the results and provision of advice about the results;
- (g) provision of payroll and personnel services in connection with the employment of staff involved in the administration of approval of laboratories; and
- (h) any other incidental expenses incurred in connection with the administration of the approval of laboratories.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Animals and Animal Products (Import and Export) (Scotland) Regulations 2000 (“the principal Regulations”).

The amendments provide a statutory basis for the Poultry Health Scheme, which is implemented by the Scottish Ministers in order to ensure compliance with the rules set out in Annex II to Council Directive 90/539/EEC (on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs) (O.J. No. L 303, 31.10.90, p. 6) (“the Directive”) (regulation 2(3) and (7) and the Schedule). Hatching eggs, day-old chicks and poultry to which Article 6 of the Directive applies may only be exported to another Member State if they come from an establishment that is a member of the Poultry Health Scheme. Applications for establishments to join the Scheme must be accompanied by a registration fee and members of the Scheme must pay an annual membership fee. Provision is also made for establishments which have a distinguishing number allocated to them for purposes of Article 6.1(a) of the Directive on 29th October 2005 to be treated as members of the Poultry Health Scheme (regulation 2(3)). These Regulations also make arrangements for the approval of laboratories to undertake Mycoplasma testing under the Poultry Health Scheme, including the details of the annual approval fee (regulation 2(4) and (7) and the Schedule).

A definition of the Directive has been inserted into the principal Regulations (regulation 2(2)). Paragraph 6 of Part I of Schedule 3 and paragraph 8 of Part II of Schedule 5 to the principal Regulations have been updated to implement Community Instruments relevant to the Directive which have come into force since the principal Regulations were made (regulation 2(6) and (8)).

A Regulatory Impact Assessment has not been prepared for these Regulations.

2005 No. 502

ANIMALS

ANIMAL HEALTH

**The Animals and Animal Products (Import and Export)
(Scotland) Amendment (No. 2) Regulations 2005**

£3.00

© Crown Copyright 2005