
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 530

The Transmissible Spongiform
Encephalopathies (Scotland) Regulations 2006

PART 1

General provisions

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006 and shall come into force on 24th November 2006.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“approved research premises” means premises approved for research purposes by the Secretary of State;

“bovine animal” includes bison and buffalo (including water buffalo);

“BSE” means bovine spongiform encephalopathy;

“bulk” means not enclosed or wrapped in packaging;

“cattle passport” has the same meaning as in the Cattle Identification Regulations 1998(1);

“Community TSE Regulation” means Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies(2), as amended by, and as read with, the instruments set out in Schedule 1;

“inspector” (except as provided for in Schedule 6) means—

(a) a person appointed as such for the purposes of these Regulations by the Scottish Ministers, and includes a veterinary inspector; or

(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(3);

“slaughterhouse” and (except in Schedule 6, paragraph 10(2)(c)) “cutting plant” mean premises—

(1) S.I.1998/87; relevant amending instrument is S.I. 2006/1538.

(2) O.J. No. L 147, 31.5.01, p.1.

(3) 1994 c. 39.

- (a) approved or conditionally approved as such by the Food Standards Agency under Article 31(2) of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules⁽⁴⁾; or
- (b) operating as such under Article 4(5) of Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin⁽⁵⁾ pending such approval;

“suspect animal” means an animal suspected of having a TSE;

“TSE” means transmissible spongiform encephalopathy;

“TSE susceptible” means capable of having a TSE; and

“veterinary inspector” means a veterinary surgeon appointed by the Scottish Ministers as an inspector.

(2) Expressions defined in the Community TSE Regulation and not defined in these Regulations shall have the same meaning in these Regulations as they have for the purposes of the Community TSE 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⁽⁶⁾, which has been recorded and is consequently capable of being reproduced.

Appointment of competent authority

3. The Scottish Ministers are the competent authority for the purposes of the Community TSE Regulation except as otherwise specified in these Regulations.

Exception for research

4.—(1) The provisions of Schedules 2 to 6 do not apply in relation to animals kept for the purposes of research in approved research premises.

(2) If a bovine animal, sheep or goat kept in approved research premises or its progeny dies or is killed, the occupier of the premises shall dispose of it as a Category 1 animal by product in accordance with 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⁽⁷⁾, and failure to do so is an offence.

PART 2

Introduction of Schedules

The Schedules

5. The following Schedules have effect—

- (a) Schedule 2 (monitoring for TSE and contents of an RMOP);
- (b) Schedule 3 (control and eradication of TSE in bovine animals);

(4) O.J. No. L 165, 30.4.04, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

(5) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.22).

(6) 2000 c. 7.

(7) O.J. No. L 273, 10.2.02, p.1 as last amended by Commission Regulation (EC) No. 208/2006, O.J. No. L 36, 8.2.06, p.25.

- (c) Schedule 4 (control and eradication of TSE in sheep and goats);
- (d) Schedule 5 (feedingstuffs);
- (e) Schedule 6 (specified risk material, mechanically recovered meat and slaughtering techniques);
- (f) Schedule 7 (restrictions on dispatch to other member States and to third countries).

PART 3

Administration and enforcement

Approvals, authorisations, licences and registrations

6.—(1) Subject to paragraph 21 of Schedule 5, the Scottish Ministers shall grant an approval, authorisation, licence or registration under these Regulations if they are satisfied that the provisions of the Community TSE Regulation and these Regulations will be complied with.

(2) It shall be in writing, and shall specify—

- (a) the address of the premises;
- (b) the name of the occupier; and
- (c) the purpose for which it is granted.

(3) It may be made subject to such conditions as are necessary to—

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

(4) If the Scottish Ministers refuse to grant an approval, authorisation, licence or registration, or grant one subject to conditions—

- (a) they shall—
 - (i) give their reasons in writing; and
 - (ii) explain the right of the applicant to make written representations to a person appointed by the Scottish Ministers; and
- (b) the appeals procedure in regulation 10 applies.

Occupier's duty

7. Subject to paragraph 22 of Schedule 5, the occupier of any premises approved, authorised, licensed or registered under these Regulations commits an offence if that occupier does not ensure that—

- (a) the premises are maintained and operated in accordance with—
 - (i) any condition of the approval, authorisation, licence or registration; and
 - (ii) the requirements of the Community TSE Regulation and these Regulations; and
- (b) any person employed by the occupier, and any person permitted to enter the premises, complies with those conditions and requirements.

Suspension and amendment

8.—(1) Subject to paragraph 23 of Schedule 5, the Scottish Ministers may suspend or amend any approval, authorisation, licence or registration granted under these Regulations if—

- (a) any of the conditions under which it was granted is not fulfilled; or
 - (b) they are satisfied that the provisions of the Community TSE Regulation or these Regulations are not being complied with.
- (2) A suspension or amendment—
- (a) shall have immediate effect if the Scottish Ministers consider it necessary for the protection of public or animal health; and
 - (b) otherwise, shall not have effect for at least 21 days from notification of the suspension or amendment.
- (3) Notification of the suspension or amendment shall—
- (a) be in writing;
 - (b) state when it comes into effect;
 - (c) give the reasons; and
 - (d) explain the right of the person who has been notified to make written representations to a person appointed by the Scottish Ministers.
- (4) The appeals procedure in regulation 10 applies.
- (5) If the suspension or amendment does not have immediate effect and representations are made under regulation 10, the suspension or amendment shall not have effect until the final determination of the appeal by the Scottish Ministers unless they consider that it is necessary for the protection of public or animal health for the suspension or amendment to have effect before then.

Revocation of approvals, etc.

9.—(1) Subject to paragraph 24 of Schedule 5, the Scottish Ministers may revoke any approval, authorisation, licence or registration granted under these Regulations if they are satisfied that the premises will not be operated in accordance with the Community TSE Regulation or these Regulations and if—

- (a) it is currently suspended and the period for appeal under regulation 10 has expired or they have upheld the suspension following such appeal;
- (b) they have previously suspended it and there is further non compliance with the Community TSE Regulation or these Regulations; or
- (c) they are satisfied that the occupier no longer uses the premises for the purpose for which it was granted.

(2) If the Scottish Ministers make a revocation under paragraph (1)(b) or (c) the appeals procedure in regulation 10 applies but the revocation remains in force during that appeals procedure.

Appeals procedure

10.—(1) Where this regulation applies, a person may make written representations concerning a decision within 21 days of notification of that decision to a person appointed for the purpose by the Scottish Ministers.

(2) The appointed person shall report in writing to the Scottish Ministers.

(3) The Scottish Ministers shall give the appellant written notification of their final determination and the reasons for it.

Valuations

11.—(1) This regulation applies when a valuation is to be obtained under these Regulations.

(2) The owner and the Scottish Ministers may agree a valuation.

(3) If the owner and the Scottish Ministers cannot agree a valuation, they may jointly appoint a valuer.

(4) If the owner and the Scottish Ministers cannot agree who the valuer shall be, the President of the Institute of Auctioneers and Appraisers in Scotland shall nominate a valuer, and both the owner and the Scottish Ministers shall accept the nomination.

(5) The valuer shall carry out the valuation and submit it and any other relevant information and documentation to the Scottish Ministers, and submit a copy to the owner.

(6) The owner and a representative of the Scottish Ministers each have the right to be present at a valuation.

(7) The valuation is binding on the owner and the Scottish Ministers.

Appointment of inspectors

12. The Scottish Ministers or, as the case may be, the local authority shall appoint inspectors for the purposes of the enforcement of these Regulations except as specified in paragraph 1 of Schedule 6.

Powers of entry

13.—(1) An inspector may on producing, if so required, some duly authenticated document showing the authority of that inspector, enter at all reasonable hours, any premises (other than premises used only as a dwelling); and in this regulation “premises” includes any vehicle, container or structure (moveable or otherwise).

(2) An inspector may be accompanied by—

- (a) such other persons as the inspector considers necessary; and
- (b) any representative of the European Commission acting for the purpose of the Community TSE Regulation.

(3) If an inspector enters any unoccupied premises, the inspector shall ensure that they are left as effectively secured against unauthorised entry as they were before entry.

Powers of inspectors

14.—(1) An inspector may—

- (a) seize any—
 - (i) animal;
 - (ii) body of an animal, part of a body of an animal (including the blood and the hide), semen, embryo or ovum; or
 - (iii) animal protein or feedingstuffs that may contain animal protein, and dispose of them as necessary;
- (b) carry out any inquiries, investigations, examinations and tests;
- (c) collect, pen and inspect any animal and for this purpose may require the keeper of the animal to arrange for its collection and penning;
- (d) inspect any body of an animal, part of a body of an animal (including the blood and the hide), semen, embryo or ovum;
- (e) inspect any part of the premises, any equipment, facility, operation or procedure;
- (f) take any samples;

- (g) have access to, and inspect and copy any records (in whatever form they are held) in order to determine if these Regulations are being complied with, including records kept under the Community TSE Regulation and these Regulations, or remove such records to enable them to be copied;
- (h) have access to, inspect and check the operation of, any computer and any associated apparatus or material that is or has been in use in connection with any record; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the inspector such assistance as the inspector may reasonably require (including providing the inspector with any necessary passwords) 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;
- (i) mark anything (including an animal) whether electronically or otherwise, for identification purposes; and
- (j) lock or seal any container or store.

(2) Any person who without reasonable cause defaces, obliterates, or removes any mark or seal, or removes any lock, applied under paragraph (1) is guilty of an offence.

(3) An inspector is not personally liable for any act done in the execution or purported execution of these Regulations if the inspector acted in the honest belief that a duty under these Regulations required it or entitled it to be done; but this does not relieve the Scottish Ministers or a local authority from any liability in respect of the acts of an inspector authorised or appointed by them.

Notices

15.—(1) If it is necessary for any reason connected with the enforcement of the Community TSE Regulation or these Regulations an inspector may serve a notice on—

- (a) the owner or keeper of any animal;
- (b) the person in possession of any animal, body of an animal, part of a body of an animal (including the blood and the hide) semen, embryo or ovum; or
- (c) the person in possession of any animal protein or feedingstuffs that may contain animal protein.

(2) The notice shall be in writing, and shall give the reasons for it being served.

(3) The notice may—

- (a) prohibit the movement of any animal onto or from the premises specified in the notice;
- (b) specify those parts of premises to which an animal may or may not be allowed access;
- (c) require the killing or slaughter of any animal;
- (d) prohibit or require the movement onto or from premises specified in the notice of the body or any part of the body (including the blood and the hide) of any animal, any animal protein or feedingstuffs that may contain animal protein, and any animal semen, embryo or ovum;
- (e) require the disposal of the body or any part of the body (including the blood and the hide) of any animal (whether or not it is one that was required to be retained), and any semen, embryo or ovum as may be specified in the notice;
- (f) require the disposal of any animal protein or feedingstuffs that may contain animal protein or specify how they are to be used; or
- (g) require the recall of any animal protein or feedingstuffs that may contain animal protein.

(4) If an inspector suspects that any premises, vehicle, container or structure to which the Community TSE Regulation or these Regulations apply constitutes a risk to animal or public health, the inspector may serve a notice on the occupier or person in charge of the premises, vehicle,

container or structure requiring that person to cleanse and disinfect all or any part of the premises, vehicle, container or structure and any associated equipment.

(5) A notice may specify how it shall be complied with, and specify time limits.

(6) A notice shall be complied with at the expense of the person on whom it is served, and if it is not complied with an inspector may arrange to have it complied with at that person's expense.

(7) Failure to comply with a notice is an offence.

Notices restricting movement

16.—(1) If a notice is served restricting movement, an inspector may subsequently permit movement under the authority of a licence.

(2) The person transporting under the authority of a licence shall carry the licence during movement, and produce it on demand to an inspector.

(3) Failure to comply with paragraph (2) is an offence.

Obstruction

17. Any person who—

- (a) intentionally obstructs an inspector acting under these Regulations;
- (b) without reasonable cause, fails to give to an inspector acting under these Regulations any assistance or information or to provide any facilities that the inspector may reasonably require that person to give or provide for the performance of the inspector's functions under these Regulations;
- (c) gives false or misleading information to an inspector acting under these Regulations; or
- (d) fails to produce a record when required to do so by an inspector acting under these Regulations,

is guilty of an offence.

Penalties

18. A person guilty of an offence under these Regulations is 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.

Offences by bodies corporate

19.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is shown to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.

(2) If 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 member's functions of management as if the member were a director of the body corporate.

(3) For the purposes of paragraph (1), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate and “body corporate” includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

Enforcement

20.—(1) Subject to sub-paragraphs (2), (3) and (4), these Regulations shall be enforced by the local authority.

(2) The Scottish Ministers shall enforce Schedule 2 in slaughterhouses and cutting plants.

(3) The Food Standards Agency shall enforce Schedule 6 in slaughterhouses and cutting plants.

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

Miscellaneous amendments

21. The miscellaneous amendments specified in Schedule 8 shall have effect.

Consequential amendments

22. The consequential amendments specified in Schedule 9 shall have effect.

Revocations

23. The enactments specified in the first column of Schedule 10 are revoked to the extent specified in the corresponding entry in the third column of that Schedule.

St Andrew’s House,
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1st November 2006

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