

**2009 No. 339**

**ANIMALS**

**The Welfare of Animals (Transport) (Scotland) Amendment  
Regulations 2009**

<i>Made</i>	- - - -	<i>6th October 2009</i>
<i>Laid before the Scottish Parliament</i>		<i>7th October 2009</i>
<i>Coming into force</i>	- -	<i>13th November 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for the references to Community Instruments in regulation 2 of the Welfare of Animals (Transport) (Scotland) Regulations 2006(b) to be construed as references to those instruments as amended from time to time.

**Citation and commencement**

1. These Regulations may be cited as the Welfare of Animals (Transport) (Scotland) Amendment Regulations 2009 and come into force on 13th November 2009.

**Amendments to the Welfare of Animals (Transport) (Scotland) Regulations 2006**

2.—(1) The Welfare of Animals (Transport) (Scotland) Regulations 2006 are amended in accordance with the following paragraphs.

(2) In regulation 2 (interpretation)—

- (a) at the end of the definition of “Council Regulation (EC) No. 1/2005”, insert “, as amended from time to time”;
- (b) at the end of the definition of “Council Regulation (EC) No. 1255/97”, insert “, as amended from time to time”; and

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(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3), and the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. The functions conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2006/606.

- (c) after the definition of “Council Regulation (EC) No. 1255/97”, insert—  
    ““inspector” means a person appointed as an inspector by the Scottish Ministers or a local authority for the purposes of these Regulations; and”.
- (3) For regulation 9(1) (control posts), substitute—  
    “(1) It is an offence under the Act for any person to operate a control post unless that post is approved by the Scottish Ministers for that purpose.”.
- (4) In regulation 22(1) (powers of inspectors) for “appearing to the inspector to be in charge of the animals”, substitute “responsible for the animals on a permanent or temporary basis”.
- (5) After regulation 24 (compliance with notices) insert—

#### “Service of notices

**24A.**—(1) Any notice under these Regulations or any notification of a determination of the Scottish Ministers may be served on the person to be affected by it, either—

- (a) by its delivery to that person;
- (b) by the leaving of it for that person at the last known home or business address; or
- (c) by the sending of it through the post in a letter addressed to that person at the last known home or business address.

(2) Any reference in these Regulations to anything done in writing or produced in written form includes reference to an electronic communication as defined in the Electronic Communications Act 2000<sup>(a)</sup> which has been recorded and is consequently capable of reproduction.

(3) An electronic communication shall be taken to be received on the day after the day of its transmission.

#### Appeals

**24B.**—(1) A person may appeal to the sheriff against—

- (a) a determination notified by the Scottish Ministers under regulation 21(4); or
- (b) a notice served by an inspector under regulation 22.

(2) An appeal under this regulation shall be made by way of summary application and shall be lodged with the sheriff clerk within the period of 28 days from the day on which the determination was notified or notice was served.

(3) On special cause being shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the time mentioned in paragraph (2).

(4) For the purposes of an appeal under this regulation, the sheriff may require the Scottish Ministers or the local authority to give reasons for the determination or notice, and the Scottish Ministers or the local authority must comply with such a requirement.

(5) The sheriff may uphold an appeal under this regulation only if the sheriff considers that the Scottish Ministers or the local authority—

- (a) erred in law;
- (b) based their determination or notice on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(6) In considering an appeal under this regulation, the sheriff may hear evidence by or on behalf of any party to the appeal.

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(a) 2000 c.7. The definition of “electronic communication” in section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

- (7) On upholding an appeal under this regulation, the sheriff may—
- (a) remit the case with the reasons for such decision to the Scottish Ministers or the local authority for reconsideration; or
  - (b) reverse or modify the determination or notice of the Scottish Ministers or the local authority.
- (8) On remitting a case under paragraph (7)(a), the sheriff may—
- (a) specify a date by which the reconsideration by the Scottish Ministers or the local authority must take place;
  - (b) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment, Act of the Scottish Parliament and subordinate legislation made under an Act of the Scottish Parliament (including these Regulations).
- (9) The sheriff may include in the decision on an appeal under this regulation such order as to the expenses of the appeal as the sheriff thinks proper.
- (10) The decision of the sheriff is final.”.

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
6th October 2009

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Welfare of Animals (Transport) (Scotland) Regulations 2006 (“the principal Regulations”).

Regulation 2(2) inserts ambulatory references to Council Regulation (EC) No. 1/2005 and Council Regulation (EC) No. 1255/97 and a definition of “inspector”.

Regulation 2(3) amends regulation 9 of the principal Regulations to clarify that the control post must be approved prior to being operated.

Regulation 2(4) amends regulation 22(1) of the principal Regulations to clarify that where an inspector considers animals are being transported, or are about to be transported, in a way which contravenes the Regulations or constitutes an offence under the Act, that inspector may serve a notice on a person who is responsible for the animals on a permanent or temporary basis.

Regulation 2(5) inserts new provisions 24A and 24B. Regulation 24A provides for the service of notices and other documents under the principal Regulations and regulation 24B inserts provisions setting out an appeals procedure.

No Regulatory Impact Assessment has been prepared as no impact on the private or voluntary sector is foreseen.

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