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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 177**

**The Transmissible Spongiform  
Encephalopathies (Scotland) Regulations 2010**

**PART 3**

**Administration and enforcement**

**Approvals, authorisations, licences and registrations**

6.—(1) The Scottish Ministers must grant an approval, authorisation, licence or registration under these Regulations if they are satisfied that the provisions of the EU TSE Regulation and these Regulations will be complied with.

(2) Any approval, authorisation, licence or registration must be in writing, and specify—

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

(3) Any approval, authorisation, licence or registration may be made subject to such conditions as are necessary to—

- (a) ensure that the provisions of the EU TSE Regulation and these Regulations will be complied with; or
- (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 must—
  - (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 in relation to any decision of the Scottish Ministers under this regulation.

**Occupier's duty**

7. 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 EU 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) 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 being complied with; or
- (b) they are satisfied that the provisions of the EU TSE Regulation or these Regulations are not being complied with.

(2) The Scottish Ministers may amend an approval, authorisation, licence or registration granted under these Regulations if the Scottish Ministers consider it necessary in the light of technical or scientific developments.

(3) A suspension or amendment—

- (a) has immediate effect if the Scottish Ministers consider it necessary for the protection of public or animal health; or
- (b) otherwise, does not have effect for at least 21 days from notification of the suspension or amendment.

(4) Notification of the suspension or amendment must—

- (a) be in writing;
- (b) state when the suspension or amendment comes into effect;
- (c) give the reasons for the suspension or amendment; and
- (d) explain the right of the person who has been notified to make written representations to a person appointed by the Scottish Ministers.

(5) The appeals procedure in regulation 10 applies in relation to any decision of the Scottish Ministers under this regulation.

(6) If the suspension or amendment does not have immediate effect and representations are made under regulation 10, the suspension or amendment does not have effect until the final determination of the appeal by the Scottish Ministers unless at any point 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, authorisations, licences and registrations**

9.—(1) 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 EU 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 EU 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) Notification of the revocation must—

- (a) be in writing;
- (b) state when the revocation comes into effect;
- (c) give the reasons for the revocation; and
- (d) explain that the person who has been notified has the right to make written representations to a person appointed by the Scottish Ministers.

(3) 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 to a person appointed for the purpose by the Scottish Ministers concerning any decision of the Scottish Ministers within 21 days of notification of the decision to that person.

(2) The Scottish Ministers may also make written representations to the appointed person concerning the decision.

(3) The appointed person must then report in writing to the Scottish Ministers.

(4) The Scottish Ministers must give to the appellant written notification of the Scottish Ministers' 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 to appoint as valuer, the President of the Institute of Auctioneers and Appraisers in Scotland<sup>(1)</sup> will nominate a valuer, and both the owner and the Scottish Ministers must accept the nomination.

(5) The valuer will 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 the valuation.

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

(8) In this regulation, "owner" means the owner of the animal or product in question.

### **Appointment of inspectors**

**12.**—(1) Except as specified in paragraph (2), the Scottish Ministers or the local authority may appoint inspectors for the purposes of enforcing these Regulations.

(2) The Food Standards Agency may appoint inspectors for the purposes of enforcing Schedule 7 and paragraphs 1, 3 and 4 of Schedule 8 in relation to a slaughterhouse or cutting plant.

(3) The appointment of an inspector (whether under paragraph (1) or (2)) is limited to powers and duties specified in the appointment.

### **Powers of entry**

**13.**—(1) Inspectors have a right to enter any premises for the purpose of ensuring that the EU TSE Regulation or these Regulations are being complied with.

(2) Inspectors must, if so required, produce some duly authenticated document showing their authority before exercising their right under paragraph (1).

(3) Inspectors may exercise the right under paragraph (1) at all reasonable hours.

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(1) The Institute of Auctioneers and Appraisers in Scotland is the corporate body of Scotland's auctioneers and appraisers and was founded in 1926.

(4) Inspectors may be accompanied by—

- (a) such other persons as they consider necessary; and
- (b) any representative of the European Commission acting for the purpose of the enforcement of an EU obligation.

(5) If inspectors enter any unoccupied premises or (where the premises are occupied) the occupier of the premises is temporarily absent, they must leave those premises (so far as reasonably practicable) as effectively secured against unauthorised entry as the inspectors found them.

(6) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes of the enforcement of these Regulations, and that—

- (a) admission has been refused, or a refusal is expected, and (in either case) notice to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by a signed warrant authorise inspectors to enter the premises, if need be by reasonable force.

(7) A warrant under this regulation is valid for one month.

### **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;
  - (iii) animal protein or feedingstuffs that may contain animal protein; or
  - (iv) milk or milk product,
 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 EU 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 and within the scope of his or her employment, 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, a local authority or the Food Standards Agency from any liability in respect of the acts of an inspector appointed by them.

## Notices

**15.**—(1) If it is necessary for any reason connected with the enforcement of the EU 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;
  - (c) the person in possession, or supplier, of any animal protein or feedingstuffs that may contain animal protein; or
  - (d) the owner, or person in possession, of any milk or milk products.
- (2) The notice must be in writing and give the reasons for it being served.
- (3) The notice may—
- (a) prohibit the movement of any animal on to or from the premises specified in the notice;
  - (b) prohibit the movement of any milk or milk products from the premises specified in the notice;
  - (c) specify those parts of premises to which an animal may or may not be allowed access;
  - (d) require the killing or slaughter of any animal;
  - (e) prohibit or require the movement on to or from the 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 semen, embryo or ovum;
  - (f) 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, ovum, milk or milk product as may be specified in the notice;
  - (g) require the disposal of any animal protein or feedingstuffs that may contain animal protein or specify how they are to be used; or
  - (h) require the recall of any animal protein or feedingstuffs that may contain animal protein.

(4) If an inspector suspects that any premises to which the EU TSE Regulation or these Regulations apply constitutes a risk to public or animal health, the inspector may serve a notice on the occupier or person in charge of the premises requiring that occupier or person to cleanse and disinfect all or any part of the premises and any associated equipment.

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

(6) A notice must 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 must 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 12 months or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 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 is guilty of an offence and is 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) 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 Scottish partnership, 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 paragraphs (2) to (4), these Regulations are enforced by the local authority.
- (2) Schedule 2 is enforced by the Scottish Ministers in slaughterhouses and cutting plants.
- (3) Schedule 7 and paragraphs 1, 3 and 4 of Schedule 8 are enforced by the Food Standards Agency 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 is discharged by the Scottish Ministers and not by the local authority.

### **Consequential amendments**

- 21.** The consequential amendments specified in Schedule 9 have effect.

### **Saving provision**

- 22.** Notwithstanding the revocation of the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006(2), regulation 21 (miscellaneous amendments) of and paragraphs 1 and 2 of Schedule 8 to those Regulations shall remain in full force and effect.

### **Revocations**

- 23.** The enactments specified in the first column of Schedule 10 are revoked.