
STATUTORY INSTRUMENTS

2005 No. 2347

The Animal By-Products Regulations 2005

PART 1

Introduction

Title, extent and commencement

1. These Regulations may be cited as the Animal By-Products Regulations 2005; they apply in England and come into force on 28th September 2005.

Interpretation

2.—(1) In these Regulations—

“the Community Regulation” means 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⁽¹⁾ as amended by and as read with—

- (a) Commission Regulation (EC) No. 808/2003 amending 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⁽²⁾;
- (b) Commission Regulation (EC) No. 811/2003 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the intra-species recycling ban for fish, the burial and burning of animal by-products and certain transitional measures⁽³⁾;
- (c) Commission Regulation (EC) No. 813/2003 on transitional measures under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the collection, transport and disposal of former foodstuffs⁽⁴⁾;
- (d) Commission Decision 2003/326/EC on transitional measures under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the separation of Category 2 and Category 3 oleochemical plants⁽⁵⁾;
- (e) Commission Decision 2004/407/EC on transitional sanitary and certification rules under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards import from certain third countries of photographic gelatine⁽⁶⁾;

(1) OJ No. L273, 10.10.2002, p.1.

(2) OJ No. L117, 13.5.2003, p. 1.

(3) OJ No. L117, 13.5.2003, p. 14.

(4) OJ No. L117, 13.5.2003, p. 22.

(5) OJ No. L117, 13.5.2003, p. 42.

(6) OJ No. L 151, 30.4.2004, p. 11 as corrected by a Corrigendum published in the Official Journal at OJ No. L208, 10.6.2004, p. 9 and as further corrected by a Corrigendum published in the Official Journal at OJ No. L 396, 31.12.2004, p. 63.

- (f) Commission Regulation (EC) No. 668/2004 amending certain Annexes to Regulation (EC) No. 1774/2002 of the European Parliament and of the Council, as regards the importation from third countries of animal by-products(7);
- (g) Commission Regulation (EC) No. 878/2004 laying down transitional measures in accordance with Regulation (EC) No. 1774/2002 for certain animal by-products classified as Category 1 and 2 materials and intended for technical purposes(8);
- (h) Commission Regulation (EC) No. 79/2005 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the use of milk, milk-based products and milk-derived products, defined as Category 3 material in that Regulation(9).
- (i) Commission Regulation (EC) No. 92/2005 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards means of disposal or uses of animal by-products and amending its Annex VI as regards biogas transformation and processing of rendered fats(10);
- (j) Commission Regulation (EC) No. 93/2005 amending Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards processing of animal by-products of fish origin and commercial documents for the transportation of animal by-products(11);

“inspector” means a person appointed by the Secretary of State or a local authority to be an inspector for the purposes of these Regulations;

“local authority” means—

- (a) where there is, within the meaning of the Local Government Changes for England Regulations 1994(12), a unitary authority for that local government area, that authority;
- (b) where there is not a unitary authority—
 - (i) in a metropolitan district, the council of that district;
 - (ii) in a non-metropolitan county, the council of that county; or
 - (iii) in each London borough, the council of that borough;
 - (iv) in the City of London, the Common Council.

(2) Category 1 material, Category 2 material and Category 3 material comprise the animal by-products set out in Articles 4, 5 and 6 respectively of the Community Regulation, and other expressions defined in the Community Regulation have the same meaning in these Regulations.

Approvals, etc.

3. Any approval, authorisation, registration, instruction, notice or recognition issued under these Regulations or the Community Regulation must be in writing, and may be made subject to such conditions as are necessary to—

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

(7) OJ No. L112, 19.4.2004, p. 1.

(8) OJ No. L162, 30.4.2004, p. 62.

(9) OJ No. L16, 20.1.2005, p. 46.

(10) OJ No. L19, 21.1.2005, p. 27.

(11) OJ No. L19, 21.1.2005, p. 34.

(12) S.I.1994/867 to which there are amendments not relevant to these Regulations.

PART 2

Collection, transportation, storage, handling, processing and disposal of animal by-products

Category 1 material

4.—(1) Any person who has in his possession or under his control any Category 1 material and who fails to comply with Article 4(2) or Article 4(3) of the Community Regulation is guilty of an offence.

(2) For the purposes of Article 4(2)(b) of the Community Regulation the material may be processed using any of the processing methods 1 to 5.

(3) This regulation does not apply in relation to material referred to in Article 4(1)(e) of the Community Regulation (catering waste from means of transport operating from outside the Community).

Category 2 material

5.—(1) Any person who has in his possession or under his control any Category 2 material and who fails to comply with Article 5(2), Article 5(3) or Article 5(4) (other than the provision in Article 5(4) relating to export) of the Community Regulation is guilty of an offence.

(2) For the purposes of Article 5(2)(b) of the Community Regulation the material may be processed using any of the processing methods 1 to 5.

(3) For the purposes of Article 5(2)(e) of the Community Regulation the animal by-products specified in that paragraph may be applied to land provided that the Secretary of State has not imposed any restrictions relating to animal health in relation to those by-products.

Category 3 material

6. Any person who has in his possession or under his control any Category 3 material and who fails to comply with Article 6(2) or Article 6(3) of the Community Regulation is guilty of an offence.

Mixing mammalian and non-mammalian by-products

7. Where mammalian by-products and non-mammalian by-products are mixed the mixture shall be regarded as mammalian by-products.

Collection, transportation and storage

8.—(1) Any person who fails to comply with Article 7(1), 7(2) or 7(5) of the Community Regulation is guilty of an offence.

(2) For the purposes of paragraph (1), if different categories of animal by-products are transported on one vehicle but in different containers or compartments, and complete separation of the different kinds of by-products cannot be guaranteed, the by-products transported shall be treated as the highest risk category of the by-products transported.

(3) In accordance with Article 7(6) of that Regulation, the provisions of Article 7 do not apply in relation to manure transported within the United Kingdom.

(4) In accordance with Annex II, Chapter X, paragraph 1 to the Community Regulation, animal by-products transported within the United Kingdom may be accompanied by any commercial document that contains the information in Annex II, Chapter III to the Community Regulation, irrespective of the format.

PART 3

Restrictions on access to animal by-products and their use

Restrictions on feeding catering waste and other animal by-products

9.—(1) It is an offence to contravene Article 22(1)(b) of the Community Regulation (which prohibits the feeding of farmed animals with catering waste or feed materials containing or derived from catering waste) and it is also an offence to feed such materials to any other ruminant animal, pig or bird.

(2) It is an offence to feed to any ruminant animal, pig or bird any other animal by-product (unless it has been processed in accordance with the Community Regulation) other than—

- (a) liquid milk or colostrum used on the farm of origin; or
- (b) in accordance with Article 23(2) of the Community Regulation as applied by regulation 26(3) of these Regulations.

Intra-species recycling

10.—(1) It is an offence to contravene Article 22(1)(a) of the Community Regulation (which prohibits intra-species re-cycling).

(2) Notwithstanding paragraph (1), it is not an offence to feed fish with processed animal protein derived from the bodies or parts of bodies of fish if this is done in accordance with Articles 2 to 4 of, and Annex I to, Commission Regulation (EC) No. 811/2003.

(3) The Secretary of State is the competent authority for the purposes of Article 5 of Commission Regulation (EC) No. 811/2003.

Access to catering waste and other animal by-products

11. This regulation applies in relation to—

- (a) catering waste of all kinds (including catering waste to which the Community Regulation does not apply because of Article 1(2)(e) of that Regulation) unless it has been either—
 - (i) processed using method 1 in Annex V, Chapter III to the Community Regulation, or
 - (ii) treated in accordance with the Community Regulation and these Regulations; and
- (b) other animal by-products that have not been processed or treated in accordance with the Community Regulation and these Regulations.

(2) Any person who brings any catering waste or other animal by-product (other than milk, colostrum, manure or digestive tract content) on to any premises where any livestock is kept is guilty of an offence.

(3) Paragraph (2) does not apply if the occupier of the premises and the person in control of the by-products ensure that livestock do not have access to the by-products, and if the animal by-products are—

- (a) brought on in a vehicle which enters to collect other by-products and the by-products are not removed from the vehicle while on the premises;
- (b) brought on, in accordance with the approval or authorisation for the relevant plant, to premises where the following plants are situated—
 - (i) a collection centre, petfood plant, incinerator or other approved premises which was in operation as an approved premises on 1st November 2002; or

- (ii) a Category 3 intermediate plant, a technical plant or a plant where the animal by-products are used for educational, research or diagnostic purposes; or
 - (c) intended for feeding to animals on the premises in accordance with Article 23(2) of the Community Regulation as applied by regulation 26(3) of these Regulations.
- (4) Any person who is in possession of the carcase or part of a carcase of any livestock that has not been slaughtered for human consumption must, pending consignment or disposal in accordance with the Community Regulation and these Regulations, ensure that it is held in such a way that animals and birds (including wild animals and birds) do not have access to it, and failure to do so is an offence.
- (5) It is an offence for any person to allow livestock to have access to any catering waste or other animal by-product except—
- (a) manure;
 - (b) milk or colostrum;
 - (c) digestive tract content that has been applied to land provided that livestock are not allowed on to the land for at least three weeks after application; or
 - (d) compost produced and applied to land in accordance with regulation 16 provided the conditions of that regulation are complied with.
- (6) It is an offence for any person to allow any animal to have access to material derived from catering waste or other animal by-product in a biogas or composting plant, except that it is not an offence for wild birds to have access to the material during the secondary or subsequent phase of composting.
- (7) In this regulation “livestock” means all farmed animals, and any other ruminant animals, pigs and birds (other than wild birds).

Pasture land

12.—(1) It is an offence to contravene Article 22(1)(c) of the Community Regulation (application of material to pasture land).

(2) For the purposes of paragraph (1), pasture land is land that is intended to be used for grazing or cropping for feedingstuffs following the application or deposit of organic fertilisers and soil improvers (other than manure or digestive tract content) within the following periods—

- (a) two months in the case of pigs; and
- (b) three weeks in the case of other farmed animals.

(3) Any person who—

- (a) uses pasture land for grazing within the period specified in paragraph (2); or
- (b) feeds to pigs or other farmed animals within that period anything cropped from pasture land during that period;

is guilty of an offence.

PART 4

Approved premises and the competent authority

The competent authority

13.—(1) The Secretary of State is the competent authority for the purposes of granting approvals under—

- (a) Chapter III and Chapter IV of the Community Regulation;
- (b) the Annexes to that Regulation;
- (c) Commission Regulation (EC) No. 92/2005; and
- (d) these Regulations.

(2) She is also the competent authority for—

- (a) checking intermediate plants in accordance with Articles 10(2)(d) and 10(3)(d) of the Community Regulation;
- (b) checking storage plants in accordance with Article 11(2)(b) of that Regulation;
- (c) validating and checking Category 1 and Category 2 processing plants in accordance with Articles 13(2)(c) and 13(2)(e) of that Regulation, supervising Category 1, 2 and 3 processing plants in accordance with Annex V, Chapter IV, paragraph 1 to that Regulation, and validating those plants in accordance with Annex V, Chapter V, paragraph 1 to that Regulation;
- (d) authorising the temporary use of a Category 2 processing plant for the processing of Category 1 material in accordance with Annex VI, Chapter 1, paragraph 2 to that Regulation;
- (e) checking oleochemical plants in accordance with Article 14(2)(d) of that Regulation and receiving records presented in accordance with Article 14(2)(c) of that Regulation;
- (f) checking biogas plants and composting plants in accordance with Article 15(2)(c) of that Regulation;
- (g) validating and checking Category 3 processing plants in accordance with Article 17(2)(c) and 17(2)(e) of that Regulation;
- (h) authorising the temporary use of a Category 3 processing plant for the processing of Category 1 or Category 2 material in accordance with Annex VII, Chapter 1, paragraph 2 to that Regulation, or the use of a Category 2 processing plant as a collection centre in accordance with Annex IX, paragraph 3 to that Regulation;
- (i) receiving records relating to a petfood or technical plant presented in accordance with Article 18(2)(a)(iv) of that Regulation;
- (j) recognising laboratories for the purposes of analysing samples from petfood and technical plants in accordance with Article 18(2)(a)(iii) of that Regulation, receiving information under Article 18(2)(a)(v) of that Regulation, and checking petfood plants and technical plants in accordance with Article 18(2)(b) of that Regulation;
- (k) supervising reprocessing in accordance with Article 25(2)(c) and (d) of that Regulation;
- (l) carrying out inspection and supervision in accordance with Article 26 of that Regulation;
- (m) giving instructions for the purposes of Annex II, Chapter II, paragraph 4 to that Regulation;
- (n) receiving commercial documents presented in accordance with under Annex II, Chapter V to that Regulation;

- (o) authorising a representative point in the combustion chamber of an incinerator in accordance with Annex IV, Chapter II, paragraph 3 to that Regulation, and inspecting incinerators in accordance with Annex IV, Chapter VII, paragraph 8 to that Regulation(13); and
 - (p) authorising specific requirements in accordance with Annex VI, Chapter II, Part C, paragraph 14 to that Regulation(14).
- (3) The use of the processes described in Annexes I to V to Commission Regulation (EC) No. 92/2005 is authorised in accordance with Articles 1 and 2 of that Regulation and the Secretary of State is the competent authority for the purposes of ensuring that Article 5(3) of that Regulation is complied with.

Approval of premises

14.—(1) No person may operate any—

- (a) category 1, 2 or 3 intermediate plant;
- (b) storage plant;
- (c) incineration or co-incineration plant;
- (d) category 1 or category 2 processing plant;
- (e) category 2 or category 3 oleochemical plant;
- (f) biogas or composting plant;
- (g) category 3 processing plant;
- (h) petfood or technical plant; or
- (i) plant that uses any of the processes described in Annexes I to V to Commission Regulation (EC) No. 92/2005,

for the storage, processing, treatment, disposal or use of animal by-products or processed products unless —

- (j) the premises;
- (k) the operator of the premises; and
- (l) the equipment (if any);

are approved for that purpose in accordance with the Community Regulation and these Regulations.

(2) The operator of approved premises must ensure that—

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

(3) The operator of a high capacity incineration or co-incineration plant that incinerates or co-incinerates material referred to in Article 4(1)(b) of the Community Regulation must dispose of the ash in accordance with Annex IV, Chapter VII, paragraph 4 of the Community Regulation in the same way as the operator of a low capacity incineration plant; but for the avoidance of doubt, this provision does not apply in relation to the incineration or co-incineration of a product derived from material referred to in Article 4(1)(b) of the Community Regulation that has already been processed or treated in accordance with the Community Regulation.

(13) Chapter VII was added to Annex IV by Commission Regulation (EC) No. 808/2003.

(14) This paragraph was added by Commission Regulation (EC) No. 808/2003.

- (4) Any person who fails to comply with any provision of this regulation is guilty of an offence.

Biogas and composting plants

15.—(1) The provisions of Part I of Schedule 1 to these Regulations apply in a biogas and composting plant used for treating any animal by-products (including catering waste) in addition to the requirements of paragraphs 1 to 11 of Annex VI, Chapter II to the Community Regulation.

(2) In accordance with Article 6(2)(g) of and Annex VI, Chapter II, paragraph 14 to the Community Regulation—

- (a) catering waste treated in a biogas or composting plant must be treated either in accordance with Annex VI, Chapter II, paragraphs 12 or 13 of the Community Regulation or in accordance with Part II of Schedule 1 to these Regulations; and
 - (b) any other animal by-product treated in a biogas or composting plant must be treated in accordance with Annex VI, Chapter II, paragraphs 12 or 13 of the Community Regulation.
- (3) Any operator who fails to comply with this regulation is guilty of an offence.

Composting catering waste on the premises on which it originates

16. In accordance with Article 6(2)(g) of, and Annex VI, Chapter II, paragraph 14 to the Community Regulation, the provisions of that Chapter and of regulation 14(1)(f) above do not apply to the composting of Category 3 catering waste on the premises on which it originates provided that —

- (a) the decomposed material is only applied to land at those premises;
- (b) no ruminant animals or pigs are kept at the premises; and
- (c) if birds are kept at the premises the material is composted in a secure container which prevents the birds having access to it during decomposition.

Processing and intermediate plants' own checks

17.—(1) Any person who fails to comply with Article 25(1) of the Community Regulation is guilty of an offence.

(2) Any person who fails to comply with Article 25(2) of the Community Regulation is guilty of an offence.

(3) The operator must record the action taken in accordance with Article 25(2) of the Community Regulation as soon as is reasonably practicable, and failure to do so is an offence.

(4) Schedule 2 (ruminant derived fluid) has effect in relation to fluid arising from the processing of ruminant animal by-products.

Sampling at processing plants

18.—(1) If a processing plant is processing Category 1 or Category 2 material and processed proteinaceous material is to be sent to landfill (or, in the case of Category 2 material, is applied to land or sent to a biogas or composting plant) the operator must, once every week—

- (a) take from the outlet of the cooker in which the material is processed a sample of at least 50 grams of processed proteinaceous material; and
- (b) send the sample to a laboratory approved to test it for *Clostridium perfringens*.

(2) If a processing plant is processing Category 3 material and the processed proteinaceous material is intended for use in feedingstuffs the operator must, on each day that the material is consigned from the premises—

- (a) take a representative sample of the processed proteinaceous material , and
 - (b) send it to a laboratory approved to test it for Salmonella and *Enterobacteriaceae*.
- (3) If a processing plant is processing Category 3 material and the processed proteinaceous material is not intended for use in feedingstuffs the operator must, once every week —
- (a) take a sample of the processed proteinaceous material that is consigned from the premises; and
 - (b) send the sample to a laboratory approved to test it for Salmonella and *Enterobacteriaceae*.
- (4) Any person who fails to comply with any provision of this regulation is guilty of an offence.

Sampling at biogas and composting plants

19.—(1) In the case of biogas and composting plants the operator must, at intervals specified in the approval, take a representative sample of material that has been treated to the time temperature parameters specified in Part II of Schedule 1 to these Regulations or the Community Regulation and send it for testing for Salmonella and *Enterobacteriaceae* (or, in the case of material derived from catering waste, Salmonella only) in a laboratory approved to carry out those tests.

(2) In the event of tests establishing that treated material does not comply with the limits in Annex VI, Chapter II, paragraph 15 to the Community Regulation, the operator must—

- (a) immediately notify the Secretary of State, giving full details of the failure, the nature of the sample and the batch from which it was derived;
 - (b) ensure that no digestion residue or compost suspected or known to be contaminated is moved from the premises unless—
 - (i) it has been re-treated under the supervision of the Secretary of State and re-sampled and re-tested by the Secretary of State, and the re-testing has shown that the re-treated digestion residue or compost complies with the standards in the Community Regulation; or
 - (ii) it is consigned for processing or incineration at an approved processing plant or incinerator or (in the case of catering waste) it is consigned to landfill; and
 - (c) record the action taken in accordance with this regulation.
- (3) Any person who fails to comply with any provision of this regulation is guilty of an offence.

Samples sent to laboratories

20.—(1) Whenever an operator sends a sample to a laboratory in accordance with this Part, he must send with the sample the following information in writing—

- (a) the name and address of the premises at which the sample was taken;
 - (b) the date on which the sample was taken; and
 - (c) the description and identity of the sample.
- (2) No person shall tamper with a sample taken under these Regulations with intent to affect the result of the test.
- (3) The operator shall keep a record of all results of laboratory tests.
- (4) Any person who fails to comply with paragraphs (1) or (3) or who contravenes paragraph (2) is guilty of an offence.

Laboratories

21.—(1) The Secretary of State shall approve laboratories under this regulation to carry out one or more of the tests in this regulation if she is satisfied that they have the necessary facilities, personnel and operating procedures to do so.

(2) In deciding whether to grant or continue an approval, the Secretary of State may require the laboratory to successfully undertake any quality control tests as she reasonably thinks fit.

(3) The operator of a laboratory approved under this regulation carrying out tests for the purposes of these Regulations or the Community Regulation must do so in accordance with the following provisions, and failure to do so is an offence.

(4) A test for *Clostridium perfringens* must be carried out in accordance with the method in Part I of Schedule 3 or (if specified in the approval) with a method which conforms with ISO 7937/1997 (BS-EN 13401:1999) (Enumeration of *Clostridium perfringens*) or equivalent(**15**).

(5) A test for Salmonella must be carried out in accordance with one of the methods in Part II of Schedule 3 or (if specified in the approval) with a method that conforms with—

- (a) ISO 6579/2002/BS-EN 12824:1998 (Detection of Salmonella) or equivalent(**16**); or
- (b) NMKL 71: 1993 or equivalent (**17**).

(6) A test for *Enterobacteriaceae* must be carried out in accordance with the method in Part III of Schedule 3 or (if specified in the approval) with a method which conforms with ISO 7402/1993 (BS 5763: Part 10: 1993) (Enumeration of *Enterobacteriaceae*) or equivalent(**18**).

(7) Where tests are carried out for the detection of any of the following, the operator of a laboratory approved under this regulation must immediately notify the Secretary of State and the operator of the premises if—

- (a) the tests fail to establish that the material is free from *Clostridium perfringens*;
- (b) the tests fail to establish that the material is free from Salmonella; or
- (c) the material fails the test for *Enterobacteriaceae* in paragraph 5, Part III of Schedule 3;

and failure to do so is an offence.

(8) The operator of a laboratory approved under this regulation must in relation to processed material notify the Secretary of State on the last day of each month of the number, type and results of tests carried out in that month, and failure to do so is an offence.

(9) If the sample has been sent to the approved laboratory from premises outside England, the requirements in this regulation to notify the Secretary of State shall be construed as a requirement to notify the competent authority for the premises from which the sample was sent.

(15) Published by the British Standards Institute, British Standards House, 389 Chiswick High Road, London W4 4AL.

(16) Published by the British Standards Institute; see above.

(17) Published by the British Standards Institute; see above.

(18) Published by the British Standards Institute; see above.

PART 5

Placing animal by-products and processed products on the market

Placing on the market of processed animal protein and other processed products that could be used as feed material

22. Any person who places on the market processed animal protein or other processed products that could be used as feed material which do not meet the requirements of Article 19 of the Community Regulation is guilty of an offence.

Placing on the market of petfood, dogchews and technical products

23.—(1) Any person who places on the market petfood, dogchews, technical products (other than fat derivatives produced from category 2 material) or those animal by-products referred to in Annex VIII to the Community Regulation, which do not meet the requirements of Article 20(1) of the Community Regulation is guilty of an offence.

(2) Any person who places on the market fat derivatives produced from category 2 material which do not meet the requirements of Article 20(3) of the Community Regulation is guilty of an offence.

(3) This regulation does not apply in relation to—

- (a) technical products produced in accordance with Commission Regulation (EC) No. 878/2004; or
- (b) photographic gelatine produced in accordance with Commission Decision 2004/407/EC.

Placing on the market of compost or digestion residues for use on agricultural land

24. Any person who places on the market compost or digestion residues for use on agricultural land must ensure that it is labelled or accompanied by documentation in such a way that the recipient has his attention drawn to the requirements of regulation 12 (provisions relating to pasture land) and any person who fails to do so is guilty of an offence.

PART 6

Derogations

Competent authority for Chapter V of the Community Regulation

25. The Secretary of State is the competent authority for the purposes of Chapter V of the Community Regulation (derogations).

Derogations regarding the use of animal by-products

26.—(1) The use of animal by-products for diagnostic, educational or research purposes is permitted if it is in accordance with an authorisation.

(2) The use of animal by-products for taxidermy is permitted if—

- (a) it is in accordance with an authorisation; and
- (b) it is in an approved technical plant.

(3) The feeding of animal by-products specified in Article 23(2)(b) of the Community Regulation to—

- (a) zoo animals;
- (b) circus animals;
- (c) reptiles and birds of prey other than zoo or circus animals;
- (d) dogs from recognised kennels or recognised packs of hounds; or
- (e) maggots for fishing bait,

is permitted if it is in accordance with an authorisation.

(4) The Secretary of State shall maintain a register of premises authorised for the feeding of such animal by-products to zoo or circus animals, dogs from recognised kennels or recognised packs of hounds and maggots for fishing bait.

(5) The register in the previous paragraph shall contain the following information—

- (a) the name of the operator;
- (b) the address of the premises; and
- (c) the business carried on at the premises.

(6) In this regulation and in the following regulation “zoo” means premises either licensed under the Zoo Licensing Act 1981(19) or premises in relation to which the Secretary of State has granted a dispensation under section 14 of that Act.

(7) Any person who uses animal by-products for any of the purposes in this regulation other than in accordance with an authorisation is guilty of an offence.

Collection centres

27.—(1) For the purposes of Article 23(2) of the Community Regulation no person may operate a collection centre for the purposes of feeding animal by-products to—

- (a) dogs from recognised kennels or recognised packs of hounds; or
- (b) maggots for fishing bait,

unless the premises and the operator of the premises are authorised.

(2) No person may operate any premises on which animal by-products are collected and treated for feeding to zoo or circus animals on other premises unless the premises on which the by-products are collected and treated and the operator of those premises are authorised.

(3) Operators of premises authorised under this regulation must maintain and operate the premises in accordance with—

- (a) the conditions applicable to a collection centre in Annex IX to the Community Regulation;
- (b) the conditions of the authorisation; and
- (c) all other relevant requirements of the Community Regulation and these Regulations.

(4) They must also ensure that any person employed on, or invited on to, the premises complies with those conditions and requirements.

(5) Any person who fails to comply with any provision of this regulation is guilty of an offence.

Burial of pet animals

28. In accordance with Article 24(1)(a) of the Community Regulation, dead pet animals may be buried.

Remote areas

29.—(1) Only the Isles of Scilly and Lundy Island are remote areas for the purposes of Article 24(1)(b) of the Community Regulation and accordingly the animal by-products referred to in that sub-paragraph and originating in those areas may be disposed of by burning or burial on site provided that this is done in accordance with Part C of Annex II to Commission Regulation (EC) No. 811/2003(20).

(2) The Secretary of State is the competent authority for the purposes of Article 7 of, and Part C of Annex II to, Commission Regulation (EC) No. 811/2003.

Burial in the event of a disease outbreak

30.—(1) In accordance with Article 24(1)(c) of the Community Regulation, if there is an outbreak of disease mentioned in List A of the International Office of Epizootic Diseases, on site burning or burial (as defined in Part A of Annex II to Commission Regulation (EC) No. 811/2003) of animal by-products is not an offence if the animal by-product is transported, and buried or burnt, in accordance with—

- (a) a notice given by the Secretary of State under Article 24(1)(c) authorising disposal in accordance with that provision; and
- (b) the provisions of Article 6 of and Part B of Annex II to Commission Regulation (EC) No. 811/2003.

(2) The Secretary of State is the competent authority for the purposes of Article 6 of and Part B of Annex II to Commission Regulation (EC) No. 811/2003.

Burning and burial of bees and apiculture products

31. In accordance with Article 8 of Commission Regulation (EC) 811/2003, bees and Category 2 apiculture products may be disposed of by burial or burning on site if this is done in accordance with that Article.

PART 7

Records

Records

32.—(1) Any person required to keep a record under these Regulations must keep it for at least two years, and failure to do so is an offence.

(2) A record may be in written or electronic form.

Records for consigning, transporting or receiving animal by-products

33. Any person who fails to comply with Article 9(1) of the Community Regulation is guilty of an offence.

Records for burying or burning of animal by-products

34. Any person who fails to comply with Article 9 of Commission Regulation (EC) No. 811/2003 is guilty of an offence.

(20) OJ No. L117, 13.5.2003, p. 14.

Records for disposal or use on premises

35.—(1) Subject to paragraph (2), an operator of any premises who disposes or uses any animal by-product (other than manure or material excluded from the Community Regulation by Article 1(2) of that Regulation), or processed product on the premises must make on disposal or use a record of each disposal or use, showing the date on which the animal by-product was disposed of or used and the quantity and description of the material disposed of or used, and failure to do so is an offence.

(2) The requirement in paragraph (1) does not apply to disposal on the premises by feeding of animal by-products or processed products to reptiles and birds of prey other than zoo or circus animals.

Delivery records to be kept by operators of biogas and composting plants

36. The operator of any biogas or composting plant receiving catering waste must record—

- (a) the date on which the catering waste was delivered to the premises;
- (b) the quantity and description of the catering waste, including a statement of whether measures were taken at source to ensure that meat was not included in the waste; and
- (c) the name of the haulier;

and failure to do so is an offence.

Treatment records for biogas and composting plants

37. The operator of a biogas or composting plant treating catering waste or other animal by-products must record—

- (a) the dates on which the material is treated;
- (b) a description of the material treated;
- (c) the quantity of material treated;
- (d) the result of all checks carried out at the critical points identified under paragraph 4 of Part I of Schedule 1; and
- (e) sufficient information to show that the material has been treated to the required parameters;

and failure to do so is an offence.

Records for approved laboratories

38. The operator of a laboratory approved under regulation 21 must, as soon as is reasonably practicable, record—

- (a) the name and address of the premises at which the sample was taken;
- (b) the date on which the sample was taken;
- (c) the description and identity of the sample;
- (d) the date on which the sample was received at the laboratory;
- (e) the date on which the sample was tested at the laboratory; and
- (f) the result of the test;

and failure to do so is an offence.

Records to be kept for consignments of compost or digestion residue

39.—(1) Subject to paragraph (2), the occupier of premises on which ruminant animals, pigs or birds are kept must, as soon as is reasonably practicable, record—

- (a) the date on which compost or digestion residue is brought on to those premises;
- (b) the quantity and description of the compost or digestion residue;
- (c) the land to which the compost or digestion residue is applied;
- (d) the date of such application;
- (e) the date on which the land is first cropped or the date on which ruminant animals, pigs or birds (other than wild birds) were allowed access to the land, whichever is the sooner;

and failure to do so is an offence.

(2) The requirement in paragraph (1) to make records does not apply in the case of any supply of compost or digestion residue for use at any premises used only as a dwelling.

PART 8

Administration and enforcement

Grant of approvals, etc.

40.—(1) The Secretary of State shall grant an approval, authorisation or registration under these Regulations if she is satisfied that the requirements of the Community Regulation and these Regulations will be complied with.

(2) An approval, authorisation or registration shall where appropriate 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 Secretary of State refuses to grant an approval, authorisation or registration, or grants it subject to a condition she shall by notice in writing served on the applicant —

- (a) give the reasons; and
- (b) explain the right of the applicant to make written representations to a person appointed by her for the purpose.

(4) During validation of premises for the purposes of granting an approval, authorisation or registration, the Secretary of State may direct in writing how the processed or treated material must be disposed of, and failure to comply with this direction is an offence.

Suspension, amendment and revocation of approvals, etc.

41.—(1) The Secretary of State, by notice served on the operator—

- (a) must suspend immediately an approval, authorisation or registration if any of the conditions under which it was granted are not complied with, and
- (b) may suspend or amend an approval, authorisation or registration if she is satisfied that the provisions of the Community Regulation or these Regulations are not complied with.

(2) A suspension or amendment under paragraph 1(b)—

- (a) shall have immediate effect if the Secretary of State considers that it is necessary for the protection of public or animal health;
 - (b) otherwise shall not have effect for at least 21 days following service of the notice.
- (3) The notice shall—
- (a) state when it comes into effect;
 - (b) give the reasons; and
 - (c) explain the right of the operator of the premises to make written representations to a person appointed by the Secretary of State.
- (4) If the notice does not have immediate effect, and representations are made under regulation 42, an amendment or suspension shall not have effect until the final determination by the Secretary of State in accordance with the following regulation unless the Secretary of State decides that it is necessary for the protection of public or animal health for the amendment or suspension to have immediate effect and gives notice to the operator.
- (5) The Secretary of State may by notice revoke an approval, authorisation or registration if, following representations made under regulation 42, if any, in accordance with the following regulation, which upholds a suspension, she is 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.

Representations to an appointed person

- 42.**—(1) A person may make written representations concerning a refusal, suspension or amendment under regulations 40 or 41 within 21 days of notification of the decision to a person appointed for the purpose by the Secretary of State.
- (2) The appointed person shall report in writing to the Secretary of State.
- (3) The Secretary of State shall give to the appellant written notification of her final determination and the reasons for it.

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, he may —
- (a) serve a notice on any person in possession or control of any animal by product requiring him to dispose of it as may be specified in the notice (and if necessary specify how to store it pending disposal); 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, he 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 must 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 is guilty of an offence.

Powers of entry

46.—(1) An inspector shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours, to enter any land or premises (including any domestic premises if they are being used for any purpose in connection with the Community Regulation or these Regulations) for the purpose of ensuring that the Community Regulation and these Regulations are being complied with; and in this regulation “premises” includes any vehicle or container.

(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 afford him such assistance as he may reasonably require (including providing him 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;
- (f) mark any animal, animal by-product or other thing for identification purposes; and
- (g) take with him—
 - (i) such other persons as he 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) is guilty of an offence.

(4) If an inspector enters any unoccupied premises he shall leave them as effectively secured against unauthorised entry as he found them.

Obstruction

47. Any person is guilty of an offence if he—

- (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 of him for the performance of his functions under these Regulations;
- (c) furnishes to any person acting in the execution of these Regulations any information which he knows to be false or misleading, or
- (d) fails to produce a record when required to do so to any person acting in the execution of these Regulations.

Penalties

48.—(1) A person guilty of an offence under these Regulation 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.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved 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 person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) For the purposes of paragraph (2) above, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Enforcement

49.—(1) These Regulations shall be enforced by the Secretary of State in relation to—

- (a) premises which are licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995(21);
- (b) premises which are licensed under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(22);
- (c) premises which are licensed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(23);
- (d) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(24)
- (e) combined premises as defined in the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(25).

(2) From 1st January 2006 (when the Regulations in paragraph (1) will be revoked in England by the coming into force of the Food Hygiene (England) Regulations 2005(26)), they shall be enforced

(21) S. I. 1995/539 as amended by S.I. 1995/731, 1995/1763, 1995/2148, 1995/2200, 1995/3124, 1995/3189, 1996/1148, 1996/2235, 1997/1729, 1997/2074, 2000/225, 2000/656, 2000/2215, 2001/1512, 2001/1739, 2001/1771, 2001/2601, 2001/3451, 2002/118 and 2002/889.

(22) S.I. 1995/540 as amended by S.I. 1995/1763, 1995/2148, 1995/2200, 1995/3205, 1997/1729, 2000/225, 2000/656, 2000/2215, 2001/3399, 2002/889 and 2005/209.

(23) S.I. 1995/2148 as amended by S.I. 1995/3205 and 2000/656.

(24) S.I. 1994/3082 as amended by S.I. 1995/539, 1995/1763, 1995/2200, 1995/3205, 1996/1499, 1999/683, 2000/225, 2000/656, 2000/790, 2000/2215, 2001/1512, 2001/1771, 2001/2601 and 2002/118.

(25) S.I. 1995/3205 as amended by S.I. 1996/3124, S. I. 2000/225, S. I. 2000/656, 2000/2215, 2001/1512, 2001/1739, 2001/1771, 2001/2601, 2001/3451 and 2002/118.

(26) S. I. 2005/2059.

by the Secretary of State in any slaughterhouses, game handling establishments, and cutting plants placing fresh meat on the market where the Food Standards Agency enforces those Regulations.

(3) Other than as specified in paragraphs (1) and (2) these Regulations shall be enforced by the local authority.

(4) The Secretary of State 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 Secretary of State and not by the local authority.

Transitional measures: technical products

50.—(1) Notwithstanding regulations 4 and 5, the placing on the market of the types of Category 1 and 2 material referred to in Article 1 of Commission Regulation (EC) No. 878/2004 for consignment to a dedicated technical plant approved in accordance with Article 18 of the Community Regulation is authorised in accordance with Article 2 of that Regulation.

(2) It is an offence to fail to comply with Article 4(1) of Commission Regulation (EC) No. 878/2004 (placing on the market) or Article 5 of that Regulation (collection and transportation).

Transitional measures: photographic products from gelatine

51.—(1) Notwithstanding regulation 4, in accordance with Article 1 of Commission Decision 2004/407/EC, the use of gelatine is authorised for the manufacture of photographic products if it has been—

- (a) produced from Category 1 material in accordance with that Decision; and
- (b) imported in accordance with that Decision.

(2) The manufacture of photographic products must be carried out in the photographic factory listed in Annex I to that Decision, and in accordance with an approval granted for the purpose by the Secretary of State.

(3) The Secretary of State shall immediately suspend the approval if the conditions of this regulation are not complied with.

(4) No person shall—

- (a) transport the photographic gelatine in a vehicle that at the same time transports any product intended for food or feed, including gelatine intended for other purposes than use in the photographic industry;
- (b) use the imported gelatine other than in the approved photographic factory;
- (c) use it for any purpose other than photographic production; or
- (d) send it to another member State.

(5) The operator of the approved photographic factory shall ensure that any surpluses or residues of and other waste derived from the photographic gelatine are—

- (a) transported in sealed leak-proof containers labelled “for disposal only” in vehicles under satisfactory hygiene conditions;
- (b) disposed of as waste by incineration in accordance with Directive 2000/76/EC of the European Parliament and of the Council⁽²⁷⁾ or in a landfill site in accordance with Council Directive 1999/31/EC⁽²⁸⁾; or

⁽²⁷⁾ (OJ No. L 332, 28.12.2000, p. 91.

⁽²⁸⁾ (OJ No. L 182, 16.7.1999, p. 1; Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

(c) exported to the country of origin in accordance with Council Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community⁽²⁹⁾.

(6) The operator of the approved photographic factory shall keep records for at least two years detailing the purchases and uses of photographic gelatine, as well as the disposal of residues and surplus material.

(7) An inspector may serve a notice on any person in possession or control of any material to which this regulation applies and which has not been transported, used or disposed of in accordance with this regulation, requiring him to dispose of the material as specified in the notice.

(8) Failure to comply with any provision of this regulation or a notice served under it is an offence.

Transitional measures: milk

52. The collection, transportation, processing, use and storage of milk, milk-based products and milk-derived products is authorised in accordance with Article 1 of Commission Regulation (EC) No. 79/2005, and the Secretary of State is the competent authority for the purposes of issuing registrations and authorisations in accordance with that Regulation.

Transitional measures with expiry dates

53.—(1) Schedule 4 (transitional measures) shall have effect.

(2) Part I of Schedule 4 (transitional measures on the collection, transportation and disposal of former foodstuffs) shall cease to have effect on 1st January 2006.

(3) Part II of Schedule 4 (oleochemical plants using rendered fats from Category 2 and 3 materials) shall cease to have effect on 1st November 2005.

Repeals and revocation

54.—(1) The following are repealed in so far as they have effect in England—

(a) sections 1, 4, 5, 6, 7, 8, 9, 10, 12, 19 to 26, 29, 33 and, in section 34, the definition of “horse”, “construction regulations”, “licence”, “knacker’s yard” of the Slaughterhouses Act 1974⁽³⁰⁾; and

(b) section 6 of the Dogs Act 1906⁽³¹⁾.

(2) The Rendering (Fluid Treatment) (England) Order 2001⁽³²⁾ and the Animal By-Products Regulations 2003⁽³³⁾ are revoked.

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

19th August 2005

⁽²⁹⁾ (OJ No. L 30, 6.2.1993, p. 1; Regulation as last amended by Commission Regulation (EC) No 2557/2001 (L 349, 31.12.2001, p. 1).

⁽³⁰⁾ 1974 c. 3.

⁽³¹⁾ 6 Edw 7 c. 32.

⁽³²⁾ S. I. 2001/1515.

⁽³³⁾ S. I. 2003/1482.