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STATUTORY INSTRUMENTS

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**2005 No. 2347**

**The Animal By-Products Regulations 2005**

**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(1);
- (b) premises which are licensed under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(2);
- (c) premises which are licensed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(3);
- (d) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(4)
- (e) combined premises as defined in the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(5).

(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(6)), they shall be enforced 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.

(1) 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.

(2) 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.

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

(4) 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.

(5) 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.

(6) S. I. 2005/2059.

(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<sup>(7)</sup> or in a landfill site in accordance with Council Directive 1999/31/EC<sup>(8)</sup>; or

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<sup>(7)</sup> (OJ No. L 332, 28.12.2000, p. 91.

<sup>(8)</sup> (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<sup>(9)</sup>.

(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<sup>(10)</sup>; and

(b) section 6 of the Dogs Act 1906<sup>(11)</sup>.

(2) The Rendering (Fluid Treatment) (England) Order 2001<sup>(12)</sup> and the Animal By-Products Regulations 2003<sup>(13)</sup> are revoked.

(9) (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).

(10) 1974 c. 3.

(11) 6 Edw 7 c. 32.

(12) S. I. 2001/1515.

(13) S. I. 2003/1482.