

2005 No. 3068

FOOD, ENGLAND

**The Bovine Products (Restriction on Placing on the Market)
(England) (No. 2) Regulations 2005**

<i>Made</i> - - - -	<i>24th October 2005</i>
<i>Laid before Parliament</i>	<i>9th November 2005</i>
<i>Coming into force</i> - -	<i>1st January 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated(b) for the purposes of that section in relation to measures in the veterinary and phytosanitary fields for the protection of public health.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c) as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(d) there has been open and transparent public consultation during the preparation of the following Regulations.

Title, application and commencement

1. These Regulations may be cited as the Bovine Products (Restriction on Placing on the Market) (England) (No. 2) Regulations 2005, apply in relation to England only and come into force on 1st January 2006.

Interpretation

2.—(1) In these Regulations —

“the Agency” means the Food Standards Agency;

“animal feed” and “human food” have the meanings that they respectively bear in Regulation 999/2001;

(a) 1972 c.68.
(b) S.I. 1999/2027.
(c) OJ No. L31, 1.2.2002, p.1.
(d) OJ No. L245, 29.9.2003, p.4.

“authorised officer”, in relation to the relevant enforcement authority, means any person (whether or not an officer of the authority) authorised by it in writing, either generally or specially, to act in matters arising under these Regulations and in relation to —

- (a) a slaughterhouse;
- (b) a cutting plant;
- (c) an establishment to which Chapter I of Section V of Annex III to Regulation 853/2004 applies; and
- (d) an establishment at which meat products are produced, includes an official veterinarian and an official auxiliary;

“bovine animal” includes —

- (a) buffalo of the species *Bubalus bubalis*; and
- (b) *Bison bison*;

“cutting plant” means an establishment which is used for boning and/or cutting up fresh meat for placing on the market as defined in Article 3.8 of Regulation 178/2002 and which —

- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31st December 2005, operating as licensed cutting premises under the Fresh Meat (Hygiene and Inspection) Regulations 1995(a);

“cutting up” has the meaning that it bears in Regulation 853/2004;

“Decision 2005/598”, “Directive 2004/41”, “Regulation 999/2001”, “Regulation 178/2002”, “Regulation 1642/2003”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 932/2005” and “Regulation 1688/2005” have the meanings respectively given to them in the Schedule;

“establishment” has the meaning given in Article 2.1(c) of Regulation 852/2004;

“fertilisers” has the meaning given to it in Article 3.1(k) of Regulation 999/2001;

“food authority” has the meaning that it bears by virtue of section 5(1) of the Food Safety Act 1990(b), except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of that Act (which deals with the Inner Temple and Middle Temple);

“fresh meat” means meat that has not undergone any preserving process other than chilling, freezing or quick-freezing, including meat that is vacuum-wrapped or wrapped in a controlled atmosphere;

“material” and “product” shall respectively be construed in accordance with the meanings that “materials” and “products” bear in Decision 2005/598;

“meat” means edible parts of a bovine animal including its blood;

“meat product” shall be construed in accordance with the definition of the term “meat products” in point 7.1 of Annex I to Regulation 853/2004;

“official auxiliary” means a person who is qualified in accordance with Regulation 854/2004 to act in such a capacity, is appointed by the Agency and works under the authority and responsibility of an official veterinarian;

“official veterinarian” means a veterinarian who is qualified in accordance with Regulation 854/2004 to act in such a capacity and is appointed by the Agency;

“place on the market” means sell, supply in any other way against payment or free of charge and store with a view to supply against payment or free of charge and “placed on the market” shall be construed accordingly;

“port health authority” means —

(a) S.I. 1995/539, revoked with effect from 1st January 2006 by S.I. 2005/2059.
(b) 1990. c. 16.

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984^(a) by section 7(1) of that Act), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act;

“the relevant enforcement authority” means the authority which by virtue of regulation 7 has the duty of executing and enforcing these Regulations; and

“slaughterhouse” means an establishment used for slaughtering and dressing bovine animals, the meat of which is intended for human consumption and which —

- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31st December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995.

(2) Any reference in these Regulations to a food authority includes a reference to a port health authority and in the context of such a reference any reference to a food authority’s area includes a reference to a port health authority’s district.

Prohibition on marketing of certain products derived from older bovine animals

3.—(1) Subject to paragraph (2), no person shall place on the market any product —

- (a) consisting of or incorporating any material derived from a bovine animal born or reared within the United Kingdom before 1st August 1996; and
- (b) intended for use in human food, animal feed or fertilisers.

(2) Nothing in paragraph (1) shall prevent milk derived from a bovine animal born or reared within the United Kingdom before 1st August 1996 from being placed on the market.

Application of various provisions of the Food Safety Act 1990

4. The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations with the modification that any reference in those provisions to that Act or Part thereof shall be construed as a reference to these Regulations —

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)^(b) with the modifications that subsections (2) to (4) shall apply in relation to an offence under regulation 6(1) as they apply in relation to an offence under section 14 or 15 and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “placing on the market” as defined in Article 3.1(b) of Regulation 999/2001;
- (c) section 32 (powers of entry);
- (d) section 33(1) (obstruction etc. of officers);
- (e) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection 1(b) above” shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (d);
- (f) section 35(1) (punishment of offences)^(c), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (d);

(a) 1984 c. 22.

(b) Section 21 was amended by S.I. 2004/3279.

(c) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), Schedule 26, paragraph 42, from a date to be appointed.

- (g) section 35(2) and (3)(a), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (e);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A (offences by Scottish partnerships)(b); and
- (j) section 44 (protection of officers acting in good faith) with the modification that the references to “food authority” shall be deemed to be references to the relevant enforcement authority.

Inspection and seizure of suspected products

5.—(1) An authorised officer of the relevant enforcement authority may at all reasonable times inspect any product that has been placed on the market and paragraphs (2) to (7) shall apply where, on such an inspection or for any other reasonable cause, it appears to the authorised officer that any person has failed to comply with regulation 3 in relation to any product.

(2) The authorised officer may either —

- (a) give notice to the person in charge of the product that, until the notice is withdrawn, the product or any specified portion of it —
 - (i) is not to be further placed on the market for use in human food, animal feed or fertilisers, and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the product and remove it in order to have it dealt with by a justice of the peace.

(3) Where the authorised officer exercises the power conferred by paragraph (2)(a), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that regulation 3 has been complied with in relation to the product and —

- (a) if he is so satisfied, shall forthwith withdraw the notice; and
- (b) if he is not so satisfied, shall seize the product and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer exercises the power conferred by paragraph (2)(b) or (3)(b), he shall inform the person in charge of the product of his intention to have it dealt with by a justice of the peace and —

- (a) any person who under regulation 3 might be liable to a prosecution in respect of the product shall, if he attends before the justice of the peace by whom the product falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under that section in relation to that product.

(5) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that there has been a failure to comply with regulation 3 in relation to any product falling to be dealt with by him under this regulation, he shall condemn the product and order —

- (a) the product to be destroyed or to be so disposed of as to prevent it from being further placed on the market for use in human food, animal feed or fertilisers; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the product.

(6) If a notice under paragraph (2)(a) is withdrawn, or the justice of the peace by whom any product falls to be dealt with under this regulation refuses to condemn it, the relevant enforcement authority shall compensate the owner of the product for any depreciation in its value resulting from the action taken by the authorised officer.

(a) Section 35(3) was amended by S.I. 2004/3279.

(b) Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.

(7) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

Offences and penalties

6.—(1) Any person who contravenes regulation 3 or knowingly contravenes the requirements of a notice given under paragraph (2)(a) of regulation 5 shall be guilty of an offence.

(2) Any person guilty of an offence under this regulation shall be liable —

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(3) No prosecution for an offence consisting of a contravention of regulation 3 or of knowingly contravening the requirements of a notice given under paragraph (2)(a) of regulation 5 shall be begun after the expiry of —

(a) three years from the commission of the offence; or

(b) one year from its discovery by the prosecutor,

whichever is the earlier.

Enforcement

7. These Regulations shall be executed and enforced —

(a) in a slaughterhouse or in a cutting plant, by the Agency; and

(b) in any other premises, by the Agency or the food authority in whose area the premises are situated.

Amendment of the Animal By-Products (Identification) Regulations 1995

8. For paragraph (3) of regulation 3 (meaning of animal by-product) of the Animal By-Products (Identification) Regulations 1995(a) in so far as it applies in relation to England there shall be substituted the following paragraph —

“(3) In these Regulations the definition of “animal by-product” includes—

(a) any product subject to the prohibition imposed by regulation 3 of the Bovine Products (Restriction on Placing on the Market) (England) (No. 2) Regulations 2005; and

(b) any bovine carcass or body part in respect of which a direction for disposal has been given under regulation 10A(5) of the TSE (England) Regulations 2002(b).”.

Revocation

9. The Bovine Products (Restriction on Placing on the Market) (England) Regulations 2005(c) are revoked.

Signed by authority of the Secretary of State for Health

Caroline Flint
Parliamentary Under Secretary of State,
Department of Health

24th October 2005

(a) S.I. 1995/614, amended by S.I. 1995/1955, S.I. 1996/3124, S.I. 1997/2073, S.I. 2000/656, S.I. 2002/1619, S.I. 2002/3231, S.I. 2003/1484 and S.I. 2005/2719.

(b) S.I. 2002/843, amended by S.I. 2002/1253, S.I. 2002/2860, S.I. 2003/1482, S.I. 2004/1518, S.I. 2005/556 and S.I. 2005/2633.

(c) S.I. 2005/2719.

DEFINITIONS OF COMMUNITY LEGISLATION

“Decision 2005/598” means Commission Decision 2005/598/EC prohibiting the placing on the market of products derived from bovine animals born or reared within the United Kingdom before 1st August 1996 for any purpose and exempting such animals from certain control and eradication measures laid down in Regulation (EC) No. 999/2001(a);

“Directive 2004/41” means Directive 2004/41/EC of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(b);

“Regulation 999/2001” means Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies(c) as last amended by Regulation 932/2005;

“Regulation 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety as last amended by Regulation 1642/2003;

“Regulation 1642/2003” means Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;

“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(d) as read with Regulation 1688/2005;

“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(e) as read with Directive 2004/41 and Regulation 1688/2005;

“Regulation 854/2004” means Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(f) as amended by Regulation 882/2004 and as read with Directive 2004/41;

“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(g);

“Regulation 932/2005” means Regulation (EC) No. 932/2005 of the European Parliament and of the Council amending Regulation (EC) No. 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies as regards the extension of the period for transitional measures(h); and

(a) OJ No. L204, 5.8.2005, p.22.

(b) OJ No. L157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p.12).

(c) OJ No. L147, 31.5.2001, p.1.

(d) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3).

(e) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22).

(f) OJ No. L139, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.83).

(g) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1).

(h) OJ No. L163, 23.6.2005, p.1.

“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs^(a).

^(a) OJ No. L271, 15.10.2005, p.17.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations revoke and re-enact with certain changes the Bovine Products (Restriction on Placing on the Market) (England) Regulations 2005 (S.I. 2005/2719), which gave effect in relation to England to Article 1.1 of Commission Decision 2005/598/EC prohibiting the placing on the market of products derived from bovine animals born or reared within the United Kingdom before 1st August 1996 for any purpose and exempting such animals from certain control and eradication measures laid down in Regulation (EC) No. 999/2001 (OJ No. L204, 5.8.2005, p.22). In doing so, these Regulations ensure that that Article continues to have effect in relation to England. The revocation of the Bovine Products (Restriction on Placing on the Market) (England) Regulations 2005 is effected by *regulation 9* of these Regulations.

2. Article 1.1 of Commission Decision 2005/598/EC provides that certain products derived from bovine animals born or reared within the United Kingdom before 1st August 1996 may not be placed on the market.

3. The prohibition contained in Article 1.1 of Commission Decision 2005/598/EC is now given effect by *regulation 3* of these Regulations.

4. The changes effected by these Regulations – which are not relevant to the prohibition contained in Article 1.1 of Commission Decision 2005/598/EC – are necessary in the light of the coming into force with effect from 1st January 2006 of the Food Hygiene (England) Regulations 2005 (S.I. 2005/2059), which provide for the execution and enforcement in relation to England of certain Community instruments relating to food hygiene.

5. These Regulations also —

- (a) apply with modifications certain provisions of the Food Safety Act 1990 (1990 c. 16) for the purposes of these Regulations (*regulation 4*);
- (b) provide for the inspection and seizure of products that are suspected of having been placed on the market in contravention of regulation 3 of these Regulations (*regulation 5*);
- (c) create offences and penalties (*regulation 6*);
- (d) make provision for their enforcement (*regulation 7*); and
- (e) in consequence of regulation 3 of these Regulations make an amendment to regulation 3 of the Animal By-Products (Identification) Regulations 1995 (S.I. 1995/614) in so far as it applies in relation to England (*regulation 8*).

6. A full Regulatory Impact Assessment of the effect that these Regulations will have on the costs of business has been prepared and placed in the library of each House of Parliament. Copies may be obtained from the TSE Division of the Food Standards Agency, Aviation House, Kingsway, London WC2B 6NH.

£3.00

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E1568 11/2005 151568T 19585