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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 470**

**FOOD**

**The Bovine Products (Restriction on Placing  
on the Market) (Scotland) Regulations 2005**

*Made* - - - - 29th September 2005  
*Laid before the Scottish  
Parliament* - - - - 29th September 2005  
*Coming into force* - - 7th November 2005

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, after consultation 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<sup>(2)</sup>, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 and come into force on 7th November 2005.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. 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;

“authorised officer”, in relation to the relevant enforcement authority, means any person appointed, or deemed to be appointed, by that authority under regulation 4;

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(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46) (“the 1998 Act”), Schedule 8, paragraph 15(3). The function conferred on the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, and in so far as exercisable in relation to food (including drink) including the primary production of food, that function was transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(2) O.J. No. L 31, 1.2.02, p.1, as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4).

“bovine animal” includes—

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

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

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(3)</sup>;

“material” and “product” shall respectively be construed in accordance with the meanings that “materials” and “products” bear in 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<sup>(4)</sup>;

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

“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<sup>(5)</sup>, as last amended by 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<sup>(6)</sup>; and

“the relevant enforcement authority” means the authority which by virtue of regulation 8 has the duty of executing and enforcing these Regulations.

### **Prohibition on the placing on the market 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.

### **Appointment of authorised officers**

4.—(1) Subject to paragraph (2), the Agency and any local authority may appoint as authorised officers such persons (whether or not officers of the Agency or the authority) as it considers necessary to act in matters arising under these Regulations.

(2) The following persons shall be deemed to be appointed as authorised officers for the purpose of paragraph (1):—

- (a) in relation to any premises licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995<sup>(7)</sup>—

(3) 1994 c. 39. Section 2 was amended by the Environment Act 1995, Schedule 22, paragraph 232.

(4) O.J. No. L 204, 5.8.05, p.22.

(5) O.J. No. L 147, 31.5.01, p.1.

(6) O.J. No. L 163, 23.6.05, p.1.

(7) S.I. 1995/539, amended by S.I. 1995/731, 1763, 2148, 2200, 3124 and 3189, S.I. 1996/1148 and 2235, S.I. 1997/1729 and 2074, S.S.I. 2000/62, 171 and 288, S.S.I. 2001/160, 358, 394 and 429 and S.S.I. 2002/35 and 234.

- (i) a veterinary surgeon appointed as an authorised officer in relation to those premises in accordance with regulation 8(1) of those Regulations, or
- (ii) any other person appointed as an inspector in relation to those premises in accordance with regulation 8(2) of those Regulations;
- (b) in relation to any premises that are combined premises for the purposes of and are approved under the Meat Products (Hygiene) Regulations 1994<sup>(8)</sup>, a person authorised by the Agency in writing, either generally or specially, to act in matters arising under those Regulations; and
- (c) in relation to any premises that are combined premises for the purposes of and are approved under the Minced Meat and Meat Preparations (Hygiene) Regulations 1995<sup>(9)</sup>, a person—
  - (i) appointed as an authorised officer in relation to those premises in accordance with regulation 12(2) of those Regulations, or
  - (ii) authorised to act in relation to those premises in accordance with regulation 12(3) of those Regulations.

### **Application of various provisions of the Food Safety Act 1990**

5. The following provisions of the Food Safety Act 1990<sup>(10)</sup> apply for the purposes of these Regulations with the modification that any reference in those provisions to that Act or Part thereof is construed as a reference to these Regulations—

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)<sup>(11)</sup>, with the modification that subsections (2) to (4) apply in relation to an offence under regulation 7(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” are 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 (obstruction etc. of officers);
- (e) sections 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) or (2) as applied by sub-paragraph (d);
- (f) section 36 (offences by bodies corporate);
- (g) section 36A (offences by Scottish partnerships)<sup>(12)</sup>; and
- (h) section 44 (protection of officers acting in good faith), with the modification that the references to “food authority” are deemed to be references to the relevant enforcement authority.

### **Inspection and seizure of suspected products**

6.—(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 (8) shall apply where, on such an inspection or for any other reasonable cause, it appears to that officer that any person has failed to comply with regulation 3 in relation to any product.

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<sup>(8)</sup> S.I. 1994/3082, amended by S.I. 1995/539, 1763, 2200 and 3205, S.I. 1996/1499, S.I. 1999/683, S.S.I. 2000/62, 171 and 288, S.S.I. 2001/160, 358, 394 and 429 and S.S.I. 2002/35.

<sup>(9)</sup> S.I. 1995/3205, amended by S.I. 1996/3124, S.S.I. 2000/62, 171 and 288, S.S.I. 2001/358, 394 and 429 and S.S.I. 2002/35.

<sup>(10)</sup> 1990 c. 16.

<sup>(11)</sup> Section 21 was amended by S.I. 2004/3279.

<sup>(12)</sup> Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.

- (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 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 the sheriff.
- (3) Where the authorised officer exercises the power conferred by sub paragraph (2)(a), that officer shall, as soon as is reasonably practicable and in any event within 21 days—
- (a) if satisfied that regulation 3 has been complied with in relation to the product, forthwith withdraw the notice; and
  - (b) if not so satisfied, seize the product and remove it in order to have it dealt with by the sheriff.
- (4) Where the authorised officer exercises the power conferred by sub paragraphs (2)(b) or (3)(b), that officer shall inform the person in charge of the product that it is intended to have it dealt with by the sheriff and any person who under regulation 7(1) might be liable to prosecution for a contravention of regulation 3 in respect of the product shall, if that person attends before the sheriff by whom the product falls to be dealt with, be entitled to be heard and to call witnesses.
- (5) If it appears to the sheriff, on the basis of such evidence as the sheriff 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 under this regulation, the sheriff 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) An order under paragraph (5) shall be sufficient evidence in any proceedings under these Regulations of the failure of the product in question to comply with regulation 3.
- (7) If a notice under sub paragraph (2)(a) is withdrawn, or the sheriff 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.
- (8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

### **Offences and penalties**

- 7.—(1) Any person who contravenes regulation 3 or knowingly contravenes the requirements of a notice given under regulation 6(2)(a) is 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 under this regulation shall be begun after the expiry of—
- (a) three years from the commission of the offence; or

(b) one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge, whichever is the earlier.

(4) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the prosecutor's knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

### **Enforcement**

**8.** These Regulations shall be executed and enforced—

(a) by the Agency in relation to—

- (i) premises licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995,
- (ii) premises that are combined premises for the purposes of and are approved under the Meat Products (Hygiene) Regulations 1994, and
- (iii) premises that are combined premises for the purposes of and are approved under the Minced Meat and Meat Preparations (Hygiene) Regulations 1995; and

(b) in relation to any other premises, by the local authority in whose area the premises are situated.

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

**9.** For regulation 3(3) (meaning of animal by-product) of the Animal By-Products (Identification) Regulations 1995(**13**) substitute—

“(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) (Scotland) Regulations 2005; and
- (b) any bovine carcase or body part in respect of which a direction for disposal has been given under regulation 10A(5) of the TSE (Scotland) Regulations 2002(**14**).”.

### **Revocations**

**10.** The Fresh Meat (Beef Controls) (No. 2) Regulations 1996(**15**), the Fresh Meat (Beef Controls) (No. 2) (Amendment) Regulations 1996(**16**) and the Fresh Meat (Beef Controls) (No. 2) Amendment (Scotland) Regulations 2000(**17**) are revoked.

St Andrew's House, Edinburgh  
29th September 2005

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

(13) S.I. 1995/614, amended by S.I. 1995/1955, S.I. 1996/3124, S.I. 1997/2073, S.S.I. 2000/62, S.S.I. 2002/283 and S.S.I. 2003/53 and 411.

(14) S.S.I. 2002/255 as amended by S.S.I. 2003/198 and 411, 2004/277 and 2005/173 and 469.

(15) S.I. 1996/2097 as amended by S.I. 1996/2522 and S.S.I. 2000/449.

(16) S.I. 1996/2522.

(17) S.S.I. 2000/449

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## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, give effect 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](#) (O.J. No. L 204, 5.8.05, p.22).

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.

That prohibition is given effect by regulation 3 of these Regulations.

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 5);
- (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 6);
- (c) create offences and penalties (regulation 7);
- (d) make provision for their enforcement including the appointment of authorised officers (regulations 4 and 8);
- (e) amend regulation 3 of the Animal By Products (Identification) Regulations 1995 ([S.I.1995/614](#)) in so far as it applies in relation to Scotland consequential on regulation 3 of these Regulations and regulation 10A(5) of the TSE (Scotland) Regulations 2002 ([S.S.I. 2002/255](#)) (inserted by regulation 4 of the TSE (Scotland) Amendment (No. 2) Regulations 2005 ([S.S.I. 2005/469](#))) (regulation 9); and
- (f) revoke the Fresh Meat (Beef Controls) (No. 2) Regulations 1996 ([S.I. 1996/2097](#)), the Fresh Meat (Beef Controls) (No. 2) (Amendment) Regulations 1996 ([S.I. 1996/2522](#)) and the Fresh Meat (Beef Controls) (No. 2) Amendment (Scotland) Regulations 2000 ([S.S.I. 2000/449](#)) (regulation 10).

A full regulatory impact assessment, which includes a compliance cost assessment of the effect that these Regulations will have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency Scotland, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.