

2010 No. 177

ANIMALS

ANIMAL HEALTH

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

<i>Made</i> - - - -	<i>5th May 2010</i>
<i>Laid before the Scottish Parliament</i>	<i>6th May 2010</i>
<i>Coming into force</i> - -	<i>28th May 2010</i>

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to the EU instruments referred to in Schedule 1 to be construed as references to those instruments as amended from time to time.

The Scottish Ministers have carried out 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(b).

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3); the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1); and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act.
(b) O.J. No. L 31, 1.2.2002, p.1, last amended by Regulation (EC) No. 596/2009 (O.J. No. L 188, 18.7.2009, p.14).

PART 1

General provisions

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010 and come into force on 28th May 2010.
- (2) These Regulations extend to Scotland only.

Interpretation

- 2.—(1) In these Regulations—

“approved research premises” means premises approved for research purposes by the Scottish Ministers;

“bovine animal” includes bison and buffalo (including water buffalo);

“BSE” means bovine spongiform encephalopathy;

“bulk” means not enclosed or wrapped in packaging;

“cattle passport” has the same meaning as in the Cattle Identification (Scotland) Regulations 2007(a);

“Commission Decision 2007/411/EC” means Commission Decision 2007/411/EC(b) 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 and repealing Decision 2005/598/EC;

“cutting plant” (except in Schedule 7, paragraph 9(3)(b)(iii)) has the meaning given to it in paragraph 1(17) of Annex 1 to Regulation (EC) No. 853/2004(c), and is an establishment that is—

(a) approved or conditionally approved as such by the Food Standards Agency(d) under Article 31(2) of Regulation (EC) No. 882/2004(e); or

(b) operating as such under Article 4(5) of Regulation (EC) No. 853/2004, pending such approval;

“EU TSE Regulation” 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(f), as read with—

(a) Commission Decision 2007/411/EC;

(b) Commission Decision 2007/453/EC establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk(g); and

(a) S.S.I. 2007/174, amended by S.S.I. 2007/312.

(b) O.J. No. L 155, 15.6.2007, p.74.

(c) O.J. No. L 139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.2004, p.22) which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.26), as last amended by Commission Regulation (EC) No. 219/2009 (O.J. No. L 87, 31.3.2009, p.109).

(d) Established by the Food Standards Act 1999 c.28.

(e) O.J. No. L 165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.2004, p.1), which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.29). Regulation (EC) No. 882/2004 was last amended by Commission Regulation (EC) No. 596/2009 (O.J. No. L 188, 18.7.2009, p.14).

(f) O.J. No. L 147, 31.5.2001, p.1, last amended by Commission Regulation (EC) No. 220/2009 (O.J. No. L 87, 31.3.2009, p.155).

(g) O.J. No. L172, 30.6.2007, p.84, last amended by Commission Decision (EC) No. 830/2009 (O.J. No. L 295, 12.11.2009, p.11).

(c) Commission Decision 2009/719/EC authorising certain Member States to revise their annual BSE monitoring programmes(a);

“inspector” means an inspector appointed under regulation 12, and “veterinary inspector” means a veterinary surgeon appointed by the Scottish Ministers as an inspector;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(b);

“offal” has the meaning given to it in point 1.11 of Annex I to Regulation (EC) No. 853/2004 (definitions);

“premises” includes—

(a) domestic premises if they are being used for any purpose in connection with the EU TSE Regulation or these Regulations;

(b) land and outbuildings;

(c) a slaughterhouse;

(d) a cutting plant;

(e) a place that is, for the purposes of point 4.1(a) of Annex V to the EU TSE Regulation (removal of specified risk material), an other place of slaughter; and

(f) any vehicle, container or structure (moveable or otherwise);

“Regulation (EC) No. 1774/2002” 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(c), as read with—

(a) Commission Regulation (EC) No. 811/2003(d) 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;

(b) Commission Regulation (EC) No. 878/2004(e) 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; and

(c) Commission Regulation (EC) No. 92/2005(f) 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;

“Regulation (EC) No. 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, as read with—

(a) Directive 2004/41/EC(g) 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) Commission Regulation (EC) No. 1688/2005(h) implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special

(a) O.J. No. L 256, 29.9.2009, p.35, amended by Commission Decision 2010/66/EU (O.J. No. L 35, 6.2.2010, p.21).

(b) 1994 c.39, amended by the Environment Act 1995 (c.25), section 120(1) and Schedule 22, paragraph 232(1).

(c) O.J. No. L 273, 10.10.2002, p.1, last amended by Commission Regulation (EC) No. 596/2009 (O.J. No. L 188, 18.7.2009, p.14).

(d) O.J. No. L 117, 13.5.2003, p.14.

(e) O.J. No. L 162, 30.4.2004, p.62, last amended by Regulation (EC) No. 1877/2006 (O.J. No. L 360, 19.12.2006, p.133).

(f) O.J. No. L 19, 21.1.2005, p.27, last amended by Regulation (EC) No. 1576/2007 (O.J. No. L 340, 22.12.2007, p.89).

(g) O.J. No. L 157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (O.J. No. L 195, 2.6.2004, p.12).

(h) O.J. No. L 271, 15.10.2005, p.17.

guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs;

- (c) Commission Regulation (EC) No. 2074/2005(a) laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004; and
- (d) Commission Regulation (EC) No. 2076/2005(b) laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004;

“Regulation (EC) No. 882/2004” means Regulation (EC) No. 882/2004(c) 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, as read with—

- (a) Commission Regulation (EC) No. 2074/2005;
- (b) Commission Regulation (EC) No. 2076/2005; and
- (c) Commission Regulation (EC) No. 669/2009(d);

“slaughterhouse” has the meaning given to it in point 1.16 of Annex I to Regulation (EC) No. 853/2004 (definitions), and is an establishment that is—

- (a) approved or conditionally approved as such by the Food Standards Agency under Article 31(2) of Regulation (EC) No. 882/2004 (registration/approval of feed and food business establishments); or
- (b) operating as such under Article 4(5) of Regulation (EC) No. 853/2004 (registration and approval of establishments) pending such approval;

“suspect animal” means an animal suspected of having a TSE;

“TSE” means transmissible spongiform encephalopathy; and

“TSE susceptible” means capable of having a TSE.

(2) Expressions defined in the EU TSE Regulation and not defined in these Regulations have the same meaning in these Regulations as they have for the purposes of the EU TSE Regulation.

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(e), which has been recorded and is consequently capable of being reproduced.

(4) References in these Regulations to the EU instruments identified in Schedule 1 are references to those instruments as amended from time to time.

Appointment of competent authority

3. The Scottish Ministers are the competent authority for the purposes of the EU TSE Regulation except in relation to Schedule 7 and paragraphs 1, 3 and 4 of Schedule 8 where the Food Standards Agency are the competent authority.

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- (a) O.J. No. L 338, 22.12.2005, p.27, last amended by Commission Regulation (EC) No. 1250/2008 (O.J. No. L 337, 16.12.2008, p.31).
 - (b) O.J. No. L 338, 22.12.2005, p.83, last amended by Commission Regulation (EC) No. 146/2009 (O.J. No. L 50, 21.2.2009, p.3).
 - (c) O.J. No. L 165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.2004, p.1), which should be read with a further Corrigendum (O.J. No. L 204, 4.8.2007, p.29). Regulation (EC) No. 882/2004 was last amended by Commission Regulation (EC) No. 596/2009 (O.J. No. L 188, 18.7.2009, p.14).
 - (d) O.J. No. L 194, 24.7.2009, p.11.
 - (e) 2000 c.7, amended by the Communications Act 2003 (c.21), sections 406 and 411(2) and (3) and Schedule 17, paragraph 158.

Exception for research

4.—(1) The provisions of Schedules 2 to 8 do not apply in relation to animals kept for the purposes of research in approved research premises.

(2) If a bovine animal, sheep or goat kept in approved research premises or its progeny dies or is killed, the occupier must dispose of it as a Category 1 animal by-product in accordance with Regulation (EC) No. 1774/2002 and failure to do so is an offence.

PART 2

Introduction of Schedules

The Schedules

5. The following Schedules have effect—

- (a) Schedule 2 (TSE monitoring);
- (b) Schedule 3 (control and eradication of TSE in bovine animals);
- (c) Schedule 4 (control and eradication of TSE in sheep and goats);
- (d) Schedule 5 (control and eradication of TSE in animals that are not bovine, ovine or caprine);
- (e) Schedule 6 (feedingstuffs);
- (f) Schedule 7 (specified risk material, mechanically separated meat and slaughtering techniques); and
- (g) Schedule 8 (restrictions on placing on the market and export).

PART 3

Administration and enforcement

Approvals, authorisations, licences and registrations

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

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

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

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

- (a) ensure that the provisions of the EU TSE Regulation and these Regulations will be complied with; or
- (b) protect public or animal health.

(4) If the Scottish Ministers refuse to grant an approval, authorisation, licence or registration, or grant one subject to conditions—

- (a) they must—
 - (i) give their reasons in writing; and
 - (ii) explain the right of the applicant to make written representations to a person appointed by the Scottish Ministers; and

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

Occupier's duty

7. The occupier of any premises approved, authorised, licensed or registered under these Regulations commits an offence if that occupier does not ensure that—

- (a) the premises are maintained and operated in accordance with—
 - (i) any condition of the approval, authorisation, licence or registration; and
 - (ii) the requirements of the EU TSE Regulation and these Regulations; and
- (b) any person employed by the occupier, and any person permitted to enter the premises, complies with those conditions and requirements.

Suspension and amendment

8.—(1) The Scottish Ministers may suspend or amend any approval, authorisation, licence or registration granted under these Regulations if—

- (a) any of the conditions under which it was granted is not being complied with; or
- (b) they are satisfied that the provisions of the EU TSE Regulation or these Regulations are not being complied with.

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

(3) A suspension or amendment—

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

(4) Notification of the suspension or amendment must—

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

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

(6) If the suspension or amendment does not have immediate effect and representations are made under regulation 10, the suspension or amendment does not have effect until the final determination of the appeal by the Scottish Ministers unless at any point they consider that it is necessary for the protection of public or animal health for the suspension or amendment to have effect before then.

Revocation of approvals, authorisations, licences and registrations

9.—(1) The Scottish Ministers may revoke any approval, authorisation, licence or registration granted under these Regulations if they are satisfied that the premises will not be operated in accordance with the EU TSE Regulation or these Regulations and if—

- (a) it is currently suspended and the period for appeal under regulation 10 has expired or they have upheld the suspension following such appeal;
- (b) they have previously suspended it and there is further non-compliance with the EU TSE Regulation or these Regulations; or

- (c) they are satisfied that the occupier no longer uses the premises for the purpose for which it was granted.
- (2) Notification of the revocation must—
 - (a) be in writing;
 - (b) state when the revocation comes into effect;
 - (c) give the reasons for the revocation; and
 - (d) explain that the person who has been notified has the right to make written representations to a person appointed by the Scottish Ministers.
- (3) If the Scottish Ministers make a revocation under paragraph (1)(b) or (c) the appeals procedure in regulation 10 applies but the revocation remains in force during that appeals procedure.

Appeals procedure

- 10.**—(1) Where this regulation applies, a person may make written representations to a person appointed for the purpose by the Scottish Ministers concerning any decision of the Scottish Ministers within 21 days of notification of the decision to that person.
- (2) The Scottish Ministers may also make written representations to the appointed person concerning the decision.
- (3) The appointed person must then report in writing to the Scottish Ministers.
- (4) The Scottish Ministers must give to the appellant written notification of the Scottish Ministers' final determination and the reasons for it.

Valuations

- 11.**—(1) This regulation applies when a valuation is to be obtained under these Regulations.
- (2) The owner and the Scottish Ministers may agree a valuation.
- (3) If the owner and the Scottish Ministers cannot agree a valuation, they may jointly appoint a valuer.
- (4) If the owner and the Scottish Ministers cannot agree who to appoint as valuer, the President of the Institute of Auctioneers and Appraisers in Scotland^(a) will nominate a valuer, and both the owner and the Scottish Ministers must accept the nomination.
- (5) The valuer will carry out the valuation and submit it and any other relevant information and documentation to the Scottish Ministers, and submit a copy to the owner.
- (6) The owner and a representative of the Scottish Ministers each have the right to be present at the valuation.
- (7) The valuation is binding on the owner and the Scottish Ministers.
- (8) In this regulation, “owner” means the owner of the animal or product in question.

Appointment of inspectors

- 12.**—(1) Except as specified in paragraph (2), the Scottish Ministers or the local authority may appoint inspectors for the purposes of enforcing these Regulations.
- (2) The Food Standards Agency may appoint inspectors for the purposes of enforcing Schedule 7 and paragraphs 1, 3 and 4 of Schedule 8 in relation to a slaughterhouse or cutting plant.
- (3) The appointment of an inspector (whether under paragraph (1) or (2)) is limited to powers and duties specified in the appointment.

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

Powers of entry

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

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

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

(4) Inspectors may be accompanied by—

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

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

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

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

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

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

Powers of inspectors

14.—(1) An inspector may—

- (a) seize any—
 - (i) animal;
 - (ii) body of an animal, part of a body of an animal (including the blood and the hide), semen, embryo or ovum;
 - (iii) animal protein or feedingstuffs that may contain animal protein; or
 - (iv) milk or milk product,and dispose of them as necessary;
- (b) carry out any inquiries, investigations, examinations and tests;
- (c) collect, pen and inspect any animal and for this purpose may require the keeper of the animal to arrange for its collection and penning;
- (d) inspect any body of an animal, part of a body of an animal (including the blood and the hide), semen, embryo or ovum;
- (e) inspect any part of the premises, any equipment, facility, operation or procedure;
- (f) take any samples;
- (g) have access to, and inspect and copy, any records (in whatever form they are held) in order to determine if these Regulations are being complied with, including records kept under the EU TSE Regulation and these Regulations, or remove such records to enable them to be copied;

- (h) have access to, inspect and check the operation of, any computer and any associated apparatus or material that is or has been in use in connection with any record; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford the inspector such assistance as the inspector may reasonably require (including providing the inspector with any necessary passwords) and, where a record is kept by means of a computer, may require the records to be produced in a form in which they may be taken away;
 - (i) mark anything (including an animal) whether electronically or otherwise, for identification purposes; and
 - (j) lock or seal any container or store.
- (2) Any person who without reasonable cause defaces, obliterates, or removes any mark or seal, or removes any lock, applied under paragraph (1) is guilty of an offence.
- (3) An inspector is not personally liable for any act done in the execution or purported execution of these Regulations and within the scope of his or her employment, if the inspector acted in the honest belief that a duty under these Regulations required it or entitled it to be done; but this does not relieve the Scottish Ministers, a local authority or the Food Standards Agency from any liability in respect of the acts of an inspector appointed by them.

Notices

15.—(1) If it is necessary for any reason connected with the enforcement of the EU TSE Regulation or these Regulations, an inspector may serve a notice on—

- (a) the owner or keeper of any animal;
 - (b) the person in possession of any animal, body of an animal, part of a body of an animal (including the blood and the hide), semen, embryo or ovum;
 - (c) the person in possession, or supplier, of any animal protein or feedingstuffs that may contain animal protein; or
 - (d) the owner, or person in possession, of any milk or milk products.
- (2) The notice must be in writing and give the reasons for it being served.
- (3) The notice may—
- (a) prohibit the movement of any animal on to or from the premises specified in the notice;
 - (b) prohibit the movement of any milk or milk products from the premises specified in the notice;
 - (c) specify those parts of premises to which an animal may or may not be allowed access;
 - (d) require the killing or slaughter of any animal;
 - (e) prohibit or require the movement on to or from the premises specified in the notice of the body or any part of the body (including the blood and the hide) of any animal, any animal protein or feedingstuffs that may contain animal protein, and any semen, embryo or ovum;
 - (f) require the disposal of the body or any part of the body (including the blood and the hide) of any animal (whether or not it is one that was required to be retained), and any semen, embryo, ovum, milk or milk product as may be specified in the notice;
 - (g) require the disposal of any animal protein or feedingstuffs that may contain animal protein or specify how they are to be used; or
 - (h) require the recall of any animal protein or feedingstuffs that may contain animal protein.

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

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

(6) A notice must be complied with at the expense of the person on whom it is served, and if it is not complied with an inspector may arrange to have it complied with at that person's expense.

(7) Failure to comply with a notice is an offence.

Notices restricting movement

16.—(1) If a notice is served restricting movement, an inspector may subsequently permit movement under the authority of a licence.

(2) The person transporting under the authority of a licence must carry the licence during movement and produce it on demand to an inspector.

(3) Failure to comply with paragraph (2) is an offence.

Obstruction

17. Any person who—

- (a) intentionally obstructs an inspector acting under these Regulations;
- (b) without reasonable cause, fails to give to an inspector acting under these Regulations any assistance or information or to provide any facilities that the inspector may reasonably require that person to give or provide for the performance of the inspector's functions under these Regulations;
- (c) gives false or misleading information to an inspector acting under these Regulations; or
- (d) fails to produce a record when required to do so by an inspector acting under these Regulations,

is guilty of an offence.

Penalties

18. A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or both.

Offences by bodies corporate

19.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is shown to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, the provisions of paragraph (1) apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(3) For the purposes of paragraph (1), "director" in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate and "body corporate" includes a Scottish partnership, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

Enforcement

20.—(1) Subject to paragraphs (2) to (4), these Regulations are enforced by the local authority.

(2) Schedule 2 is enforced by the Scottish Ministers in slaughterhouses and cutting plants.

(3) Schedule 7 and paragraphs 1, 3 and 4 of Schedule 8 are enforced by the Food Standards Agency in slaughterhouses and cutting plants.

(4) The Scottish Ministers may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on the local authority under this regulation is discharged by the Scottish Ministers and not by the local authority.

Consequential amendments

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

Saving provision

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

Revocations

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

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
5th May 2010

(a) S.S.I. 2006/530, amended by S.S.I. 2007/357 and 2008/166 and 417.

SCHEDULE 1

Regulation 2(4)

Ambulatory References

The EU instruments that must be construed as amended from time to time are—

- (a) EU TSE Regulation;
- (b) Regulation (EC) No. 1774/2002;
- (c) Regulation (EC) No. 853/2004;
- (d) Regulation (EC) No. 882/2004;
- (e) Commission Decision 2007/411/EC;
- (f) Commission Decision 2007/453/EC establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk^(a); and
- (g) Commission Decision 2009/719/EC authorising certain Member States to revise their annual BSE monitoring programmes^(b).

(a) O.J. No. L 172, 30.6.2007, p.84, amended by Commission Decision (EC) No. 289/2008 (O.J. No. L 294, 1.11.2008, p.14).

(b) O.J. No. L 256, 29.9.2009, p.35, amended by Commission Decision 2010/66/EU (O.J. No. L 35, 6.2.2010, p.21).

SCHEDULE 2

Regulation 5(a)

TSE monitoring

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PART 1

Monitoring for TSE

Notification of the body of a goat for the purpose of monitoring under Article 6 of the EU TSE Regulation

1.—(1) For the purpose of monitoring under Article 6 of the EU TSE Regulation, a person who has possession or control of the body of a goat aged 18 months or over at death, must—

- (a) within 24 hours from the time when the animal died or was killed or the body came into that person's possession or control notify the Scottish Ministers; and
- (b) where the Scottish Ministers direct, retain it until it has been collected by or on behalf of the Scottish Ministers,

and failure to do so is an offence.

(2) This paragraph does not apply in relation to goats slaughtered for human consumption or killed in accordance with Schedule 4.

Delivery of the body of a bovine animal for the purpose of monitoring under Article 6 of the EU TSE Regulation

2.—(1) For the purpose of monitoring under Article 6 of the EU TSE Regulation, a person who has possession or control of the body of a bovine animal that must be tested for BSE in accordance with point 3.1 of Part I of Chapter A of Annex III to that Regulation (monitoring in animals not slaughtered for human consumption) must, unless directed otherwise by the Scottish Ministers, within 24 hours either—

- (a) make arrangements with another person for that other person to collect it and deliver it to an approved sampling site within 72 hours; or
- (b) identify an approved sampling site that will carry out the sampling and deliver the animal to that site so as to arrive at the site within 72 hours,

and failure to do so is an offence.

(2) The periods of 24 and 72 hours referred to in sub-paragraph (1) run from the time when the animal died or was killed or the body came into the possession or control of the person to whom the requirements of that sub-paragraph apply.

Persons collecting and delivering

3. A person with whom arrangements are made under paragraph 2(1)(a) for the delivery of a body to an approved sampling site must, unless directed otherwise by the Scottish Ministers, within 48 hours of the time when the body comes into that person's possession or control—

- (a) identify an approved sampling site that will carry out the sampling; and
- (b) ensure it is delivered to that site,

and failure to do so is an offence.

Destruction without sampling

4. Any person who destroys the body of a bovine animal to which paragraph 2(1) applies before it has undergone sampling at an approved sampling site, except in accordance with a direction of the Scottish Ministers, commits an offence.

Retention of bodies of bovine animals pending test results

5. An approved sampling site to which the body of a bovine animal has been sent for sampling in accordance with this Part must retain it in accordance with point 6.3 of Part I of Chapter A of Annex III to the EU TSE Regulation (measures following testing), and failure to do so is an offence.

Island areas

6.—(1) The requirements of paragraphs 1(1) and 2 do not apply in an island area.

(2) In this paragraph, “island area” means—

- (a) islands in the area of the Argyll and Bute Council, excluding the island of Bute;
- (b) the area of Comhairle nan Eilean Siar;
- (c) islands in the area of the Highland Council, excluding the island of Skye;
- (d) islands in the area of North Ayrshire Council;
- (e) the area of the Orkney Islands Council; and
- (f) the area of the Shetland Islands Council.

(3) The exemption in sub-paragraph (1) continues to apply even if the body of the animal has been removed from an island area.

Consignment and slaughter of over-age bovine animals

7.—(1) If a bovine animal was born or reared in the United Kingdom before 1st August 1996, it is an offence—

- (a) to consign it to a slaughterhouse for human consumption (whether the animal is alive or dead); or
- (b) to slaughter it for human consumption.

(2) For the purposes of sub-paragraph (1), a bovine animal is deemed to have been born or reared in the United Kingdom before 1st August 1996 unless its cattle passport shows either that—

- (a) it was born in the United Kingdom on or after 1st August 1996; or
- (b) it first entered the United Kingdom on or after 1st August 1996.

Brain stem sampling of bovine animals (slaughterhouses)

8.—(1) The occupier of a slaughterhouse in which a bovine animal which must be tested in accordance with point 2 of Part I of Chapter A of Annex III to the EU TSE Regulation (monitoring in animals slaughtered for human consumption) is slaughtered or (if the animal is slaughtered at a place other than a slaughterhouse) processed must—

- (a) take a sample comprising the brain stem for testing in accordance with point 1 of Chapter C of Annex X to the EU TSE Regulation (sampling);
- (b) ensure that the animal from which the sample has been taken can be identified; and
- (c) arrange for the sample to be delivered to an approved testing laboratory,

and failure to do so is an offence.

(2) The Scottish Ministers must, by means of a notice, notify the occupier of a slaughterhouse if an animal comes into any of the categories specified in point 2.1 of Part I of Chapter A of Annex III to the EU TSE Regulation (except in the case of a dead animal consigned to a slaughterhouse with a written declaration from a veterinary surgeon that it falls into one of those categories).

(3) For the purposes of point 5 of Part I of Chapter A of Annex III to the EU TSE Regulation (monitoring in other animals), the Scottish Ministers may serve a notice on the occupier of a

slaughterhouse requiring the occupier to take a sample from any bovine animal slaughtered there and send it for testing in accordance with sub-paragraph (1).

Brain stem sampling of bovine animals (other places of slaughter)

9. The occupier of a place—

- (a) that, for the purposes of point 4.1(a) of Annex V to the EU TSE Regulation (removal of specified risk material), is an other place of slaughter; and
- (b) in which a bovine animal covered by point 2 of Part I of Chapter A of Annex III to the EU TSE Regulation (monitoring in animals slaughtered for human consumption) is slaughtered must—
 - (i) arrange for a sample, comprising the brain stem, to be taken for testing in accordance with point 1 of Chapter C of Annex X to the EU TSE Regulation (sampling);
 - (ii) ensure that the animal from which the sample has been taken can be identified; and
 - (iii) arrange for the sample to be delivered to an approved testing laboratory,

and failure to do so is an offence.

Approval of laboratories

10.—(1) The Scottish Ministers must approve laboratories to test samples taken under paragraph 8 if the Scottish Ministers are satisfied that the laboratory—

- (a) will carry out the testing in accordance with Chapter C of Annex X to the EU TSE Regulation (sampling and laboratory testing);
- (b) has adequate quality control procedures; and
- (c) has adequate procedures to ensure the correct identification of the samples and notification of the test results to the consigning slaughterhouse and to the Scottish Ministers.

(2) The Scottish Ministers may charge the fees set out in the following table for the initial approval and ongoing quality assessment of a laboratory—

Fees for laboratory approvals and quality assessment

	<i>Fee (£)</i>
Initial approval	29,770
Annual proficiency testing and follow-up inspection for the first year after approval	8,834
Annual proficiency testing from the second year after approval	4,135
Single proficiency test (in the event of a failure in the annual proficiency testing)	1,385
Rate of an inspector per hour or part thereof (for any additional inspections that are necessary to check for compliance with the matters set out at sub-paragraph (1)(a) to (c))	87.24

(3) For the purposes of this paragraph and paragraphs 8 and 9, “approved testing laboratory” means—

- (a) a laboratory approved under this paragraph;
- (b) a laboratory approved under corresponding legislation elsewhere in the United Kingdom;

- (c) an EU National Reference laboratory^(a); or
- (d) a diagnostic laboratory approved by a Member State in accordance with Annex X to the EU TSE Regulation (reference laboratories, sampling and laboratory analysis methods).

Approved sampling sites

11.—(1) The Scottish Ministers must on application approve a sampling site to sample animals to which paragraph 2 applies if the Scottish Ministers are satisfied that the sampling site has adequate control procedures to carry out the sampling.

(2) For the purposes of this Schedule, an “approved sampling site” means a sampling site approved under this paragraph or a sampling site in another part of the United Kingdom approved by the competent authority in that part of the United Kingdom to carry out sampling under the EU TSE Regulation.

Slaughter of bovine animals

12.—(1) It is an offence for the occupier to use a slaughterhouse to slaughter for human consumption a bovine animal that, in accordance with point 2 of Part I of Chapter A of Annex III to the EU TSE Regulation (monitoring in animals slaughtered for human consumption), requires BSE testing at slaughter, unless the Scottish Ministers have approved the Required Method of Operation (“RMOP”) for that slaughterhouse and that occupier.

(2) The RMOP must, as a minimum, describe—

- (a) the procedures that will be followed to comply with Part 1 of this Schedule; and
- (b) all the systems and procedures required by Part 2 of this Schedule.

(3) The Scottish Ministers must approve the RMOP if they are satisfied that all the requirements of the EU TSE Regulation and these Regulations will be complied with, and the occupier must demonstrate this by means of an assessment of 2 days’ duration during which animals are slaughtered (using bovine animals that are not required, under point 2 of Part I of Chapter A of Annex III to the EU TSE Regulation, to be tested for BSE).

(4) If a bovine animal referred to in sub-paragraph (1) is slaughtered for human consumption other than in accordance with the RMOP, the occupier of the slaughterhouse is guilty of an offence.

Retention of products and disposal

13.—(1) In relation to any sampled bovine animal, the occupier of a slaughterhouse or other place of slaughter (for the purposes of point 4.1(a) of Annex V to the EU TSE Regulation (removal of specified risk material), hide market or tannery must, for the purpose of point 6.3 of Part I of Chapter A of Annex III to the EU TSE Regulation (measures following testing) and pending receipt of the test result, either—

- (a) retain all carcasses and all parts of the body (including the blood and the hide) that will have to be disposed of in the event of a positive result; or
- (b) dispose of them in accordance with sub-paragraph (2).

(2) For the purposes of points 6.4 and 6.5 of that Part, if a positive result is received for a sampled bovine animal, the occupier must immediately dispose of—

- (a) the carcass and all parts of the body of that animal (including the blood and the hide); and
- (b) unless a derogation has been granted under sub-paragraph (5), the carcass and all parts of the body (including the blood and the hide) of the animal immediately preceding that animal on the slaughter line and the 2 animals immediately following it,

in accordance with point 6.4 of that Part.

(a) Designated under Article 33(1) of Regulation (EC) No. 882/2004 (O.J. No. L 165, 30.4.2004, p.1).

(3) If no sample has been sent to or no sample has been received by, an approved testing laboratory for testing in accordance with paragraphs 8 and 9, or if an insufficient test result is received, in respect of a bovine animal required to be tested under this Schedule, the occupier must immediately dispose of—

- (a) the carcass and all parts of the body (including the blood and the hide) of that animal; and
- (b) unless a derogation has been granted under sub-paragraph (5), the carcass and all parts of the body (including the blood but not the hide) of the animal immediately preceding that animal on the slaughter line and the 2 animals immediately following it,

in accordance with point 6.4 of that Part; and for the purposes of this sub-paragraph an “insufficient test result” means a certification by an approved testing laboratory that the sample sent to the laboratory was not of an adequate quality or was not of a sufficient quantity to obtain a test result.

(4) If a no-test result is received in respect of an animal required to be tested under this Schedule, the occupier must immediately dispose of the carcass and all parts of the body (including the blood and the hide) of that animal in accordance with point 6.4 of that Part; and for the purposes of this sub-paragraph a “no-test result” means a negative result from a sample following multiple rapid testing where such testing was certified as necessary by an approved testing laboratory.

(5) The Scottish Ministers may grant in writing a derogation under point 6.6 of Part I of Chapter A of Annex III to the EU TSE Regulation if they are satisfied that there is a system in place that prevents contamination between carcasses.

(6) Failure to comply with sub-paragraphs (1) to (4) is an offence.

TSE sampling of sheep, goats and deer

14.—(1) In relation to any sheep or goat selected for sampling, the occupier of a slaughterhouse, hide market or tannery must—

- (a) for the purposes of point 7.3 of Part II of Chapter A of Annex III to the EU TSE Regulation (measures following testing of ovine and caprine animals), retain the carcass and all parts of the body (including the blood and the hide) pending receipt of the test result (except to the extent that point 7.3 permits direct disposal of animal by-products pending receipt of a negative rapid test result); and
- (b) in the event of a positive result, immediately dispose of the carcass and all parts of the body (including the blood and the hide) in accordance with point 7.4 of that Part.

(2) Where—

- (a) a sheep, goat or deer has died, or has been killed, other than for human consumption; and
- (b) either—
 - (i) the death or killing occurred at premises approved, or required to be approved, under the Animal By-Products (Scotland) Regulations 2003(a); or
 - (ii) the carcass of the sheep, goat or deer has been taken to those premises,

the occupier of the premises must comply with any direction given by the Scottish Ministers requiring the carcass to be sampled at the premises.

(3) In relation to any deer selected for monitoring for TSE in accordance with Part III of Chapter A of Annex III to the EU TSE Regulation (monitoring in other animal species), the occupier of a slaughterhouse, hide market or tannery must—

- (a) retain the carcass and all parts of the body (including the blood and the hide) pending receipt of the test result; and

(a) S.S.I. 2003/411, amended by S.S.I. 2006/3 and 530, 2007/1 and 2009/7.

- (b) in the event of a positive result, immediately dispose of the carcass and all parts of the body (including the blood and the hide) in accordance with point 7.4 of Part II of Chapter A of Annex III to the EU TSE Regulation.
- (4) Failure to comply with sub-paragraph (1), (2) or (3) is an offence.

Compensation

15.—(1) If an animal slaughtered for human consumption tests positive, the Scottish Ministers must pay to the occupier of the slaughterhouse or other place of slaughter compensation for the carcass and all parts of the body (including the blood and the hide) of—

- (a) that animal; and
- (b) if they are destroyed because of that positive result, the animal immediately preceding it on the slaughter line and the 2 animals immediately following it.

(2) The compensation is the market value, established under the procedure in regulation 11(1) to (7) (reading “occupier” wherever “owner” is mentioned in that regulation), with the occupier paying any fee arising for nominating and employing a valuer.

(3) For the purposes of sub-paragraph (2), the market value is the price that would reasonably be expected to have been obtained for the animal from a buyer in the open market at the time of the valuation and on the assumption that the animal was not affected by a TSE.

- (4) Compensation under this paragraph is not payable in any other case.

PART 2

Contents of the RMOP

Animal identification and separation

16.—(1) The RMOP must describe the system that—

- (a) enables bovine animals born or reared in the United Kingdom before 1st August 1996 to be identified and ensures that they are not slaughtered for human consumption;
- (b) enables bovine animals that, in accordance with point 2.1 of Part I of Chapter A of Annex III to the EU TSE Regulation (monitoring in animals slaughtered for human consumption), require BSE testing, to be identified and ensures that they are sampled in accordance with this Schedule; and
- (c) enables bovine animals that in accordance with point 2.2 of Part I of Chapter A of Annex III to the EU TSE Regulation, require BSE testing at slaughter, to be identified and ensures that they are sampled in accordance with this Schedule.

(2) The requirements of sub-paragraph (1)(b) and (c) apply only in relation to bovine animals born or reared in the United Kingdom on or after 1st August 1996.

(3) The RMOP must also describe the system that ensures that animals to which sub-paragraph (1)(b) and (c) applies are—

- (a) batched together before slaughter separately from those not referred to in sub-paragraph (1)(b) and (c); and
- (b) slaughtered in batches separately from those not referred to in sub-paragraph (1)(b) and (c).

(4) For the purposes of this paragraph, a bovine animal is deemed to have been born or reared in the United Kingdom before 1st August 1996 unless its cattle passport shows either that—

- (a) it was born in the United Kingdom on or after 1st August 1996; or
- (b) it first entered the United Kingdom on or after 1st August 1996.

Brain stem sampling

17.—(1) The RMOP must describe how the slaughterhouse occupier will ensure that there are—

- (a) sufficient staff trained and competent in the taking, labelling, packaging and dispatch of brain stem samples;
- (b) hygienic facilities for sampling; and
- (c) sampling procedures that do not jeopardise the hygienic production of meat intended for human consumption.

(2) It must describe how health and safety guidelines designed to minimise the risk of exposure of staff to a TSE during brain stem sampling and packaging will be complied with.

Correlation of sample to carcass and all other parts of the body

18. The RMOP must describe the system linking the brain stem sample of each bovine animal to which paragraph 16(1)(b) and (c) applies, to the carcass of that animal and all parts of the body of that animal (including the blood and the hide).

Retention of carcasses

19. The RMOP must describe—

- (a) the system that ensures that all carcasses retained in accordance with paragraph 13(1) are retained either in a sealed or locked chiller or on a sealed or locked rail in an unsealed chiller pending the receipt of the BSE test result;
- (b) the system that ensures that the chronological order in which the animals were slaughtered can be determined; and
- (c) how the occupier will ensure that there is suitable and sufficient chiller space for retaining carcasses for the purposes of this Schedule.

Retention of parts of the body

20. The RMOP must describe the system that ensures that all parts of the body (including the blood and the hide) are retained in accordance with paragraph 13(1).

Disposal before receipt of the result

21. The RMOP must describe the disposal arrangements for all carcasses and all parts of the body (including the blood and the hide) retained pending receipt of a BSE test result but disposed of before the test result is received.

Other measures following sampling

22. The RMOP must describe the systems in place that ensure that—

- (a) brain stem samples are packaged in accordance with packaging instructions P650 of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (version applicable on and after 1st January 2005)(a);
- (b) BSE test results are received, either by fax or by other electronic means; and
- (c) everything required to be disposed of in accordance with point 6.4 or 6.5 of Part I of Chapter A of Annex III to the EU TSE Regulation (measures following testing) or under this Schedule is identified and disposed of accordingly.

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SCHEDULE 3

Regulation 5(b)

Control and eradication of TSE in bovine animals

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Notification

1.—(1) For the purposes of Article 11 of the EU TSE Regulation (notification), any person who has possession or control of any bovine animal suspected of having a TSE must immediately notify the Scottish Ministers and detain it on the premises until it has been examined by a veterinary inspector.

(2) Any veterinary surgeon who examines or inspects any bovine animal suspected of having a TSE must, with all practical speed, notify the Scottish Ministers.

(3) Any person (other than the Scottish Ministers) who examines the body of any bovine animal, or any part of it, in a laboratory and who reasonably suspects the presence of a TSE must immediately notify the Scottish Ministers, and retain the body and any parts of it until a veterinary inspector has authorised disposal.

(4) Failure to comply with this paragraph is an offence.

Restriction of a notified animal

2.—(1) Where a bovine animal is the subject of notification under paragraph 1, an inspector may serve a notice prohibiting its movement from the premises pending determination of whether or not it is suspected of having a TSE.

(2) Movement of restricted animals is only permitted in accordance with regulation 16.

Killing of a suspect animal

3.—(1) For the purposes of paragraphs (1) and (2) of Article 12 of the EU TSE Regulation (measures with respect to suspect animals), if a veterinary inspector suspects that a bovine animal has a TSE the veterinary inspector must—

- (a) cause it to be killed on the holding immediately;
- (b) remove its cattle passport and serve a notice prohibiting the animal from being moved from the holding until it has been killed; or
- (c) ensure that its cattle passport is stamped “Not for human consumption” and serve a notice directing the owner to consign it to other premises for killing and prohibiting movement other than in accordance with that direction.

(2) The inspector must restrict the movement of other bovine animals on the holding in accordance with the second, third and fifth paragraphs of Article 12(1) of the EU TSE Regulation and Article 2(1)(a) of Commission Decision 2007/411/EC.

(3) The inspector may restrict the movement of bovine animals on other holdings in accordance with the fourth paragraph of Article 12(1) of the EU TSE Regulation.

(4) If the suspect animal is killed on the holding, it is an offence to remove the body from that holding except in accordance with a written direction from an inspector.

(5) If the suspect animal is not killed immediately, its keeper must dispose of its milk in such a way that it cannot be consumed by humans or animals except its own calf or animals kept for research purposes, and failure to comply with this sub-paragraph is an offence.

Identification and restriction of progeny and cohorts

4.—(1) In accordance with Article 13(2) of the EU TSE Regulation (measures following confirmation of the presence of a TSE) as read with Article 2(1)(b) and (2) of Commission Decision 2007/411/EC, if—

- (a) a veterinary inspector suspects that a bovine animal has a TSE;
- (b) the monitoring of carcasses under Part 1 of Schedule 2 or under Annex III to the EU TSE Regulation (monitoring system) confirms that an animal is suspected of having a TSE; or
- (c) the competent authority of another part of the United Kingdom or another Member State notifies the Scottish Ministers that a bovine animal is suspected of having a TSE,

an inspector must identify—

- (i) (if the suspect animal is female) all its progeny born within 2 years prior to, or after, clinical onset of the disease; and
- (ii) in all cases all its bovine cohorts born on or after 1st August 1996,

and for these purposes the animal's date of birth is the one shown on its cattle passport.

(2) An inspector must serve notices prohibiting movement of the animals identified in accordance with sub-paragraph (1) from the holding on which they are kept or where the inspector suspects they may be kept (whether or not this is the same holding as that of the suspect animal) and remove their cattle passports.

(3) If the inspector cannot immediately identify the animals specified in sub-paragraph (1) the inspector must prohibit the movement of all bovine animals from the holding pending identification.

(4) Movements of restricted animals are only permitted in accordance with regulation 16.

Action following confirmation of test result

5.—(1) In accordance with Article 13(1)(c) of, and point 2 of Chapter A of Annex VII to, the EU TSE Regulation (measures following confirmation of the presence of a TSE) as read with Article 2(1)(b) and (2) of Commission Decision 2007/411/EC, when it is confirmed that a bovine animal had a TSE an inspector must cause to be killed—

- (a) (if the animal is female) all its progeny born within 2 years prior to, or after, clinical onset of the disease; and
- (b) in all cases, all the bovine animals in its cohort born on or after 1st August 1996 except where—
 - (i) an inspector is satisfied that the animal did not have access to the same feed as the animal in which a TSE was confirmed; or
 - (ii) the animal is a bull that is kept at, and will not be removed from, a semen collection centre, but it is an offence to remove the animal from the centre except to be killed, and when it is killed the owner must ensure that the carcass is completely destroyed, and failure to do so is an offence.

(2) If the animal is not killed on the holding, an inspector must ensure that its cattle passport is stamped “Not for human consumption” and serve a notice directing the owner to consign it to other premises for killing as specified in the direction.

(3) If the test is confirmed as negative the inspector must remove all restrictions imposed because of the suspect animal and return the cattle passports.

(4) When an animal is killed under this paragraph, it is an offence to remove the body of the animal from the premises on which it was killed except in accordance with a written direction from an inspector.

(5) The appeals procedure in regulation 10 applies to a decision to kill under subparagraph (1)(b), and no animal may be killed until—

- (a) receipt of written notification from the person on whom the notice is served that that person has no intention to proceed with an appeal;
- (b) after the 21 day period for appeal under regulation 10 has expired; or
- (c) if there is an appeal, the appeal is refused or withdrawn.

(6) When an animal is killed under this paragraph, it is an offence to remove the carcase from the premises on which it was killed except in accordance with a written direction from an inspector.

Death while under restriction

6. If a bovine animal dies or is killed while it is under restriction for any reason under this Schedule, the owner must immediately notify the Scottish Ministers and retain the body on the premises until the owner is directed in writing to move or dispose of it by an inspector, and it is an offence not to comply with this paragraph or to fail to comply with a direction under it.

Placing on the market of progeny

7. Any person who places on the market a bovine animal in contravention of Article 15(2) (live animals, their semen, embryos and ova) of, and Chapter B of Annex VIII (conditions relating to progeny of TSE suspect or confirmed animals referred to in Article 15(2)) to, the EU TSE Regulation is guilty of an offence.

When compensation is payable

8. The Scottish Ministers must pay compensation—

- (a) when an animal is killed under this Schedule;
- (b) when an animal is to be killed under this Schedule, and has been valued for the purposes of compensation, but dies (or is killed for other reasons) after valuation; or
- (c) where an animal is subject to a movement restriction under this Schedule and has to be killed as an emergency and a veterinary surgeon has declared in writing that the animal would otherwise have been fit for human consumption in accordance with Chapter VI of Section I of Annex III to Regulation (EC) No. 853/2004 (emergency slaughter outside the slaughterhouse), in which case compensation is the market value of the body (including the blood and the hide).

Amount of compensation payable

9.—(1) The compensation is the average price paid in Great Britain for that age and category of animal—

- (a) for a pedigree animal, in the previous 6 months before the date of its valuation; and
- (b) for any other bovine animal, in the previous month before the date of its valuation.

(2) A pedigree animal is one for which a pedigree certificate has been issued by a breeders’ organisation or association that fulfils the conditions of Commission Decision 84/247/EEC laying

down the criteria for the recognition of breeders' organisations and associations which maintain or establish herd-books for pure-bred breeding animals of the bovine species(a).

(3) The Scottish Ministers must categorise animals as follows, and for the purposes of determining which category the animal falls into, the age of the animal is the age, as shown by its cattle passport, at the date on which the notice of intention to kill was served—

Categories

Male

Beef Sector – non-pedigree animal

Up to and including 3 months
Over 3 months up to and including 6 months
Over 6 months up to and including 9 months
Over 9 months up to and including 12 months
Over 12 months up to and including 16 months
Over 16 months up to and including 20 months
Over 20 months—
 Breeding bulls
 Other

Dairy Sector – non-pedigree animal

Up to and including 3 months
Over 3 months up to and including 6 months
Over 6 months up to and including 12 months
Over 12 months up to and including 16 months
Over 16 months up to and including 20 months
Over 20 months

Beef Sector – pedigree animal

6 months up to and including 12 months
Over 12 months up to and including 24 months
Over 24 months

Dairy Sector – pedigree animal

Up to and including 2 months
Over 2 months up to and including 12 months
Over 12 months up to and including 24 months
Over 24 months

Female

Up to and including 3 months
Over 3 months up to and including 6 months
Over 6 months up to and including 9 months
Over 9 months up to and including 12 months
Over 12 months up to and including 16 months
Over 16 months up to and including 20 months
Over 20 months—
 Calved
 Not calved

Up to and including 3 months
Over 3 months up to and including 6 months
Over 6 months up to and including 12 months
Over 12 months up to and including 16 months
Over 16 months up to and including 20 months
Over 20 months—
 Calved
 Not calved

6 months up to and including 12 months
Over 12 months up to and including 24 months
Over 24 months (not calved)
Calved under 36 months
Calved 36 months and over

Up to and including 2 months
Over 2 months up to and including 10 months
Over 10 months up to and including 18 months
Over 18 months (not calved)
Calved under 36 months
Calved 36 months and over.

Exceptions

10.—(1) Where the Scottish Ministers consider that the data to calculate the average price is inadequate, they may pay compensation at—

- (a) for animals in that category, the most recent previously calculated average price for which there was sufficient data to calculate the average price; or
- (b) for the individual animal, the market value.

(a) O.J. No. L 125, 12.5.1984, p.58, amended by Commission Decision (EC) No. 2007/371/EC (O.J. L 140, 1.6.2007, p.49).

- (2) For buffalo or bison, compensation is the market value.
- (3) The market value is the price that might reasonably have been obtained for the individual animal—
- (a) from a purchaser in the open market;
 - (b) at the time of valuation;
 - (c) on the assumption that the animal was not from a herd affected by a TSE; and
 - (d) calculated in accordance with regulation 11.
- (4) Where the owner and the Scottish Ministers cannot agree on a market value, the valuation must be carried out in accordance with the procedure laid down in regulation 11(3) to (8) with the owner paying any valuation fee arising.

SCHEDULE 4

Regulation 5(c)

Control and eradication of TSE in sheep and goats

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Notification

1.—(1) For the purposes of Article 11 of the EU TSE Regulation (notification), any person who has possession or control of any sheep or goat suspected of having a TSE must immediately notify the Scottish Ministers and detain it on the premises until it has been examined by a veterinary inspector.

(2) Any veterinary surgeon who examines or inspects any sheep or goat suspected of having a TSE must, with all practical speed, notify the Scottish Ministers.

(3) Any person (other than the Scottish Ministers) who examines the body of any sheep or goat, or any part of it, in a laboratory and who reasonably suspects the presence of a TSE must immediately notify the Scottish Ministers, and retain the body and any parts of it until a veterinary inspector has authorised disposal.

(4) Failure to comply with this paragraph is an offence.

Restriction of a notified animal

2.—(1) When a sheep or goat is the subject of notification under paragraph 1, a veterinary inspector may, pending determination of whether or not it is suspected of having a TSE, serve a notice prohibiting the movement of the animal from its holding and the movement of any other sheep or goat on to or from that holding.

(2) Movements of restricted animals are only permitted in accordance with regulation 16.

Killing of a suspect animal

3.—(1) For the purposes of Article 12(1) and (2) (measures with respect to suspect animals) of the EU TSE Regulation, if a veterinary inspector suspects that a sheep or goat has a TSE, the inspector must—

- (a) cause the animal to be killed on the holding immediately;
- (b) serve a notice prohibiting the animal from being moved from the holding until it has been killed; or
- (c) serve a notice directing the owner to consign the animal to other premises for killing and prohibiting movement other than in accordance with that direction.

(2) If the animal is killed on the holding, it is an offence to remove the body from the holding except in accordance with a written direction from an inspector.

Movement restrictions

4.—(1) For the purposes of Article 12(1) (measures with respect to suspect animals) of, and point 2.2 of Chapter A of Annex VII (measures following confirmation of the presence of a TSE) to, the EU TSE Regulation, following suspicion of a TSE (whether in a live animal or through the monitoring under Annex III to the EU TSE Regulation (monitoring system)), an inspector—

- (a) must serve a notice prohibiting the movement onto or from its holding of any sheep or goat on the same holding as the suspect animal if the inspector considers that the animal was exposed to a TSE on that holding;
- (b) may serve a notice prohibiting the movement onto or from any holding of any sheep or goat if there is evidence that the suspect animal was exposed to a TSE on that holding;
- (c) may serve a notice prohibiting movement onto or from a holding where an animal specified in point 1(b) of Chapter A of Annex VII to the EU TSE Regulation (measures following confirmation of the presence of a TSE) is kept or where the inspector suspects such an animal is kept; and
- (d) must serve a notice prohibiting the movement of sheep or goat milk, or sheep or goat milk products, derived from any sheep or goat present on any holding referred to in paragraphs (a) to (c).

(2) Movements of restricted animals or products are only permitted in accordance with regulation 16.

(3) To avoid doubt, a notice served under sub-paragraph (1)(d) does not prohibit the use of milk or milk products within the holding.

(4) A notice referred to in sub-paragraph (1)(a) to (d) remains in force until one of paragraphs 5, 6, 7 or 9 applies.

Action where TSE is not confirmed

5. If it is confirmed that the sheep or goat did not have a TSE, an inspector must remove as soon as reasonably practicable all restrictions imposed because the sheep or goat was suspected of having a TSE.

Action following confirmation of TSE in sheep

6.—(1) When it is confirmed that a suspect sheep or the body of a sheep monitored under Annex III to the EU TSE Regulation (monitoring system) has a TSE, and BSE is excluded in accordance with the procedure set out in point 3.2(c) of Chapter C of Annex X to that Regulation (further examination of positive TSE cases), the Scottish Ministers, after—

- (a) carrying out the inquiry specified in Article 2.3(b) of, and point 1(b) of Chapter A of Annex VII to, the EU TSE Regulation (measures following confirmation of the presence of a TSE); and
- (b) sampling the animals to establish their genotype (if this is necessary),

must decide which of the options set out in point 2.3(b)(i) and (ii) of Chapter A of Annex VII to the EU TSE Regulation they intend to exercise.

(2) The Scottish Ministers must then serve a notice on the occupier of the holding identifying which of the options in point 2.3(b)(i) or (ii) of Chapter A of Annex VII to that Regulation they intend to exercise.

(3) The notice must specify—

- (a) the identity of the animals to be killed and destroyed;
- (b) the identity of any animals to be slaughtered for human consumption;
- (c) the identity of any animals that may be detained;
- (d) the identity of any ovum or embryo to be destroyed; and
- (e) the time limit for complying with the notice.

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

Confirmation of TSE in goats

7.—(1) This paragraph applies if it is confirmed that a suspect goat, or a body of a goat monitored under Annex III to the EU TSE Regulation, is affected with a TSE, and BSE is excluded in accordance with the procedure set out in point 3.2(c) of Chapter C of Annex X to that Regulation (further examination of positive TSE cases), except where the Scottish Ministers decide to exercise the power in paragraph 10(3).

(2) The Scottish Ministers, after carrying out the inquiry specified in Article 13(1)(b) of, and point 1(b) of Chapter A of Annex VII to, the EU TSE Regulation (measures following confirmation of the presence of a TSE), must serve a notice on the occupier of the holding informing him or her that the Scottish Ministers intend to kill and destroy all the goats on the holding and all embryos and ova from those animals in accordance with Article 13(1)(c) of, and point 2.3(b)(i) of Chapter A of Annex VII, to that Regulation.

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

Use of milk and milk products following confirmation of classical scrapie

8.—(1) This paragraph applies to milk or milk products derived from a sheep or goat that is to be destroyed in accordance with paragraph 6 or 7.

(2) Milk and milk products must not—

- (a) be used for feeding ruminants, other than ruminants within the holding; or
- (b) be exported, or allowed to be exported, to any other Member State or third country as feed for non-ruminants.

(3) Milk and milk products that are to be fed to non-ruminants in the United Kingdom must be—

(a) accompanied by documentation that clearly states that it must not be fed to ruminants; and

(b) contained in packaging that is clearly marked “must not be fed to ruminants”.

(4) Feedingstuffs containing milk or milk products must not be stored on farms where ruminants are kept.

(5) Bulk feedingstuffs containing milk or milk products must not be transported in vehicles that also transport feedingstuffs for ruminants.

(6) Vehicles that have transported bulk feedingstuffs containing milk or milk products must, before being used for transporting any feedingstuffs intended for ruminants, be thoroughly cleaned so as to avoid cross-contamination, in accordance with a procedure approved by the Scottish Ministers.

(7) Failure to comply with any of sub-paragraphs (2) to (6) is an offence.

Inability to exclude BSE in sheep or goats

9.—(1) This paragraph applies if a TSE is confirmed in a suspect sheep or goat, or a body of a sheep or goat monitored under Annex III to the EU TSE Regulation (monitoring system), and BSE cannot be excluded by the results of a ring trial carried out in accordance with the procedure set out in point 3.2(c) of Chapter C of Annex X to that Regulation (further examination of positive TSE cases).

(2) The Scottish Ministers, after carrying out the inquiry specified in Article 13(1)(b) of, and point 1(b) of Chapter A of Annex VII to, the EU TSE Regulation (measures following confirmation of the presence of a TSE), must serve a notice on the occupier of the holding informing him or her of the Scottish Ministers’ intention to have the animals killed and destroyed, and the embryos and ova destroyed and the milk and milk products destroyed, in accordance with Article 13(1)(c), and point 2.3(a) of Chapter A of Annex VII to that Regulation.

(3) In sub-paragraph (2), “milk and milk products” means the milk and milk products that derived from the animals that were present on the relevant holding on and from the date on which notice was served under paragraph 4(1)(d).

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

Confirmation of atypical scrapie in sheep or goats

10.—(1) This paragraph applies if the TSE confirmed in a suspect sheep or goat, or a body of a sheep or goat, monitored under Annex III to the EU TSE Regulation is atypical scrapie, and BSE is excluded in accordance with the procedure set out in point 3.2(c) of Chapter C of Annex X to that Regulation (further examination of positive TSE cases).

(2) The Scottish Ministers may decide not to apply paragraph 6 in respect of sheep, or paragraph 7 in respect of goats.

(3) If the Scottish Ministers decide not to apply either paragraph 6 or 7, the Scottish Ministers must, instead of complying with the requirements in that paragraph—

(a) carry out the inquiry specified in Article 13(1)(b) of, and point 1(b) of Chapter A of Annex VII to, the EU TSE Regulation (measures following confirmation of the presence of a TSE); and

(b) decide which of the options set out in point 5(a) or (b) of Chapter A of Annex VII to that Regulation the Scottish Ministers intend to exercise.

(4) The Scottish Ministers must then serve a notice on the occupier of the holding informing him or her of which option the Scottish Ministers intend to exercise.

(5) If the Scottish Ministers choose the option set out in point 5(a) of Chapter A of Annex VII to the EU TSE Regulation, the notice must specify—

- (a) the identity of the animals (if any) to be killed and destroyed;
- (b) the identity of any ovum or embryo (if any) to be destroyed; and
- (c) the time limit for complying with the notice.

(6) If the Scottish Ministers choose the option set out in point 5(b) of Chapter A of Annex VII to the EU TSE Regulation, for 2 breeding years following the detection of the last TSE case, the occupier must—

- (a) identify all sheep and goats on the holding by attaching a tag to the ear of each animal;
- (b) ensure that no tag is removed, other than as directed or permitted by the Scottish Ministers; and
- (c) subject the holding to the intensified TSE monitoring set out in point 5(b)(ii) of Chapter A of that Annex,

and failure to comply with this sub-paragraph is an offence.

(7) No person may export any live sheep or goat identified under sub-paragraph (6) or embryos or ova from such animals to another Member State or third country, and failure to comply with this sub-paragraph is an offence.

(8) The appeals procedure in regulation 10 applies in relation to any decision by the Scottish Ministers under this paragraph.

(9) In sub-paragraph (6), “tag” means an identification tag approved for the purposes of sub-paragraph (6) by the Scottish Ministers.

Derogation

11.—(1) Subject to sub-paragraphs (2) to (4)—

- (a) the Scottish Ministers may decide to delay the destruction of any animals specified in a notice served under paragraph 6 or 7; or
- (b) the occupier of the relevant holding may apply to the Scottish Ministers for a delay in the destruction of any such animals.

(2) The Scottish Ministers must not decide upon, or consent to, a delay unless satisfied that—

- (a) the frequency of ARR allele within the relevant breed or holding is low or absent; or
- (b) a delay is necessary in order to avoid inbreeding.

(3) Subject to sub-paragraph (4), the Scottish Ministers may decide upon, or consent to, a delay of up to 5 breeding years.

(4) The Scottish Ministers must not decide upon, or consent to—

- (a) any delay, if a breeding ram (other than a ram of the ARR/ARR genotype present within the breed or holding) is on the holding; or
- (b) a delay of more than 18 months in relation to sheep or goats kept for the production of milk or milk products intended for placing on the market.

(5) An application under sub-paragraph (1)(b) must be in writing and must set out in full the reasons for the application.

(6) The Scottish Ministers must provide the applicant with a decision in writing, stating that the Scottish Ministers—

- (a) consent to the application;
- (b) consent in part to the application; or
- (c) refuse the application.

(7) The Scottish Ministers may impose any conditions that they consider to be reasonably necessary in relation to any decision made, or consent granted, under this paragraph.

(8) Unless the Scottish Ministers consent to the application in full, the appeals procedure in regulation 10 applies in relation to any decision by the Scottish Ministers under this paragraph.

Time for appeals

12. The Scottish Ministers must not cause to be killed any sheep or goat, or cause to be destroyed any ovum or embryo, under this Schedule until—

- (a) they have received written notification from the person on whom the notice is served that that person has no intention to proceed with an appeal;
- (b) after the 21 day period for appeal under regulation 10 has expired; or
- (c) if there is an appeal, the appeal is refused or withdrawn.

Killing and destruction following confirmation

13.—(1) An inspector must ensure that all the animals specified for killing in the notice under paragraph 6(2), 7(2), 9(2) or 10(4) are killed and that all the ova and embryos specified for destruction in the notice are destroyed.

(2) If an animal is not killed on the holding, an inspector must direct the owner in writing to consign it to other premises for killing as specified in the direction.

(3) When an animal has been killed under this paragraph, it is an offence to remove the body from the premises on which it was killed except in accordance with a written direction from an inspector.

Animals from another holding

14. For the purposes of point 2.4 of Chapter A of Annex VII to the EU TSE Regulation (measures following confirmation of the presence of a TSE), if the animal with a TSE was introduced from another holding, the Scottish Ministers may act in accordance with this Schedule in relation to the holding of origin in addition to, or instead of, the holding on which a TSE was confirmed.

Common grazing

15. In the case of animals with a TSE on common grazing, the Scottish Ministers may limit a notice under paragraph 6(2), 7(2), 9(2) or 10(4) to an individual flock or herd in accordance with point 2.4 of Chapter A of Annex VII to the EU TSE Regulation.

Multiple flocks on a holding

16. Where more than one flock is kept on a single holding, the Scottish Ministers may limit a notice under paragraph 6(2), 7(2), 9(2) or 10(4) to an individual flock or herd in accordance with point 2.4 of Chapter A of Annex VII to the EU TSE Regulation.

Subsequent occupiers

17.—(1) If there is a change in occupation of the holding, the previous occupier must ensure that the subsequent occupier is made aware of the existence and contents of any notice served under this Schedule, and failure to do so is an offence.

(2) The subsequent occupier must comply with the notice as if that notice were served on that occupier and failure to do so is an offence.

Introduction of animals onto a holding

18. Any person who introduces an animal onto a holding in contravention of point 3.1 of Chapter A of Annex VII to the EU TSE Regulation is guilty of an offence.

Use of ovine germinal products

19. Any person who uses ovine germinal products in contravention of point 3.2 of Chapter A of Annex VII to the EU TSE Regulation is guilty of an offence.

Movement of animals from a holding

20. Any person who moves an animal from a holding in contravention of point 3.3 of Chapter A of Annex VII to the EU TSE Regulation is guilty of an offence.

Period of movement restrictions

21. For the purposes of point 3.4 of Chapter A of Annex VII to the EU TSE Regulation the relevant dates must be established by the Scottish Ministers giving written notification of those dates to the occupier of the holding.

Death while under restriction

22. If any animal aged 18 months or over dies or is killed while it is under restriction for any reason under this Schedule or Annex VII to the EU TSE Regulation, the owner must immediately notify the Scottish Ministers, and retain the body on the premises until the owner is directed in writing to move or dispose of it by the Scottish Ministers, and it is an offence not to comply with this paragraph or to fail to comply with a direction under it.

Placing on the market of progeny of sheep or goats in which BSE is confirmed

23. Any person who places on the market any first generation progeny, semen, embryo or ovum of a sheep or goat suspected of, or confirmed with, a TSE in contravention of Article 15(2) of the EU TSE Regulation and Chapter B of Annex VIII to that Regulation is guilty of an offence.

Compensation for a sheep or goat slaughtered as a suspect animal

24.—(1) The Scottish Ministers must pay compensation in accordance with this paragraph for a sheep or goat killed as a suspect animal.

(2) Where it is confirmed that it was affected with a TSE, the compensation is—

- (a) £30 in the case of an animal at the end of its productive life; and
- (b) £90 in any other case.

(3) Where it is not confirmed that it was affected with a TSE, the compensation is the higher of—

- (a) the amount that would have been payable under this paragraph if it had been confirmed the animal was affected with a TSE; and
- (b) such sum as appears to the Scottish Ministers, having regard to any information provided by the owner of the animal and any other relevant information, to reflect the market value of the animal, subject to a maximum sum of £400 for each animal.

Compensation for animals killed or products destroyed following confirmation of TSE

25. The Scottish Ministers must pay compensation to the owner of animals killed and products destroyed under this Schedule following confirmation of a TSE in accordance with the following provisions of this paragraph—

Compensation

<i>Animal or product</i>	<i>Compensation (£)</i>
Male sheep or goat	90
Female sheep or goat	65
Lamb (under 12 months old) or kid (under 12 months old)	40
Embryo	150
Ovum	5.

Valuations

26.—(1) If the owner of an animal or product considers the compensation in the preceding paragraph to be unreasonable a valuation must be carried out in accordance with the procedure laid down in regulation 11(3) to (8), with the owner paying any valuation fee arising.

(2) When carrying out a valuation under regulation 11(5), the valuer must value the animal or product at the price that might reasonably have been obtained for it at the time of valuation from a buyer in the open market as if the animal or product was not from a flock or herd affected by TSE.

Compensation for milk and milk products compulsorily destroyed in accordance with paragraph 9

27.—(1) The Scottish Ministers must pay compensation in accordance with this paragraph for milk and milk products destroyed pursuant to paragraph 9.

(2) The compensation payable is that which the Scottish Ministers believe might reasonably have been obtained for it on the open market if the milk or milk product had not been compulsorily destroyed and had not been milk that derived from a flock or herd affected by TSE.

(3) If the owner of milk or milk products considers the compensation in the preceding paragraph to be unreasonable, a valuation must be carried out in accordance with the procedure laid down in regulation 11(3) to (8), with the owner paying any valuation fee arising.

SCHEDULE 5

Regulation 5(d)

Control and eradication of TSE in animals that are not bovine, ovine or caprine

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Notification

1.—(1) For the purposes of Article 11 of the EU TSE Regulation (notification), any person who has in his or her possession or under his or her control any animal that is not bovine, ovine or caprine that is suspected of being affected by a TSE must immediately notify the Scottish Ministers and detain it on the premises until it has been examined by a veterinary inspector.

(2) Any veterinary surgeon who examines or inspects any such animal must, with all practical speed, notify the Scottish Ministers of that examination or inspection.

(3) Any person (other than the Scottish Ministers) who examines the body of an animal that is not bovine, ovine or caprine, or any part of it, in a laboratory and who reasonably suspects the presence of a TSE must immediately notify the Scottish Ministers, and retain the body and any parts of it until a veterinary inspector has authorised disposal.

(4) Failure to comply with this paragraph is an offence.

Restriction of a notified animal

2.—(1) If an animal is the subject of notification under paragraph 1, a veterinary inspector may serve a notice prohibiting the movement of that animal from its holding, pending determination of whether or not it is suspected of being affected with a TSE.

(2) Movements of restricted animals are only permitted in accordance with regulation 16.

Slaughter of a suspect animal

3.—(1) For the purposes of Article 12(1) and (2) of the EU TSE Regulation (measures with respect to suspect animals), if a veterinary inspector suspects that an animal that is not bovine, ovine or caprine is affected with a TSE, he or she may either—

- (a) kill it on the holding immediately;
- (b) serve a notice prohibiting the animal from being moved from the holding until it has been killed; or
- (c) serve a notice directing the owner to consign it to other premises for killing and prohibiting movement other than in accordance with that direction.

(2) If the animal is killed on the holding, it is an offence to remove the body from the holding or dispose of it except in accordance with a written direction from an inspector.

Compensation

4.—(1) Where an animal is killed under paragraph 3, the Scottish Ministers must pay compensation.

- (2) The compensation is the market value of the animal at the time it is killed.
- (3) For the purposes of this paragraph, the market value—
 - (a) must be calculated in accordance with the procedure in regulation 11;
 - (b) must be the price that would reasonably be expected to have been obtained for the animal from a buyer in the open market at the time of the valuation; and
 - (c) on the assumption that the animal was not from a group affected by a TSE.
- (4) Where the owner and the Scottish Ministers cannot agree on a market value, the valuation must be carried out in accordance with the procedure laid down in regulation 11(3) to (8), with the owner paying any valuation fee arising.

SCHEDULE 6

Regulation 5(e)

Feedingstuffs

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PART 1

Restrictions on feeding proteins to animals

Prohibition on feeding animal protein to ruminants

1.—(1) For the purposes of Article 7(1) (prohibitions concerning animal feeding) of, and point (b) of Part I of Annex IV (extension of the prohibition provided for in Article 7(1)) to the EU TSE Regulation it is an offence to—

- (a) feed to any ruminant animal;

- (b) supply for feeding to any ruminant animal; or
- (c) permit any ruminant animal to have access to,

any animal protein (or anything containing animal protein) other than the proteins specified in point A(a) and, if authorised by the Scottish Ministers following a risk assessment, point A(d) of Part II of Annex IV to that Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations).

(2) It is an offence to bring onto any premises where ruminant animals are kept, or to possess on such premises, anything (other than food intended for human consumption) prohibited by sub-paragraph (1), except—

- (a) in accordance with paragraph 3; or
- (b) where authorised by an inspector and suitable measures are in place to ensure that ruminant animals do not have access to the animal protein specified in the authorisation.

(3) Sub-paragraph (2) does not apply where the premises are registered to use and store the relevant animal protein under paragraph 8(6), 9(6)(b), 11(5) or 13(9).

(4) The prohibition in sub-paragraph (1) does not apply in relation to liquid milk replacers containing fishmeal provided that—

- (a) the fishmeal has been produced, labelled, transported and used in accordance with point BA of Part II of Annex IV to the EU TSE Regulation; and
- (b) the liquid milk replacer is intended for, and fed only to, unweaned, ruminant farmed animals in accordance with point A(e) of that Part.

Prohibition on feeding animal protein to non-ruminants

2.—(1) For the purposes of Article 7(2) (prohibitions concerning animal feeding) of, and point (a) of Part I of Annex IV (extension of the prohibition provided for in Article 7(1)) to, the EU TSE Regulation it is an offence to—

- (a) feed to any pig, poultry, horse or any farmed non-ruminant animal;
- (b) supply for feeding to any such animal; or
- (c) allow any such animal to have access to,

anything in relation to which this paragraph applies.

(2) Subject to sub-paragraph (3), the prohibition in sub-paragraph (1) applies in relation to—

- (a) processed animal protein;
- (b) gelatine of ruminant origin;
- (c) blood products;
- (d) hydrolysed protein;
- (e) dicalcium phosphate and tricalcium phosphate of animal origin;
- (f) petfood containing animal protein; and
- (g) raw petfood consisting of animal protein.

(3) The prohibition in sub-paragraph (1) does not apply in relation to—

- (a) the protein specified in point A(a) of Part II of Annex IV to the EU TSE Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations);
- (b) fishmeal (and feedingstuffs containing it) that has been produced, labelled, transported and stored in accordance with the conditions in point B of that Part;
- (c) dicalcium phosphate and tricalcium phosphate (and feedingstuffs containing them) that have been produced, labelled, transported and stored in accordance with the conditions in point C of that Part;

- (d) blood products derived from non-ruminants (and feedingstuffs containing them) that have been produced, labelled, transported and stored in accordance with the conditions in point D of that Part;
 - (e) in the case of feeding to fish, blood meal derived from non-ruminants (and feedingstuffs containing it) that has been produced, labelled, transported and stored in accordance with the conditions in point D of that Part; and
 - (f) feed materials of plant origin (and feedingstuffs containing such products) in which bone spicules have been detected, if authorised by the Scottish Ministers following a risk assessment in accordance with point A(d) of that Part.
- (4) In this paragraph “protein” includes any feedingstuffs containing animal protein.
- (5) It is an offence to bring onto any premises where any animals specified in sub-paragraph (1)(a) are kept anything prohibited by this paragraph, or to possess it on such premises other than—
- (a) food intended for human consumption;
 - (b) in accordance with paragraph 3; or
 - (c) where authorised by an inspector and suitable measures are in place to ensure that animals specified in sub-paragraph (1)(a) do not have access to it.

Exceptions

3. Paragraphs 1(2) and 2(5) do not apply to—

- (a) raw petfood consisting of animal protein or anything incorporated into petfood for feeding to pets (including working dogs) on those premises; or
- (b) anything incorporated into organic fertiliser or soil improver produced and used in accordance with Regulation (EC) No. 1774/2002 and the Animal By-Products (Scotland) Regulations 2003^(a) and paragraph 19,

provided that—

- (i) it is not fed to any farmed animals;
- (ii) it is not stored or handled, or fed to pets (including working dogs), in parts of the premises—
 - (aa) to which farmed animals have access; or
 - (bb) where feedingstuffs for farmed animals are stored or handled;
- (iii) it does not come into contact with—
 - (aa) feedingstuffs permitted to be fed to farmed animals; or
 - (bb) handling equipment used in connection with any such feedingstuffs; and
- (iv) farmed animals do not have access to petfood at any time and do not have access to organic fertiliser or soil improver until it has been applied to the land and the no-grazing period specified in regulation 11(1) of the Animal By-Products (Scotland) Regulations 2003 has expired.

Movement prohibitions and restrictions of animals

4. Where an inspector has reasonable grounds to believe that a TSE susceptible animal has been fed or has had access to—

- (a) specified risk material;
- (b) any material which the inspector has reasonable grounds to believe carries the risk of TSE infectivity; or

^(a) S.S.I. 2003/411, amended by S.S.I. 2006/3 and 530, 2007/1 and 2009/7.

- (c) animal protein for which the inspector cannot establish the origin or the TSE infectivity risk,

the inspector may—

- (i) serve a notice on the owner or person in charge of the animal prohibiting or restricting the movement of the animal from the premises described in the notice; and
- (ii) if it is a bovine animal, seize its cattle passport.

Killing of animals

5.—(1) Where an inspector has reasonable grounds to believe that a TSE susceptible animal has been fed or has had access to any material referred to in paragraph 4, the inspector may serve a notice on the owner or person in charge of the animal in accordance with this paragraph.

(2) The notice may either—

- (a) require the owner or person in charge of the animal to kill it and dispose of it as specified in the notice; or
- (b) require the owner or person in charge of the animal to keep it on such premises and in such manner as the notice provides, in which case the inspector must ensure that the cattle passport of any bovine animal is stamped with the words “Not for human consumption”.

(3) The inspector must ensure that all the animals specified for killing in the notice in subparagraph (2)(a) are killed and disposed of.

Compensation

6.—(1) Where an animal is killed under paragraph 5, the Scottish Ministers may pay compensation if they consider it appropriate in all the circumstances and give their decision on whether or not to pay compensation in writing.

(2) The compensation for—

- (a) a bovine animal is the value established in accordance with paragraphs 9 and 10 of Schedule 3;
- (b) an ovine or caprine animal is the value established in accordance with paragraph 24 of Schedule 4; and
- (c) an animal that is not bovine, ovine or caprine is the market value of the animal at the time it is killed, established in accordance with the procedure in regulation 11, with the owner paying any fee for nominating the valuer and the valuer’s fee.

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

Slaughter or sale for human consumption

7. It is an offence to consign for slaughter for human consumption or to slaughter for human consumption any TSE susceptible animal the cattle passport for which has been stamped under paragraph 5.

PART 2

Production of protein and feedingstuffs

Fishmeal for feeding to non-ruminant farmed animals

8.—(1) Any person producing fishmeal intended for feeding to non-ruminant farmed animals must do so in accordance with point B(a) of Part II of Annex IV to the EU TSE Regulation

(derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations).

(2) Any person producing feedingstuffs containing fishmeal intended for feeding to non-ruminant farmed animals must do so—

- (a) in accordance with point B(c) of that Part, in premises authorised by the Scottish Ministers for the purposes of that point;
- (b) in accordance with point B(c)(i) of that Part, for home compounders registered by the Scottish Ministers for the purposes of that point; or
- (c) in accordance with point B(c)(ii) of that Part, in premises authorised by the Scottish Ministers for the purposes of that point.

(3) Any person packaging the feedingstuffs must label them in accordance with point B(d) of that Part, and any documentation accompanying the feedingstuffs must be in accordance with that point.

(4) Any person transporting the feedingstuffs in bulk must do so in accordance with the first sentence of point B(e) of that Part.

(5) Any person using a vehicle previously used to transport such feedingstuffs to transport feedingstuffs for ruminants must comply with the second sentence of point B(e) of that Part.

(6) The occupier of any farm where ruminants are kept must comply with the first paragraph of point B(f) of that Part unless the Scottish Ministers are satisfied that the provisions of the second paragraph of that point are complied with and have registered the farm under that paragraph.

Fishmeal for feeding to unweaned, ruminant farmed animals

9.—(1) Any person producing raw fishmeal for use in feed for unweaned, ruminant farmed animals must do so in accordance with point BA(a) of Part II of Annex IV to the EU TSE Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations).

(2) Any person producing feed for unweaned, ruminant farmed animals must, if the feed contains fishmeal, produce that feed only in premises authorised for that purpose by the Scottish Ministers in accordance with points BA(c) and BA(d) of that Part.

(3) Any person packaging milk replacers containing fishmeal intended for unweaned, ruminant farmed animals, must clearly mark the product in accordance with point BA(e) of that Part, and any documentation accompanying the product must be in accordance with that point.

(4) Any person transporting the milk replacers in bulk must do so in accordance with the first sentence of point BA(f) of that Part.

(5) Any person using a vehicle previously used to transport such milk replacers for the transport of other feedingstuffs for ruminants must comply with the second sentence of point BA(f) of that Part.

(6) The occupier of any farm where feedingstuffs containing fishmeal are to be used and ruminants are kept must ensure that—

- (a) measures are in place to prevent such feedingstuffs being fed to ruminants, other than as permitted by point A(e) of that Part; and
- (b) before the feedingstuffs are brought on to the relevant holding, the occupier of the holding has registered the holding with the Scottish Ministers in accordance with the second sentence of point BA(g) of that Part.

Offences relating to fishmeal and feedingstuffs containing fishmeal

10.—(1) Failure to comply with paragraph 8 or 9 is an offence.

(2) It is an offence for a home compounder registered under paragraph 8(2)(b) to—

- (a) keep ruminant animals;

- (b) consign feedingstuffs containing fishmeal (whether complete or partly complete) produced by the home compounder from the home compounder's holding; or
 - (c) use feedingstuffs containing fishmeal with a crude protein content of 50% or more in the production of complete feedingstuffs.
- (3) It is an offence for any person producing feedingstuffs in accordance with point B(c)(ii) of Part II of Annex IV to the EU TSE Regulation to—
- (a) fail to ensure that feedingstuffs destined for ruminants are kept in separate facilities in accordance with the first indent of that point;
 - (b) fail to ensure that feedingstuffs destined for ruminants are manufactured in accordance with the second indent;
 - (c) fail to make and keep a record in accordance with the third indent; and
 - (d) fail to carry out routine tests in accordance with the fourth indent.

Feedingstuffs containing dicalcium phosphate or tricalcium phosphate for feeding to non-ruminant farmed animals

- 11.**—(1) Any person producing feedingstuffs containing dicalcium phosphate or tricalcium phosphate for feeding to non-ruminant farmed animals must do so—
- (a) in accordance with point C(a) of Part II of Annex IV to the EU TSE Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations), in an establishment authorised by the Scottish Ministers for the purposes of that point;
 - (b) in accordance with point C(a)(i) of that Part, for home compounders registered by the Scottish Ministers for the purposes of that point; or
 - (c) in accordance with point C(a)(ii) of that Part in an establishment authorised by the Scottish Ministers for the purposes of that point.
- (2) Any person packaging the feedingstuffs must label them in accordance with point C(b) of that Part, and any documentation accompanying the feedingstuffs must be in accordance with that point.
- (3) Any person transporting those feedingstuffs in bulk must do so in accordance with the first sentence of point C(c) of that Part.
- (4) Any person using a vehicle previously used to transport such feedingstuffs to transport feedingstuffs for ruminants must comply with the second sentence of point C(c) of that Part.
- (5) The occupier of any farm where ruminants are kept must comply with the first paragraph of point C(d) of that Part unless the Scottish Ministers are satisfied that the provisions of the second paragraph of that point are complied with and have registered the farm under that paragraph.

Offences relating to feedingstuffs containing dicalcium phosphate or tricalcium phosphate for feeding to non-ruminant animals

- 12.**—(1) Failure to comply with paragraph 11 is an offence.
- (2) It is an offence for a home compounder registered under paragraph 11(1)(b) to—
- (a) keep ruminant animals;
 - (b) consign feedingstuffs containing dicalcium phosphate or tricalcium phosphate (whether complete or partly complete) from the home compounder's holding; or
 - (c) use feedingstuffs containing dicalcium phosphate or tricalcium phosphate with a phosphorus content of 10% or more in the production of complete feedingstuffs.

(3) It is an offence for any person producing feedingstuffs in accordance with point C(a)(ii) of Part II of Annex IV to the EU TSE Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations) to—

- (a) fail to ensure that feedingstuffs destined for ruminants are manufactured in accordance with the first indent of that point;
- (b) fail to ensure that they are kept in separate facilities in accordance with the second indent; or
- (c) fail to make and keep a record in accordance with the third indent.

Blood products and blood meal

13.—(1) Any person who produces—

- (a) blood products, or feedingstuffs containing blood products, intended for feeding to non-ruminant farmed animals; or
- (b) blood meal, or feedingstuffs containing blood meal, intended for feeding to fish,

must ensure that the blood comes from a slaughterhouse that is registered with the Scottish Ministers for the purposes of point D(a) of Part II of Annex IV to the EU TSE Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations) and that either—

- (i) is not used to slaughter ruminants; or
- (ii) has in place a control system in accordance with the second paragraph of point D(a) of that Part to ensure that ruminant blood is kept separate from non-ruminant blood, and has been authorised for the purpose by the Scottish Ministers.

(2) The occupier of the slaughterhouse must consign the blood in accordance with point D(a) of Part II of Annex IV to the EU TSE Regulation, and any transporter must transport it in accordance with that point.

(3) Any person producing blood products or blood meal must do so in accordance with either the first or the second paragraph of point D(b) of that Part.

(4) Any person producing blood products or blood meal for the use described in the second paragraph of point D(b) of Part II of Annex IV to the EU TSE Regulation must—

- (a) have in place the control system specified in that paragraph to ensure that products of ruminant origin are kept separate from products of non-ruminant origin; and
- (b) be authorised by the Scottish Ministers for the purpose.

(5) Any person producing feedingstuffs containing blood products or blood meal must do so—

- (a) in accordance with point D(c) of that Part, in an establishment authorised by the Scottish Ministers for the purposes of that point;
- (b) in accordance with point D(c)(i) of that Part, for home compounders registered by the Scottish Ministers for the purposes of that point; or
- (c) in accordance with point D(c)(ii) of that Part, in an establishment authorised by the Scottish Ministers for the purposes of that point.

(6) Any person packaging the feedingstuffs must label them in accordance with point D(d) of that Part, and any documentation accompanying the feedingstuffs must be in accordance with that point.

(7) Any person transporting the feedingstuffs in bulk must do so in accordance with the first sentence of point D(e) of that Part.

(8) Any person using a vehicle previously used to transport such feedingstuffs to transport feedingstuffs for ruminants must comply with the second sentence of point D(e) of that Part.

(9) The occupier of any farm where ruminants are kept must comply with the first paragraph of point D(f) of that Part unless the Scottish Ministers are satisfied that the provisions of the second paragraph of that point are complied with and have registered the farm under that paragraph.

Offences relating to feedingstuffs containing blood products or blood meal

14.—(1) Failure to comply with paragraph 13 is an offence.

(2) It is an offence for any person collecting blood in accordance with the second paragraph of point D(a) of Part II of Annex IV to the EU TSE Regulation (derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations) to fail to—

- (a) slaughter animals in accordance with the first indent of that paragraph;
- (b) collect, store, transport or package blood in accordance with the second indent of that paragraph; or
- (c) regularly sample and analyse blood in accordance with the third indent of that paragraph.

(3) It is an offence for any person producing blood products or blood meal in accordance with the second paragraph of point D(b) of that Part to fail to—

- (a) ensure that the blood is processed in accordance with the first indent of that paragraph;
- (b) keep raw material and finished product in accordance with the second indent of that paragraph; or
- (c) sample in accordance with the third indent of that paragraph.

(4) It is an offence for any person producing feedingstuffs in accordance with point D(c)(ii) of Part II of Annex IV to the EU TSE Regulation to—

- (a) fail to ensure that feedingstuffs are manufactured in accordance with the first indent of that point;
- (b) fail to ensure that they are kept in separate facilities in accordance with the second indent; or
- (c) fail to make and keep a record in accordance with the third indent.

(5) It is an offence for a home compounder registered under paragraph 13(5)(b) to—

- (a) keep ruminant animals where blood products are used;
- (b) keep animals other than fish where blood meal is used;
- (c) consign feedingstuffs containing blood products or blood meal (whether complete or partly complete) from the home compounder's holding; or
- (d) use feedingstuffs containing blood products or blood meal with a total protein content of 50% or more in the production of complete feedingstuffs.

Change in use of equipment

15.—(1) It is an offence to use equipment used to produce feedingstuffs for non-ruminant animals under paragraph 8, 11 or 13, for the production of feedingstuffs for ruminant animals, unless authorised in writing by an inspector.

(2) It is an offence to use equipment used to produce feedingstuffs for unweaned, ruminant farmed animals under paragraph 9, for the production of feedingstuffs for weaned, ruminant farmed animals, unless authorised in writing by an inspector.

Conditions applying to the storage and transport of bulk quantities of protein products and feedingstuffs containing such proteins

16.—(1) It is an offence to store or transport—

- (a) bulk processed animal protein (other than fishmeal); or
- (b) bulk products, including feedingstuffs, organic fertilisers, and soil improvers containing such proteins,

except in accordance with point C(a) of Part III of Annex IV to the EU TSE Regulation (general implementing conditions).

(2) It is an offence to store or transport bulk fishmeal, bulk dicalcium phosphate, bulk tricalcium phosphate, blood products derived from non-ruminants or blood meal derived from non-ruminants, except in accordance with points C(b) and C(c) of Part III of Annex IV to the EU TSE Regulation.

(3) In addition to the requirements of sub-paragraphs (1) and (2), it is an offence to transport bulk processed animal protein or any of the materials specified in sub-paragraph (2) unless the transporter is registered with the Scottish Ministers for that purpose.

Conditions applying to the manufacture and transport of petfood or feedingstuffs

17.—(1) It is an offence to manufacture, store, transport or package feedingstuffs, including petfood, that contain blood products of ruminant origin or processed animal protein, other than fishmeal, except in accordance with point D of Part III of Annex IV to the EU TSE Regulation (general implementing conditions).

(2) It is an offence to manufacture or transport petfood containing dicalcium or tricalcium phosphate or blood products of non-ruminant origin except in accordance with point D of that Part.

Export of processed animal protein to third countries

18.—(1) It is an offence to export processed animal proteins derived from ruminants, and anything containing such proteins, otherwise than in accordance with point E(1) of Part III of Annex IV to the EU TSE Regulation (general implementing conditions).

(2) Sub-paragraph (1) does not apply to the export of processed petfood (including canned petfood) that contains processed animal proteins derived from ruminants, provided that it has undergone treatment and is labelled in accordance with Regulation (EC) No. 1774/2002.

(3) It is an offence to export processed animal proteins derived from non-ruminants (and anything containing such proteins) except in accordance with point E(2) of that Part and any agreement in writing between the United Kingdom and the competent authority of the third country.

Fertilisers

19.—(1) It is an offence to sell or supply for use as a fertiliser on agricultural land, or to possess with the intention of such sale or supply, any—

- (a) mammalian protein (other than ash) derived from animal by-products classified as Category 2 material in Regulation (EC) No. 1774/2002; or
- (b) ash derived from the incineration of animal by-products classified as Category 1 material in that Regulation.

(2) It is an offence to use anything prohibited in sub-paragraph (1) on agricultural land as a fertiliser.

(3) In this paragraph—

- (a) “agricultural land” means land used or capable of use for the purposes of a trade or business in connection with agriculture; and
- (b) “agriculture” includes fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, the use of land for woodland, and horticulture (except the propagation of plants and the growing of plants within greenhouses, glass structures or plastic structures).

Record keeping for transport etc. of reject petfood

20.—(1) Any person who supplies, transports or receives any petfood containing animal protein that is not intended for use as petfood must—

(a) record—

- (i) the name of the manufacturer;
- (ii) the date of supply and receipt;
- (iii) the premises of origin and destination;
- (iv) the quantity of petfood; and
- (v) the nature of the animal protein contained in the petfood; and

(b) keep those records for 2 years.

(2) The consignor must ensure that the petfood is labelled with the information referred to in sub-paragraph (1) or is accompanied by documentation that contains that information.

(3) Failure to comply with this paragraph is an offence.

Cross-contamination of materials originating from premises where processed animal proteins (except fishmeal) are in use

21. It is an offence to supply an ingredient of a feedingstuff if that ingredient is produced on premises where any processed animal protein (except fishmeal) is used in any manufacturing process unless the label or accompanying documentation indicates this.

SCHEDULE 7

Regulation 5(f)

Specified risk material, mechanically separated meat and slaughtering techniques

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Appointment of the Food Standards Agency as the competent authority

1. The Food Standards Agency must carry out the duties placed on the Member State in point 11.1 and point 11.2 of Annex V (removal of specified risk material) to the EU TSE Regulation in relation to this Schedule and may grant authorisations for the purposes of point 4.3(a) of that Annex (controls).

Training

2. The occupier of any slaughterhouse or cutting plant where specified risk material is removed must—

- (a) ensure that staff receive any training necessary to ensure that the occupier complies with the occupier's duties under this Schedule; and
- (b) keep records of each person's training for as long as that person works there,

and failure to do so is an offence.

Mechanically separated meat

3.—(1) Any person who fails to comply with point 5 of Annex V to the EU TSE Regulation (measures concerning mechanically separated meat) is guilty of an offence.

(2) Any person who uses any mechanically separated meat produced in contravention of that point in the preparation of any food for sale for human consumption or of any feedingstuffs is guilty of an offence.

Pithing

4. Any person who fails to comply with point 6 of Annex V to the EU TSE Regulation (measures concerning laceration of tissues) is guilty of an offence.

Tongue harvesting

5. Any person who fails to comply with point 7 of Annex V to the EU TSE Regulation (harvesting of tongues from bovine animals) is guilty of an offence.

Head meat harvesting

6. Any person who fails to comply with point 8.1 of Annex V to the EU TSE Regulation (harvesting of bovine head meat) is guilty of an offence.

Removal of specified risk material

7.—(1) Any person who removes specified risk material at any premises or place other than premises or a place where that specified risk material may be removed under point 4.1 or point 4.3(a) of Annex V to the EU TSE Regulation (removal of specified risk material) is guilty of an offence.

(2) In the case of a cutting plant, it is an offence to remove—

- (a) any part of the vertebral column that is specified risk material from any bovine animal unless the plant is authorised under paragraph 13(1)(a); or
- (b) the spinal cord from any sheep or goat aged over 12 months at slaughter, or that has a permanent incisor erupted through the gum, unless the plant is authorised for the purpose of such removal under paragraph 13(1)(b).

Bovine animals in a slaughterhouse

8.—(1) When a bovine animal is slaughtered in a slaughterhouse or the carcase of a bovine animal is transported to a slaughterhouse following emergency slaughter elsewhere, the occupier of the slaughterhouse must remove all specified risk material (other than those parts of the vertebral column that are specified risk material and specified risk material contained in or attached to offal) as soon as is reasonably practicable after slaughter and in any event before post-mortem inspection.

(2) The occupier must—

- (a) as soon as reasonably practicable after post mortem inspection, consign any offal that has been removed from the carcase and that contains or is attached to specified risk material to an appropriate area of the slaughterhouse; and
- (b) as soon as reasonably practicable after the offal is consigned there and in any event before the offal is removed from the slaughterhouse, remove the specified risk material.

(3) The occupier must as soon as is reasonably practicable after slaughter consign any meat containing those parts of the vertebral column that are specified risk material to—

- (a) a cutting plant authorised under paragraph 13(1)(a);
- (b) a cutting plant located in another part of the United Kingdom and authorised under the corresponding provision applicable in that part; or
- (c) another Member State in accordance with point 10.2 of Annex V to the EU TSE Regulation (rules on trade and export).

(4) The occupier must identify meat containing vertebral column that is not specified risk material in accordance with point 11.3(a) of Annex V (controls) to the EU TSE Regulation and provide information in accordance with point 11.3(b) of that Annex.

(5) No person may include a blue stripe in the label referred to in Article 13 of Regulation (EC) No. 1760/2000(a) of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No. 820/97(b), except in accordance with point 11.3(a) of Annex V to the EU TSE Regulation.

(6) Failure to comply with this paragraph is an offence.

Sheep and goats in a slaughterhouse

9.—(1) When a sheep or goat is slaughtered in a slaughterhouse or the carcase of a sheep or goat is transported to a slaughterhouse following emergency slaughter elsewhere, the occupier of the slaughterhouse must remove all specified risk material (other than the spinal cord and specified risk material contained in or attached to offal) as soon as is reasonably practicable after slaughter and in any event before post-mortem inspection.

(2) The occupier must—

- (a) as soon as reasonably practicable after post mortem inspection, consign any offal that has been removed from the carcase and that contains or is attached to specified risk material to an appropriate area of the slaughterhouse; and
- (b) as soon as reasonably practicable after the offal is consigned there and in any event before the offal is removed from the slaughterhouse, remove the specified risk material.

(3) In the case of a sheep or goat aged over 12 months at slaughter, or that has a permanent incisor erupted through the gum, the occupier must as soon as is reasonably practicable after slaughter—

- (a) remove the spinal cord at the slaughterhouse before the post-mortem inspection; or
- (b) send the meat to—
 - (i) a cutting plant authorised under paragraph 13(1)(b);
 - (ii) a cutting plant located in another part of the United Kingdom and authorised under the corresponding provision applicable in that part; or
 - (iii) in accordance with point 10.1 of Annex V to the EU TSE Regulation (rules on trade and export), a cutting plant located in another Member State, provided that the Food Standards Agency has entered into a written agreement with the competent authority of the receiving Member State and the dispatch is in accordance with that agreement.

(4) In sub-paragraph (3)(b)(iii), “cutting plant” means an establishment—

- (a) approved or conditionally approved as such under Article 31(2) of Regulation 882/2004 (registration/approval of feed and food business establishments); or
- (b) operating as such under Article 4(5) of Regulation 853/2004 (registration and approval of establishments) pending such approval.

(5) Failure to comply with this paragraph is an offence.

Bovine animals, sheep and goats in other places of slaughter

10.—(1) When a bovine animal, sheep or goat is slaughtered in a place that, for the purposes of point 4(1)(a) of Annex V to the EU TSE Regulation (removal of specified risk material), is an other place of slaughter, the person carrying out the slaughter must remove all specified risk material as soon as is reasonably practicable after slaughter.

(a) O.J. No. L 204, 11.8.2000, p.1, last amended by Council Regulation (EC) No. 1791/2006 (O.J. No. L 363, 20.12.2006, p.1).

(b) O.J. No. L 117, 7.5.1997, p.1.

(2) Failure to comply with this paragraph is an offence.

Young lamb and goat stamps

11.—(1) An inspector may stamp a sheep or goat in a slaughterhouse with a young lamb stamp or a young goat stamp if the animal does not have a permanent incisor erupted through the gum and the documentation, if any, relating to the animal does not indicate that it is aged over 12 months at slaughter.

(2) The stamp must mark the meat with a circular mark 5 centimetres in diameter with the following in capital letters one centimetre high—

- (a) “MHS”; and
- (b) in the case of—
 - (i) a sheep, “YL”; or
 - (ii) a goat, “YG”.

(3) It is an offence for any person other than an inspector to apply the stamp or a mark resembling the stamp, or to possess the equipment for applying it.

(4) It is an offence to mark a sheep or goat with a stamp that is or resembles a young lamb stamp or a young goat stamp unless it is an animal permitted to be marked in accordance with subparagraph (1).

Removal of spinal cord from sheep and goats

12. It is an offence to remove the spinal cord or any part of it from a sheep or goat aged over 12 months at slaughter or that had one or more permanent incisors erupted through the gum (other than for the purposes of veterinary or scientific examination) except by—

- (a) longitudinally splitting the whole vertebral column; or
- (b) removing a longitudinal section of the whole vertebral column including the spinal cord.

Authorisation of cutting plants by the Food Standards Agency

13.—(1) The Food Standards Agency may authorise a cutting plant to remove—

- (a) those parts of the vertebral column of bovine animals that are specified risk material; or
- (b) the spinal cord from sheep and goats aged over 12 months at slaughter, or that have a permanent incisor erupted through the gum,

if the Agency is satisfied that the provisions of Annex V to the EU TSE Regulation (specified risk material) and this Schedule will be complied with.

(2) The procedures in regulations 6, 8, 9 and 10 apply, with references to the Scottish Ministers being construed as references to the Food Standards Agency.

Removal of specified risk material at a cutting plant authorised under paragraph 13(1)

14.—(1) The occupier of a cutting plant authorised under paragraph 13(1) shall ensure that as soon as reasonably practicable after arrival at the plant of meat and in any event before the meat leaves the plant all specified risk material of the kind to which the authorisation relates is removed from the meat.

(2) Failure to comply with this paragraph is an offence.

Meat from another Member State

15. For the purposes of point 10.1 and point 10.2 of Annex V to the EU TSE Regulation (rules on trade and export), where meat containing those parts of the vertebral column of a bovine animal that are specified risk material is brought into Scotland from another Member State, the importer

must send it directly to a cutting plant authorised under paragraph 13(1)(a), and failure to do so is an offence.

Staining and disposal of specified risk material

16.—(1) The occupier of any premises where specified risk material is removed commits an offence if that occupier fails to comply with point 3 of Annex V to the EU TSE Regulation (marking and disposal).

(2) For the purposes of that point—

(a) staining involves treating the material (whether by immersion, spraying or other application) with—

(i) a 0.5% weight/volume solution of the colouring agent Patent Blue V (E131, 1971 Colour Index No 42051(a)); or

(ii) such other colouring agent as may be approved in writing by the Scottish Ministers or the Food Standards Agency; and

(b) the stain must be applied in such a way that the colouring is and remains clearly visible—

(i) over the whole of the cut surface and the majority of the head in the case of the head of a sheep or goat; or

(ii) in the case of all other specified risk material, over the whole surface of the material.

(3) This paragraph does not apply in relation to any specified risk material that is destined for use as provided for in Article 1(2)(b) and (c) of the EU TSE Regulation (scope).

Security of specified risk material

17.—(1) Pending consignment or disposal from the premises or place where it was removed, the occupier of the premises or place must ensure that specified risk material is adequately separated from any food, feedingstuff or cosmetic, pharmaceutical or medical product and held in an impervious covered container that is labelled as either—

(a) containing specified risk material; or

(b) Category 1 animal by-products and including the words “For disposal only”.

(2) The occupier must ensure that the container is thoroughly washed as soon as is reasonably practicable each time that it is emptied, and disinfected before use for any other purpose.

(3) Failure to comply with this paragraph is an offence.

Prohibition on the sale, supply or possession for sale or supply of specified risk material for human consumption

18. It is an offence to sell, supply or possess for sale or supply—

(a) any specified risk material, or any food containing specified risk material, for human consumption; or

(b) any specified risk material for use in the preparation of any food for human consumption.

(a) Colour Index is published online by the Society of Dyers and Colourists at Perkin House, 82 Grattan Road, Bradford, West Yorkshire BD1 2JB. See www.colour-index.org.

SCHEDULE 8

Regulation 5(g)

Restrictions on placing on the market and export

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Placing on the market or export to third countries of bovine products

1.—(1) It is an offence for any person to place on the market or to export (or offer to export) to third countries any products consisting of or incorporating any material (other than milk) derived from a bovine animal born or reared within the United Kingdom before 1st August 1996.

(2) The prohibition in sub-paragraph (1) does not apply to the hides of bovine animals born or reared within the United Kingdom before 1st August 1996 (including hides from bovine animals referred to in the third indent of point 1(a) of Annex VII to the EU TSE Regulation) that have been used for leather production in accordance with Article 1(3) of Commission Decision 2007/411/EC.

(3) For the purposes of this paragraph, a bovine animal is deemed to have been born or reared in the United Kingdom before 1st August 1996 unless its cattle passport shows either that—

- (a) it was born in the United Kingdom on or after 1st August 1996; or
- (b) it first entered the United Kingdom on or after 1st August 1996.

Placing on the market or export to third countries of bovine animals

2.—(1) It is an offence for any person to place on the market or to export (or offer to export) to third countries bovine animals born or reared in the United Kingdom before 1st August 1996.

(2) The prohibition in sub-paragraph (1) does not apply to the placing on the market of such animals for sale or supply to any person in the United Kingdom.

(3) For the purposes of this paragraph, a bovine animal is deemed to have been born or reared in the United Kingdom before 1st August 1996 unless its cattle passport shows either that—

- (a) it was born in the United Kingdom on or after 1st August 1996; or
- (b) it first entered the United Kingdom on or after 1st August 1996.

Export to Member States of heads and un-split carcasses

3. Subject to point 10.2 of Annex V to the EU TSE Regulation (rules on trade and export), it is an offence for any person to export (or offer to export) to another Member State a head or un-split carcass containing specified risk material in the absence of an agreement of the kind specified in point 10.1 of that Annex.

Export to third countries of products containing specified risk material

4. It is an offence for any person to export (or offer to export) to third countries heads or fresh meat of bovine, ovine or caprine animals containing specified risk material, otherwise than in accordance with point 10(3) of Annex V to the EU TSE Regulation (rules on trade and export).

Further offences relating to placing on the market and export

5. In addition to the offences specified in paragraphs 1 to 4, the following provisions of these Regulations specify offences relating to placing on the market and export—

- (a) paragraph 7 of Schedule 3;
- (b) paragraphs 8(2)(b) and (7), 10(7) and 23 of Schedule 4; and
- (c) paragraph 18(1) and (3) of Schedule 6.

SCHEDULE 9

Regulation 21

Consequential Amendments

The Animal By-Products (Identification) Regulations 1995

1. The Animal By-Products (Identification) Regulations 1995(a) are amended as follows.
2. For regulation 3(3) (meaning of “animal by-product”) substitute—
 - “(3) In these Regulations the definition of “animal by-product” includes—
 - (a) any product that, under paragraph 1 of Schedule 8 to the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010, it is an offence for any person to place on the market or export (or offer to export) to third countries; and
 - (b) where—
 - (i) a bovine animal has been slaughtered for human consumption other than in accordance with a required method of operation approved pursuant to paragraph 12(3) of Schedule 2 to the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010; and
 - (ii) the disposal of its body, or a part of its body, has in consequence been required under regulation 15(1), (2) and (3)(f) of those Regulations, that body or part of a body.”.

The Rendering (Fluid Treatment) (Scotland) Order 2001

3. The Rendering (Fluid Treatment) (Scotland) Order 2001(b) is amended as follows.
4. In article 2 (interpretation), in the definition of “animal by-product”, for “The Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006”, substitute, “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(e)”.

The Meat Products (Scotland) Regulations 2004

5. The Meat Products (Scotland) Regulations 2004(d) are amended as follows.
6. In regulation 2 (interpretation), in the definition of “meat product” for “paragraph 4 of Schedule 6 to the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006” substitute “paragraph 3 of Schedule 7 to the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010”.
7. In regulation 6(2) (parts of the carcass in uncooked meat products), for “the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006” substitute “the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010”.

(a) S.I. 1995/614, relevantly amended by S.S.I. 2006/530 and 2008/417.

(b) S.S.I. 2001/189, relevantly amended by S.S.I. 2006/530.

(c) O.J. No. L 147, 31.5.2001, p.1, last amended by Commission Regulation (EC) No. 571/2008 (O.J. No. L 161, 20.6.2008, p.4).

(d) S.S.I. 2004/6, relevantly amended by S.S.I. 2005/616, 2006/530 and 2008/97.

The Official Feed and Food Controls (Scotland) Regulations 2009

8. The Official Feed and Food Controls (Scotland) Regulations 2009**(a)** are amended as follows.

9. In paragraph (a)(viii) of the definition of “relevant food law” in Schedule 3 (definition of relevant food law), for “the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006” substitute “the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010”.

(a) S.S.I. 2009/446.

SCHEDULE 10

Regulation 23

Revocations

<i>Column 1 – enactment</i>	<i>Column 2 citations</i>
The Bovine Products (Restriction on Placing on the Market) (Scotland) (No. 2) Regulations 2005	S.S.I. 2005/586
The Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006	S.S.I. 2006/530
The Bovine Products (Restriction on Placing on the Market) (Scotland) (No. 2) Amendment Regulations 2007	S.S.I. 2007/338
The Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2007	S.S.I. 2007/357
The Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2008	S.S.I. 2008/166
The Transmissible Spongiform Encephalopathies (Scotland) Amendment (No. 2) Regulations 2008	S.S.I. 2008/417

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland, revoke and remake with amendments the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006.

These Regulations enforce 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 as amended (“the EU TSE Regulation”). They also enforce—

- (a) Commission Decision 2007/411 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 and repealing Decision 2005/598/EC;
- (b) Commission Decision 2009/719 authorising certain Member States to revise their annual BSE monitoring programmes;
- (c) Commission Regulations (EC) No. 956/2008 and (EC) No. 163/2009 amending Annex IV to the EU TSE Regulation; and
- (d) Commission Regulation (EC) No. 103/2009 amending Annexes VII and IX to the EU TSE Regulation.

The main Regulations

The Regulations provide that the Scottish Ministers are the competent authority for the purposes of the EU TSE Regulation (except in Schedule 7 and paragraphs 1, 3 and 4 of Schedule 8, where the competent authority is the Food Standards Agency) (regulation 3) and provide an exception for research (regulation 4).

Part 2 introduces Schedules 2 to 8.

Part 3 deals with administration and enforcement.

Regulations 6 to 10 deal with approvals, authorisations, licences and registrations, occupier’s duties, suspension, amendment and revocations of approvals, etc., and an appeals procedure.

Regulation 11 deals with valuations.

Regulations 12 to 14 give powers to the Scottish Ministers, the local authority and the Food Standards Agency to appoint inspectors, and deal with powers of entry and powers of inspectors. Regulation 15 provides for a notice procedure, and regulation 16 provides for licences permitting movement during a movement restriction.

Regulations 17 to 19 deal with obstruction of an inspector, penalties, and offences by a body corporate. A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding £10,000 (the statutory maximum) or to imprisonment for a term not exceeding twelve months or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

Regulation 20 details who is responsible for enforcing these Regulations.

Regulation 21 introduces Schedule 9 (consequential amendments).

Regulation 22 saves the miscellaneous amendments made by the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006.

Regulation 23 introduces Schedule 10 (revocations).

Schedule 1

Regulation 2(4) and Schedule 1 set out those EU instruments to which any reference should be construed as references to those instruments as amended from time to time.

Schedule 2

Schedule 2 deals with monitoring for TSEs. Paragraph 1 provides for notification to the Scottish Ministers of fallen stock that must be tested for TSEs under the EU TSE Regulation. Paragraphs 2 to 5 deal with the delivery, testing and retention of bodies of bovine animals for the purposes of monitoring under Article 6 of the EU TSE Regulation. Paragraph 4 makes it an offence to destroy the body of a bovine animal to which paragraph 1 applies before it has been tested. Paragraph 6 provides that paragraphs 1 and 2 do not apply in an island area as defined in that paragraph. Paragraph 7 makes it an offence to consign a bovine animal born or reared in the United Kingdom before 1st August 1996 to a slaughterhouse for human consumption or to slaughter such an animal for human consumption. Paragraphs 8 and 9 provide for brain stem sampling of specified bovine animals. Paragraph 10 provides for the approval of laboratories that test such brain stem samples and includes the following fees—

- (a) £29,770 for the initial approval of a laboratory;
- (b) £8,834 for annual proficiency testing and a follow-up inspection for the first year after approval;
- (c) £4,135 for annual proficiency testing from the second year after approval;
- (d) £1,385 for Single proficiency test (in the event of a failure in the annual proficiency testing); and
- (e) £87.24 per hour for an inspector (for any additional inspections that are necessary to check for compliance with the terms of the approval).

Paragraph 11 deals with applications for approval as a sampling site.

Paragraph 12 creates a requirement for the occupier of a slaughterhouse (in which bovine animals that require BSE testing are slaughtered for human consumption) to have a Required Method of Operation (“RMOP”).

Paragraph 13 provides for retention of products and their disposal, paragraph 14 provides for TSE sampling of sheep, goats and deer and paragraph 15 deals with compensation.

Paragraphs 16 to 22 specify the minimum requirements that must appear in the RMOP.

Schedule 3

Schedule 3 deals with control and eradication of TSE in bovine animals. Paragraph 1 provides for notification of a suspect animal to the Scottish Ministers. Paragraphs 2 and 3 provide for the restriction and slaughter of notified and suspect animals. Paragraphs 4 and 5 deal with the offspring and cohorts of the suspect. Paragraph 6 provides for the notification and restriction of the carcasses of animals that die or are killed while under restriction, and paragraph 7 prohibits the placing on the market of offspring.

Paragraphs 8 to 10 deal with compensation.

Schedule 4

Schedule 4 deals with control and eradication of TSE in sheep and goats. Paragraph 1 provides for notification of a suspect animal to the Scottish Ministers. Paragraphs 2 and 3 provide for the restriction and slaughter of the suspect animal. Paragraphs 4 and 5 deal with movement restrictions. Paragraphs 6 to 10 provide for action following confirmation. Paragraph 11 deals with derogations from the usual requirement of paragraphs 6 to 10. Paragraph 12 provides for time for appeals, and paragraph 13 provides for killing and destruction. Paragraphs 14 to 16 deal with

infected animals from another holding, common grazing and multiple flocks on a holding. Paragraph 17 deals with subsequent occupiers of the land.

Paragraphs 18 to 20 set out the procedure to be followed after the killing or destruction. Paragraph 18 restricts the introduction of animals onto a holding. Paragraph 19 regulates the use of ovine germinal products, and paragraph 20 restricts the movement of animals from a holding.

Paragraph 21 requires the Scottish Ministers to establish the dates relating to restrictions. Paragraph 22 provides for notification of animals that die while under restriction. Paragraph 23 deals with placing on the market of first generation progeny, semen, embryo, and ovum of animals that are either suspected of, or confirmed with, a TSE. Paragraph 24 deals with compensation for a sheep or goat slaughtered as a suspect animal. Paragraph 25 sets out a table of compensation for a sheep or goat killed or products destroyed following confirmation of TSE. Paragraph 26 provides a process for dealing with disputed valuations. Paragraph 27 provides for compensation for milk and milk products destroyed as a result of inability to exclude BSE from sheep or goats.

Schedule 5

Schedule 5 deals with the control and eradication of TSE in animals that are not bovine, ovine, or caprine. Paragraphs 1 to 3 concern notification, restriction and slaughter of suspect animals. Paragraph 4 provides for compensation.

Schedule 6

Schedule 6 deals with feedingstuffs. Paragraphs 1 to 3 prohibit feeding specified feedingstuffs to ruminant and non-ruminant animals, and provide for exceptions. Paragraphs 4 and 5 provide for movement restrictions and slaughter of animals suspected of having been fed prohibited feedingstuffs, and paragraph 6 provides for compensation. Paragraph 7 prohibits the slaughter or sale for human consumption of restricted animals.

Paragraphs 8 to 10 regulate the production and use of fishmeal for feeding to non-ruminant animals and unweaned, ruminant farmed animals. Paragraphs 11 and 12 regulate feedingstuffs containing dicalcium phosphate or tricalcium phosphate. Paragraphs 13 and 14 regulate feedingstuffs containing blood products and blood meal.

Paragraph 15 makes provision for changes in use of equipment. Paragraphs 16 and 17 control the manufacture, storage and transport of processed animal protein and products containing it. Paragraph 18 controls exports to third countries, and paragraph 19 regulates fertilisers derived from animal protein. Paragraph 20 deals with records, and paragraph 21 deals with cross-contamination.

Schedule 7

Schedule 7 deals with specified risk material, mechanically recovered meat and slaughtering techniques. Paragraph 1 appoints the Food Standards Agency as the competent authority for this Schedule. Paragraph 2 makes provision for training of staff in slaughterhouses and cutting plants where specified risk material is removed.

Paragraph 3 deals with mechanically separated meat, paragraph 4 with pithing, paragraph 5 with tongue harvesting and paragraph 6 with head meat harvesting.

Paragraph 7 controls the removal of specified risk material. Paragraph 8 deals with bovine animals in a slaughterhouse and paragraph 9 deals with sheep and goats in a slaughterhouse.

Paragraph 10 deals with bovine animals, sheep and goats at other places of slaughter.

Paragraph 11 deals with young lamb and goat stamps.

Paragraph 12 deals with the removal of spinal cord from sheep and goats.

Paragraph 13 provides for the authorisation of cutting plants to remove certain specified risk material and paragraph 14 controls the removal of specified risk material at a cutting plant authorised under paragraph 13(1).

Paragraph 15 deals with meat from other Member States.

Paragraph 16 requires the staining and disposal of specified risk material and paragraph 17 provides for the security of specified risk material.

Paragraph 18 prohibits the sale, supply or possession for sale or supply of specified risk material for human consumption.

Schedule 8

Schedule 8 deals with the export of live bovine animals and products derived from them to other Member States and to third countries. Paragraphs 1 and 2 prohibit the export of bovine animals and products to other Member States and to third countries, paragraph 3 restricts the export of heads and un-split carcasses containing specified risk material to other Member States, and paragraph 4 prohibits the export of bovine heads and meat containing specified risk material to third countries. Paragraph 5 provides cross-references to other relevant offence provisions in these Regulations.

Schedules 9 and 10

Schedule 9 makes consequential amendments to other statutory instruments and Schedule 10 contains revocations.

A regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Rural Directorate, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY and from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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