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WELSH STATUTORY INSTRUMENTS

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**2008 No. 3154**

The Transmissible Spongiform  
Encephalopathies (Wales) Regulations 2008

**PART 1**

General provisions

**Title, application and commencement**

1. These Regulations—
  - (a) are entitled the Transmissible Spongiform Encephalopathies (Wales) Regulations 2008;
  - (b) apply in relation to Wales; and
  - (c) come into force on 31 December 2008

**Interpretation**

- 2.—(1) In these Regulations—
  - “approved testing laboratory” (“*labordy profi cymeradwy*”) has the meaning given to it in paragraph 4(3) of Schedule 2;
  - “bovine animal” (“*anifail buchol*”) includes bison and buffalo (including water buffalo);
  - “BSE” (“*BSE*”) means bovine spongiform encephalopathy;
  - “cattle passport” (“*pasbort gwartheg*”) has the same meaning as in the Cattle Identification (Wales) Regulations 2007(1);
  - “Commission Decision 2007/411/EC” (“*Penderfyniad y Comisiwn*”) means Commission Decision 2007/411/EC prohibiting the placing on the market of products derived from bovine animals born or reared within the United Kingdom before 1 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(2);
  - “Community TSE Regulation” (“*Rheoliad TSE y Gymuned*”) 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(3), as read with—
    - (a) Commission Decision 2007/411/EC; and
    - (b) Commission Decision 2007/453/EC establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk(4);

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(1) S.I.2007/842 (W.74).

(2) OJ No L 155, 15.6.2007, p.74.

(3) OJ No L 147, 31.5.2001, p.1, as last amended by Commission Regulation (EC) No 571/2008 (OJ No L 161, 20.6.2008, p.4).

(4) OJ No L 172, 30.6.2007, p.84.

“cutting plant” (“*safle torri*”) (except in Schedule 7, paragraph 9(2)(b)(iii)) has the meaning given to it in paragraph 1(17) of Annex I to Regulation (EC) No. 853/2004, and is an establishment which is—

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

“inspector” (“*arolygydd*”) means an inspector appointed under regulation 12, and “veterinary inspector” (“*arolygydd milfeddygol*”) means a veterinary surgeon appointed by the Welsh Ministers as an inspector;

“local authority” (“*awdurdod lleol*”) means in relation to an area the county council or county borough council for that area;

“Regulation (EC) No. 1774/2002” (“*Rheoliad (EC) Rhif. 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<sup>(5)</sup>, as read with—

- (a) Commission Regulation (EC) No. 811/2003 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the intra-species recycling ban for fish, the burial and burning of animal by-products and certain transitional measures<sup>(6)</sup>;
- (b) Commission Regulation (EC) No. 878/2004 laying down transitional measures in accordance with Regulation (EC) No. 1774/2002 for certain animal by-products classified as Category 1 and 2 materials and intended for technical purposes<sup>(7)</sup>; and
- (c) Commission Regulation (EC) No. 92/2005 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards means of disposal or uses of animal by-products and amending its Annex VI as regards biogas transformation and processing of rendered fats<sup>(8)</sup>;

“Regulation (EC) No. 853/2004” (“*Rheoliad (EC) Rhif. 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<sup>(9)</sup>, as read with—

- (a) Directive 2004/41/EC of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC<sup>(10)</sup>;
- (b) Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs<sup>(11)</sup>;
- (c) Commission Regulation (EC) No. 2074/2005 laying down implementation measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament

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(5) OJ No L 273, 10.10.2002, p.1, as last amended by Commission Regulation (EC) No 523/2008 (OJ No L 153, 12.6.2008, p 23).

(6) OJ No L 117, 13.5.2003, p.14.

(7) OJ No L 162, 30.4.2004, p.62, as amended by Regulation (EC) No 1877/2006 (OJ No L 360, 19.12.2006, p133).

(8) OJ No L 19, 21.1.2005, p.27, as last amended by Regulation (EC) No 1576/2007 (OJ No L 340, 22.12.07, p.89).

(9) OJ No L 139, 30.04.2004, p.55. The revised text of Regulation (EC) No 853/2004 is now set out in a Corrigendum (OJ No L 226, 25.6.2004, p.22) which should be read with a further Corrigendum (OJ No L204, 4.8.2007, p.26), as last amended by Commission Regulation (EC) No 1243/2007 (OJ No L 281, 25.10.2007, p.8).

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

(11) OJ No L 271, 15.10.2005, p.17.

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<sup>(12)</sup>; and

- (d) Commission Regulation (EC) No. 2076/2005 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<sup>(13)</sup>;

“Regulation (EC) No. 882/2004” (“*Rheoliad (EC) Rhif. 882/2004*”) means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules<sup>(14)</sup>, as read with—

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

“slaughterhouse” (“*lladd-dy*”) has the meaning given to it in paragraph 1(16) of Annex I to Regulation (EC) No. 853/2004, and is an establishment which is—

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

“TSE” (“*TSE*”) means transmissible spongiform encephalopathy.

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

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

### **Appointment of competent authority**

3. The Welsh Ministers are the competent authority for the purposes of the Community TSE Regulation except as otherwise specified in these Regulations.

### **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 premises approved for that purpose under this regulation by the Welsh Ministers.

(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.

(12) OJ No L 338, 22.12.2005, p.27, as last amended by Commission Regulation (EC) No 1244/2007 (OJ No L 281, 25.10.2007, p.12).

(13) OJ No L 338, 22.12.2005, p.83, as last amended by Commission Regulation (EC) No 1246/2007 (OJ No L 281, 25.10.2007, p.21).

(14) OJ No L 165, 30.4.2004, p.1. The revised text of Regulation (EC) No 882/2004 is now set out in a Corrigendum (OJ No L 191, 28.5.2004, p.1), as last amended by Council Regulation (EC) No 1791/2006 (OJ No L 363, 20.12.2006, p.1).

## **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 export).

## **PART 3**

### Administration and enforcement

#### **Approvals, authorisations, licences and registrations**

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

- (2) It must be in writing, and must specify—
- (a) the address of the premises;
  - (b) the name of the occupier; and
  - (c) the purpose for which it is granted.
- (3) It may be made subject to such conditions as are necessary to—
- (a) ensure that the provisions of the Community TSE Regulation and these Regulations will be complied with; or
  - (b) protect public or animal health.
- (4) Where refusing to grant an approval, authorisation, licence or registration, or granting one subject to conditions, the Welsh Ministers must—
- (a) give reasons in writing; and
  - (b) explain that the applicant has the right to make written representations to a person appointed by the Welsh Ministers.
- (5) The appeals procedure in regulation 10 then applies.

#### **Occupier's duty**

7. The occupier of any premises approved, authorised, licensed or registered under these Regulations commits an offence if they do 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 Community TSE Regulation and these Regulations; and
- (b) any person employed by them, and any person permitted to enter the premises, complies with those conditions and requirements.

### **Suspension and amendment**

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

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

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

(3) A suspension or amendment—

- (a) may have immediate effect if the Welsh Ministers consider it necessary for the protection of public or animal health; and
- (b) otherwise, may have effect after the expiration of at least 21 days.

(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; and
- (d) explain that the person who has been notified has the right to make written representations to a person appointed by the Welsh Ministers.

(5) The appeals procedure in regulation 10 then applies.

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

### **Revocations of approvals, etc.**

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

- (a) it is currently suspended and the period for appeal under regulation 10 has expired or the suspension has been upheld following such appeal;
- (b) it has been previously suspended and there is further non-compliance with the Community TSE Regulation or these Regulations; or
- (c) the Welsh Ministers are satisfied that the occupier no longer uses the premises for the purpose for which it was granted.

(2) If the Welsh Ministers revoke under paragraph (1)(b) or (1)(c) the appeals procedure in regulation 10 applies but the revocation remains in force during that appeals procedure.

### **Appeals**

**10.**—(1) Where this regulation applies, a person may make written representations to a person appointed for the purpose by the Welsh Ministers concerning any decision of the Welsh Ministers within 21 days of notification of the decision to that person.

(2) The Welsh Ministers may also make written submissions to the appointed person concerning the decision.

(3) The appointed person must then report in writing to the Welsh Ministers.

(4) The Welsh Ministers must give to the appellant written notification of the final determination and the reasons for it.

### **Valuations**

**11.**—(1) This regulation applies when a valuation is necessary under these Regulations.

(2) The owner and the Welsh Ministers may agree on a valuation.

(3) If the owner and the Welsh Ministers cannot agree on a valuation, they may jointly appoint a valuer.

(4) If the owner and the Welsh Ministers cannot agree on who the valuer should be, the President of the Royal Institution of Chartered Surveyors may nominate the valuer, and both the owner and the Welsh Ministers must accept the nomination.

(5) The valuer must carry out the valuation and submit it and any other relevant information and documentation to the Welsh Ministers, and provide a copy to the owner.

(6) Both the owner and a representative of the Welsh Ministers have the right to be present at a valuation.

(7) The valuation is binding on both the owner and the Welsh Ministers.

### **Appointment of inspectors**

**12.** The Welsh Ministers and the local authority may appoint inspectors for the purposes of the enforcement of these Regulations except as specified in Schedule 7.

### **Powers of entry**

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

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

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

(4) They may take with them—

(a) such other persons as they consider necessary; and

(b) any representative of the European Commission acting for the purpose of the enforcement of a Community obligation.

(5) If inspectors enter any unoccupied premises 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 either—

- (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 section is valid for one month.

(8) In this regulation “premises” (“*mangre*”) includes—

- (a) domestic premises if they are being used for any purpose in connection with the Community TSE Regulation or these Regulations; and
- (b) any vehicle, container or structure (moveable or otherwise).

### **Powers of inspectors**

**14.**—(1) Inspectors may—

- (a) seize any—
  - (i) animal;
  - (ii) body of an animal, and any parts of the body (including the blood and the hide) and any semen, embryo or ovum; or
  - (iii) animal protein or feedingstuffs that may contain animal protein, 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 any such animal to arrange for the collection and penning of the animal;
- (d) inspect any body of an animal and any parts of the body (including the blood and the hide) and any 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 Community 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 them such assistance as the inspector may reasonably require (including providing them 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 defaces, obliterates, or removes any mark or seal, or removes any lock, applied under paragraph (1) is guilty of an offence.

- (3) Inspectors are not personally liable for anything they do—
  - (a) in the execution or purported execution of these Regulations; and
  - (b) within the scope of their employment,

if they acted in the honest belief that their duty under these Regulations required or entitled them to do it; but this does not affect any liability of their employer.

### **Notices**

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

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

(4) If inspectors suspect that any premises, vehicle or container to which the Community TSE Regulation or these Regulations apply constitutes a risk to animal or public health, they may serve a notice on the occupier or person in charge of the premises, vehicle or container requiring that person to cleanse and disinfect all or any part of the premises, vehicle or container 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 inspectors 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 movements, inspectors may subsequently permit movement under the authority of a licence.

(2) The person transporting under the authority of a licence must carry the licence with him or her during any movement, and produce it on demand to an inspector, and failure to do so is an offence.



## **Obstruction**

17. A person is guilty of an offence if that person—
- (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.

## **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 of three months or both; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

## **Corporate offences**

- 19.—(1) If an offence under these Regulations committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer; or
  - (b) to be attributable to any neglect on their part,

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

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

- (3) If an offence under these Regulations committed by a partnership is shown—
- (a) to have been committed with the consent or connivance of a partner; or
  - (b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If any offence under these Regulations committed by an unincorporated association, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

- (a) “officer” (“*swyddog*”), in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) “partner” (“*partner*”) includes a person purporting to act as a partner.

## **Enforcement**

**20.**—(1) The Welsh Ministers enforce Schedule 2 in slaughterhouses and cutting plants.

(2) The Food Standards Agency enforces Schedule 7 and paragraph 2 of Schedule 8 in slaughterhouses and cutting plants.

(3) Otherwise these Regulations are enforced by the local authority.

(4) The Welsh 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 must be discharged by the Welsh Ministers and not by the local authority.

## **Revocations**

**21.** The following Regulations are revoked—

- (a) the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006(**15**); and
- (b) the Bovine Products (Restriction on Placing on the Market) (Wales) (No.2) Regulations 2005(**16**).
- (c) the Bovine Spongiform Encephalopathy (BSE) Compensation (Wales) Regulations 2006(**17**)
- (d) the Sheep and Goats Transmissible Spongiform Encephalopathy (TSE) Compensation (Wales) Regulations 2006(**18**).

9 December 2008

*Elin Jones*  
Minister for Rural Affairs, one of the Welsh  
Ministers

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(15) S.I. 2006/1226 (W.117).

(16) S.I. 2005/3296 (W.254).

(17) S.I. 2006/1512 (W.148).

(18) S.I. 2006/1513 (W.149).