

**2005 No. 586**

**FOOD**

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

*Made* - - - - - *17th November 2005*

*Laid before the Scottish Parliament* *21st November 2005*

*Coming into force* *1st January 2006*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(b), hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Bovine Products (Restriction on Placing on the Market) (Scotland) (No. 2) Regulations 2005 and come into force on 1st January 2006.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“the Agency” means the Food Standards Agency;

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

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

“bovine animal” includes—

(a) buffalo of the species *Bubalus bubalis*; and

(b) *Bison bison*;

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

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

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

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

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

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

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

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

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

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

“material” and “product” shall respectively be construed in accordance with the meanings that “materials” and “products” bear in Commission Decision 2005/598/EC prohibiting the placing on the market of products derived from bovine animals born or reared within the United Kingdom before 1st August 1996 for any purpose and exempting such animals from certain control and eradication measures laid down in Regulation (EC) No. 999/2001(c);

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

“meat preparations” has the meaning given in point 1.15 of Annex I to Regulation 853/2004;

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

“mechanically separated meat” has the meaning given in point 1.14 of Annex I to Regulation 853/2004;

“minced meat” has the meaning given in point 1.13 of Annex I of Regulation 853/2004;

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

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

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

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

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

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

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(a) S.I. 1995/539, revoked with effect from 1st January 2006 by S.S.I. 2005/470.

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

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

### **Prohibition on marketing of certain products derived from older bovine animals**

- 3.—(1) Subject to paragraph (2), no person shall place on the market any product—
- (a) consisting of or incorporating any material derived from a bovine animal born or reared within the United Kingdom before 1st August 1996; and
  - (b) intended for use in human food, animal feed or fertilisers.
- (2) Nothing in paragraph (1) shall prevent milk derived from a bovine animal born or reared within the United Kingdom before 1st August 1996 from being placed on the market.

### **Appointment of authorised officers**

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

(2) For the purposes of paragraph (1), an official veterinarian and an official auxiliary shall be deemed to be an authorised officer in relation to—

- (a) any slaughterhouse;
- (b) any cutting plant;
- (c) any establishment to which Chapter I of section V of Annex III to Regulation 853/2004 applies; and
- (d) any establishment at which meat products are produced.

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

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

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)<sup>(b)</sup> with the modifications that subsections (2) to (4) shall apply in relation to an offence under regulation 7(1) as they apply in relation to an offence under section 14 or 15 and that in subsection (4)(b) the references to “sale or intended sale” are deemed to be references to “placing on the market” as defined in Article 3.1(b) of Regulation 999/2001;
- (c) section 32 (powers of entry);
- (d) section 33 (obstruction etc. of officers);
- (e) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) or (2) as applied by sub-paragraph (d);
- (f) section 36 (offences by bodies corporate);
- (g) section 36A (offences by Scottish partnerships)<sup>(c)</sup>; and
- (h) section 44 (protection of officers acting in good faith), with the modification that the references to “food authority” are deemed to be references to the relevant enforcement authority.

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

6.—(1) An authorised officer of the relevant enforcement authority may at all reasonable times inspect any product that has been placed on the market and paragraphs (2) to (8) shall apply

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

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

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

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

(2) The authorised officer may either–

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

(3) Where the authorised officer exercises the power conferred by paragraph (2)(a), that officer shall, as soon as is reasonably practicable and in any event within 21 days–

- (a) if satisfied that regulation 3 has been complied with in relation to the product, forthwith withdraw the notice; or
- (b) if not so satisfied, seize the product and remove it in order to have it dealt with by the sheriff.

(4) Where the authorised officer exercises the power conferred by paragraph (2)(b) or (3)(b), that officer shall inform the person in charge of the product that it is intended to have it dealt with by the sheriff and any person who under regulation 7(1) might be liable to prosecution for a contravention of regulation 3 in respect of the product shall, if that person attends before the sheriff by whom the product falls to be dealt with, be entitled to be heard and to call witnesses.

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

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

(6) An order under paragraph (5) shall be sufficient evidence in any proceedings under these Regulations of the failure of the product in question to comply with regulation 3.

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

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

## **Offences and penalties**

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

(2) Any person guilty of an offence under this regulation is liable–

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 3 months or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(3) No prosecution for an offence under paragraph (1) shall be begun after the expiry of–

- (a) 3 years from the commission of the offence; or

(b) 1 year from the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the prosecutor's knowledge, whichever is the earlier.

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

## **Enforcement**

**8.**—(1) These Regulations shall be executed and enforced—

(a) in relation to—

(i) any slaughterhouse;

(ii) any cutting plant; and

(iii) any establishment at which minced meat, meat preparations, mechanically separated meat or meat products are produced and which shares a common curtilage with, or falls within the same curtilage as, a slaughterhouse or cutting plant,

by the Agency; and

(b) subject to paragraph (2), in relation to any other establishment by the local authority in whose area the establishment is situated.

(2) The Agency may, if it considers it appropriate to do so, enforce and execute these Regulations in relation to any establishment referred to in paragraph (1)(b).

(3) Before exercising its option to enforce and execute these Regulations under paragraph (2), the Agency shall consult the local authority which would otherwise have a duty to carry out such enforcement and execution.

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

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

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

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

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

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(a) S.I. 1995/614, amended by S.I. 1995/1955, S.I. 1996/3124, S.I. 1997/2073, S.S.I. 2000/62, S.S.I. 2002/83, S.S.I. 2003/53 and 411 and S.S.I. 2005/470.

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

**Revocation**

**10.** The Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005(a) are revoked.

St Andrew's House,  
Edinburgh  
17th November 2005

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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(a) S.S.I. 2005/470.

## DEFINITIONS OF COMMUNITY LEGISLATION

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

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

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

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

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

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

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

“Regulation 1688/2005” means the 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(j).

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(a) O.J. No. L 157, 30.4.04, 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).

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

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

(d) O.J. No. L 31, 1.2.02, p.1.

(e) O.J. No. L 245, 29.9.03, p.4.

(f) O.J. No. L 139, 30.4.04, p.1. The revised text of Regulation 852/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.3).

(g) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.22).

(h) O.J. No. L 139, 30.4.04, p.206. The revised text of Regulation 854/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.83).

(i) O.J. No. L 165, 30.4.04, p.1. The revised text of Regulation 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1).

(j) O.J. No. L 271, 15.10.05, p.17.

## EXPLANATORY NOTE

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

These Regulations revoke and re-enact with certain changes the Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 (S.S.I. 2005/470), which gave effect in relation to Scotland to Article 1.1 of Commission Decision 2005/598/EC prohibiting the placing on the market of products derived from bovine animals born or reared within the United Kingdom before 1st August 1996 for any purpose and exempting such animals from certain control and eradication measures laid down in Regulation (EC) No. 999/2001 (O.J. No. L 204, 5.8.05, p.22).

The changes effected by these Regulations are necessary in the light of the coming into force of the Food Hygiene (Scotland) Regulations 2005 (S.S.I. 2005/505), which provide for the execution and enforcement in relation to Scotland of certain Community instruments relating to food hygiene. The revocation of the Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 is effected by regulation 10 of these Regulations.

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

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

These Regulations also—

- (a) apply with modifications certain provisions of the Food Safety Act 1990 (1990 c.16) for the purposes thereof (regulation 5);
- (b) provide for the inspection and seizure of products that are suspected of having been placed on the market in contravention of regulation 3 (regulation 6);
- (c) create offences and penalties (regulation 7);
- (d) make provision for their enforcement including the appointment of authorised officers (regulations 4 and 8);
- (e) make a consequential amendment to the Animal By-Products (Identification) Regulations 1995 (S.I. 1995/614) in so far as they apply in relation to Scotland (regulation 9).

No regulatory impact assessment has been prepared in relation to these Regulations. A full regulatory impact assessment, which includes a compliance cost assessment of the effect that the implementation of Article 1.1 of Commission Decision 2005/598/EC by the Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 would have on business costs, was prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency Scotland, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.

£3.00

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