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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 46**

**ANIMALS**

**ANIMAL HEALTH**

**The TSE (Scotland) Amendment Regulations 2006**

*Made* - - - - *7th February 2006*  
*Laid before the Scottish*  
*Parliament* - - - - *7th February 2006*  
*Coming into force* - - *10th March 2006*

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

**Citation and commencement**

1. These Regulations may be cited as the TSE (Scotland) Amendment Regulations 2006 and shall come into force on 10th March 2006.

**Amendment of the TSE (Scotland) Regulations 2002**

2. The TSE (Scotland) Regulations 2002<sup>(2)</sup> are amended in accordance with regulations 3 to 5.

3. In regulation 3(1) (interpretation), for the definition of “the Community Transitional Measures” substitute—

““the Community Transitional Measures” means—

- (a) Commission Regulation (EC) No. 1248/2001 of 22nd June 2001 amending Annexes III, X and XI to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards epidemic surveillance and testing of transmissible spongiform encephalopathies<sup>(3)</sup>;
- (b) Commission Regulation (EC) No. 1326/2001 of 29th June 2001 laying down transitional measures to permit the changeover to the Regulation of the European Parliament and of the Council (EC) No. 999/2001 laying down rules for

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(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

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

(3) O.J. No. L 173, 27.6.01, p.12.

the prevention, control and eradication of certain transmissible spongiform encephalopathies, and amending Annexes VII and XI to that Regulation(4);

- (c) Commission Regulation (EC) No. 270/2002 of 14th February 2002 amending Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards specified risk material and epidemio surveillance for transmissible spongiform encephalopathies and amending Regulation (EC) No. 1326/2001 as regards animal feeding and the placing on the market of ovine and caprine animals and products thereof(5);
- (d) Commission Regulation (EC) No. 1494/2002 of 21st August 2002 amending Annexes III, VII and XI to Regulation (EC) No. 999/2001 of the European Parliament and the Council as regards monitoring of bovine spongiform encephalopathy, eradication of transmissible spongiform encephalopathy, removal of specified risk materials and rules for importation of live animals and products of animal origin(6);
- (e) Commission Regulation (EC) No. 1139/2003 of 27th June 2003 amending Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards monitoring programmes and specified risk material(7);
- (f) Commission Regulation (EC) No. 2245/2003 of 19th December 2003 amending Annex III to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards monitoring of transmissible spongiform encephalopathies in ovine and caprine animals(8);
- (g) Commission Regulation (EC) No. 1492/2004 of 23rd August 2004 amending Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards eradication measures for transmissible spongiform encephalopathies in bovine, ovine and caprine animals, the trade and importation of semen and embryos of ovine and caprine animals and specified risk material(9);
- (h) Commission Regulation (EC) No. 36/2005 amending Annexes III and X to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards epidemio-surveillance for transmissible spongiform encephalopathies in bovine, ovine and caprine animals(10); and
- (i) Regulation (EC) No. 932/2005 of the European Parliament and of the Council of 8th June 2005 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(11).”.

4. In regulation 97(1) (offences and penalties), after “person” where it appears in the first line insert–

“, other than an inspector,”.

5.—(1) Schedule 6A (enforcement of Annex VII to the Community TSE Regulation) is amended in accordance with paragraphs (2) to (7).

(2) After paragraph 5, insert–

(4) O.J. No. L 177, 30.6.01, p.60.

(5) O.J. No. L 45, 15.2.02, p.4.

(6) O.J. No. L 225, 22.8.02, p.3.

(7) O.J. No. L 160, 28.6.03, p.22.

(8) O.J. No. L 333, 20.12.03, p.28.

(9) O.J. No. L 274, 24.8.04, p.3.

(10) O.J. No. L 10, 13.1.05, p.9.

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

**“Multiple flocks on a holding**

**5A.** Where more than one flock is kept on a single holding, the Scottish Ministers may limit a notice under paragraph 2 or 3 above to the flock in which TSE has been confirmed in accordance with paragraph 2(b)(iii), third sentence, of Annex VII.”.

(3) For paragraph 7, substitute—

**“Time for review**

7. The Scottish Ministers shall not proceed with a notice served under this Part until—

- (a) they have received written notification from the person on whom the notice is served that that person does not intend to proceed with a review under Part III of this Schedule; or
- (b) after the end of the 21 day period for such a review; or
- (c) if there is such a review, they have given the person aggrieved notification of their final determination.”.

(4) In Part II after “MOVEMENT OF ANIMALS”, insert “ON CONFIRMATION OF TSE” .

(5) After paragraph 13, insert—

**“PART IIA**

**MOVEMENT RESTRICTIONS ON SUSPICION OF TSE**

**Movement restrictions on suspicion of TSE**

**13A.—**(1) For the purposes of paragraph 3 of Annex VII, where TSE is suspected in an animal on a holding, an inspector—

- (a) shall serve a notice prohibiting the movement of any sheep or goat from that holding; or
- (b) if the inspector is satisfied that that holding is not likely to be the holding where the suspect animal could have been exposed to TSE, the inspector may serve a notice prohibiting the movement of any sheep or goat on to or from other holdings or only the holding of exposure.

PART IIB”.

(6) For paragraph 14, substitute—

**“Derogations**

**14.—**(1) In accordance with paragraph 9 of Annex VII, the occupier of a holding may apply to the Scottish Ministers in writing asking them to exercise one of the options permitted under that paragraph.

(2) An application under this paragraph shall be in writing and shall set out in full the reasons for the application.

(3) After they have considered an application under this paragraph, the Scottish Ministers shall serve a notice on the applicant giving their decision, which must either—

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

(4) The Scottish Ministers shall not exercise the option permitted under paragraph 7(c) of Annex VII.”.

(7) For Part IV, substitute—

## “PART IV COMPENSATION

### Compensation

17.—(1) Compensation for animals killed and products destroyed under this Schedule shall be payable by the Scottish Ministers as specified in the following table as read with the Note on the rates:

<i>Animal or product</i>	<i>Compensation (£)</i> <i>A</i>	<i>Compensation (£)</i> <i>B</i>
Male sheep or goat	90	90
Female sheep <sup>(i)</sup> or goat	90	65
Lamb (under 12 months old) <sup>(ii)</sup> or kid (under 12 months old)	50	40
Embryos	150	150
Ova	5	5

(i) In the case of a female sheep in respect of which the Scottish Ministers have granted a derogation under paragraph 9 of Annex VII the compensation shall be £30 if it is killed after the first year of the period of that derogation.

(ii) Where the Scottish Ministers have granted a derogation under paragraph 9 of Annex VII in respect of a ram, the compensation for a lamb in that flock shall be £25 if it is killed after the first year of the period of that derogation.

### Note on the rates

The rate in Column A is payable if—

- (i) the owner notifies the Divisional Veterinary Manager of an animal suspected of being affected by a TSE in accordance with regulation 77(1) on or before 9th March 2006, and the presence of a TSE is confirmed (whether before or after that date); and
- (ii) the animal for which compensation is being paid was in the flock or herd on or before 9th March 2006.

The rate in Column B is payable in all other cases.

(2) If the owner of an animal killed under this Schedule considers the compensation specified in paragraph (1) is unreasonable—

- (a) that owner may notify the Scottish Ministers of this;
- (b) following such notification the owner may, at the owner’s own expense, obtain a valuation of the animal; and
- (c) the expense of having a valuer nominated and the valuation carried out shall be at the owner’s expense.

(3) If the Scottish Ministers consider the compensation specified in paragraph (1) is excessive for an animal killed under this Schedule—

- (a) they may notify the owner of this;

- (b) following such notification the Scottish Ministers may, at their own expense, obtain a valuation of the animal; and
  - (c) the expense of having a valuer nominated and the valuation carried out shall be at the Scottish Minister's expense.
- (4) Any valuation to be obtained under sub paragraphs (2)(b) and (3)(b)–
- (a) shall be obtained from a valuer nominated by the President of the Institute of Auctioneers and Appraisers in Scotland;
  - (b) that valuer shall value the animal at a value which might reasonably have been obtained for it at the time of valuation from a buyer in the open market if the animal was not from a herd or flock affected by a TSE;
  - (c) the owner and a representative of the Scottish Ministers shall have the right to be present at the valuation;
  - (d) the valuer shall submit the valuation and any other relevant information and documentation to the owner and the Scottish Ministers; and
  - (e) the valuation shall be binding on the owner and the Scottish Ministers.”.

St Andrew's House,  
Edinburgh  
7th February 2006

*ROSS FINNIE*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

These Regulations amend the TSE (Scotland) Regulations 2002 (S.I.2002/255) (“the principal Regulations”) which give effect in Scotland to the enforcement and administration of 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 (“TSE”) (O.J. No. L 147, 31.5.01, p.1). Annex VII was replaced by Commission Regulation (EC) No. 1492/2004 as regards eradication measures for transmissible spongiform encephalopathies in bovine, ovine and caprine animals, the trade and importation of semen and embryos of ovine and caprine animals and specified risk material (O.J. No. L 163, 23.6.05, p.1).

Regulation 3 amends the principal Regulations by bringing up to date the definition of “the Community Transitional Measures”.

Regulation 4 amends the principal Regulations so that the general offence provision does not apply to inspectors.

Regulation 5(2) amends the principal Regulations to provide that where TSE is confirmed in an animal on a holding where more than one flock is kept, eradication measures may be limited to the flock in which TSE is confirmed.

Regulation 5(3) amends the principal Regulations to provide that eradication measures shall not be carried out until the decision in any review has been intimated.

Regulation 5(5) introduces a new Part IIA which provides for movement restrictions on holdings where an animal is suspected of being affected by TSE. Regulation 5(6) updates the position regarding derogations.

Regulation 5(7) reduces the rates of compensation payable for female sheep and goats and for lambs and kids slaughtered following confirmation of TSE in a flock or herd. It also gives Scottish Ministers the option of seeking an independent valuation if they consider the specified rates of compensation to be excessive in a particular case.

A Regulatory Impact Assessment has not been prepared in respect of these Regulations.