

2009 No. 7

ANIMALS

ANIMAL HEALTH

**The Animal By-Products (Scotland) Amendment
Regulations 2009**

<i>Made</i>	<i>14th January 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>15th January 2009</i>
<i>Coming into force</i>	<i>13th February 2009</i>

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 the reference in regulation 2(2) to the Community Regulation to be a reference to that instrument as amended from time to time.

Citation and commencement

1.—(1) These Regulations may be cited as the Animal By-Products (Scotland) Amendment Regulations 2009.

(2) These Regulations come into force on 13th February 2009.

Amendment of the Animal By-Products (Scotland) Regulations 2003

2.—(1) The Animal By-Products (Scotland) Regulations 2003^(b) are amended in accordance with paragraphs (2) to (5).

^(a) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”) and section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

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

(2) In regulation 2 (interpretation), in paragraph (1) for the definition of “the Community Regulation” substitute–

““the Community Regulation” 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(a), as amended from time to time, and as read with–

- (a) Regulation (EC) No. 811/2003(b);
- (b) Regulation (EC) No. 813/2003(c);
- (c) Commission Decision 2004/407/EC on transitional sanitary and certification rules under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards import from certain third countries of photographic gelatine(d);
- (d) 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(e);
- (e) Commission Regulation (EC) No. 79/2005 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the use of milk, milk-based products and milk-derived products, defined as Category 3 material in that Regulation(f);
- (f) 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(g);
- (g) Commission Regulation (EC) No. 181/2006 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards organic fertilisers and soil improvers other than manure and amending that Regulation(h); and
- (h) Commission Regulation (EC) No. 2007/2006 implementing Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the importation and transit of certain intermediate products derived from Category 3 material intended for technical uses in medical devices, in vitro diagnostics and laboratory reagents and amending that Regulation(i).”.

(3) In regulation 5 (category 2 material), before paragraph (2) insert–

“(1A) Any person who possesses or has any control over Category 2 material and who fails to comply with Article 5(2), Article 5(3) or Article 5(4) (other than the provision in Article 5(4) relating to export) of the Community Regulation is guilty of an offence.”.

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- (a) O.J. No. L 273, 10.10.2002, p.1. The Community Regulation is amended by Commission Regulation (EC) No. 808/2003 (O.J. No. L 117, 13.5.2003, p.1), Commission Regulation (EC) No. 668/2004 (O.J. No. L 112, 19.4.2004, p.1), Commission Regulation (EC) No. 92/2005 (O.J. No. L 19, 21.1.2005, p.27), Commission Regulation (EC) No. 93/2005 (O.J. No. L 19, 21.1.2005, p.34), Commission Regulation (EC) No. 416/2005 (O.J. No. L 66, 12.3.2005, p.10), Commission Regulation (EC) No. 181/2006 (O.J. No. L 29, 2.2.2006, p.31), Commission Regulation (EC) No. 208/2006 (O.J. No. L 36, 8.2.2006, p.25), Commission Regulation (EC) No. 2007/2006 (O.J. No. L 379, 28.12.2006, p.98), Commission Regulation (EC) No. 829/2007 (O.J. No. L 191, 21.7.2007, p.1), Commission Regulation (EC) No. 1432/2007 (O.J. No. L 320, 6.12.2007, p.13), Commission Regulation (EC) No. 399/2008 (O.J. No. L 118, 6.5.2008, p.12), and Commission Regulation (EC) No. 437/2008 (O.J. No. L 132, 22.5.2008, p.7).
 - (b) 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 (O.J. No. L 117, 13.5.2003, p.14). This Regulation is defined in regulation 2(1) of the Animal By-Products (Scotland) Regulations 2003 (S.S.I. 2003/411).
 - (c) Commission Regulation (EC) No. 813/2003 on transitional measures under Regulation (EC) No. 1774/2002 of the European Parliament and of the Council as regards the collection, transport and disposal of former foodstuffs (O.J. No. L 117, 13.5.2003, p.22). This Regulation is defined in regulation 2(1) of the Animal By-Products (Scotland) Regulations 2003.
 - (d) O.J. No. L 151, 30.4.2004, p.11, as amended by Commission Decisions 2006/311/EC (O.J. No. L 115, 28.4.2006, p.40) and 2008/48/EC (O.J. No. L 11, 15.1.2008, p.17).
 - (e) O.J. No. L 162, 30.04.2004, p.62.
 - (f) O.J. No. L 16, 20.1.2005, p.46.
 - (g) O.J. No. L 19, 21.1.2005, p.27.
 - (h) O.J. No. L 29, 2.2.2006, p.31.
 - (i) O.J. No. L 379, 28.12.2006, p.98.

- (4) In regulation 9 (access to animal by-products), for paragraphs (3) to (5) substitute–
- “(3) No person shall bring an animal by-product (other than milk, colostrum, manure or digestive tract content) on to any premises where any farmed animal, or any other ruminant animal, pig or poultry is kept.
- (4) Paragraph (3) does not apply if the occupier of the premises and the person in control of the animal by-product ensures that no animal or poultry has or have access to the animal by-product, and if the animal by-product is–
- (a) brought on in a vehicle which enters to collect other animal by-products and no animal by-product is removed from the vehicle while on the premises; or
 - (b) brought on, in accordance with the approval or authorisation for the relevant plant, to premises where there is a–
 - (i) collection centre, incinerator or other approved premises which was in operation on 1st November 2002; or
 - (ii) Category 3 intermediate plant, a technical plant, a petfood plant, or a plant where the animal by-products are used for educational, research or diagnostic purposes.
- (5) No person shall allow any animal to have access to–
- (a) material in a biogas or composting plant; or
 - (b) compost produced and applied to land in accordance with regulation 16 (composting catering waste on the premises on which it originates) provided that the conditions of that regulation are complied with,
- except that wild birds may have access to such material during the secondary or subsequent phase of composting, and to such compost.”.
- (5) In regulation 51 (amendments), omit paragraph (1).

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
14th January 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Animal By-Products (Scotland) Regulations 2003 (the “ABP Regulations”).

The ABP Regulations make provision in Scotland for the administration and enforcement of 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 (O.J. No. L 273, 10.10.2002, p.1) (“the Community Regulation”).

The ABP Regulations implement so far as necessary the Community obligations regulating what may be done in relation to such products.

Regulation 2(2) of these Regulations inserts an amended definition of the Community Regulation taking account of changes to that instrument since the coming into force of the ABP Regulations.

The amended definition provides for a reference to the Community Regulation in the ABP Regulations to be read as a reference to the text of the Community instrument as amended from time to time. The definition therefore encompasses amendments which may be made in the future, and an ‘as amended’ version of the Community Regulation can be found at any time on the Eur-Lex website (<http://eur-lex.europa.eu/en/index.htm>).

Regulation 2(3) and (5) of these Regulations corrects an omission in the ABP Regulations, caused by an error in the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2006 (S.S.I. 2006/530) (the “2006 TSE Regulations”).

Regulation 51(1) of and Part 1 of Schedule 5 to the ABP Regulations as originally made amended the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2002 (S.S.I. 2002/255) (the “2002 TSE Regulations”) so that the 2002 Regulations complied with the provisions in the Community Regulation relating to TSE.

The 2006 TSE Regulations revoked and remade, with amendments, the 2002 TSE Regulations. The 2006 TSE Regulations implemented the Community Regulation so far as applicable, so the amendments to the 2002 TSE Regulations made by regulation 51(1) of, and Part 1 of Schedule 5 to, the ABP Regulations were no longer needed, and could be revoked. Due to an error the 2006 TSE Regulations revoked regulation 5(1) of the ABP Regulations rather than regulation 51(1).

These Regulations correct the omission in the ABP Regulations caused by the error in the 2006 TSE Regulations, and complete the consequential amendment to the ABP Regulations begun by the 2006 TSE Regulations, by–

- (a) providing that it is an offence for any person in possession or control of Category 2 Material to fail to comply for certain purposes with Articles 5(2) to 5(4) of the Community Regulation (regulation 2(3)); and
- (b) revoking regulation 51(1) of the ABP Regulations (regulation 2(5)).

Category 2 Material is as defined in regulation 2(2) of the ABP Regulations, and as described in Article 5 of the Community Regulation.

Regulation 2(4) of these Regulations replaces paragraphs (3) to (5) of regulation 9 of the ABP Regulations, which provides for access to animal by-products, with the effect that under–

- (a) regulation 9(3) and (4), animal by-products may be brought onto premises where certain animals are present, and where there is any of a petfood plant that came into operation after 1st November 2002, a Category 3 intermediate plant, a technical plant, or a plant where the by-product is used for educational, research or diagnostic purposes;

(b) regulation 9(5), no animal other than a wild bird may have contact with compost applied to land in accordance with regulation 16 of the ABP Regulations.

Breach of the ABP Regulations is an offence punishable under regulation 48 of those Regulations.

A regulatory impact assessment has not been prepared for these Regulations.

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