
WELSH STATUTORY INSTRUMENTS

2014 No. 517

**The Animal By-Products (Enforcement)
(Wales) Regulations 2014**

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Animal By-Products (Enforcement) (Wales) Regulations 2014.

(2) Subject to paragraph (3) these Regulations come into force on 28 March 2014.

(3) Regulation 27 and Schedule 2 come into force immediately after the coming into force of the other regulations and schedule.

(4) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“EU Control Regulation” (*“Rheoliad Rheolaeth yr UE”*) means Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation)(1);

“EU Implementing Regulation” (*“Rheoliad Gweithredu'r UE”*) means Commission Regulation (EU) No. 142/2011 implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive as amended from time to time;

“animal by-product requirement” (*“gofyniad sgil-gynhyrchion anifeiliaid”*) means any requirement in Part 3 and any requirement in Column 2 of Schedule 1 to these Regulations as read with the provisions in Column 3 to that Schedule;

“authorised person” (*“person awdurdodedig”*) means a person authorised under regulation 22;

“competent authority” (*“awdurdod cymwys”*) has the meaning given in regulation 3;

“enforcement authority” (*“awdurdod gorfodi”*) means a person exercising functions under regulation 21(1) or (2);

“premises” (*“mangre”*) includes—

(a) any land, building, shed or pen;

(1) OJ No. L 300, 14.11.2009, p. 1, amended by Directive No. 2010/63/EU of the European Parliament and of the Council (OJ No. 276, 20.10.2010, p. 33).

- (b) any receptacle or container;
- (c) any ship; or
- (d) a vehicle of any description;
“ship” (“*llong*”) includes a hovercraft, submersible craft or any other floating craft but not a vessel which—
 - (a) permanently rests on or is permanently attached to the seabed; or
 - (b) is an installation within section 16 of the Energy Act 2008(2).

(2) Expressions used in these Regulations that are also used in the EU Control Regulation or EU Implementing Regulation have the same meaning in these Regulations as they have in the EU Control Regulation or EU Implementing Regulation.

PART 2

The competent authority and miscellaneous provisions

The competent authority

3. The competent authority for the purposes of the EU Control Regulation and the EU Implementing Regulation is the Welsh Ministers.

Restrictions on access to animal by-products

4.—(1) Animal by-products, including catering waste, must not be brought on to any premises if farmed animals would have access to such animal by-products.

(2) Paragraph (1) does not apply to derived products, except for—

- (a) products derived from catering waste; or
- (b) meat and bone meal derived from Category 2 material and processed animal proteins intended to be used as or in organic fertilisers and soil improvers that do not comply with the requirements of Article 32(1)(d) (placing on the market and use) of the EU Control Regulation.

(3) The body or part of a body of any farmed animal that has not been slaughtered for human consumption must be held by an operator, pending consignment or disposal, in such manner as to ensure that no animal or bird will have access to it.

Use of organic fertilisers and soil improvers

5.—(1) Where organic fertilisers or soil improvers are applied to land, no person may allow pigs to have access to that land or to be fed cut herbage from such land for a period of 60 days beginning with the day on which the organic fertiliser or soil improver is applied.

(2) Paragraph (1) does not apply to the following organic fertilisers or soil improvers—

- (a) manure;
- (b) milk;
- (c) milk-based products;
- (d) milk-derived products;
- (e) colostrum;

- (f) colostrum products; or
- (g) digestive tract content.

Collection centres

6. A processing plant for Category 2 material which is approved for the purpose of being a collection centre for Category 2 material is authorised as a collection centre.

Remote areas

7. The following areas are remote areas for the purposes of Article 19(1)(b) of the EU Control Regulation (collection, transport and disposal)—

- (a) Bardsey Island;
- (b) Caldey Island;
- (c) Ramsey Island; and
- (d) Flatholm Island.

Placing on the market

8. The placing on the market of untreated wool and untreated hair from farms or from establishments or plants is authorised except where they present a risk of any disease communicable through those products to humans or animals.

Reporting of test results

9. Operators must report to the Welsh Ministers the results of any tests carried out pursuant to any of the following Articles of the EU Implementing Regulation which fail to meet the standards required by those Articles—

- (a) Article 10(1) (requirements for the transformation of animal by-products and derived products into biogas and composting);
- (b) Article 21(1) (processing and placing on the market of animal by-products and derived products for feeding to farmed animals);
- (c) Article 22(1) (placing on the market and use of organic fertilisers and soil improvers); and
- (d) Article 24(3) (pet food and other derived products).

PART 3

Staining

Staining

10.—(1) This regulation applies to the operators of—

- (a) slaughterhouses;
- (b) cutting plants;
- (c) game-handling establishments; and
- (d) cold stores.

(2) In this part—

- (a) the terms “slaughterhouse”, “cutting plant” and “game-handling establishment” have the meanings given to them in regulation 5(6) of the Food Hygiene (Wales) Regulations 2006(3);
 - (b) “cold store” means any other premises used for the storage, under temperature controlled conditions, of fresh meat intended for sale for human consumption.
- (3) Operators must, subject to paragraph (5), without undue delay, stain the following animal by-products in accordance with paragraph (4)—
- (a) animal by-products defined by any of the following articles of the EU Control Regulation—
 - (i) Article 8(c);
 - (ii) Article 8(d);
 - (iii) Article 9(c); or
 - (iv) Article 9(d);
 - (b) whole poultry bodies where the animals are dead on arrival at the slaughterhouse;
 - (c) bodies or parts of animals which are unfit for human consumption because they show signs of disease communicable to humans or animals;
 - (d) bodies or parts of animals which are unfit for human consumption because they have not been presented for either ante or post mortem inspection;
 - (e) bodies or parts of animals which have been contaminated with any substance which may pose a threat to public or animal health; and
 - (f) Category 3 material that has changed through decomposition or spoilage so as to present an unacceptable risk to public or animal health.
- (4) Operators must—
- (a) stain the material listed in paragraph (3) with a colouring agent and using a solution of such a strength that the staining is clearly visible and remains visible after the animal by-product has been chilled or frozen;
 - (b) apply the stain to the whole surface of the by-product, whether by immersing the by-product in the stain, spraying it with the solution or applying the solution to it by any other equally effective means;
 - (c) in the case of an animal by-product not falling within paragraph (3) and weighing more than 20 kg, apply the stain after its surface has been opened by multiple and deep incisions; and
 - (d) in the case of an animal by-product comprising a whole poultry body, whether or not it has been eviscerated or de feathered, apply the stain after the surface of the body has been opened by multiple and deep incisions.
- (5) Operators need not stain pursuant to paragraph (3)—
- (a) any animal by-product which is removed, or is intended to be removed, from any premises by, or under the authority of, a veterinary surgeon for examination by or on behalf of the surgeon;
 - (b) any animal by-product which is mixed with green offal in a container containing mainly green offal for disposal in accordance with the EU Control Regulation;
 - (c) any animal by-product which is intended for use for scientific purposes and which, pending such use or removal to premises for such use in accordance with the EU Control Regulation, is placed in a room and in a receptacle designed for the purpose of holding

(3) [S.I. 2006/31 \(W. 5\)](#) to which there are amendments not relevant to these Regulations.

animal by-products and bearing a notice that its contents are intended for use for scientific purposes;

(d) any animal by-product which is moved immediately after generation to a processing or incineration establishment or plant approved under the EU Control Regulation via a sealed and leak-proof pipe; or

(e) a whole animal body, except a whole poultry body.

(6) No one may export stained material of the type referred to in paragraph (3) to another member State of the European Union unless that member State agrees to import the material.

(7) In paragraph (5)(b) of this regulation “green offal” means the stomach and intestines of an animal and the contents of the digestive tract.

PART 4

Registration and approval

Procedure for registration of plants and establishments

11. A notification must be made in writing to the competent authority where it is made—

(a) with a view to registration in accordance with Article 23(1) (registration of operators, establishments or plants) of the EU Control Regulation; or

(b) to inform the authority of changes in accordance with Article 23(2) of that Regulation.

Notifications of competent authority in respect of registration

12. The competent authority must give notice in writing to—

(a) the operator who has notified in accordance with regulation 11, of—

(i) the registration of the operator; or

(ii) the decision not to register the operator;

(b) a registered operator, of—

(i) a prohibition made under Article 46(2) (prohibition on operations) of the EU Control Regulation;

(ii) a requirement to comply with Article 23(1)(b) or (2) of the EU Control Regulation (information on activities and up-to-date information); or

(iii) the amendment of the registration or the ending of the registration where an operator has notified the competent authority of the closure of an establishment in accordance with Article 23(2) (up-to-date information) of the EU Control Regulation.

Procedure for approval

13. Operators to whom Article 24(1) (approval of establishments or plants) of the EU Control Regulation applies, must apply in writing to the competent authority for approval, including approval after the grant of temporary approval where Article 33 of the EU Implementing Regulation (re-approval of plants and establishments after the grant of temporary approval) applies.

Notification in respect of decisions on approval

14. The competent authority must give notice in writing to—

(a) the applicant for approval, of the—

- (i) grant of approval in accordance with Articles 24 (approval) and 44 (procedure for approval) of the EU Control Regulation;
- (ii) grant of conditional approval in accordance with Articles 24 and 44 of the EU Control Regulation, or the extension of such approval in accordance with Article 44; or
- (iii) refusal to grant approval in respect of an initial application or extension;
- (b) the operator of a plant or establishment subject to conditional approval granted in accordance with Articles 24 and 44 of the EU Control Regulation, of the—
 - (i) grant of full approval;
 - (ii) extension of such approval;
 - (iii) imposition of conditions in accordance with Article 46(1)(c) (suspensions, withdrawals and prohibitions on operations) of the EU Control Regulation;
 - (iv) suspension of such approval in accordance with Article 46(1)(a) of the EU Control Regulation;
 - (v) withdrawal of such approval in accordance with Article 46(1)(b) of the EU Control Regulation;
 - (vi) making of a prohibition in accordance with Article 46(2) of the EU Control Regulation; or
 - (vii) refusal to extend or grant full approval;
- (c) the operator of an approved plant or establishment, of the—
 - (i) imposition of conditions in accordance with Article 46(1)(c) of the EU Control Regulation (suspension, withdrawal);
 - (ii) suspension of such approval in accordance with Article 46(1)(a) of the EU Control Regulation;
 - (iii) making of a prohibition in accordance with Article 46(2) of the EU Control Regulation; or
 - (iv) withdrawal of such approval in accordance with Article 46(1)(b) of the EU Control Regulation.

Reasons for decisions

15.—(1) Where a decision is made by the competent authority and notified in accordance with regulation 12 or regulation 14, the competent authority must give reasons in writing for that decision.

(2) Paragraph (1) does not apply to decisions notified under—

- (a) regulation 12(a)(i);
- (b) regulation 14(a)(i); or
- (c) regulation 14(b)(i) or (ii).

Appeals procedure

16.—(1) Where the competent authority has made a notification to which regulation 15(1) applies, a person may appeal against it by making written representations, within 21 days of the issuing of notification of that decision, to a person appointed for the purpose by the Welsh Ministers.

(2) The competent authority may also make written representations 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 applicant written notification of the final determination of the Welsh Ministers and the reasons for it.

PART 5

Offences and penalties

Compliance with animal by-product requirements

17. A person who fails to comply with an animal by-product requirement commits an offence.

Obstruction

18. It is an offence—

- (a) intentionally to obstruct an authorised person;
- (b) without reasonable cause, to fail to give to an authorised person any information or assistance or to provide any facilities that such person may reasonably require;
- (c) knowingly or recklessly to give false or misleading information to an authorised person; or
- (d) to fail to produce a record or document when required to do so by an authorised person.

Corporate, partnership and unincorporated association offences

19.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a partnership or Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a relevant individual (including an individual purporting to act in the capacity of a relevant individual),

the relevant individual as well as the body corporate, partnership, Scottish partnership or unincorporated association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a partnership or Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

(3) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(4) For the purpose of proceedings pursuant to paragraph (3) the following provisions apply as if the partnership or unincorporated association were a body corporate—

- (a) rules of court relating to the service of documents;

- (b) section 33 of the Criminal Justice Act 1925(4); and
- (c) Schedule 3 to the Magistrates' Courts Act 1980(5).

(5) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

Penalties

20. 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 not exceeding 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.

PART 6

Enforcement

Enforcement authority

- 21.—(1) Regulation 10 is enforced by—
- (a) in relation to any slaughterhouse, cutting plant or game-handling establishment, the Food Standards Agency; and
 - (b) in relation to any other premises, the Food Standards Agency or the local authority in whose area the premises are situated.
- (2) Otherwise these Regulations are enforced by—
- (a) the relevant local authority;
 - (b) the port health authority in relation to a port health district constituted by order under section 2(3) of the Public Health (Control of Diseases) Act 1984(6); or
 - (c) the Welsh Ministers in relation to a food hygiene establishment.

(3) Sub-paragraphs (a) and (b) of paragraph (2) do not apply where the Welsh Ministers direct that the enforcement duty is to be exercised in relation to cases of a particular description or any particular case by the Welsh Ministers.

(4) In this regulation “local authority” means county council or country borough council.

(5) In paragraph (2)(c) “food hygiene establishment” means an establishment referred to in regulation 5(2) of the Food Hygiene (Wales) Regulations 2006(7) in respect of which the Food Standards Agency has enforcement functions under those Regulations.

(4) 1925 c. 86. Subsections (1), (2) and (5) of section 33 were repealed by the Magistrates Courts Act 1952 (c. 55) section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, Part 2, paragraph 19; subsection (4) was partially repealed by the Courts Act 2003 (c. 39) section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10

(5) 1980 c. 43. Paragraphs 2(a) and 5 were repealed by the Criminal Justice Act 2003 (c. 44); paragraph 2(a) was repealed by sections 41, 332, Schedule 3 Part 2, paragraph 51(1), (13)(a) and Schedule 37, Part 4; paragraph 5 was repealed by, sections 25(2) and 101(2) and Schedule 13; paragraph 6 of Schedule 3 was amended by the Criminal Justice Act 2003 section 41, Schedule 3, Part 2, paragraphs 51(1) and (13)(b).

(6) 1984 c. 22.

(7) S.I. 2006/31 (W. 5).

Authorised person

22. An enforcement authority may authorise in writing such persons as the authority considers appropriate to act for the purpose of enforcing these Regulations.

Powers of entry and additional powers

23.—(1) An authorised person may, on production of that person's authority if so required for the purpose of enforcing these Regulations, the EU Control Regulation and the EU Implementing Regulation—

- (a) enter and inspect premises (except premises used wholly or mainly as a dwelling-house) at any reasonable hour;
- (b) take such other persons and any equipment or materials as necessary;
- (c) make such examination or investigation as necessary;
- (d) direct that the premises, or part of them, are left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) take such measurements and photographs and make such recordings as are considered necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) in the case of any article or substance found in or on the premises—
 - (i) take samples;
 - (ii) test or subject it to any process, where it appears that it has caused or is likely to cause harm to human health or to the health of animals or plants;
 - (iii) take possession of it and retain it for so long as is necessary—
 - (aa) to examine it and to exercise the power within paragraph (ii);
 - (bb) to ensure that it is not tampered with before examination of it is completed; and
 - (cc) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (g) require the production of, or where the information is recorded in computerised form the furnishing of extracts from, any records which it is necessary to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
- (h) require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred by this regulation; or
- (i) mark any animal or animal by-product as the authorised person considers necessary.

(2) An authorised person entering any premises which are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

(3) An authorised person may be accompanied by such other persons as the authorised person considers necessary.

(4) Where an authorised person proposes to exercise the power in paragraph (1)(f)(ii), the authorised person must—

- (a) if so requested by a person who at the time is present and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in that person's presence;
 - (b) consult such persons as appear to the authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which is proposed under that power.
- (5) Where an authorised person proposes to exercise the power in paragraph (1)(f)(iii), the authorised person must, if it is practicable to do so, take a sample of the article or substance and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (6) Where an authorised person exercises the power in paragraph (1)(f)(iii), the authorised person must leave a notice giving particulars of the article or substance sufficient to identify it and stating that possession has been taken, either—
- (a) with a responsible person; or
 - (b) if that is impracticable, fixed in a conspicuous place at those premises.
- (7) Nothing in this regulation compels the production by any person of a document which that person would be entitled to withhold production of on the grounds of legal professional privilege on an order for discovery in an action in the High Court.

Warrant

- 24.—**(1) If, in relation to the power to enter premises under regulation 23, a justice of the peace, on written information on oath—
- (a) is satisfied that there are reasonable grounds to believe that any information or material relevant to the examination or investigation under regulation 23(1)(c) is on any such premises; and
 - (b) is satisfied that—
 - (i) entry to such premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) an application for entry, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that such premises are unoccupied or the occupier is temporarily absent,
 the justice may by warrant, which continues in force for a period of one month, authorise an authorised person to enter the premises, if necessary by force.
- (2) If, in relation to premises used wholly or mainly as a dwelling-house, a justice of the peace on written information on oath—
- (a) is satisfied that there are reasonable grounds to believe that information or material relevant to an examination or investigation for the purpose of enforcing the EU Control Regulation, the EU Implementing Regulation or these Regulations is on such premises; and
 - (b) is satisfied that—
 - (i) entry to such premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant has been given to the occupier; or
 - (ii) an application for entry, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that such premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant, which continues in force for a period of one month, authorise an authorised person to enter such premises, if necessary by force, and inspect them.

(3) Where an authorised person has been authorised under paragraph (2) to enter by warrant, the authorised person has the powers conferred by regulation 23(1)(b) to (i).

Notices served by an authorised person

25.—(1) An authorised person may serve a notice in accordance with paragraph (2) where that person—

- (a) considers that there is a contravention of, or failure to comply with, an animal by-product requirement; or
- (b) reasonably suspects that as a result of such contravention or failure to comply, premises constitute a risk to human or animal health.

(2) Notices may be served on the occupier of any premises, or the person in charge of or responsible for the premises or any animal by-product—

- (a) requiring the disposal and, where applicable, storage pending such disposal of—
 - (i) animal by-products and derived products;
 - (ii) material in premises to which paragraph (1)(b) applies;
- (b) requiring the cleansing and disinfection of premises to which paragraph (1)(b) applies and, where applicable, specifying the method for such cleansing and disinfection;
- (c) prohibiting animal by-products and derived products being—
 - (i) moved in or brought on to premises;
 - (ii) moved in or brought on to premises unless in accordance with conditions specified in the notice, including a condition as to the satisfactory completion of the cleansing and disinfection in accordance with a notice as provided in sub-paragraph (b).

(3) A notice served under paragraph (2) must be complied with at the expense of the person on whom the notice is served and, if it is not complied with, an authorised person may arrange for it to be complied with at the expense of that person.

(4) Paragraph (1) does not apply where Article 46(1)(a) or (b) (suspensions, withdrawals and prohibitions on operations) of the EU Control Regulation applies.

(5) Any person on whom a notice is served who intentionally contravenes or fails to comply with the provisions of that notice is guilty of an offence.

Power to disclose information for enforcement purposes

26.—(1) This regulation applies to information received by an enforcement authority or an authorised person in the course of enforcing these Regulations.

(2) That person may disclose the information to any comparable enforcement authority or authorised person (appointed elsewhere within the United Kingdom to enforce the EU Control Regulation and the EU Implementing Regulation) for the purposes of their enforcement role.

PART 7

Consequential amendments

Consequential amendments

27. Schedule 2 to these Regulations provides for consequential amendments.

PART 8

Revocations and transitional provision

Revocations

28. The following instruments are revoked—

- (a) the Animal By-Products (Identification) (Amendment) (Wales) Regulations 2002⁽⁸⁾;
- (b) the Animal By-Products (Identification) (Amendment) (Wales) Regulations 2003⁽⁹⁾;
- (c) the Animal By-Products (Identification) (Amendment) (Wales) (No. 2) Regulations 2003⁽¹⁰⁾;
- (d) the Animal By-Products (Enforcement) (No. 2) (Wales) Regulations 2011⁽¹¹⁾;
- (e) in relation to Wales—
 - (i) the Animal By-Products (Identification) Regulations 1995⁽¹²⁾;
 - (ii) the Animal By-Products (Identification) (Amendment) Regulations 1997⁽¹³⁾.

Transitional provision

29.—(1) The collection, transport and disposal of Category 3 material in Article 10(f) of the EU Control Regulation (Category 3 material) is authorised for the period ending on 31 December 2014, where the requirements of paragraph (2) are satisfied.

(2) The requirements are—

- (a) the material satisfies Article 36(3) of, and paragraphs (a) to (c) of Chapter IV of Annex IV to, the EU Implementing Regulation; and
- (b) the means of disposal for such material, in addition to the means in Article 14 of the EU Control Regulation (disposal and use of Category 3 material), are disposal—
 - (i) in an authorised landfill without prior processing; or
 - (ii) where Article 21 of the EU Control Regulation is satisfied, to a biogas or composting plant for transformation in accordance with an authorisation under paragraph 2 of Section 2 of Chapter III of Annex V to the EU Implementing Regulation.

⁽⁸⁾ S.I. 2002/1472 (W. 146).

⁽⁹⁾ S.I. 2003/1849 (W. 199).

⁽¹⁰⁾ S.I. 2003/2754 (W. 265).

⁽¹¹⁾ S.I. 2011/2377 (W. 250).

⁽¹²⁾ S.I. 1995/614.

⁽¹³⁾ S.I. 1997/2073.

5 March 2014

Alun Davies
one of the Welsh Ministers
Minister for Natural Resources and Food,