



SCOTTISH EXECUTIVE

Environment and Rural Affairs Department
Food and Agriculture Group

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Your ref:
Our ref:

23 April 2003

Dear Sir/Madam

APPLICATION OF THE EU ANIMAL BY-PRODUCTS REGULATION

As promised in my letter of 7 February, I am now sending out the final part of our proposals to implement this EU Regulation in Scotland. Enclosed for comment is a draft Scottish Statutory Instrument (SSI) and a partially completed Regulatory Impact Assessment (RIA).

Once the draft SSI is finalised, which will be after this consultation exercise is completed, it will enable enforcement of the EU Regulation, by providing for powers of entry, offences and powers for Scottish Ministers to grant and withdraw approvals. We also propose to include a number of other provisions where we think it necessary to ensure that the provisions of the Regulation are complied with. For example, for some purposes we consider it necessary to specify the records that must be kept to demonstrate compliance with the requirements of the Regulation. We have also maintained the current system of approval for laboratories which carry out the microbiological testing requirements of the Regulation. The full text of the EU Regulation (95 pages in total) can be accessed via the legislation section of the European Commission's website (<http://europa.eu.int/eur-lex>). The RIA enables you to contribute to the assessment of the impact these proposals will have on business and commercial activities affected by these forthcoming statutory controls.

Please send your comments to my colleague Ian Murdoch at the above address by **15 May 2003** at the latest.

I can also now update you on progress made in Brussels on the various transitional measures requested by Member States to provide additional time to comply with these requirements. A package of measures was agreed last week and included transitional measures for the UK on the following issues: low capacity incinerators, used cooking oil, former foodstuffs, processing of mammalian blood and oleochemical plants. The finalised text is not yet available from the Commission services but once published will be incorporated in our implementation arrangements, although please note that the draft SSI includes some provisions (mainly in Schedule 5) based on previous version of these measures. Also agreed were provisions to be followed where burial or burning of animal by-products is utilised in the "remote area". Our proposed definition of the "remote area" in Scotland was circulated to you all for comment on 19 March.



INVESTOR IN PEOPLE



At the end of the consultation period, we intend to make copies of the all comments received on these issues publicly available. It will be assumed that your reply can be made publicly available unless you indicate clearly in your response that you wish all or part of it to be excluded from this arrangement. Copies of the comments will be made available at the main Executive Library at Saughton House, Edinburgh. Copies will be supplied on request but there will be an administrative charge to cover copying and postage. To enable requests to be dealt with efficiently and to avoid undue delay for those calling at the Library in person, it would be appreciated if personal callers could give at least 24 hours notice of their requirements.

Yours faithfully

Martin Morgan
Beef Exports, BSE & Animal Waste Branch

DRAFT REGULATORY IMPACT ASSESSMENT

The Animal By-Products (Scotland) Regulations 2003 (which will provide powers to enforce 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)

PURPOSE AND INTENDED EFFECT

Objective

1. A new EU Regulation concerning animal by-products will apply in Member States from 1 May 2003. It results from a review by the European Commission of the Animal Waste Directive, 90/667/EEC, which lays down the health rules governing the disposal and processing of animal by-products not intended for human consumption, and the Balai Directive, 92/118/EEC, which among other things governs imports into the Community and trade within the Community of animal by-products. The new Regulation will replace the Animal Waste Directive and most of the Balai Directive and introduce a number of changes. The aim is to protect public and animal health and maintain consumer confidence in the livestock industry. Enforcing Regulations will be introduced to give effect to the Regulation in the UK. **This draft regulatory impact assessment describes the impact of both the EU Regulation and its enforcing Regulations, other than the import provisions.**

Background

2. The EU Animal By-Products Regulation will separate animal by-products into three categories of material;
- category 1 (eg carcasses of BSE suspects, Specified Risk Material (SRM), ruminant carcasses from which SRM has not been removed);
 - category 2 (eg carcasses of animals with diseases other than BSE, carcasses of animals which were not slaughtered for human consumption(including such ruminant carcasses if the SRM has been removed), manure and gut contents); and
 - category 3 (material fit for human consumption).

Material from categories 1 and 2 could not be used in livestock feedingstuffs and would, in most cases, have to be destroyed. Category 1 and category 2 material would need to be rendered to the pressure cooking standard if it were to be landfilled, as would category 2 material which is not destroyed but is intended for use in fertilisers or for treatment in a biogas or composting plant. These categories would apply to all types of animal by-products; mammalian, poultry and fish.

3. The Regulation will ban the use of category 1 and 2 material in animal feedingstuffs. There is already an EU-wide ban on the feeding of most processed animal protein to livestock and only a very small amount of meal derived from high risk (Category 1 and 2) fish is fed to livestock. In this respect the impact is therefore likely to be limited. However, in other respects the Regulation will impose additional costs on the livestock industry and associated businesses. Details are in paragraphs 13 to 28.

Risk Assessment

4. The Regulation implements a number of opinions of the EU Scientific Steering Committee, on the disposal of fallen stock and on the use of processed animal by-products in fertilisers and feedingstuffs for livestock (opinions on intra-species recycling, use of meat and bone meal, dicalcium phosphate, blood). These opinions suggested that feedingstuffs should be sourced from material which is fit for human consumption. The resulting measures are precautionary and are aimed at safeguarding animal and public health against any risk of diseases from pathogens from unsafe or improperly disposed of processed animal by-products.

5. It was the Commission's original view that, for instance, the exclusion of high risk (Category 1 and 2) material from the feed chain would further reduce the risk of transmission of disease, maintain consumer confidence and prevent a total collapse of the market in meat and bone meal. However, since the Regulation was first proposed, the EU has introduced a feed ban which prevents the feeding of processed animal protein to livestock, other than fish meal to non-ruminants. A review of the ban on the feeding of poultry meal is expected shortly, but any relaxation of the ban is likely to be dependent on the proper application of the controls in this Regulation. The Regulation also bans the swill-feeding of catering waste to livestock. This is in line with a ban that has been in place since May 2001 and which was introduced in the light of the outbreak of Foot and Mouth Disease.

Business sectors affected

6. A wide range of business sectors are potentially affected by the Regulation including approximately 7 Scottish rendering plants (38 in GB), 4 knackery yards (73 in GB), 13 petfood plants (109 in GB), 8 hunt kennels (293 in GB), 4 zoos/parks (93 in GB), a maggot farm (35 in GB), 2 pharmaceutical plants, 2 technical plants (9 in GB). Other businesses also affected are 45 slaughterhouses (662 in GB), around 30,000 livestock producers (200,000 in GB), plus other producers of animal by-products such as food manufacturing premises, catering outlets, retail outlets, the waste disposal industry, animal feed industry and the collectors, processors and blenders of used cooking oils. The operators of biogas and composting plants may also be directly affected if they choose to process catering waste or other animal by-products.

Issues of Equity and Fairness

7. EU Regulation 1774/2002 is directly applicable to Scotland and Scottish Ministers must introduce legislation which will enable it to be enforced.

Options

8. The EU Regulation has been adopted and will be directly applicable in all Member States.

There are three options with respect to the enforcing Regulations -

a) Do nothing i.e. do not enforce the EU legislation

This would leave Scottish Ministers in breach of their obligation to implement EU legislation and would lead to legal challenge in the European Court of Justice. It would also increase the risk of unsafe material being distributed and pose a risk to animal and public health.

b) Enforce the EU legislation without any national requirements

The EU legislation could be enforced by simply providing for powers of entry, offences etc. However, there are some provisions of the Regulation where supplementary national provisions are necessary if we are to ensure that the Regulation is complied with.

c) Enforce the Regulation with some national requirements

This option seems to be the most appropriate. This would enable us to include those national requirements (eg record keeping) necessary to ensure that the Regulation is complied with and allow us to provide some flexibility of approach for those industries most directly affected.

Benefits

9. The Regulation will reduce the risk of disease transmission and help to safeguard public and animal health. The original aim of the Regulation was to address ethical objections such as the feeding of animal material to animals of the same species; to boost the image of the industry and to help restore confidence among consumers. By restoring a level playing field in the disposal chain across the Community, it is hoped that the controls will provide clarity for the industry, allowing it to plan for the future. Since the Regulation was proposed, the feeding of processed animal protein to most livestock has been banned throughout Europe. The Regulation will now provide a framework of controls within which a relaxation of that ban can be considered. The Regulation sets out detailed controls on animal by-products to prevent the transmission of disease. By preventing the swill-feeding to livestock of catering waste, it should also reduce the possibility of livestock having access to meat which might contain a serious animal disease such as Foot and Mouth Disease and Classical Swine Fever. The cost of the outbreak of Foot and Mouth Disease in 2001 has been estimated as being in the region of £8 billion, including indirect costs.

10. The Regulation will also provide environmental benefits by providing a framework within which alternative and more sustainable methods of disposing of animal by-products can be developed. In particular, it will permit the treatment of certain types of animal by-products in approved composting or biogas plants. This will increase the amount of material that is recycled and reduce the quantities of material being disposed of to landfill.

Compliance Costs for Business, charities and voluntary organisations

11. Option (a) would not impose direct costs for business, but the lack of controls over animal by-products could hinder the ability of business to trade with other Member States in such products, or in products derived from them, or to export to third countries.

Option (b) would impose the full costs of the EU Regulation on business.

Option (c) would impose the full costs of the EU Regulation and some additional costs resulting from the enforcing legislation. It would also provide some flexibility of approach for those businesses most affected.

12. For both options (b) and (c), there will be some additional training and management costs as business familiarises itself with the Regulation and takes the necessary measures to comply with it. The costs will vary between the different types of operation and it is not possible to quantify the training and management costs. Other compliance costs are explained below. It is not proposed to charge businesses for the issuing of approvals required by the Regulation.

Compliance costs for a typical business

13. The majority of the businesses affected are small businesses. The compliance costs for a typical business therefore apply equally to a small business.

14. Non-recurring costs for both options (b) and (c) are unlikely to be significant for most premises as they already have the basic infrastructure in place. However, there will be non-recurring compliance costs for renderers who install pressure cooking systems, and for hunt kennels/maggot farms, etc. who need to upgrade their standards. The cost of installing a medium sized pressure cooker in a rendering plant is estimated at £0.75 million, while it could cost a hunt kennel or a maggot farmer up to £5000 to upgrade their premises. There may also be non-recurring costs for the operators of composting plants, intermediate plants and small incinerators who may need to upgrade their premises or equipment to comply with the Regulation. A separate consultation exercise has recently been completed on the national standards proposed for the treatment of catering waste in composting and biogas plants. The RIA for that proposal will inform this RIA.

15. There would be recurring costs from the pressure cooking of category 1 and 2 material and from the disposal of products which are not currently controlled (eg blood from slaughterhouses).

Total compliance costs

16. To pressure cook category 1 and 2 animal by-products, renderers may need to invest around £0.75 million per cooker for up to 75 cookers, or up to £50-60 million in total. An alternative to installing pressure cookers would be to send the meat and bone meal to off-site incinerators (with consequent recurring costs) or to install on-site incinerators (with non-recurring costs).

17. If most of the hunt kennels and other premises handling animal by-products for feeding to hounds, maggots, fur animals, etc. had to upgrade their premises, the cost could be as much as £1.5 million. However, not all hunt kennels will need to upgrade as some only receive treated material from knackers' yards and do not themselves collect and treat fallen stock. The costs are not yet clear.

18. It is not known how many animals are buried on farm and thus how much a ban on burial and burning will cost, but the costs to individual farmers of disposing of sheep and cows via alternative routes are thought to be around £15 per sheep and £90 per cow. The additional disposal costs for cattle should be small as the collection of all fallen stock over 24

months is currently met by central funds for TSE testing purposes. However, there will be additional disposal costs for sheep producers, many of whom currently bury these animals, and there may also be costs for the small number of pig and poultry producers who do not already use a legitimate outlet. The continued burial of fallen stock will however be permitted in remote areas, and a significant number of crofters and farmers are likely to benefit from this derogation.

19. There is already an EU-wide ban on the feeding of mammalian and poultry meal to livestock, and fishmeal may only be fed to non-ruminants. The additional costs caused by a preventing the use of category 1 and 2 material in feedingstuffs will therefore be small. In the UK it is thought that several thousand tonnes of category 2 fish waste may be used each year to feed livestock (other than fish). Disposal costs for this material could rise by around £80/tonne. If the EU Scientific Steering Committee recommends that fish meal derived from Category 3 wild fish should not be fed to farmed fish, there would be further costs for the fishmeal industry. However, these have not been quantified.

20. The Regulation will prevent the spreading to land of untreated blood from slaughterhouses. It is thought that an extra 150,000 tonnes of blood will need to be treated but that sufficient capacity will be available at rendering plants to treat the blood to atmospheric pressure standards. However, the Regulation requires the pressure treatment standard and we have secured a transition period to allow time for the necessary equipment to be installed. This will result in additional costs for the rendering industry, although it is possible that the costs may encourage the development of alternative outlets such as biogas or composting plants. It has been estimated that the price that slaughterhouses pay for the disposal of blood could rise from the current £16/tonne to £60-80/tonne. In addition, some slaughterhouses currently dispose of their blood direct to sewer and do not have collection tanks. As many as one third of slaughterhouses may need to install suitable facilities. We do not have an indication of the likely cost of installing suitable facilities, but are looking to provide guidance on simple, cost-effective ways of making the change.

21. Animal carcass incinerators will be brought within the scope of the Regulation, in accordance with a commitment in the EU Waste Incineration Directive, 2000/76/EC. While large incinerators will have to operate to standards which are broadly in line with those established by the Waste Incineration Directive, new standards will apply to small incinerators (less than 50 kg/hour). It is not yet clear how many of these incinerators will be able to comply with the new standards, or how much it might cost should they need (and be able) to upgrade. The cost of an upgrade is likely to be a few hundred pounds but if an upgrade is not possible, a complete replacement may be necessary at a cost of several thousand pounds. However, any costs will be considerably less than the additional costs which would have been necessary to comply with the Waste Incineration Directive. To meet the requirements of the Waste Incineration Directive, the capital compliance cost for an individual incinerator was estimated at £230,000, with annual operating costs of approximately £12,000. A two year transition period to enable the requirements of the Animal By-Products Regulation to be phased in for those low capacity incinerators which do not burn SRM has been obtained.

22. The Regulation does not permit small incinerators to be used for the incineration of category 1 material such as SRM or whole ruminant animals, although they could be used to incinerate pets. Around 12 small incinerators are approved in Scotland to incinerate SRM and these are primarily located at hunt kennels and knackers' yards. However, the Commission

has undertaken to come forward with proposals to permit their use, providing a satisfactory legal view from the Commission and a satisfactory scientific opinion can be obtained.

23. With the exception of used cooking oils, the ban on intraspecies recycling and on the feeding of catering waste to livestock would have little practical effect. Swill-feeding has already been banned in the UK and the EU-wide ban on processed animal protein in feed effectively prevents most intraspecies recycling. However, there will be costs to the animal feed industry resulting from the ban on the use in animal feed of used cooking oils from restaurants. The UK has asked for a two year transition period during which used cooking oils could continue to be used in animal feed if they are protected from contamination by the application of HACCP (Hazard Analysis of Critical Control Points) principles and appropriate quality control. We hope that during that period sustainable alternatives (eg biodiesel) will be put in place and provide alternative outlets with no additional cost to restaurants. Around 80,000 tonnes of used cooking oils are produced in the UK each year and the Feed Fat Association (representing the blenders) has estimated that additional feed costs of between £29 and 45 million p.a. will result from the need to use alternative sources (these costs will be passed on to the feed industry and farmers).

24. There are currently a small number of UK plants that are approved to use SRM to produce technical products. When the Regulation applies, they will no longer be able to use SRM and will need to source alternative material. We have no indication of the likely costs of this change, but it is thought that the quantities of SRM being used is small.

25. A large number of people use animal by-products in small scale and hobby activities. These include the blowing of duck and other eggs for use for craft purposes, the carving of horns to produce walking sticks and similar activities. A large number of taxidermists also use animal by-products, mostly for hobby purposes. We consider that the risk from these practices is very small and we therefore intend to issue a general approval to allow them to continue without controls. The operations would be approved as technical plants. The exception will be taxidermists who use SRM or whole ruminant carcasses, or who import whole animal carcasses. These operators will need to obtain approval, as will tanneries. Our aim is to keep the approval process for such premises as simple as possible.

26. The Regulation requires records to be kept, so that an audit trail can be maintained. The enforcing Regulations will require some additional documentation to enable operators to demonstrate compliance with the Regulation. However, as the records may be those that are kept for other purposes, the additional burden should be limited.

27. The change in the definition of catering waste will mean that some waste that is currently considered to be catering waste will now need to be disposed of in the same way as other animal by-products once the transitional period has expired. Landfill will not be a permitted outlet. Thus meat and most other products of animal origin that arise in supermarkets, food factories and retail outlets will need to be disposed of to a legitimate outlet (rendering, incineration, composting or biogas) instead of landfill.

28. Currently Specified Risk Material may only be mixed with other animal by-products at rendering plants. This is to maintain the audit trail but can increase the cost of transporting the material. We are consulting on the possibility of allowing mixing at other premises providing the audit trail can be maintained. We are also proposing to allow different

categories of material to be transported in compartmentalised vehicles and this should also result in some benefits to industry.

Consultation with small business: the small firms impact test

29. The majority of the businesses described in this RIA are small businesses. Industry organisations and other interests have been consulted throughout negotiations on the EU Regulation. Although compliance costs for small businesses are similar to those for other businesses, in some cases the impact may be greater. For example, large slaughterhouses already have collection facilities for blood, but many small abattoirs do not and will need to install the necessary facilities to comply with the Regulation.

Competition assessment

30. The Regulation may result in some changes to the disposal routes used for catering waste and animal by-products but, on balance, should increase competition in this area. The Regulation will, for the first time, permit Category 3 material to be treated in an approved composting or biogas plant. These outlets will compete with rendering plants for Category 3 animal by-products, including currently uncontrolled material such as blood. Catering waste which is currently disposed of to landfill or incineration would also be able to be treated in an approved composting or biogas plant. In addition, there will be competition between the animal feed industry and the biodiesel and energy-generating industries for used cooking oils.

Enforcement and sanctions

31. There are likely to be some additional costs to the Executive of enforcing the Regulation. These costs will largely be related to the inspection of premises such as hunt kennels/maggot farms which need to comply with new standards, and to the inspection and monitoring of premises which are not currently registered or approved (intermediate plants, biogas, composting and oleochemical plants, incinerators). The additional costs for inspecting these premises by the State Veterinary Service are estimated at around £1.5 million p.a. There may also be additional resources for local authorities as they are responsible for enforcing the legislation on animal by-products. Although they already have such responsibilities, extra resources may be needed if it is necessary to increase enforcement activity eg in policing the ban on the burial of fallen stock.

32. In the event of non-compliance, the Regulation requires the competent authority to suspend an operator's approval, thus preventing the premises from receiving animal by-products. Prosecutions on summary conviction may result in a fine of up to £5,000 and 6 months' imprisonment, or on conviction on indictment to an unlimited fine and up to 2 years imprisonment or both.

Monitoring and review

33. The Regulation requires Member States to inform the Commission within one year of its entry into force of the measures taken to ensure compliance with the Regulation. The Regulation also provides for the Commission to propose amendments to the Annexes, following consultation of the EU Scientific Steering Committee where appropriate, so that

technical changes can be made if experience suggests it is necessary. The Commission has already begun a review of the Annexes.

Results of consultation

34. Industry organisations and other interests have been consulted at regular intervals. Where difficulties have been identified, changes to the Regulation have been sought if appropriate, or steps taken to implement the requirements in a way that minimises the impact. For example, it was not possible to prevent the introduction of a ban on the use in animal feed of used cooking oil, but we agreed a two year delay to allow time for sustainable alternative outlets to be developed. This period reflects a balance between the wish of the restaurant and used cooking oil industries for the current situation to continue as long as possible, and the wish of those offering alternative outlets (eg biodiesel and burning as fuel) for a rapid change-over. It also reflects our concern to protect the environment by ensuring that sufficient alternative capacity is in place by the time the ban takes effect.

Summary and recommendation

Option	Total cost per year	Total benefit per year
(a)	Nil	Not quantifiable, but negative.
(b)	Possibly in excess of £100 million	Not quantifiable, but positive.
(c)	Possibly in excess of £100 million	Not quantifiable but positive.

35. Option (c) is recommended, because it enables the Regulation to be properly enforced and the maximum benefit is derived from the Regulation. Option (c) would also provide some flexibility of approach for those businesses most affected.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed [by Scottish Minister when Scottish Statutory Instrument is signed]

Scottish Executive Environment and Rural Affairs Department

SCOTTISH STATUTORY INSTRUMENTS

2003 No. []

ANIMALS

ANIMAL HEALTH

[DRAFT Animal By-Products (Scotland) Regulations 2003]

Laid before the Scottish Parliament

[] 2003

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SCHEDULE 6: Revocations [and Savings]

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, []

Citation, commencement and extent

1.—(1) These Regulations may be cited as the [Animal By-Products (Scotland) Regulations 2003] and come into force on [] 2003.

(2) These Regulations extend to Scotland only.

Application

2. These Regulations do not apply to the use at any premises of any catering waste originating only on those premises or any material derived from catering waste originating only on the premises where—

- (a) no ruminant animals or pigs are kept; or
- (b) poultry is kept and where the catering waste or material derived from catering waste is produced and stored in a secure container which prevents the poultry having access to such catering waste or material during decomposition.

Interpretation

3.—(1) In these Regulations—

“the Agency” means the Food Standards Agency;

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

“the Council Regulation” means Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption^(a);

[“the blood transitional Decision” means Commission Decision [] on transitional arrangements pursuant to Article 32(2) of Regulation (EC) No 1774/2002 as regards the processing standards for mammalian blood;

[“the Commission Regulation” means Commission Regulation [] on transitional arrangements and permanent implementing measures pursuant to Articles 22(2), 24(6) and 32(1) of Regulation (EC) No 1774/2002 on animal by-products not intended for human consumption with regard to the feeding of fish and with regard to burning and burial;]

“the Community Transitional Measures” means-

- (a) the blood transitional Decision;
- (b) Article 1 of the Commission Regulation;
- (c) the former foodstuff transitional Decision;
- (d) the low capacity incinerators transitional Decision;
- (e) the oleochemical plants transitional Decision; and
- (f) the used cooking oil transitional Decision;

[“the former foodstuff transitional Decision” means Commission Decision [] on transitional arrangements pursuant to Article 32(1) of Regulation (EC) No 1774/2002 as regards the collection, transport and disposal of former foodstuff.]

[“the low capacity incinerators transitional Decision” means Commission Decision [] on transitional arrangements pursuant to Article 32(2) of Regulation (EC) No 1774/2002 as regards the low capacity incineration or co-incineration plants which do not incinerate or co-incinerate specified risk material or carcasses containing them;

[“the oleochemical plants transitional Decision” means Commission Decision [] on transitional arrangements pursuant to Article 32(2) of Regulation (EC) No 1774/2002 as regards the separation of Category 2 and Category 3 oleo-chemical plants;

[“the used cooking oil transitional Decision” means Commission Decision [] on transitional arrangements pursuant to Article 32(2) of Regulation (EC) No 1774/2002 as regards the use in feed of used cooking oil;

“inspector” means-

- (a) a person appointed as such for the purposes of these Regulations by the Scottish Ministers; and
- (b) a person appointed as such for the purposes of these Regulations by a local authority in relation to its enforcement responsibilities under these Regulations;

(a) O.J. No. L 273, 10.10.2002, p.1.

“justice of the peace” means a full justice as defined by section 9 of the District Courts (Scotland) Act 1975(a);

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

“meat-excluded catering waste” means catering waste derived from waste other than animal carcasses, parts of animal carcasses or products of animal origin in accordance with a procedure intended to ensure that no animal carcasses, parts of animal carcasses or products of animal origin are included in the waste;

“remote areas” means the parts of Scotland specified in Schedule 1.

(2) Expressions in these Regulations which are not defined in paragraph (1) above and which appear in the Council Regulation or in the Community Transitional Measures have the same meaning in these Regulations as they have for the purposes of the Council Regulation or the Community Transitional Measures.

(3) Unless the context otherwise requires, any reference in these Regulations—

(a) to a numbered regulation is a reference to the regulation so numbered in these Regulations;

(b) to a numbered paragraph is a reference to the paragraph so numbered in the regulation, Schedule or part of a Schedule in which that reference occurs; or

(c) to a numbered Schedule is a reference to the Schedule to these Regulations so numbered.

(4) Any person appointed by the Scottish Ministers or a local authority to be an inspector for the purposes of the Animal Health Act 1981(c) or the Animal By Products Order 1999(d) shall be deemed to have been appointed by the Scottish Ministers or that authority to be an inspector for the purposes of these Regulations.

(5) Any approval, registration or notice issued under these Regulations, shall be in writing, and may be made subject to such conditions as are necessary to ensure that the provisions of the Council Regulation and these Regulations are complied with.

(6) Other than in relation to information sworn before a sheriff or a justice of the peace, and other than in relation to the service of a notice or other document in accordance with regulation 37, any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(e), which has been recorded and is consequently capable of being reproduced.

(7) Any record required to be kept under these Regulations shall be kept for at least two years.

General obligations

4. Any person who fails to comply with Article 3(1) of the Council Regulation shall be guilty of an offence.

Category 1 material

(a) 1975 c.20. The definition of “full justice” was inserted by section 8 of the Bail, Judicial Appointments etc. (Scotland) Act 2000 (asp 9).
(b) 1994 c.39.
(c) 1981 c. 22.
(d) S.I. 1999/646, amended by S.S.I. 171.
(e) 2000 c.7.

5. Any person who fails to comply with Article 4(2), Article 4(3) or the first sentence of Article 4(4) of the Council Regulation shall be guilty of an offence.

Category 2 material

6. Any person who fails to comply with Article 5(2), Article 5(3) or Article 5(4) of the Council Regulation shall be guilty of an offence.

Category 3 material

7. Any person who fails to comply with Article 6(2) or Article 6(3) of the Council Regulation shall be guilty of an offence.

Collection, transportation and storage

8.—(1) Any person who fails to comply with Article 7(1), 7(2) or 7(5) of the Council Regulation shall be guilty of an offence.

(2) For the purposes of Article 7 of that Regulation animal by-products may be transported in containers that are not leak-proof provided—

- (a) the vehicle in which the material is transported is leak-proof; and
- (b) all the material is disposed of as the highest category of material.

Records for consigning, transporting or receiving animal by-products

9. Any person who fails to comply with Article 9(1) of the Council Regulation shall be guilty of an offence.

Placing on the market and export of processed animal protein and other processed products that could be used as feed material

10. Any person who places on the market or exports processed animal protein or other processed products that could be used as feed material which do not meet the requirements of Article 19 of the Council Regulation shall be guilty of an offence.

Placing on the market and export of petfood, dogchews and technical products

11.—(1) Any person who places on the market or exports petfood, dogchews or technical products which do not meet the requirements of Article 20(1) of the Council Regulation shall be guilty of an offence.

(2) Any person who places on the market or exports fat derivatives produced from category 2 material which do not meet the requirements of Article 20(3) of the Council Regulation shall be guilty of an offence.

Restrictions on use: enforcement of Article 22 of the Council Regulation

12.—(1) Any person who fails to comply with Article 22(1) of the Council Regulation shall be guilty of an offence.

(2) For the purposes of Article 22(1)(b) of that Regulation—

- (a) no person shall feed to or allow any ruminant animal pig or poultry, or farmed animals other than fur animals, to have access to any animal by-product or any feeding stuffs which have been in contact with any animal by-product unless such animal by-product–
 - (i) has been processed in an approved processing plant; or
 - (ii) has been treated in an approved biogas or composting plant and applied or otherwise deposited onto land which is not pasture land;
- (b) no person shall bring any animal by-product on to any premises where any ruminant animal pig or poultry, or farmed animals other than fur animals, are kept unless such animal by-product–
 - (i) has been processed in an approved processing plant; or
 - (ii) has been treated in an approved biogas or composting plant,

and any person who fails to comply with any provision of this paragraph shall be guilty of an offence.

(3) For the purposes of Article 22(1)(c) land is not pasture land if it is land which is not cropped or grazed for at least two months immediately after the application or deposit of organic fertilisers and soil improvers.

Derogations regarding the use of animal by-products

13.—(1) For the purposes of Article 23 of the Council Regulation the Scottish Ministers shall be the competent authority.

(2) It shall not be an offence under these Regulations to use animal by-products for diagnostic, educational or research purposes if in accordance with an approval of the Scottish Ministers.

(3) It shall not be an offence under these Regulations to use animal by-products for taxidermy purposes if–

- (a) in accordance with an approval of the Scottish Ministers; and
- (b) if used in a technical plant approved for that purpose in accordance with the Council Regulation and these Regulations.

(4) It shall not be an offence under these Regulations to use animal by-products specified in paragraph 2(b) of Article 23 of the Council Regulation for the purposes of feeding to–

- (a) zoo animals;
- (b) circus animals;
- (c) reptiles and birds of prey other than zoo or circus animals;
- (d) fur animals;
- (e) wild animals the meat of which is not destined for human consumption;

- (f) dogs from recognised kennels or recognised packs of hounds; or
- (g) maggots for fishing bait,

in accordance with an approval of the Scottish Ministers.

(5) The Scottish Ministers shall maintain a register of premises used for the feeding of such animal by-products to zoo or circus animals, dogs from recognised kennels or recognised packs of hounds and maggots for fishing bait containing the following information:-

- (a) the name of the operator;
- (b) the address of the premises; and
- (c) the business carried on at the premises.

(6) For the purposes of Article 23(2) no person shall operate a collection centre, as defined in Annex I of the Council Regulation, for the purposes of feeding to-

- (a) fur animals;
- (b) dogs from recognised kennels or recognised packs of hounds; or
- (c) maggots for fishing bait,

unless the premises and the operator of the premises are approved by the Scottish Ministers.

(7) The operator of the approved premises shall-

- (a) ensure that the premises are maintained and operated in accordance with-
 - (i) the conditions of approval; and
 - (ii) the requirements of the Council Regulation and these Regulations; and
- (b) ensure that any person employed by the operator, and any person invited to the premises, complies with these conditions and requirements.

(8) Any person who fails to comply with any provision of paragraphs 6 and 7 shall be guilty of an offence.

Derogations regarding the disposal of animal by-products

14.—(1) For the purposes of Article 24 of the Council Regulation the Scottish Ministers shall be the competent authority.

(2) It shall not be an offence under these Regulations for dead pet animals to be directly disposed of as waste by burial.

(3) It shall not be an offence under these Regulations for animal by-products to be disposed of as waste by burning or burial on site where they originate in the remote areas specified in Schedule 1 in accordance with Article 24(1)(b) of the Council Regulation if in accordance with an approval of the Scottish Ministers.

(4) It shall not be an offence under these Regulations for animal by-products to be disposed of as waste by burning or burial on site in the event of a disease outbreak of disease in accordance with Article 24(1)(c) of the Council Regulation if in accordance with an approval of the Scottish Ministers.

Approvals

15.—(1) The Scottish Ministers shall be the competent authority for the purposes of granting approvals for the purposes of Chapter III and Chapter IV of the Council Regulation.

- (2) No person shall use any—
- (a) category 1, 2 or 3 intermediate plant;
 - (b) storage plant;
 - (c) incineration or co-incineration plant;
 - (d) category 1 or category 2 processing plant;
 - (e) category 2 or category 3 oleochemical plant;
 - (f) biogas or composting plant;
 - (g) category 3 processing plant;
 - (h) petfood or technical plant,

unless the premises, the operator of the premises and where appropriate the equipment are approved.

- (3) The operator of the approved premises shall—
- (a) ensure that the premises are maintained and operated in accordance with—
 - (i) any conditions of approval; and
 - (ii) the requirements of the Council Regulation and these Regulations; and
 - (b) ensure that any person employed by that operator, and any person invited to the premises, complies with these conditions and requirements.

(4) Where catering waste is the only animal by-product used as raw material in a biogas or composting plant the requirements of Chapter II of Annex VI of the Council Regulation and Schedule 2 shall apply.

(5) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

Grant of approvals

16.—(1) An approval under these Regulations, shall specify, where appropriate—

- (a) the address of the premises and the operator of the premises;

- (b) the parts of the premises in which the animal by-products may be received and processed or treated; and
 - (c) the equipment, the methods in accordance with which, and the parameters within which, the animal by products must be processed or treated.
- (2) The Scottish Ministers shall grant an approval if they are satisfied that the requirements of the Council Regulation and these Regulations will be complied with.
- (3) If the Scottish Ministers refuse to grant the approval, or approve it subject to a condition, they shall by notice in writing served on the applicant–
- (a) give the reasons for that refusal or condition; and
 - (b) advise of the rights of the applicant to make written representations to the Scottish Ministers within a period of 21 days beginning with the date on which the notice is served and to be heard by an independent person appointed by the Scottish Ministers.

Suspension, amendment or revocation of approvals

- 17.—(1) The Scottish Ministers, by notice in writing served on the operator–
- (a) shall suspend immediately an approval or registration if any of the conditions under which the approval was granted are no longer fulfilled; and
 - (b) may suspend, amend or revoke an approval or registration if they are satisfied that the provisions of the Council Regulation or these Regulations are not being complied with.
- (2) A suspension or amendment under paragraph (1)(b)–
- (a) shall have immediate effect if the Scottish Ministers reasonably consider that it is necessary for the protection of public or animal health;
 - (b) otherwise shall not have effect for a period of at least 21 days following the date of service of the notice.
- (3) A revocation under paragraph (1)(b) shall not have effect for a period of at least 21 days following the date of service of the notice.
- (4) The notice shall–
- (a) give the reasons for the suspension, amendment or revocation; and
 - (b) advise of the right of the operator of the premises to make written representations to the Scottish Ministers within a period of 21 days beginning with the date on which the notice is served and to be heard by an independent person appointed by the Scottish Ministers.
- (5) Where the operator makes written representations pursuant to regulation 18, unless the Scottish Ministers reasonably consider that it is necessary for the protection of public or animal health for the amendment or suspension to have immediate effect, the amendment, suspension or revocation shall not have effect until the final determination by the Scottish Ministers in accordance with the following regulation.

Appeals

18.—(1) An applicant or operator on whom a notice is served under regulation 16 or 17 may within the period of 21 days beginning with the date on which the notice is served—

- (a) make written representations to the Scottish Ministers; and
- (b) give notice of whether or not that person wishes to appear before an independent person appointed by the Scottish Ministers.

(2) Where the applicant or operator gives notice of their wish to appear before and be heard by an independent person appointed for the purpose—

- (a) the Scottish Ministers shall appoint an independent person to hear representations and specify a time limit within which representations must be made;
- (b) the person so appointed shall not, except with the consent of the applicant or operator, be an officer or servant of the Scottish Ministers;
- (c) if the applicant or operator so requests the hearing shall be in public; and
- (d) if the applicant or operator so requests, the Scottish Ministers shall furnish the appellant with a copy of the report of the person so appointed.

(3) The independent person shall report to the Scottish Ministers.

(4) The Scottish Ministers shall give to the applicant or operator written notification of their final determination and the reasons for it.

(5) The Scottish Ministers shall be responsible for meeting the reasonable fees and expenses of the independent person in relation to the appeal except—

- (a) where the Scottish Ministers confirm the notice served under regulation 16 or 17; and
- (b) the Scottish Ministers are satisfied it is reasonable in all the circumstances for the applicant or operator to bear some or all of the fees and expenses.

(6) Where the Scottish Ministers are satisfied that it is reasonable in all the circumstances for the applicant or operator to bear some or all of the reasonable fees and expenses of the independent person, they shall give notice to the applicant or operator of the proportion, which they are satisfied the applicant or operator should bear.

(7) The applicant, operator and the Scottish Ministers shall each be responsible for their own costs incurred in relation to the appeal.

Laboratories

19.—(1) The Scottish Ministers shall approve laboratories under this regulation to carry out one or more of the tests in this regulation if they are satisfied that they have the necessary facilities, personnel and operating procedures to do so.

(2) In deciding whether to grant or continue an approval, the Scottish Ministers may require the laboratory to successfully undertake any quality control tests as they reasonably think fit.

(3) The operator of a laboratory approved under this regulation carrying out tests on material submitted to that operator in accordance with the Council Regulation shall do so in accordance with this regulation, and failure to do so shall be an offence.

(4) A test for *Clostridium perfringens* shall be carried out in accordance with the method in Schedule 3 or (if specified in the approval) with a method which conforms with ISO 7937/1997 (BS-EN 13401:1999)(Enumeration of *Clostridium perfringens*) or equivalent(**a**).

(5) A test for *salmonella* shall be carried out in accordance with the method in Schedule 3 or if specified in the approval) with a method which conforms with–

(a) ISO 6579/2002/BS-EN 12824:1998 (Detection of Salmonella) or equivalent(**b**); or

(b) NMKL 71: 1993 or equivalent(**c**).

(6) A test for *Enterobacteriaceae* shall be carried out in accordance with the method in Schedule 3 or (if specified in the approval) with a method which conforms with ISO 7402/1993 (BS 5763: Part 10: 1993) (Enumeration of *Enterobacteriaceae*) or equivalent(**d**).

(7) The operator of a laboratory approved under this article shall immediately notify the Scottish Ministers and the operator of the premises, in the event of tests establishing that material does not comply with the microbiological standards in the Council Regulation, and failure to do so shall be an offence.

(8) The material complies with the relevant microbiological standards for the purposes of the Council Regulation if–

(a) it is free from *Clostridium perfringens*;

(b) it is free from *Salmonella*; and

(c) it successfully passes the test for *Enterobacteriaceae* in paragraph 5 Part III of Schedule 3.

(9) The operator of a laboratory approved under this regulation shall in relation to processed material notify the Scottish Ministers on the last day of each month of the number, type and results of tests carried out, and failure to do so shall be an offence.

Records for approved laboratories

20. The operator of a laboratory approved under regulation 19 shall record–

(a) the name and address of the premises at which the sample was taken;

(b) the date on which the sample was taken;

(c) the description and identity of the sample;

(d) the date on which the sample was received at the laboratory;

(a) Published by the British Standards Institute, British Standards House, 389 Chiswick High Road, London W4 4AL.

(b) Published by the British Standards Institute; see above.

(c) Published by the Nordic Committee on Food Analysis, National Veterinary Institute, Department of Food and Hygiene, PO Box 8156, N-0033, Oslo, Norway.

(d) Published by the British Standards Institute; see above.

- (e) the date on which the sample was tested at the laboratory; and
- (f) the result of the test,

and failure to do so shall be an offence.

Sampling frequency

21.—(1) In the case of Category 1 and 2 processing plants and processed material derived from category 1 and 2 material, the operator shall, once every week—

- (a) take from the outlet of the cooker in which the material is processed a sample of at least 50 grams of processed material; and
- (b) send the sample to a laboratory approved for the purposes of the Council Regulation for testing for *Clostridium perfringens*.

(2) In the case of Category 1 and 2 processing plants and processed material derived from category 3 material, the operator shall—

- (a) where the material is intended for use in feeding stuffs—
 - (i) take samples of the material on each day that that the material is consigned from the premises, [using one of the methods specified in Schedule 3 and aggregate the samples in accordance with that method]; and
 - (ii) send the final sample to a laboratory approved for the purposes of the Council Regulation for testing for *Salmonella* and *Enterobacteriaceae*; and
- (b) where the material is not intended for use in feeding stuffs—
 - (i) take a sample, once every week of the material that is consigned from the premises; and
 - (ii) send the sample to a laboratory approved for the purposes of the Council Regulation for testing for *Salmonella* and *Enterobacteriaceae*.

(3) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

Sampling frequency at biogas and composting plants

22.—(1) In the case of biogas and composting plants the operator shall—

- (a) where the total treated material consigned is less than 20 tonnes a week take samples once a week, of the material, prior to it being consigned from the premises; or
- (b) where the total treated material consigned is more than 20 tonnes a week take samples for every 20 tonnes of the material prior to it being consigned from the premises such samples being taken from three [or four] [separate places] in the material and mixed to form one composite sample,

and send such samples to a laboratory approved for the purposes of the Council Regulation for testing for *Salmonella* and *Enterobacteriaceae*.

(2) In the event of tests establishing that treated material does not comply with the standards in the Council Regulation, the operator shall—

- (a) record the result of the test;
- (b) immediately notify the Scottish Ministers of the full details of the nature of the sample and the batch from which it was derived;
- (c) ensure that no further digestion residue or compost suspected or known to be contaminated is moved from the premises unless—
 - (i) it has been re-treated under the supervision of the Scottish Ministers and re-sampled and re-tested by the Scottish Ministers, and the re-testing has shown that the re-treated digestion residue or compost complies with the standards in the Council Regulation; or
 - (ii) it is to be disposed of—
 - (aa) if it is material derived from catering waste to a landfill authorised under the Landfill (Scotland) Regulations 2003(a);
 - (bb) if it is material derived from animal by-products to a processing or incineration plant; and
- (d) record the action taken in accordance with this regulation.

(3) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

Plants own checks

23.—(1) Any person who fails to comply with Article 25(1) of the Council Regulation shall be guilty of an offence.

(2) Any person who fails to comply with Article 25(2) of the Council Regulation shall be guilty of an offence.

(3) The operator shall record the action taken in accordance with Article 25(2) of the Council Regulation, and failure to do so shall be an offence.

Sampling records

24.—(1) Whenever an operator sends a sample to a laboratory approved for the purposes of the Council Regulation, the operator shall send with the sample the following information in writing—

- (a) the name and address of the premises at which the sample was taken;
- (b) the date on which the sample was taken; and
- (c) the description and identity of the sample.

(a) S.I.2003/[].

(2) No person shall tamper with a sample taken under these Regulations with intent to affect the result of the test.

(3) Any person who fails to comply with any provision of this regulation shall be guilty of an offence.

Records for disposal or use on premises

25.—(1) Subject to paragraph (2), an operator of any premises who disposes or uses any animal by-product other than manure, or any processed product, on the premises shall make on disposal or use a record of each disposal or use showing the date on which the animal by-product was disposed of or used and the quantity and description of the material disposed of or used, and failure to do so shall be an offence.

(2) The requirement in paragraph (1) shall not apply to disposal on the premises by feeding of animal by-products or processed products to—

- (a) reptiles and birds of prey other than zoo or circus animals; and
- (b) wild animals the meat of which is not destined for human consumption.

Records to be kept by operators of approved biogas and composting plants

26.—(1) The operator of biogas or composting plants approved under Article 15 of the Council Regulation and these Regulations shall record—

- (a) the date on which any catering waste was delivered to the premises;
- (b) except in the case of collections of household waste by a waste collection authority, the address of each of the premises from which the waste was collected;
- (c) in the case of collections of household waste by a waste collection authority, the name of the waste collection authority;
- (d) the quantity and description of the catering waste, including a statement of whether the waste is meat-excluded waste; and
- (e) the name of the person who transported the catering waste and a description of the vehicle in which it was transported sufficient to identify it,

and failure to do so shall be an offence.

(2) In paragraph (1) “household waste” and “waste collection authority” have the same meaning respectively as they have for the purposes of the Environmental Protection Act 1990^(a).

(3) The operator of a biogas or composting plant approved under Article 15 of the Council Regulation and these Regulations shall record—

- (a) the date on which the material is processed;
- (b) a description of the material processed;

(a) 1990 c.43.

- (c) the quantity of material processed; and
- (d) sufficient information to show that the material is treated to the specified parameters in Part 2 of Schedule 2,

and failure to do so shall be an offence.

Records to be kept for consignments of compost or digestion residue

27.—(1) Subject to paragraph (3), the operator of approved premises from which any compost or digestion residue is consigned shall record—

- (a) the date on which any compost or digestion residue is consigned from the premises;
- (b) the address of each of the premises to which the compost or digestion residue is consigned;
- (c) the quantity and description of the compost or digestion residue; and
- (d) the name of the person who transported the compost or digestion residue,

and failure to do so shall be an offence.

(2) Subject to paragraph (3), an owner of ruminant animals, pigs or poultry who receives consigned compost or digestion residue shall record—

- (a) the date on which the compost or digestion residue is received;
- (b) the address of the premises from which the compost or digestion residue is received;
- (c) the quantity and description of the compost or digestion residue;
- (d) the land to which the compost or digestion residue is applied;
- (e) the date of such application; and
- (f) the date on which the land is first cropped or the date on which farmed animals other than fur animals, were allowed access to the land, whichever is the sooner,

and failure to do so shall be an offence.

(3) The requirement in paragraph (2) to make records shall not apply in the case of any supply of compost or digestion residue for use at any premises used as a dwelling.

Mixing of different species of material

28.—(1) [Mixing at premises]

(2) Where mammalian material and non-mammalian material is mixed it shall be regarded as mammalian material and handled as such.

Mixing of different categories of material

29. An operator of premises where different categories of animal by-products material are mixed shall record–

- (a) before mixing–
 - (i) the different categories and species of material;
 - (ii) the weight of the different categories and species of material; and
- (b) the date and place of mixing,

and failure to do so shall be an offence.

Notice requiring the disposal of animal by-products or catering waste

30. If an inspector considers it necessary for animal or public health purposes or if any provision of these Regulations or the Council Regulation are not being complied with, the inspector may serve a notice on any person in possession or control of any animal by product requiring that person to dispose of it as may be specified in the notice.

Cleansing and disinfection

31.—(1) If an inspector reasonably suspects that any vehicle, container or premises to which these Regulations or the Council Regulation apply constitutes an animal or public health risk, the inspector may serve a notice on the person in charge of the vehicle or container, or on the occupier of the premises, requiring the vehicle, container or premises to be cleansed and disinfected.

- (2) The notice may–
 - (a) specify the method of cleansing and disinfection;
 - (b) specify the method of disposal of any material remaining in the vehicle, container or premises; and
 - (c) prohibit the movement of any animal by-product into the vehicle or container or on to the premises until such time as the required cleansing and disinfection has been satisfactorily completed.

Compliance with notices

32.—(1) Any notice served under these Regulations shall be complied with at the expense of the person on whom the notice is served, and if it is not complied with, an inspector may arrange for it to be complied with at the expense of that person.

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

Powers of entry

33.—(1) An inspector shall, on producing, if so required, some duly authenticated document showing the authority of that inspector, have a right at all reasonable hours, to enter any premises (excluding

any premises used only as a dwelling) for the purpose of administering and enforcing these Regulations and the Council Regulation.

- (2) An inspector may–
 - (a) carry out any inquiries, examinations and tests;
 - (b) take any samples;
 - (c) have access to, and inspect and copy any records (in whatever form they are held) kept under these Regulations or the Council Regulation;
 - (d) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to provide such assistance as the inspector may reasonably require 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.
- (3) An inspector may, for the purposes of identification, mark any animal or thing in relation to which any of the powers in paragraph (1) has been exercised.
- (4) No person shall, or shall attempt to, deface, obliterate or remove any such mark as referred to in paragraph (2).
- (5) If a sheriff or justice of the peace, on sworn information in writing, is satisfied that there is a reasonable ground for an inspector to enter any premises (excluding premises used only as a dwelling) for any purpose mentioned in paragraph (1) and either–
 - (a) admission to the premises has been refused, or a refusal is expected, and that notice of the intention to apply for a warrant has been given to the occupier; or
 - (b) an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is absent,

the sheriff or justice may issue a warrant authorising an inspector to enter the premises for that purpose if need be by reasonable force.

- (6) Every warrant issue under this regulation shall continue in force for a period of one month.
- (7) The occupier of any premises entered by an inspector under this regulation or by virtue of a warrant issued under it, and the employees of that occupier shall provide such reasonable facilities and assistance to the inspector and comply with such reasonable requirements as the inspector considers necessary for any purpose connected with the administration and enforcement of these Regulations.
- (8) An inspector entering any premises by virtue of this regulation, or of a warrant issued under it may be accompanied by–
 - (a) such other persons as the inspector considers necessary; and

- (b) any representative of the European Commission acting for the purpose of the Council Regulation or the Community Transitional Measures.

(9) If an inspector enters any unoccupied premises, the inspector shall leave them as effectively secured against unauthorised entry as those premises were before entry.

Obstruction

34.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of these Regulations;
- (b) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require for purpose of carrying out the functions of that person under these Regulations; or
- (c) furnishes to any person acting in the execution of these Regulations any information which is known to be false or misleading,

shall be guilty of an offence.

(2) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Offences

35.—(1) A person guilty of an offence under these Regulations shall be liable—

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

(2) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that officer or person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

Enforcement

36.—(1) These Regulations shall be enforced by the Scottish Ministers in relation to—

- (a) premises which are licensed under the Fresh Meat (Hygiene and Inspection) Regulations 1995;

- (b) premises which are licensed under the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat Hygiene and Inspection) Regulations 1995(a);
 - (c) premises which are licensed under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(b);
 - (d) combined premises as defined in the Meat Products (Hygiene) Regulations 1994(c);
 - (e) combined premises as defined in the Minced Meat and Meat Preparations (Hygiene) Regulations 1995(d).
- (2) Other than as specified in paragraph (1) these Regulations shall be enforced by the local authority.
- (3) The Scottish Ministers may direct, in relation to cases of a particular description or any particular case, that an enforcement duty imposed on a local authority under this regulation shall be discharged by the Scottish Ministers and not by the local authority.

Service of notices and other documents

37.—(1) Any notice or other document to be served on any person under or in relation to these Regulations may be served either—

- (a) by delivering it to that person;
- (b) in the case of an incorporated body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it by post to that secretary or clerk at that office; or
- (c) in the case of any other person, by leaving it, or sending it by post to that person, at the usual or last known address of that person.

(2) Where a notice or other document is to be given or served on the owner, proprietor, operator or occupier of any premises and it is not practicable after reasonable enquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied, the document may be given or served by addressing it to the person concerned by the description of “owner”, “proprietor”, “operator” or “occupier” of the premises (naming them) and—

- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Amendments

38. The TSE (Scotland) Regulations 2002(e) are amended in accordance with the provisions of Part I of Schedule 4.

Transitional provisions

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- (a) S.I. 1995/540 as amended by S.I. 1995/1763, S.I. 1995/2200, S.I. 1995/3205 and S.I. 1997/1729.
 - (b) S.I. 1995/2148 as amended by S.I. 1995/3205.
 - (c) S.I. 1994/3082 as amended by S.I. 1995/1763, S.I. 1995/2200, S.I. 1995/3205 and S.I. 1996/1499.
 - (d) S.I. 1995/3205 as amended by S.I. 1996/3124.
 - (e) S.S.I. 2002/255, amended by S.S.I. 2003/198.

39.—(1) Schedule 5 shall have effect.

(2) Part 1 of Schedule 5 (used cooking oil) shall cease to have effect on 31st October 2004.

(3) Part 2 of Schedule 5 (oleochemical plants using rendered fats from category 2 and 3 materials) shall cease to have effect on 31st October 2005.

(4) Part 3 of Schedule 5 (low capacity incinerators which do not incinerate specified risk materials or carcasses containing them to which Directive 2000/76/EC does not apply) shall cease to have effect on 31st December 2004.

(5) Part 4 of Schedule 5 (disposal of blood) shall cease to have effect on 31st December 2004.

(6) Part 5 of Schedule 5 (collection, transport and storage of former foodstuff of animal origin) shall cease to have effect on 30 December 2005.

(7) Part 6 of Schedule 5 (feeding of fish with processed animal protein derived from the same species) shall cease to have effect on 31st December 2003.

Revocations

40. The Orders and Regulations specified in the first column of Schedule 6 are revoked to the extent specified in the third column of that Schedule.

SCHEDULE 1

Remote Areas

The Parishes of-

[Ardgour	Flotta
Ardrnamurchan	Rousay
Morvern	North Ronaldsay/Sanday
Colonsay and Oronsay	Sanday
Jura	Shapinsay
Killarow and Kilmeny	South Ronaldsay
Kilchoman	Stronsay
Kildalton and Oa	Papa Westray
Gigha and Cara	Westray
Inveraray	Fortingall
Coll	Gairloch
Kilfinichen and Kilvickeon	Barvas
Kilninian and Kilmore	Lochs
Torosay	Stornoway
Tiree	Uig
Ardchattan and Muckairn	Lochbroom
Lismore and Appin	Applecross
Glenorchy and Inishail	Lochcarron
Kilbrandon and Kilchattan	Contin
Kilchrennan and Dalavich	Urray
Kilmore and Kilbride	Glenshiel
Kilninver and Kilmelford	Kintail
Canisbay	Lochalsh
Kilmorack	Kincardine
Kiltarlity	Assynt
Urquhart and Glenmoriston	Creich
Laggan	Durness
Barra	Eddrachilles
Harris	Tongue
Arisaig and Moidart	Bressay
Glenelg	Delting
Kilmallie	Dunrossness
Kilmonivaig	Cunningsburgh
Small Isles	Sandwick
North Uist	Fetlar
Bracadale	Lerwick
Duirinish	Burra Isles
Kilmuir	Nesting
Portree	Lunnasting
Sleat	Whalsay
Snizort	Northmavine
Strath	Sandsting
South Uist	Aithsting
Eday	Tingwall
Hoy and Graemsay	Whiteness
Walls	Weisdale

Unst
Walls
Sandness

Papa Stour
Walls Foula
Yell]

SCHEDULE 2

Additional requirements for biogas and composting plants

PART 1

Premises

1. There shall be a clean area and an unclean area, adequately separated. The unclean area shall be easy to clean and disinfect. It shall have a covered place (reception area) to receive and store the unprocessed animal by-products.
2. The animal by-products shall be unloaded in the reception area and either–
 - (a) processed immediately, or
 - (b) stored in the reception area and processed without undue delay.
3. Digestion residues or compost shall not be allowed to come into contact with unprocessed animal by-products. Floors shall be laid so that liquids cannot seep from the unclean area into the clean area.
4. Persons who have been in the unclean area shall not enter the clean area without first disinfecting or changing their footwear and changing their outer clothing. Equipment and utensils which have been in the unclean area shall not be taken into the clean area unless they have been suitably cleansed and disinfected.
5. Premises must have adequate facilities for cleaning and disinfecting vehicles and containers transporting animal by-products. Containers, receptacles and vehicles used for transporting unprocessed animal by-products must be cleaned in the unclean area.
6. No pet animals or, farmed animals other than fur animals, will be able to have access to any catering waste on the premises.

PART 2

Processing systems and parameters

1. Unless an approval specifically permits a different system, catering waste must be processed by one of the systems specified in the table below. The system must ensure, as a minimum, that 99.8% of the material is treated to the following parameters:-

System	Composting (in closed reactor)	Biogas (in closed reactor)	Composting (in closed reactor) or biogas (in pasteurisation or hygienisation unit)	Composting (in housed windrows)
Maximum	40cm	5cm	6cm	40cm

Particle size				
Minimum Temperature	60°C	57°C	70°C	60°C
Minimum Time spent at the minimum temperature	2 days	5 hours	1 hour	8 days (during which the windrow shall be turned 3 times at no less than 2 day intervals)

2. The approval must specify–

(a) in the case of composting plants either–

(i) sub-paragraph (a) and (c); or

(ii) sub-paragraph (b),

of the additional measures specified in paragraph 3; or

(b) in the case of biogas plants one of the additional measures specified in paragraph 3.

3. The additional measures are–

(a) the catering waste must be meat excluded catering waste;

(b) in the case of the production of compost, following treatment in the approved system the catering waste shall be processed by one of the systems specified in paragraph 1 or by composting in open windrows to the same treatment parameters as for housed windrows in paragraph 1;

(c) following treatment in the approved system the catering waste must be stored for a period of at least 18 days after the date, or the last date, of treatment (storage need not be in an enclosed system).

4. If an approval permits a system other than the one described in the table, the complete processing system for the catering waste must be described in the approval.

SCHEDULE 3

Sampling and Testing Methods

PART I

METHOD FOR THE ISOLATION OF *CLOSTRIDIUM PERFRINGENS***Time of testing**

1. Tests shall be begun on receipt of the sample or on the first working day which allows this method to be completed. If the test is not begun on the day of receipt the sample shall be stored in a refrigerator at between 2°C and 8°C until required. If the sample has been refrigerated it shall be removed from the refrigerator and stored at room temperature for at least one hour before the test is started.

Samples

2. Tests shall be carried out using two 10 gram portions of each sample submitted for testing. Each 10 gram sample shall be placed aseptically in a jar containing 90 ml *Clostridium perfringens* diluent consisting of 0.1% peptone and 0.8% sodium chloride at a pH of 7 and mixed thoroughly until the sample is evenly suspended.

Inoculations

3. For each portion of the sample 1 ml of solution shall be transferred to a sterile 90 mm petri dish (in duplicate), to which 15 ml of Shahidi - Ferguson agar (SF agar)(a) at a temperature of 48°C±1°C shall be added and immediately gently mixed by swirling the dish with 5 clockwise and 5 anticlockwise circular movements.

4. Once the agar has set, each agar plate shall be overlaid with a further 10 ml SF agar at a temperature of 4°C±1°C. Once the overlay has set and with the plate lids uppermost the plates shall be incubated anaerobically at 37°C±1°C for 20 hours±2 hours.

Samples with colonies of *Clostridium perfringens*

5. After incubation each set of duplicate plates shall be examined for colonies characteristic of *Clostridium perfringens* (black). The sample provisionally fails if any colonies characteristic of *Clostridium perfringens* are present, in which case the following procedure shall be followed to establish whether or not the colonies are *Clostridium perfringens*.

6. In the case of each plate, 10 characteristic colonies of *Clostridium perfringens* shall be subcultured on to a further SF agar plate. If there are less than 10 colonies on the plate, all characteristic colonies shall be subcultured on to the further plate. The plates shall be incubated anaerobically at 37°C±1°C for 20 hours±2 hours.

7. If the surface area of the plates is overgrown and it is not possible to select well isolated characteristic colonies, 10 suspect colonies shall be subcultured on to duplicate SF agar plates and incubated anaerobically at 37°C±1°C for 20 hours±2 hours.

(a) Shahidi-Ferguson agar- See Shahidi, S. A. and Ferguson, A. R. (1971) Applied Microbiology 21:500-506. American Society for Microbiology, 1913 1 St N.W., Washington DC 20006, USA.

8. One characteristic colony from each plate shall be subcultured on to SF agar and incubated anaerobically at 37°C±1°C for 20 hours±2 hours.

Subcultured colonies

9. After incubation each plate shall be examined for colonies characteristic of *Clostridium perfringens*. All colonies characteristic of *Clostridium perfringens* shall be–

- (a) stab inoculated into motility nitrate medium(a); and
- (b) inoculated into either lactose gelatin medium(b) or charcoal gelatin discs(c),

and incubated anaerobically at 37°C±1°C for 20 hours±2 hours.

EXAMINATION OF SUBCULTURES

Motility

10. The motility nitrate medium shall be examined for the type of growth along the stab line. If there is evidence of diffuse growth out into the medium away from the stab line, the bacteria shall be considered to be motile.

Reduction of nitrate to nitrite

11. After examination of the motility nitrate medium, 0.2 ml to 0.5 ml of nitrite detection reagent shall be added to it. The formation of a red colour confirms that the bacteria have reduced nitrate to nitrite. Cultures that show a faint reaction (i.e. a pink colour) should be discounted. If no red colour is formed within 15 minutes, a small amount of zinc dust shall be added and the plate allowed to stand for 15 minutes. If a red colour is formed after the addition of zinc dust no reduction of nitrate to nitrite has taken place.

Production of gas and acid from lactose and liquefaction of gelatin

12. The lactose gelatin medium shall be examined for the presence of small gas bubbles in the medium.

13. The lactose gelatin medium shall be examined for colour. A yellow colour indicates fermentation of lactose.

14. The lactose gelatin medium shall be chilled for one hour at 2 - 8°C and then checked to see if the gelatin has liquefied. If the medium has solidified it shall be re-incubated anaerobically for a further 18 - 24 hours, the medium chilled for a further one hour at 2 - 8°C and again checked to see if the gelatin has liquefied.

15. The presence of *Clostridium perfringens* shall be determined on the basis of the results from paragraphs 10 to 14. Bacteria which produce black colonies on SF agar, are non-motile, reduce nitrate to nitrite, produce gas and acid from lactose and liquefy gelatin within 48 hours shall be considered to be *Clostridium perfringens*.

(a) Motility nitrate medium-See Hauschild AHW, Gilbert RJ, Harmon SM, O'Keefe MF, Vahlefeld R, (1997) ICMSF Methods Study VIII, Canadian Journal of Microbiology 23, 884-892. National Research Council of Canada, Ottawa ON K1A 0R6, Canada.
(b) Lactose gelatin medium- See Hauschild AHW, Gilbert RJ, Harmon SM, O'Keefe MF, Vahlefeld R, (1997) ICMSF Methods Study VIII, Canadian Journal of Microbiology 23, 884-892.
(c) Charcoal gelatin discs-See Mackie and McCartney, (1996) Practical Medical Microbiology 14, 509. Churchill Livingstone, Robert Stevenson House, 1-3 Baxter's Place, Leith Walk, Edinburgh EH1 3AF.

Control Tests

16. Control tests shall be carried out each day that a test is initiated using–
 - (a) *Clostridium perfringens* no more than seven days old at the time of use;
 - (b) *Escherichia coli* NCTC 10418(a) or equivalent not more than seven days old at the time of use; and
 - (c) rendered animal protein which is free of *Clostridium perfringens*.
17. 10 gram portions of the rendered animal protein shall be placed aseptically in each of two jars containing 90 ml Buffered Peprone Water (BPW)(b) and mixed thoroughly until the samples are evenly suspended.
18. One colony of *Clostridium perfringens* shall be placed in 10 ml BPW and mixed to form an even suspension. 0.1 ml of the suspension shall be added to the suspension in the preceding paragraph. This shall be repeated for *Escherichia coli*.
19. These are then treated and examined in the same way as test samples. If no typical colonies are formed then that day's testing shall be invalid and shall be repeated.

PART II

METHODS FOR THE ISOLATION OF *SALMONELLA*

A. BACTERIOLOGICAL METHOD

1. Tests shall be begun on receipt of the sample or on the first working day which allows this method to be completed. If the test is not begun on the day of receipt the sample shall be stored in a refrigerator until required. If the sample has been refrigerated it shall be removed from the refrigerator and stored at room temperature for at least four hours before the test is started.

Day 1

2. Tests shall be carried out in duplicate using two 25 gram portions of each sample submitted for testing. Each 25 gram sample shall be placed aseptically in a jar containing 225 ml Buffered Peptone Water (BPW) and incubated at 37°C for 18 hours.

Day 2

3. 0.1 ml from the jar of incubated BPW shall be inoculated into 10 ml Rappaports Vassiliadis broth (RV broth)) and incubated at 41.5°C±0.5°C for 24 hours.

Day 3

4. The RV broth shall be plated out on to two 90 millimetre plates of Brilliant Green Agar (BGA) or on to one 90 millimetre plate of BGA and one 90 millimetre plate of Xylose Lysine Deoxycholate Agar (XLD) using a 2.5 mm diameter loop. The plates shall be inoculated with a droplet taken from the edge of the surface of the fluid by drawing the loop over the whole of one plate

(a) The National Collection of Type Cultures, Central Public Health Laboratory, 61 Colindale Ave, London NW9 5HT.

(b) Buffered Peptone Water – See Edel, W. and Kampelmacher, E.H. (1973) Bulletin of World Health Organisation, 48: 167-174, World Health Organisation Distribution and Sales, CH-1211, Geneva 27, Switzerland (ISSN 0042-9686).

in a zig zag pattern and continuing to the second plate without recharging the loop. The space between the loop streaks shall be 0.5 cm - 1.0 cm. The plates shall be incubated at 37°C overnight.

5. The residual RV broth shall be reincubated at 41.5°C±0.5°C for a further 24 hours.

Day 4

6. The plates shall be examined and a minimum of 3 colonies from each plate showing suspicion of *Salmonella* growth shall be subcultured–

- (a) on to a blood agar plate;
- (b) on to a MacConkey agar plate; and
- (c) into biochemical media suitable for the identification of *Salmonella*.

These media shall be incubated at 37°C overnight.

7. The reincubated RV both shall be plated out as described in paragraph 4.

Day 5

8. The incubated composite media or equivalent shall be examined and the findings recorded, discarding cultures which are obviously not *Salmonella*. Slide serological tests shall be performed using *Salmonella* polyvalent “O” and polyvalent “H” (phase 1 and 2) agglutinating sera on selected suspect colonies collected from the blood agar or MacConkey plates. If reactions occur with one or both sera, the colonies shall be typed by slide serology and a subculture sent to a [Regional Veterinary Laboratory of the Veterinary Laboratories Agency of the Department for Environment, Food and Rural Affairs] for further typing.

9. The plates referred to in paragraph 7 shall be examined and further action taken as in paragraph 6 and 8.

B. ELECTRICAL CONDUCTANCE METHOD

1. Tests shall be begun on receipt of the sample or on the first working day which allows the following method to be completed. If the test is not begun on the day of receipt the sample shall be stored in a refrigerator until required. If the sample has been refrigerated it shall be stored at room temperature for at least four hours before the test is started.

Day 1

2. Tests shall be carried out in duplicate using two 25 gram portions of each sample submitted for testing. Each 25 gram sample shall be placed aseptically in a jar containing 225 ml Buffered Peptone Water/Lysine/Glucose (BPW/L/G) and incubated at 37°C for 18 hours.

Day 2

3. The incubated BPW/L/G shall be added to Selenite Cystine Trimethylamine-N-Oxide Dulcitol (SC/T/D) and Lysine Decarboxylase Glucose (LD/G) media in electrical conductance cells or wells. For cells or wells containing more than 5 ml medium 0.2 ml of the BPW/L/G shall be added and for cells or wells containing 5 ml or less medium 0.1 ml of the BPW/L/G shall be added. Cells or wells shall be connected to appropriate electrical conductance measuring equipment set to monitor

and record changes in electrical conductance at 6 minute intervals over a 24 hour period. The temperature of cells and wells shall be kept at 37°C.

Day 3

4. At the end of the 24 hour period, the information recorded by the conductance measuring equipment shall be analysed and interpreted using criteria defined by the manufacturers of the equipment. Where a well or cell is provisionally identified as being positive for *Salmonella*, the result shall be confirmed by subculturing the contents of the well or cell on to two 90 millimetre plates of BGA or on to one 90 millimetre plate of BGA and one 90 millimetre plate of Xylose Lysine Deoxycholate Agar (XLD) using a 2.5 mm diameter loop. The plates shall be inoculated with a droplet taken from the edge of the surface of the fluid by drawing the loop over the whole of one plate in a zig zag pattern and continuing to the second plate without recharging the loop. The space between the loop streaks shall be 0.5 cm - 1.0 cm. The plates shall be incubated at 37°C overnight.

Day 4

5. The plates shall be examined and a minimum of 3 colonies from each plate showing suspicion of *Salmonella* growth shall be subcultured–

- (a) on to a blood agar plate;
- (b) on to a MacConkey agar plate; and
- (c) into biochemical media suitable for the identification of *Salmonella*.

These media shall be incubated at 37°C overnight.

Day 5

6. The incubated composite media or equivalent shall be examined and the findings recorded, discarding cultures which are obviously not *Salmonella*. Slide serological tests shall be performed using *Salmonella* polyvalent “O” and polyvalent “H” (phase 1 and 2) agglutinating sera on selected suspect colonies collected from the blood agar or MacConkey plates. If reactions occur with one or both sera, a subculture shall be sent to a [Regional Veterinary Laboratory of the Veterinary Laboratories Agency of the Department for Environment, Food and Rural Affairs] for further typing.

PART III

METHOD FOR THE ISOLATION OF *ENTEROBACTERIACEAE*

1. Tests shall be begun on receipt of the sample or on the first working day which allows this method to be completed. If the test is not begun on the day of receipt the sample shall be stored in a refrigerator until required at between 2°C and 8°C. If the sample has been refrigerated it shall be removed from the refrigerator and stored at room temperature for at least one hour before the test is started.

Samples

2. Tests shall be carried out using five 10 gram portions of each sample submitted for testing. Each 10 gram sample shall be placed aseptically in a jar containing 90 ml Buffered Peptone Water and mixed thoroughly until the sample is evenly suspended.

Inoculations

3. For each portion of the sample 1 ml of solution shall be transferred to a sterile 90 mm petri dish (in duplicate). The plates shall be labelled to identify the portion of sample they were taken from. 15 ml of Violet Red Bile Glucose Agar (VRBGA) at a temperature of $47^{\circ}\text{C}\pm 2^{\circ}\text{C}$ shall be added to each petri dish and immediately gently mixed by swirling the dish with five clockwise and five anticlockwise circular movements.

4. Once the agar has set, each agar plate shall be overlaid with a further 10 ml VRBGA at a temperature of $47^{\circ}\text{C}\pm 2^{\circ}\text{C}$. Once the overlay has set, the plates shall be inverted and incubated aerobically at $36^{\circ}\text{C}\pm 1^{\circ}\text{C}$ for 20 hours ± 2 hours.

Samples with colonies of *Enterobacteriaceae*

5. After incubation each set of duplicate plates shall be examined for colonies characteristic of *Enterobacteriaceae* (purple colonies 1 - 2 mm in diameter). All characteristic colonies on each plate shall be counted and the arithmetic mean of the duplicate plates taken.

The sample provisionally fails if either–

- (a) any arithmetic mean is above 30; or
- (b) three or more arithmetic means are above 10;

in which case the following procedure shall be followed to establish whether or not the colonies are *Enterobacteriaceae*.

6. After counting the colonies, characteristic colonies shall be taken at random from the agar plates, the number being at least the square root of the colonies counted. The colonies shall be subcultured onto a blood agar plate and incubated aerobically at $36^{\circ}\text{C}\pm 1^{\circ}\text{C}$ for 20 hours ± 2 hours.

Examination of subcultures

7. An oxidase test and a glucose fermentation test shall be performed on each of the five subcultured colonies. Colonies which are oxidase-negative and glucose fermentation-positive shall be considered to be *Enterobacteriaceae*.

8. If not all of the colonies prove to be *Enterobacteriaceae*, the total count in paragraph 5 shall be reduced in proportion prior to establishing whether or not the sample should fail.

Controls

9. Control tests shall be carried out each day that a test is initiated using–

- (a) *Escherichia coli* NCTC 10418 no more than seven days old at time of use; and
- (b) rendered animal protein which is free of *Enterobacteriaceae*.

10. A 10 gram portion of the rendered animal protein shall be placed aseptically in a jar containing 90 ml BPW and mixed thoroughly until the sample is evenly suspended.

11. One colony of *Escherichia coli* shall be placed in 10 ml BPW and mixed to form an even suspension. 0.1 ml of the suspension shall be added to the suspension in the preceding paragraph.

12. This is then treated and examined in the same way as test samples. If no typical colonies are formed then that day's testing shall be invalid and shall be repeated.

SCHEDULE 4

Amendments to the TSE (Scotland) Regulations 2002

- 1.** In regulation 3 (interpretation), for the definition of “ABPO approved” in paragraph (1), there is substituted–

“ “ABPO approved”, in relation to premises, means approved under article 15 of the Animal By-Products Regulations 2003, and “ABPO approval” shall be construed accordingly;”.

- 3.** For regulation 40 (consignment of specified risk material after removal from carcasses), there is substituted–

“40. Once specified risk material has been removed from the carcass and treated in accordance with this Part of these Regulations, including any material treated as if it were specified risk material in accordance with regulation 33(5) or 34(4) above, or, in the case of specified solid waste, recovered from the drainage system, the person responsible for its removal or recovery shall, without unreasonable delay, send it directly to–

- (a) be handled in accordance with the Animal By-Products Regulations 2003; or
- (b) premises licensed under Regulation 56.”.

- 4.** In Schedule 5 (Application of Part IV of the Regulations to scheme animals) the words from “regulation 54(2)” to “material from scheme animals” are deleted.

SCHEDULE 5

Transitional Provisions

PART 1

Used cooking oil

1. For the purposes of the used cooking oil transitional Decision the Scottish Ministers shall be the competent authority.
2. No person shall collect, transport, store, handle, treat or use used cooking oil otherwise than in accordance with the used cooking oil transitional Decision.
3. No person shall use any premises as a treatment or blending premises unless the operator, the premises and where appropriate the equipment are approved.
4. The operator of the approved premises shall—
 - (a) ensure that the premises are maintained and operated in accordance with—
 - (i) the conditions of approval; and
 - (ii) the requirements of the used cooking oil transitional Decision; and
 - (b) ensure that any person employed by the operator, and any person invited to the premises, complies with these conditions and requirements.
5. No person shall operate as a collector of used cooking oil unless the operator is approved.
6. The operator of the approved premises shall ensure that the premises are maintained and operated in accordance with—
 - (a) the conditions of approval; and
 - (b) the requirements of the used cooking oil transitional Decision.
7. Any person who fails to comply with any provision of this Part shall be guilty of an offence.

PART 2

Oleochemical plants using rendered fats from category 2 and 3 materials

1. For the purposes of the oleochemical plants transitional Decision the Scottish Ministers shall be the competent authority.
2. No person shall operate any category 2 or category 3 oleochemical plant in accordance with the oleochemical plants transitional Decision, unless the premises, the operator of the premises and where appropriate the equipment are approved for that purpose.
3. The operator of the approved premises shall—

- (a) ensure that the premises are maintained and operated in accordance with–
 - (i) the conditions of approval; and
 - (ii) the requirements of the oleochemical plants transitional Decision; and
 - (b) ensure that any person employed by the operator, and any person invited to the premises complies with these conditions and requirements.
4. Any person who fails to comply with any provision of this Part shall be guilty of an offence.

PART 3

Low capacity incinerators which do not incinerate specified risk materials or carcasses containing them to which Directive 2000/76/EC does not apply

1. For the purposes of the low capacity incinerators transitional Decision the Scottish Ministers shall be the competent authority.
2. No person shall operate any low capacity incinerators which do not incinerate specified risk materials or carcasses containing them to which Directive 2000/76/EC(a) does not apply, in accordance with the low capacity incinerators transitional Decision, unless the premises, the operator of the premises and where appropriate the equipment are approved for that purpose.
3. The operator of the approved premises shall–
 - (a) ensure that the premises are maintained and operated in accordance with–
 - (i) the conditions of approval; and
 - (ii) the requirements of the low capacity incinerators transitional Decision; and
 - (b) ensure that any person employed by the operator, and any person invited to the premises complies with these conditions and requirements.
4. Any person who fails to comply with any provision of this Part shall be guilty of an offence.

PART 4

Disposal of blood

1. For the purposes of the blood transitional Decision the Scottish Ministers shall be the competent authority.
2. No person shall operate any premises for the processing of blood of mammalian origin in accordance with the blood transitional Decision, unless the premises, the operator of the premises and where appropriate the equipment are approved for that purpose.
3. The operator of the approved premises shall–
 - (a) ensure that the premises are maintained and operated in accordance with–

(a) Directive 2000/76/EC of the European Parliament and Council of 4 December 2000 on the incineration of waste. O.J. No. L 332, 28.12.2000, p.91.

- (i) the conditions of approval; and
 - (ii) the requirements of the blood transitional Decision;
- and
- (b) ensure that any person employed by the operator, and any person invited to the premises complies with these conditions and requirements.
4. Any person who fails to comply with any provision of this Part shall be guilty of an offence.

PART 5

Collection, transport and storage of former foodstuff of animal origin

1. For the purposes of the former foodstuff transitional Decision the Scottish Ministers shall be the competent authority.
2. No person shall collect or transport former foodstuff of animal origin as referred to in Article 6(1)(f) of the Council Regulation in accordance with the former foodstuffs transitional Decision, unless the system of collection and transportation and where appropriate the equipment operated by that person is approved for that purpose.
3. The operator of the system for collecting and transporting the animal by-products or processed products shall—
 - (a) ensure that collection and transport is in accordance with—
 - (i) the conditions of approval;
 - (ii) the requirements of the former foodstuff Decision;and
 - (b) ensure that any person employed by that person complies with these conditions and requirements.
4. If the Scottish Ministers suspend as approval under paragraph 2, they shall by notice in writing served on the operator of the system of collection and transport—
 - (a) give the reasons for that suspension;
 - (b) advise of the rights of that operator to make written representations to the Scottish Ministers within the period of 21 days beginning with the date on which the notice is served and to be heard by an independent person appointed by the Scottish Ministers; and
 - (c) give instructions for the disposal of any material which does not comply with the Council Regulation, these Regulations or the conditions of approval.
5. Any material specified in a notice under paragraph 5(c) shall be disposed of as instructed therein.

6. Regulation 18 shall apply to the suspension of the approval of the system of collection and transport as it does to suspension, amendment or revocation under regulations 16 or 17, but as if the Scottish Ministers may by their final determination under regulation 18(4) revoke or restore the approval of the system of collection and transportation.

7. Any person who fails to comply with paragraphs 2, 3 or 5 shall be guilty of an offence.

PART 6

Feeding of fish with processed animal protein derived from the same species

1. For the purposes of Article 1 of the Commission Regulation, regulation 12(1) shall not apply to the feeding of fish with processed animal protein derived from the bodies or parts of bodies of animals of the same species.

SCHEDULE 6

Revocations [and Savings]

Revocations

<i>Column 1 – enactment</i>	<i>Column 2 - references</i>	<i>Column 3 - extent</i>
The Animal By-Products Order 1999 (a)	(S.I. 1999/646)	The whole Order.
The Animal By-Products (Amendment) (Scotland) Order 2001	(S.S.I. 2001/171)	The whole Order.
The TSE (Scotland) Regulations 2002 (b)	(S.S.I. 2002/255)	Regulations 50, 52, 55(1)(a), (2)(b) and (4)(c) and (d), 62 to 67, 68(5) and (6), Schedule 6, Parts I and II and Schedule 8, Part IV.
The TSE (Scotland) Amendment Regulations 2003	(S.S.I. 2003/198)	Regulation 2(8).

(a) S.I. 1999/646, amended by S.S.I. 2001/171.

(b) S.S.I. 2002/255, amended by S.S.I. 2003/198.

- category 3 material where the by-products derive from animals which are fit for human consumption in accordance with Community legislation and are (a) parts of such animals not intended for human consumption for commercial reasons; (b) parts of such animals not themselves fit for human consumption; (c) hides skins, hooves, horns, pig bristles and feathers (and (d) non-ruminant blood) from animals identified as such from inspections before being slaughtered in a slaughterhouse; (e) derived from the productions of products intended for human consumption; (f) former foodstuffs of animal origin other than catering waste no longer intended for human consumption for commercial reasons or due to defects which present no risk to humans; (g) raw milk from animals showing no clinical signs of a disease communicable through that product; (h) from sea animals, except sea mammals, caught in the open sea for the purposes of fishmeal production; (i) from fish from plants manufacturing fish products for human consumption; (j) shells, hatchery and cracked egg by-products (and (k) blood, hides, skins, hooves, feathers, wool, horns, hair and fur) from animals showing no clinical signs of a disease communicable through that product; and (l) catering waste other than from means of transport operating internationally.

In addition, the Regulations provide:

- it is a specific offence to collect, transport, identify or store animal by-products other than in accordance with the Council Regulation (regulation 8);
- it is an offence to fail to keep records in accordance with Article 9(1) of the Council Regulation (regulation 9);
- it is an offence to place on the market and export products which do not meet the requirements of Article 19 or 20 of the Council Regulation (regulations 10 and 11);
- for the purposes of the enforcement of Article 22 of the Council Regulation it is an offence to feed to or allow some animals to have access to any animal by-products or feedingstuffs which have been in contact with any animal by-product or bring any animal by-product onto premises where such animals are kept unless certain conditions are met, and land that is not pasture land is defined (regulation 13);
- in order to exercise the derogations in Article 23 of the Council Regulation concerning the use of animal by-products, provision is made for the approval of the use of animal by-products for diagnostic, educational and research purposes, or for taxidermy purposes or the feeding of animal by-products to certain animals (regulation 14);
- in order to exercise the derogations in Article 24 of the Council Regulation concerning the disposal of animal by-products, the disposal of dead pet animals and the burning and burial on-site of animal by-products originating in remote areas, and in the event of a disease outbreak, are permitted, subject to certain restrictions (regulation 14);
- for the approval of plants to process or treat animal by-products, it is an offence to use such premises without an approval or to maintain and operate the premises other than in accordance with the approval and the requirements of the Council Regulation and these Regulations (regulation 15);
- for applications for approvals, the suspension or revocation of approvals and an appeal against a notice to amend, suspend or revoke an approval (regulations 16-18);

- controls for the approval of laboratories, record keeping requirements and the sampling frequencies and checks required of various plants (regulations 19-23);
- additional record keeping requirements are listed for the disposal or use on premises of animal by-products or processed products, for operators of approved biogas and composting plants and for consignments of compost or digestion residue (regulations 24 to 27);
- [mixing of different categories and species of material]
- an inspector can serve a notice requiring the disposal of animal by-product or catering waste and requiring cleansing and disinfection of any vehicle, container or premises, and any notice served under these Regulations shall be complied with at the expense of the person on whom the notice is served (regulation 30-32);
- powers of entry and further provisions for offences and penalties and enforcement of the Regulations and supplementary provisions for the service of notices and other documents, amendments, transitional provisions and revocations and savings (regulations 33-40);

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Reference Centre. Copies can be obtained from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY.