

Welsh Statutory Instrument 2004 No. 2735 (W.242)

The TSE (Wales) (Amendment) Regulations 2004

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STATUTORY INSTRUMENTS

2004 No. 2735 (W.242)

ANIMALS, WALES

The TSE (Wales) (Amendment) Regulations 2004

<i>Made</i>	<i>19 October 2004</i>
<i>Coming into force</i>	<i>1 November 2004</i>

The National Assembly for Wales, being designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to measures in the veterinary and phytosanitary fields for the protection of public health, in exercise of the powers conferred on it by that section, makes the following Regulations -

Citation and commencement

1. These Regulations may be cited as the TSE (Wales) (Amendment) Regulations 2004 and come into force on 1 November 2004.

Amendments to the TSE (Wales) Regulations 2002

2. The TSE (Wales) Regulations 2002^[3] are amended in accordance with these Regulations.

3. After regulation 86 there is inserted -

" Enforcement of Annex VII to the Community TSE Regulation

86A. Schedule 6A (enforcement of Annex VII to the Community TSE Regulation) will have effect."

4. After Schedule 6 there will be inserted the following Schedule -

" SCHEDULE 6A

regulation 86A

Enforcement of Annex VII to the Community TSE Regulation ^[4]

PART I

Competent authority

1. The Secretary of State will be the competent authority for the purposes of Annex VII (other than paragraph 1(a) and 2(a)) to Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ("Annex VII") and will exercise all powers and duties imposed on the Member State in that Annex.

Confirmation of TSE in sheep

2. - (1) Following the confirmation of TSE in sheep on a holding under Article 13 of Regulation (EC) No. 999/2001, the Secretary of State, after -

(a) carrying out the inquiry specified in Article 13(1)(b) of that Regulation and in paragraph 1 of Annex VII, and

(b) sampling the animals in accordance with Part V of these Regulations to establish their genotype (if this is necessary),

will decide which of the options set out in paragraphs 2(b)(i) and (ii) of Annex VII the Secretary of State intends to exercise.

(2) The Secretary of State must then serve a notice on the occupier of the holding informing the occupier of which of the options in those

paragraphs the Secretary of State intends to exercise.

(3) The notice must specify -

- (a) the identity of the animals to be killed and destroyed;
- (b) the identity of the animals (if any) to be slaughtered for human consumption;
- (c) the identity of the animals (if any) that may be retained;
- (d) the identity of any ova and embryos that must be destroyed;
- (e) the time limit for complying with the notice; and
- (f) the right to apply for a derogation in accordance with paragraph 14.

Confirmation of TSE in goats

3. Following the confirmation of TSE in goats on a holding under Article 13 of Regulation (EC) No. 999/2001, the Secretary of State, after carrying out the inquiry specified in Article 13(1)(b) of that Regulation and in paragraph 1 of Annex VII, will serve a notice on the occupier of the holding informing the occupier of the holding that the Secretary of State intends to kill and destroy all the goats on the holding and all caprine embryos and ova from those animals in accordance with paragraph 2(b)(i) of Annex VII.

Infected animals from another holding

4. In the case of infected animals introduced from another holding, the Secretary of State may act in accordance with paragraphs 2 and 3 above in relation to the holding of origin in addition to, or instead of, the holding on which infection was confirmed.

Common grazing

5. In the case of infected animals on common grazing, the Secretary of State may limit a notice under paragraph 2 or 3 above to an individual flock in accordance with paragraph 2(b)(iii), second sentence of Annex VII.

Confirmation of BSE in sheep or goats

6. Following the confirmation of BSE in sheep or goats on a holding, the Secretary of State, after carrying out the inquiry specified in Article 13(1)(b) of Regulation (EC) No. 999/2001 and paragraph 1 of Annex VII, will serve a notice on the occupier of the holding informing the occupier of the Secretary of State's intention to kill and destroy the animals, embryos and ova in accordance with paragraph 2(c) of Annex VII.

Time for appeals

7. The Secretary of State must not proceed with a notice served under this part until after the 21 day period for the appeal under Part III is completed or, if there is an appeal, until the appeal is determined.

Subsequent occupiers

8. If there is a change in occupation of the holding, the previous

occupier must ensure that the subsequent occupier is made aware of the existence and contents of the notice, and failure to do so will be an offence.

PART II

MOVEMENT OF ANIMALS

Scope

9. This Part will have effect as soon as a notice has been served under Part I of this Schedule, irrespective of any appeal against the notice.

Introduction of animals on to a holding

10. Any person who introduces an animal on to a holding in contravention of paragraph 3.1 of Annex VII will be guilty of an offence, and liable on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

Use of ovine germinal products

11. Any person who uses ovine germinal products in contravention of paragraph 3.2 of Annex VII will be guilty of an offence, and liable on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

Movement of animals from a holding

12. Any person who moves an animal from a holding in contravention of paragraph 5 of Annex VII will be guilty of an offence, and liable on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.

Time of movement restrictions

13. For the purposes of paragraph 6 of Annex VII the relevant dates will be established by the National Assembly giving written notification of those dates to the occupier of the holding.

Derogations

14. - (1) In accordance with paragraph 4 of Annex VII, the occupier of a holding may apply to the National Assembly for a derogation under that paragraph.

(2) In accordance with paragraph 7 of that Annex, the occupier of a holding may apply to the National Assembly asking it to exercise one or both of the options permitted under that paragraph.

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

(4) After it has considered the application the National Assembly will

serve a notice on the applicant giving its decision, which will state that it either -

- (a) consents to the application;
- (b) consents in part to the application; or
- (c) refuses the application.

PART III

APPEALS

Notices

15. A notice served under any provision of this Schedule (other than one under paragraph 14(4)(a)) will -

- (a) give the reasons for the decision; and
- (b) explain the right of the person receiving the notice to make written representations to the National Assembly and to be heard by an independent person appointed by the National Assembly, in relation to an appeal made under paragraphs 13 and 14 of this Schedule and to make written representations to the Secretary of State and to be heard by an independent person appointed by the Secretary of State, in relation to an appeal made under any other provision of this Schedule.

Appeals

16. - (1) A person on whom a notice is served under any provision of this Schedule (other than paragraph 14(4)(a)) may within 21 days beginning with the day on which the notice is served -

- (a) provide written representations to the National Assembly concerning the National Assembly's decision, in relation to an appeal made under paragraphs 13 and 14 of this Schedule and to provide written representations to the Secretary of State, in relation to an appeal made under any other provision of this Schedule; and
- (b) provide notice of whether or not that person wishes to be heard by an independent person appointed by the National Assembly, in relation to an appeal made under paragraphs 13 and 14 of this Schedule and to provide notice of whether or not that person wishes to be heard by an independent person appointed by the Secretary of State in relation to any other provision of this Schedule.

(2) Where an appellant gives notice of the appellant's wish to be heard by an independent person -

- (a) the National Assembly or the Secretary of State as the case may be, will appoint an independent person to hear representations and specify a time limit within which representations must be made;
 - (b) the appointed person will not, except with the consent of the appellant, be an officer of the National Assembly or the Secretary of State;
 - (c) if the appellant so requests the hearing will be in public;
 - (d) if the appellant so requests, the National Assembly or the Secretary of State as the case may will furnish to the appellant a copy of the report of the person so appointed.
- (3) The independent person will report in writing to the National Assembly or the Secretary of State as the case may be.
- (4) The National Assembly and the Secretary of State will give to the appellant written notification of their determination and the reasons for it.

PART IV

COMPENSATION

Compensation

17. - (1) The Secretary of State will pay to the owner of animals killed and destroyed, and products destroyed, under this Schedule as follows -

<i>Animal or product</i>	<i>Compensation (£)</i>
Sheep* or goat	90
Lamb (under 12 months old)**or kid (under 12 months old)	50
Embryos	150
Ova	5

*** In the case of a female sheep in respect of which the National Assembly has granted a derogation under paragraph 4 or 7 of Annex VII the compensation shall be £30 if it is killed after the first year of the derogation period.**

**** Where the National Assembly has granted a derogation in accordance with paragraph 7 of Annex VII in respect of any ram in a flock, the compensation for any lamb in that flock killed after the first year of the period of derogation shall be £25.**

(2) If the owner of an animal considers this compensation to be unreasonable he will notify the Secretary of State.

(3) Following notification the owner may obtain, at the owner's expense, a valuation of the animal from a valuer nominated by the President of the Royal Institution of Chartered Surveyors.

(4) The owner must accept the valuer nominated under paragraph (3) and pay the valuer's fee.

(5) The valuer will value the animal at the price that might reasonably have been obtained for it at the time of valuation from a buyer in the open market if the animal was not from a flock affected by TSE.

(6) The valuer will then submit the valuation and any other relevant information and documentation to the Secretary of State, and a copy to the owner.

(7) The valuation will be binding on both the owner and the Secretary of State."

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[[5](#)].

D. Elis-Thomas

Presiding Officer, National Assembly for Wales

19 October 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the TSE (Wales) Regulations 2002, S.I. 2002/1416 (W.142).

They make provision for the enforcement of Annex VII (other than paragraphs 1(a) and 2(a)) to Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ No. L 147, 31.5.2001, p.1). Annex VII to that Regulation was first replaced in respect of ovine and caprine animals by Commission Regulation (EC) No 260/2003 amending Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the eradication of transmissible spongiform encephalopathies in ovine and caprine animals and rules for the trade in live ovine and caprine animals and bovine embryos (OJ No. L 37, 13/02/2003, p.7). The Annex was subsequently replaced by Commission Regulation (EC) No. 1915/2003 (OJ No. L 283, 31.10.2003, p. 29).

They add a new Schedule to the Regulations. They provide that the Secretary of State is the competent authority for the purposes of Annex VII to the EU Regulation (paragraph 1 of the Schedule).

They make provision for notices to be served and procedures to be followed following confirmation of TSE in sheep and goats (paragraphs 2 to 8).

Part II of the Schedule regulates movement of sheep and goats following service of a notice under Part I (paragraphs 9 to 13) and provides for potential derogations specified in Annex VII to the EC Regulation (paragraph 14).

Part III provides an appeals procedure against notices served under the Schedule.

Part IV specifies compensation for animals, embryos and ova destroyed in accordance with the Schedule.

A Regulatory Appraisal has been prepared and is available from the Animal and Plant Health Division, National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ.

Notes:

[1] S.I. 1999/2027 as amended by S.I 2002/794.[back](#)

[2] 1972 c. 68.[back](#)

[3] S.I. 2002/1416 (W.142) as amended by S.I. 2003/2756[back](#)

[4] This Schedule enforces Annex VII (other than paragraphs 1(a) and 2(a)) to Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ No. L 147, 31.5.2001, p. 1). Annex VII to that Regulation was first replaced in respect of ovine and caprine animals by Commission Regulation (EC) No 260/2003 amending Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards the eradication of transmissible spongiform encephalopathies in ovine and caprine animals and rules for the trade in live ovine and caprine animals and bovine embryos (OJ No. L 37, 13/02/2003, p.7) and replaced again by Commission Regulation (EC) No. 1915/2003 as regards the trade and import of ovine and caprine animals and the measures following the confirmation of transmissible spongiform encephalopathies in bovine, ovine and caprine animals (OJ No. L 283, 31.10.2003, p. 29).[back](#)

[5] 1998 c.38.[back](#)

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