STATUTORY INSTRUMENTS

S.I. No. 291 of 2009

EUROPEAN COMMUNITIES (TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES AND ANIMAL BY-PRODUCTS) (AMENDMENT) REGULATIONS 2009

(Prn. A9/1045)

S.I. No. 291 of 2009

EUROPEAN COMMUNITIES (TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES AND ANIMAL BY-PRODUCTS) (AMENDMENT) REGULATIONS 2009

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Regulation (EC) No. 999/2001 of the European Parliament and the Council of 22 May 2001[1], Commission Regulation (EC) No. 1248/2001 of 22 June 2001[2], Commission Regulation (EC) No. 1326/2001 of 29 June 2001[3], Commission Regulation (EC) No. 270/2002 of 14 February 2002[4], Commission Regulation (EC) No. 1494/2002 of 21 August 2002[5], Commission Regulation (EC) No. 260/2003 of 12 February 2003[6], Commission Regulation (EC) No. 650/2003 of 10 April 2003[7], Commission Regulation (EC) No. 1053/2003 of 19 June 2003[8], Regulation (EC) No. 1128/2003 of the European Parliament and the Council of 16 June 2003[9], Commission Regulation (EC) No. 1139/2003 of 27 June 2003[10], Commission Regulation (EC) No. 1234/2003 of 10 July 2003[11], Commission Regulation (EC) No. 1809/2003 of 15 October 2003[12], Commission Regulation (EC) No. 1915/2003 of 30 October 2003[13], Commission Regulation (EC) No. 2245/2003 of 19 December 2003[14], Commission Regulation (EC) No. 876/2004 of 29 April 2004[15], Commission Regulation (EC) No. 1471/2004 of 18 August 2004[16] Commission Regulation (EC) No. 1492/2004 of 23 August 2004[17], Commission Regulation (EC) No. 1993/2004 of 19 November 2004[18], Commission Regulation (EC) No. 36/2005 of 12 January 2005[19], Commission Regulation (EC) No. 214/2005 of 9 February 2005[20], Commission Regulation (EC) No. 260/2005 of 16 February 2005[21], Commission Regulation (EC) No. 932/2005 of 8 June 2005[22], Commission

[1] O.J. No. L 147 of 31.5.2001, p.1.
[2] O.J. No. L 173 of 27.6.2001, p.12.
[3] O.J. No. L 177 of 30.6.2001, p.60.
[4] O.J. No. L 45 of 15.2.2002, p.4.
[5] O.J. No. L 225 of 22.8.2002, p.3.
[6] O.J. No. L 37 of 13.2.2003, p.7.
[7] O.J. No. L 95 of 11.4.2003, p.15.
[8] O.J. No. L 152 of 20.6.2003, p.8.
[9] O.J. No. L 160 of 28.6.2003, p.1.
[10] O.J. No. L 160 of 28.6.2003, p.22.
[11] O.J. No. L 173 of 11.7.2003, p.6.
[12] O.J. No. L 265 of 16.10.2003, p.10.
[13] O.J. No. L283 of 31.10.2003, p.29.
[14] O.J. No. L 333 of 20.12.2003, p.28.
[15] O.J. No. L 162 of 30.4.2004, p.52.
[16] O.J. No. L 271 of 19.8.2004, p.24.
[17] O.J. No. L 274 of 24.8.2004, p.3.
[18] O.J. No. L 344 of 20.11.2004, p.12.
[19] O.J. No. L 10 of 13.1.2005, p.9.
[20] O.J. No. L 37 of 10.2.2005, p.9.
[21] O.J. No. L 46 of 17.2.2005, p.31.
[22] O.J. No. L 163 of 23.6.2005, p.1.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 31*st July*, 2009.

Regulation (EC) No. 1292/2005 of 5 August 2005[23] and Commission Regulation (EC) No. 1974/2005 of 2 December 2005[24], Commission Regulation (EC) No. 253/2006 of 14 February 2006[25], Commission Regulation (EC) No. 339/2006 of 24 February 2006[26], Commission Regulation (EC) No. 657/2006 of 10 April 2006[27], Commission Regulation (EC) No. 688/2006 of 4 May 2006[28], Commission Regulation (EC) No. 1041/2006 of 7 July 2006[29], Regulation (EC) No. 1923/2006 of the European Parliament and of the Council of 18 December 2006[30], Commission Regulation (EC) No. 722/2007 of 25 June 2007[31], Commission Regulation (EC) No. 727/2007 of 26 June 2007[32], Commission Regulation (EC) No. 1275/2007 of 29 October 2007[33], Commission Regulation (EC) No. 1428/2007 of 4 December 2007[34], Commission Regulation (EC) No. 21/2008 of 11 January 2008[35], Commission Regulation (EC) No. 315/2008 of 4 April 2008[36], Commission Regulation (EC) No. 357/2008 of 22 April 2008[37], Commission Decision No. 2008/908/EC of 28 November 2008[38], Commission Regulation (EC) No. 103/2009 of 3 February 2009[39], Commission Regulation (EC) No. 162/2009 of 26 February 2009[40], Commission Regulation (EC) No. 163/2009 of 26 February 2009[41], Regulation (EC) No. 220/2009 of the European Parliament and of the Council of 11 March 2009[42], Regulation (EC) No. 1774/2002 of the European Parliament and the Council of 3 October 2002[43], Commission Regulation (EC) No. 808/2003 of 12 May 2003[44], Commission Regulation (EC) No. 811/2003 of 12 May 2003[45], Commission Regulation (EC) No. 668/2004 of 10 March 2004[46], Commission Regulation (EC) No. 878/2004 of 29 April 2004[47], Commission Regulation (EC) No. 79/2005 of 19 January 2005[48], Commission Regulation (EC) No. 92/2005 of 19 January 2005[49], Commission Regulation (EC) No. 93/2005 of 19 January 2005[50], Commission Regulation (EC) No. 416/2005 of 11 March 2005[51], Commission Regulation (EC) No. 2067/2005 of 16 December 2005[52], Commission

[23] O.J. No. L 205 of 6.8.2005, p.3.
[24] O.J. No. L 317 of 3.12.2005, p.4.
[25] O.J. No. L 44 of 15.2.2006, p.9.
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[30] O.J. No. L 404 of 30.12.2006, p.1.
[31] O.J. No. L 164 of 26.6.2007, p.7.
[32] O.J. No. L 165 of 28.6.2007, p.8.
[33] O.J. No. L 284 of 30.10.2007, p.8.
[34] O.J. No. L 317 of 5.12.2007, p.61
[35] O.J. No. L 94 of 5.4.2008, p.3.
[36] O.J. No. L 111 of 23.4.2008, p.3.
[37] O.J. No. L 161 of 20.6.2008, p.4
[38] O.J. No. L 34 of 4.2.2009, p.1.
[39] O.J. No. L 327 of 5.12.2008, p.24.
[40] O.J. No. L 55 of 27.2.2009, p.11.
[41] O.J. No. L 55 of 27.2.2009, p.17.
[42] O.J. No. L 87 of 31.3.2009, p.155.
[43] O.J. No. L 273 of 10.10.2002, p.1.
[44] O.J. No. L 117 of 13.5.2003, p.1.
[45] O.J. No. L 117 of 13.5.2003, p.14.
[46] O.J. No. L 112 of 19.4.2004, p.1.
[47] O.J. No. L 162 of 29.4.2004, p.62.
[48] O.J. No. L 16 of 20.1.2005, p.46.
[49] O.J. No. L 19 of 21.1.2005, p.27.
[50] O.J. No. L 19 of 21.1.2005, p.34.
[51] O.J. No. L 66 of 12.3.2005, p.10.
[52] O.J. No. L 331 of 17.12.2005, p.12.

Regulation (EC) No. 181/2006 of 1 February 2006[53], Commission Regulation (EC) No. 197/2006 of 3 February 2006[54], Commission Regulation (EC) No. 208/2006 of 7 February 2006[55], Commission Regulation (EC) No. 209/2006 of 7 February 2006[56], Commission Regulation (EC) No. 1192/2006 of 4 August 2006[57], Commission Regulation (EC) No. 1678/2006 of 14 November 2006[58], Commission Regulation (EC) No. 185/2007 of 20 February 2007[59], Commission Regulation (EC) No. 829/2007 of 28 June 2007[60], Commission Regulation (EC) No. 832/2007 of 16 July 2007[61], Commission Regulation (EC) No. 1256/2007 of 25 October 2007[62], Commission Regulation (EC) No. 1432/2007 of 5 December 2007[63], Commission Regulation (EC) No. 1576/2007 of 21 December 2007[64], Commission Regulation (EC) No. 399/2008 of 5 May 2008[65], Commission Regulation (EC) No. 437/2008 of 21 May 2008[66], Commission Regulation (EC) No. 523/2008 of 11 June 2008[67], Commission Regulation (EC) No. 777/2008 of 4 August 2008[68] and Commission Regulation (EC) No. 129/2009 of 13 February 2009[69], hereby make the following Regulations—

1. These Regulations may be cited as the European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) (Amendment) Regulations 2009.

2. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the substitution, for the definition of "Animal By-products Regulation" in Regulation 2(1), of—

> " 'Animal By-products Regulation' means Regulation (EC) No. 1774/2002 of the European Parliament and the Council of 3 October 2002 as amended by Commission Regulation (EC) No. 808/2003 of 12 May 2003, Commission Regulation (EC) No. 811/2003 of 12 May 2003, Commission Regulation (EC) No. 668/2004 of 10 March 2004, Commission Regulation (EC) No. 878/2004 of 29 April 2004, Commission Regulation (EC) No. 79/2005 of 19 January 2005, Commission Regulation (EC) No. 92/2005 of 19 January 2005, Commission Regulation (EC) No. 93/2005 of 19 January 2005, Commission Regulation (EC) No. 416/2005 of 11 March 2005, Commission Regulation (EC) No. 2067/2005 of 16 December 2005, Commission Regulation (EC) No. 181/2006 of 1 February 2006, Commission Regulation (EC) No. 197/2006 of 3 February 2006, Commission Regulation (EC) No. 208/2006 of

[53] O.J. No. L 29 of 2.2.2006, p.31.
[54] O.J. No. L 32 of 4.2.2006, p. 13.
[55] O.J. No. L 36 of 8.2.2006, p.25.
[56] O.J. No. L 36 of 8.2.2006, p.32.
[57] O.J. No. L 215 of 5.8.2007, p.10.
[58] O.J. No. L 314 of 15.11.2006, p.4.
[59] O.J. No. L 63 of 1.3.2007, p.4.
[60] O.J. No. L 191 of 21.7.2007, p.1.
[61] O.J. No. L 185 of 17.7.2007, p.7.
[62] O.J. No. L 282 of 25.10.2007, p.30.
[63] O.J. No. L 320 of 6.12.2007, p.13.
[64] O.J. No. L 340 of 22.12.2007, p.89.
[65] O.J. No. L 118 of 6.5.2008, p. 12.
[66] O.J. No. L 132 of 22.5.2008, p. 7.
[67] O.J. No. L 153 of 12.6.2008, p. 23.
[68] O.J. No. L 207 of 5.8.2008, p. 9
[69] O.J. No. L 44 of 14.2.2009, p. 3

7 February 2006, Commission Regulation (EC) No. 209/2006 of 7 February 2006, Commission Regulation (EC) No. 1192/2006 of 4 August 2006, Commission Regulation (EC) No. 1678/2006 of 14 November 2006, Commission Regulation (EC) No. 185/2007 of 20 February 2007, Commission Regulation (EC) No. 829/2007 of 28 June 2007, Commission Regulation (EC) No. 1256/2007 of 25 October 2007, Commission Regulation (EC) No. 1432/2007 of 5 December 2007, Commission Regulation (EC) No. 1576/2007 of 21 December 2007, Commission Regulation (EC) No. 399/2008 of 5 May 2008, Commission Regulation (EC) No. 437/2008 of 21 May 2008, Commission Regulation (EC) No. 523/2008 of 11 June 2008, Commission Regulation (EC) No. 777/2008 of 4 August 2008 and Commission Regulation (EC) No. 129/2009 of 13 February 2009;".

3. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the substitution, for the definition of "TSE Regulation" in Regulation 2(1), of—

"TSE Regulation" means Regulation (EC) No. 999/2001 of the European Parliament and the Council of 22 May 2001 as amended by Commission Regulation (EC) No. 1248/2001 of 22 June 2001, Commission Regulation (EC) No. 1326/2001 of 29 June 2001, Commission Regulation (EC) No. 270/2002 of 14 February 2002, Commission Regulation (EC) No. 1494/2002 of 21 August 2002, Commission Regulation (EC) No. 260/2003 of 12 February 2003, Commission Regulation (EC) No. 650/2003 of 10 April 2003, Commission Regulation (EC) No. 1053/2003 of 19 June 2003, Regulation (EC) No. 1128/2003 of the European Parliament and the Council of 16 June 2003, Commission Regulation (EC) No. 1139/2003 of 27 June 2003, Commission Regulation (EC) No. 1234/2003 of 10 July 2003, Commission Regulation (EC) No. 1809/2003 of 15 October 2003, Commission Regulation (EC) No. 1915/2003 of 30 October 2003, Commission Regulation (EC) No. 2245/2003 of 19 December 2003, Commission Regulation (EC) No. 876/2004 of 29 April 2004, Commission Regulation (EC) No. 1471/2004 of 18 August 2004, Commission Regulation (EC) No. 1492/2004 of 23 August 2004, Commission Regulation (EC) No. 1993/2004 of 19 November 2004, Commission Regulation (EC) No. 36/2005 of 12 January 2005, Commission Regulation (EC) No. 214/2005 of 9 February 2005, Commission Regulation (EC) No. 260/2005 of 16 February 2005, Commission Regulation (EC) No. 932/2005 of 8 June 2005, Commission Regulation (EC) No. 1292/2005 of 5 August 2005, Commission Regulation (EC) No. 1974/2005 of 2 December 2005, Commission Regulation (EC) No. 253/2006 of 14 February 2006, Commission Regulation (EC) No. 339/2006 of 24 February 2006, Commission Regulation (EC) No. 657/2006 of 10 April 2006, Commission Regulation (EC) No. 688/2006 of 4 May 2006, Commission Regulation (EC) No. 1041/2006 of 7 July 2006, Regulation (EC) No. 1923/2006 of the European Parliament and of the Council of 18 December 2006, Commission Regulation (EC) No. 722/2007 of 25 June 2007, Commission Regulation (EC) No. 727/2007 of 26 June 2007, Commission Regulation (EC) No. 1275/2007 of 29 October 2007, Commission Regulation (EC) No. 1428/2007 of 4 December 2007, Commission Regulation (EC) No. 21/2008 of 11 January

2008, Commission Regulation (EC) No. 315/2008 of 4 April 2008, Commission Regulation (EC) No. 357/2008 of 22 April 2008, Commission Decision No. 2008/908/EC of 28 November 2008, Commission Regulation (EC) No. 103/2009 of 3 February 2009, Commission Regulation (EC) No. 162/2009 of 26 February 2009, Commission Regulation (EC) No. 163/2009 of 26 February 2009 and Regulation (EC) No. 220/2009 of the European Parliament and of the Council of 11 March 2009;".

4. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended, in Regulation 9 by—

(*a*) the substitution, in paragraph (1)(*a*) for "by a registered veterinary practitioner (within the meaning of the Veterinary Practice Act 2005 (no. 22 of 2005))" of "in accordance with the instructions (either generally or of specific application) of an authorised officer", and

(*b*) the deletion in paragraph (1)(*c*) of "in the opinion of an authorised officer,".

5. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the insertion, after Regulation 10(15) of—

"(16) Notwithstanding the generality of this Regulation and Regulation 15, a person may collect, transport, treat, use or dispose of former foodstuffs referred to in Article 1 of Commission Regulation (EC) No. 197/2006 of 3 February 2006 in accordance with an authorisation granted for the purposes of Articles 2 or 3 of that Regulation.".

6. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the insertion, after Regulation 10, of—

"10A (1) A person shall not, in a butcher's shop, sell or supply beef or a beef product containing specified risk material.

(2) A person shall not, in a butcher's shop-

(*a*) remove the vertebral column from a bovine carcase or part of a bovine carcase, or

(*b*) have beef or a beef product containing specified risk material on the premises,

other than in accordance with an authorisation granted by the Health Service Executive or a local authority for the purposes of point 4.3 of Annex V to the TSE Regulation.

(3) An application for an authorisation under the Regulations revoked by Regulation 12 of the European Communities

(Transmissible Spongiform Encephalopathies and Animal By-products) (Amendment) Regulations 2009 may be considered and determined as if it is an application for an authorisation under this Regulation.

(4) An authorisation granted under the Regulations revoked by Regulation 12 of the European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) (Amendment) Regulations 2009 remains in force and may be dealt with as if it is an authorisation under this Regulation.

(5) In this Regulation "butcher's shop" means a premises or part of a premises from which beef or a beef product is sold or supplied to consumers and includes a premises ancillary to the first mentioned premises, but does not include an establishment to which Regulation 4 of the European Communities (Food and Feed Hygiene) Regulations 2005 (S.I. No. 910 of 2005) applies.".

7. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the insertion, after Regulation 16(15), of—

"(16) The Health Service Executive or a local authority (in the case of a butcher's shop situated in its functional area which is also engaged in wholesale meat trade) may grant an authorisation for the purposes of Regulation 10A, attach conditions to an authorisation, revoke or vary a condition, insert a new condition, suspend, withdraw an authorisation or refuse an application for an authorisation.

(17) The Health Service Executive or a local authority shall maintain a register of the butchers' shops it has authorised and make it available to the Food Safety Authority of Ireland on request.

(18) A person may appeal a decision of the Health Service Executive or a local authority to refuse an application or withdraw an authorisation in writing to the Food Safety Authority of Ireland within 30 days of the refusal or withdrawal.

(19) Where an appeal under paragraph (18) is made, the Food Safety Authority of Ireland may confirm, vary or cancel the decision of the Health Service Executive or a local authority."

8. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the substitution, in Regulation 18 for the passage "All records pertaining to animal by-products" with "All records pertaining to animal by-products or any material covered by these Regulations".

9. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the substitution, in Regulation 24(1)(*b*) for the passage commencing with "(*b*) there is a danger to

public or animal health," and finishing with "TSE Regulation relates or other thing to which the notice relates —", of—

"(*b*) there is a danger to public or animal health,

he or she may, by a notice in writing ("compliance notice") stating that opinion and served on the person who appears to be the owner, operator or person in charge of the premises, animal by-product, feedingstuff, fertilizer or other thing to which either the Animal By-products Regulation or the TSE Regulation relates or other thing to which the notice relates —".

10. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the insertion, in Regulation 30(1)(*n*) after "10," of "10A,".

11. The European Communities (Transmissible Spongiform Encephalopathies and Animal By-products) Regulations 2008 are amended by the insertion, after Regulation 34(5) of

"(6) In a prosecution in which a contravention of Articles 6(2) or 7 of the Animal By-products Regulation is alleged, it is a defence for the defendant to prove that the collection, transport, treatment or use to which the alleged offence relates was in relation to a former foodstuff (within the meaning of Article 6(1)(*f*) of the Animal By-product Regulation) other than a former foodstuff that consists of or contains raw material of animal origin and was done in compliance with an authorisation granted for the purposes of Articles 2 or 3 of Commission Regulation (EC) No. 197/2006 of 3 February 2006."

12. The European Communities (Removal of Bovine Vertebral Column) Regulations 2004 (S.I. No. 528 of 2004) are revoked.

L.S.

GIVEN under my Official Seal,
23 July 2009.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations, *inter alia*, make it an offence to remove vertebral column in butchers' premises without an authorisation. They provide for the issuing of such an authorisation and also provide for an appeal mechanism in the event of a refusal to issue such an authorisation. They allow for the possibility of TSE sampling being carried out by someone other than a registered veterinary practitioner, in accordance with the instructions of an authorised officer.

BAILE ÁTHA CLIATH
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