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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 336**

**The Avian Influenza and Influenza of Avian  
Origin in Mammals (Scotland) Order 2006**

**PART 9**

**Inspection, enforcement, offences, amendments and revocations**

**Redirection of mammals, birds and eggs in transit**

**79.** A veterinary inspector may, by notice to the owner of driver or any vehicle moving any mammal, bird or egg or any other thing to any premises (including regulated places) where avian influenza or influenza virus of avian origin is suspected or confirmed, require any mammal, bird, egg or any other things specified in the notice to be moved to other premises specified in the notice instead.

**Change of occupation of premises under restriction**

**80.—(1)** This article applies if the keeper of any poultry, other captive bird or mammal is unable to move it from premises on the termination of the keeper's right of occupation because of a movement restriction imposed by or under this Order and continues to apply for seven days after any such restriction has been removed.

(2) Where this article applies, the person entitled to occupation of the premises on that termination shall—

- (a) provide such facilities for feeding, tending or otherwise using the poultry, other captive bird or mammal (including selling it) as the keeper may reasonably require; and
- (b) allow entry to the premises to that keeper and any person authorised by the keeper at reasonable times for feeding, tending or otherwise using the poultry, other captive bird or mammal.

(3) If the keeper is unable or unwilling to feed or tend the poultry, other captive bird or mammal, the person entitled to occupation of the premises shall take such steps as are necessary to ensure it is properly fed and tended.

(4) The keeper of the poultry, other captive bird or mammal is liable to pay the reasonable costs (including accommodation costs) incurred under this article by any person feeding or tending it, or providing facilities for feeding, tending or otherwise using it.

(5) Nothing required to be done under this article shall be taken to imply continued occupation of the premises by a keeper whose right of occupation has terminated.

**Veterinary investigations**

**81.—(1)** A veterinary inspector (and an inspector acting in accordance with a veterinary inspector's instructions) may enter any premises on which a veterinary inquiry, clinical examination,

survey or other investigation into the presence or spread of avian influenza is required under this Order.

(2) A person who enters premises under this Order or under section 63, 64 or 64A of the Act for the purposes of an investigation into the presence or spread of avian influenza or influenza of avian origin must carry out such examinations and tests and take such samples (including live birds, live mammals and carcasses) as that person considers necessary and may—

- (a) mark, or cause to be marked, for identification purposes any bird, mammal, carcase or other thing; and
- (b) count birds and mammals.

(3) If the person carrying out an investigation suspects that avian influenza exists or has existed on the premises, that person must seek to establish—

- (a) the length of time avian influenza may have existed on the premises or on any vehicle;
- (b) the possible origin of avian influenza on the premises;
- (c) which premises may have been exposed to contamination by avian influenza from the same origin or from the premises under investigation; and
- (d) the extent to which avian influenza may have been carried to or from the premises under investigation by the movement of birds, people, animals, vehicles, eggs, meat, carcasses, implements or any other thing.

(4) A person who enters premises for the purposes of surveillance under article 7 may re-enter the premises to investigate any inconclusive findings of the survey.

(5) The occupier of the premises under investigation and any person appearing to the person carrying out the investigation to have charge of birds or mammals on the premises must provide such assistance as the person carrying out the inquiry may reasonably require.

(6) No person shall deface, obliterate or remove any mark applied under sub-paragraph (2)(a) except with the written authority of a veterinary inspector.

(7) Any person who carries out an investigation under this Order must keep a record of the dates on which that person visits premises, of that person's findings at the premises, and of any action the person has required the occupier of the premises to take.

(8) The Scottish Ministers must take account of the results of veterinary inquiries when deciding what requirements and restrictions to impose under this Order.

### **General powers of inspectors**

**82.**—(1) An inspector who enters premises under this Order may take with that person for any purpose relating to its execution and enforcement such persons and things as the inspector considers necessary.

(2) Any person who so assists may return to the premises unaccompanied to take any further steps necessary to ensure the execution or enforcement of this Order.

(3) An inspector of a local authority is hereby authorised for the purposes of section 64 of the Act.

(4) Provisions in this Order prohibiting or restricting the movement or use of any thing do not apply to any person in the execution or enforcement of the Order.

### **Powers of inspectors in case of default**

**83.**—(1) If any person fails to comply with a requirement of this Order or of a declaration, licence, notice or designation under it, an inspector may take such steps the inspector considers necessary to ensure the requirement is met.

(2) In taking steps under this article, an inspector may direct any person to take or refrain from specified action in respect of any place, mammal, bird, vehicle, or other thing.

(3) Any steps taken under this article are without prejudice to proceedings for an offence arising out of the default.

(4) The person in default must reimburse any reasonable expenses incurred by the Scottish Ministers or the local authority in taking such steps.

### **Offences by bodies corporate etc**

**84.**—(1) If an offence under the Act committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the officer’s part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body.

(3) “Officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) “Body corporate” includes a partnership in Scotland and, in relation to such a partnership, a reference to an officer of a body corporate is a reference to a partner.

(5) No contravention of, or failure to comply with, a provision of this Order by the Scottish Ministers, a local authority, a veterinary inspector or an inspector shall constitute a contravention for the purposes of section 73 of the Act.

### **Ignorance of restriction or requirement**

**85.** No person shall be guilty of failing to comply with a restriction or requirement applying in a controlled zone if that person satisfies the court that the person did not know of the restriction or requirement and that the person could not with reasonable diligence have obtained knowledge of it.

### **Enforcement**

**86.**—(1) The local authority must, subject to paragraph (2), enforce this Order.

(2) The Scottish Ministers may, in relation to particular cases or cases of a particular description, direct that they will enforce this Order.

### **Revocations and amendments**

**87.**—(1) The Diseases of Poultry (Scotland) Order 2003<sup>(1)</sup> is amended by inserting after article 1(2)—

“(3) This Order does not apply in relation to avian influenza.”.

(2) In article 2 of the Diseases of Animals (Approved Disinfectants) Order 1978<sup>(2)</sup>, the definition of “Diseases of Poultry Order” is substituted by—

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(1) S.S.I. 2003/354.

(2) S.I.1978/32, as amended by S.I. 1994/3141. Other amendments are not relevant to this Order.

““Diseases of Poultry Order” means the Diseases of Poultry (Scotland) Order 2003 and the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006;”.