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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 69**

**ANIMALS**

**ANIMAL HEALTH**

**The Avian Influenza (Preventive Measures) (Scotland) Order 2007**

*Made* - - - - - *13th February 2007*  
*Laid before the Scottish*  
*Parliament-* - - - - - *13th February 2007*  
*Coming into force* - - - - - *15th February 2007*

The Scottish Ministers, in exercise (with regard to the following Order, except article 9) of the powers conferred by sections 1 and 8A of the Animal Health Act 1981(1), and, in exercise (with regard to article 9) of the powers conferred by section 2(2) of the European Communities Act 1972(2) and of all other powers enabling them in that behalf, and after consultation as required by section 8A(11) of the Animal Health Act 1981, hereby make the following Order:

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Avian Influenza (Preventive Measures) (Scotland) Order 2007 and shall come into force on 15th February 2007.

(2) This Order shall extend to Scotland only.

**Interpretation**

2. In this Order—

“avian influenza” means an infection of poultry or other captive birds caused by any influenza A virus of the subtypes H5 or H7 or with an intravenous pathogenicity index in six week old chickens greater than 1.2;

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(1) 1981 c. 22, amended by the [Animal Health and Welfare \(Scotland\) Act 2006 \(asp 11\)](#), section 6 of which inserted section 8A into the 1981 Act, and the [Animal Health Act 1981 \(Amendments\) Regulations 1992 \(S.I. 1992/3293\)](#). The functions conferred by the 1981 Act on “the Ministers” (as defined in section 86 of that Act) were transferred, so far as within devolved competence, to the Scottish Ministers by virtue of section 53 of the [Scotland Act 1998 \(c. 46\)](#).

(2) 1972 c. 68. Section 2(2) was amended by the [Scotland Act 1998 \(c. 46\)](#), Schedule 8, paragraph 15(3). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the [Scotland Act 1998](#).

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(3);

“other captive bird” means any bird, other than poultry, kept in captivity including any bird kept for shows, races, exhibitions and competitions (such as ornamental birds and racing pigeons);

“poultry” means all birds that are reared or kept in captivity for the production of meat, or eggs for consumption, the production of other commercial products, for restocking supplies of game or for the purposes of any breeding programme for the production of these categories of birds;

“premises” includes any land, building or place.

### **Notices and licences**

3.—(1) Notices and licences under this Order may be subject to conditions and may be varied, suspended or revoked in writing at any time.

(2) The Scottish Ministers shall take such steps as they consider necessary to ensure that notices and licences are brought to the attention of those who may be affected by them.

### **Prohibition on fairs, markets, shows and other gatherings**

4.—(1) No person shall permit birds to be collected together at any fair, market, show, exhibition or other gathering except under the authority of a licence issued by a veterinary inspector.

(2) A veterinary inspector shall only grant a licence if a veterinary risk assessment has been carried out and the veterinary inspector is satisfied that the gathering and the transit of birds to and from the gathering would not significantly increase the risk of the transmission of avian influenza virus (in particular of virus of the subtype H5N1).

### **Identification of certain poultry premises**

5.—(1) A person who, at the date this Order comes into force, is the keeper of 50 or more poultry at any single premises must notify the Scottish Ministers in writing of the following, in relation to each such premises—

- (a) the address and holding number (if it has one) of the premises;
- (b) that person’s name and address and, if different, those of—
  - (i) the owner of the poultry; and
  - (ii) the occupier of the premises;
- (c) the species of poultry kept at the premises;
- (d) the husbandry system or systems in use at the premises, including whether poultry are kept for the production of—
  - (i) meat;
  - (ii) hatching eggs; or
  - (iii) eggs for consumption;
- (e) the number of each species of poultry usually kept at the premises;
- (f) the incubator capacity of any hatchery;
- (g) details of any seasonal stocking variations which might result in significant differences in the numbers or species of poultry on the premises;
- (h) the number of each species of poultry with access to the open air; and

- (i) the presence on, or in the vicinity of, the premises of any body of water which attracts wild birds.
- (2) A notification under paragraph (1) must be made within 1 month of the date this Order comes into force.
- (3) Paragraph (1) does not apply to any person who notified the Scottish Ministers under regulation 6(2) or (2A) of the Regulations.
- (4) A person who becomes the keeper of 50 or more poultry at any single premises after the date this Order comes into force must notify the information referred to in paragraph (1) to the Scottish Ministers in writing within 1 month of so becoming.
- (5) A person who has made a notification under the Regulations or under this article must notify the Scottish Ministers in writing within 1 month of the following—
  - (a) a change to the information referred to in paragraph (1)(b) or (c); or
  - (b) an increase or decrease of 20% or more in a number referred to in paragraph (1)(e) or (1)(h),unless this is due to usual management fluctuations.
- (6) The Scottish Ministers may, by notice, require any person who has notified them under the Regulations or under this article to notify them, in addition, of any changes to the information so notified.
- (7) A person required to notify under paragraph (6) must do so within 1 month of receiving a notice from the Scottish Ministers.
- (8) In this article—
  - “usual management fluctuations” means—
    - (a) the emptying of poultry houses or hatcheries for immediate restocking; and
    - (b) seasonal stocking, and
  - “the Regulations” means the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005(4).

### **Identification of other premises**

- 6.—(1) The Scottish Ministers shall, if they consider it necessary for the purpose of carrying out a risk assessment under article 4, require, in writing, any keeper of poultry or other captive birds on premises other than those to which article 5 applies, to comply with some or all of the requirements of article 5.
- (2) For the purposes of this article, article 5 shall be read as if references to poultry include reference to other captive birds.

### **Monitoring of premises**

- 7. The Scottish Ministers shall ensure that veterinary inspectors and inspectors who inspect premises where poultry or other captive birds are kept monitor compliance with this Order.

### **Enforcement**

- 8.—(1) The local authority shall enforce this Order unless directed otherwise by the Scottish Ministers pursuant to paragraph (2).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(2) The Scottish Ministers may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under paragraph (1) shall be discharged by the Scottish Ministers and not by the local authority.

### **Revocations**

9. The Avian Influenza (Preventive Measures) (Scotland) Regulations 2005<sup>(5)</sup> and the Avian Influenza (Preventive Measures) (Scotland) Amendment Regulations 2005<sup>(6)</sup> are hereby revoked.

St Andrew's House,  
Edinburgh  
13th February 2007

*ROSS FINNIE*  
A member of the Scottish Executive

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(5) S.S.I. 2005/530.  
(6) S.S.I. 2005/646.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision consistent with Commission Decision [2005/734/EC](#) laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza caused by Influenza virus A subtype H5N1 from birds living in the wild to poultry and other captive birds and providing for an early detection system in areas at particular risk<sup>(7)</sup> as amended by Commission Decisions [2005/745/EC](#)<sup>(8)</sup>, [2005/855/EC](#)<sup>(9)</sup>, [2006/405/EC](#)<sup>(10)</sup> and [2006/574/EC](#)<sup>(11)</sup>; and in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health of 27th November 2006.

The Order consolidates provisions previously contained in the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005, as amended, except regulation 4 thereof (risk assessment and imposition of restrictions) for which provision is made by article 6 of the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order (S.S.I. [2006/196](#)).

Article 4 prohibits the holding of poultry gatherings of birds anywhere in Scotland unless they are licensed by a veterinary inspector after a risk assessment.

Article 5(1) requires keepers of 50 or more poultry on any single premises anywhere in Scotland to provide certain information to the Scottish Ministers, including whether poultry have access to the open air. Article 5(2) specifies the date by which they must do this. Article 5(5) requires keepers to inform the Scottish Ministers of changes to that information. Article 6 allows the Scottish Ministers to require other keepers to provide some or all of this information if they consider this necessary.

Article 7 relates to the monitoring of premises. Article 8 makes provision as to enforcement of the Order.

A regulatory impact assessment has not been prepared in respect of this Order as it consolidates provisions previously contained in the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005.

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(7) O.J. L 274, 20.10.2005, p.105.

(8) O.J. L 279, 22.10.2005, p.79.

(9) O.J. L 316, 2.12.2005, p.21.

(10) O.J. L 158, 10.6.2006, p.14.

(11) O.J. L 228, 22.8.2006, p.24.