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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 186**

**ANIMALS**

**ANIMAL HEALTH**

**The Bovine Viral Diarrhoea (Scotland) Amendment Order 2015**

<i>Made</i>	- - - -	<i>29th April 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>1st May 2015</i>
<i>Coming into force</i>	- -	<i>1st June 2015</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1) and 83(2) of the Animal Health Act 1981(1) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Bovine Viral Diarrhoea (Scotland) Amendment Order 2015 and comes into force on 1st June 2015.

(2) In this Order, “the principal Order” means the Bovine Viral Diarrhoea (Scotland) Order 2013(2).

**Amendment of the principal Order**

2. The principal Order is amended in accordance with articles 3 to 15.
3. In article 2 (interpretation)—
  - (a) after the definition of “CPH number” insert—

““dairy breeding herd” means a breeding herd which is primarily maintained for the purpose of milk production and which is being managed according to a system which allows for the possibility of calving throughout the year;”;
  - (b) the definitions of “bulk milk sample”, “milk collector” and “milk recorder” are revoked.
4. For article 10 (compliance deadlines) substitute—

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(1) 1981 c.22. Powers to make Orders under these sections were originally conferred on “the Ministers”, as defined in section 86(1) of the Animal Health Act 1981. The functions of the Ministers were, so far as within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) S.S.I. 2013/3, amended by S.S.I. 2013/21, S.S.I. 2013/337 and S.S.I. 2013/363.

### “Compliance deadlines

**10.**—(1) The first compliance deadline is the date falling 13 calendar months after this article first applies to the breeding herd or breeding bovine animal.

(2) This article first applies to a herd or animal on the day on which the herd or animal has been kept in Scotland, as a breeding herd or breeding bovine animal, for a total of not less than 30 days in any period of one year beginning no earlier than 1st June 2015.

(3) Subject to paragraphs (4), (5) and (6)—

- (a) the second compliance deadline is the date falling 13 calendar months after the first compliance deadline; and
- (b) compliance deadlines subsequently occur on the date falling 13 calendar months after the immediately preceding compliance deadline.

(4) Subject to paragraphs (5) and (6), where in the case of a dairy breeding herd the keeper of the herd has taken (or has arranged to take) a sample as described in article 11(2) (c)—

- (a) the second compliance deadline is the date falling 7 calendar months after the first compliance deadline; and
- (b) compliance deadlines subsequently occur on the date falling 7 calendar months after the immediately preceding compliance deadline.

(5) Where in any case article 9(1) is complied with before a compliance deadline, the date of such compliance is substituted as the starting point for the determination of the next compliance deadline in relation to the breeding herd or breeding bovine animal concerned.

(6) Where a herd or animal is kept in Scotland as a breeding herd or breeding bovine animal for a total of less than 30 days in the period between two compliance deadlines—

- (a) the keeper does not have to comply with article 9(1) in relation to the later of those compliance deadlines; and
- (b) the herd or animal is treated, as at the later of those compliance deadlines, as not previously having been kept in Scotland.”.

5. For article 11 (taking of samples) substitute—

### “Taking of samples

**11.**—(1) The keeper of a breeding herd must take (or arrange to have taken) a sample or samples as described in any one of the sub-paragraphs of paragraph (2).

(2) The samples described in this paragraph are—

- (a) except in a case mentioned in sub-paragraph (b) or (c), a sample of blood from—
  - (i) each of 5 calves between the age of 9 and 18 months in the herd at the time, or, where the herd contains separately managed groups, each of 5 such calves from each such group or, if there are fewer than 5 such calves in the herd or, as the case may be, group, each of such calves in the herd or group;
  - (ii) each of 10 calves between the age of 6 and 18 months in the herd at the time or, where the herd contains separately managed groups, each of 10 such calves from each such group or, if there are fewer than 10 such calves in the herd or, as the case may be, group, each of such calves in the herd or group; or
  - (iii) where there are no calves as referred to in head (ii) in the herd at the time or, as the case may be, separately managed group, each of 5 bovine animals over the age of 18 months in the herd at the time or, as the case may be, each

- of 5 such animals from each such group, where those animals have not left the holding since birth or, if there are fewer than 5 such animals in the herd or, as the case may be, group, each of such animals in the herd or group, where those animals have not left the holding since birth;
- (b) in the case of a breeding herd kept in any area within the local government area of the Shetland Islands<sup>(3)</sup>, a sample of blood from each of 5 calves between the age of 6 and 18 months in the herd at the time or, where the herd contains separately managed groups, each of 5 such calves from each such group or, if there are fewer than 5 such calves in the herd or, as the case may be, group, each of such calves in the herd or group;
- (c) in the case of a dairy breeding herd, a sample of blood from—
- (i) each of 10 calves between the age of 9 and 18 months in the herd at the time or, where the herd contains separately managed groups, each of 10 such calves from each such group; or
  - (ii) if there are fewer than 10 such calves in the herd or, as the case may be, group, each of such calves in the herd or group;
- (d) subject to paragraphs (3) and (4), from each of the calves in the herd born since the immediately preceding compliance deadline either—
- (i) an ear tag sample of tissue taken in accordance with paragraphs (7) and (8); or
  - (ii) a sample of blood; and
- (e) from each of the bovine animals in the herd at the time either—
- (i) an ear tag sample of tissue taken in accordance with paragraphs (7) and (8); or
  - (ii) a sample of blood.
- (3) Paragraph (2)(d) applies only where since the immediately preceding compliance deadline no calves have been removed from the herd.
- (4) In relation to the first compliance deadline the reference in paragraph (2)(d) to the immediately preceding compliance deadline is to be read as a reference to the day on which article 10 first applies to the herd.
- (5) For the purposes of paragraphs (2)(d) and (e), (3) and (4), the herd does not include any bovine animals which, so far as known by the keeper, have previously tested negative for the presence of BVDV or which are the maternal antecedents of any which have previously tested negative for the presence of BVDV.
- (6) The keeper of a breeding bovine animal must take (or arrange to have taken) from the animal—
- (a) an ear tag sample of tissue taken in accordance with paragraphs (7) and (9); or
  - (b) a sample of blood.
- (7) An ear tag sample of tissue is taken in accordance with this paragraph if—
- (a) the tag used when the sample is collected is an ear tag applied under the 2007 Regulations; or
  - (b) the tag used is a management tag, and the tag and the vessel for collecting the sample have an identical, pre-printed, identification number; and that identification number—

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(3) The local government area of the Shetland Islands comprises the area of Shetland Islands Council as set out in section 1(2) of, and Schedule 1 to, the Local Government etc. (Scotland) Act 1994 (c.39).

- (i) in the case of a sample taken from a bovine animal in a breeding herd, is used only once within the same herd; and
  - (ii) in the case of a sample taken from a breeding bovine animal or a bovine animal in a breeding herd, is notified along with the animal's ear tag number required by article 14(3)(b)(v), (va) or (vi) when the sample is submitted.
- (8) For the purposes of paragraph (2)(d) and (e) the keeper of a breeding herd must not take (or arrange to have taken) an ear tag sample of tissue from any calves or bovine animals in the herd from which such a sample has previously been collected from a management tag.
- (9) For the purposes of paragraph (6) the keeper of a breeding bovine animal must not take (or arrange to have taken) an ear tag sample of tissue from that animal if such a sample has previously been collected from a management tag from it.”.
- 6. In article 12(1) (decision on type of sample to take)—
  - (a) in sub-paragraph (a), for “article 11(2)(d) or (da)” substitute “article 11(2)(a), (b) or (c)”; and
  - (b) in sub-paragraph (b), for “article 11(5A) (other than a sample as described in article 11(5A) (b))” substitute “article 11(6) (other than a sample as described in article 11(6)(b))”.
- 7. Article 13 (persons authorised to take milk samples) is revoked.
- 8. In article 14 (submission of samples)—
  - (a) in paragraph (1), omit “Subject to paragraph (2),”;
  - (b) paragraph (2) is revoked; and
  - (c) in paragraph (3)(b)—
    - (i) in head (v), for “article 11(2)(d), (da), (e) or (f)” substitute “article 11(2)(a), (b), (c), (d) or (e)”;
    - (ii) in head (va), for “article 11(5A)” substitute “article 11(6)”; and
    - (iii) in head (vi), for “article 11(6)(a)” substitute “article 11(7)(a)”.
- 9. In article 17 (duties of operators of approved laboratories – breeding herds or breeding bovine animals)—
  - (a) in paragraph (2)(b)(ia), for “article 11(2)(e) or (f) or (5A)” substitute “article 11(2)(d) or (e) or (6)”;
  - (b) in paragraph (3)(a), for “article 11(2)(a), (b), (c), (d) or (da)” substitute “article 11(2)(a), (b) or (c)”;
  - (c) paragraph (4) is revoked; and
  - (d) in paragraph (5)—
    - (i) in sub-paragraph (g), for “article 11(2)(e) or (f)” substitute “article 11(2)(d) or (e)”; and
    - (ii) in sub-paragraph (ga), for “article 11(5A)” substitute “article 11(6)”.
- 10. In article 21 (BVD status of a breeding herd or breeding bovine animal)—
  - (a) after paragraph (5) insert—
 

“(5A) The BVD status of a breeding herd or a breeding bovine animal is “not negative” during any period when the herd or bovine animal is kept on the same holding as another breeding herd or breeding bovine animal which does not have a BVD status as determined in accordance with this article.”; and

- (b) in paragraph (6)(a)(ii) after “from the herd” insert “and, prior to its removal, the animal was isolated or other appropriate steps were taken so as to minimise the risk of spread of BVDV to any other animal in the herd”.

11. In article 23B(2)(b) (movement of bovine animals), after “veterinary inspector” insert “or the Scottish Ministers”.

12. In article 23C(3)(b) (movement of a qualifying calf), after “veterinary inspector” insert “or the Scottish Ministers”.

13. In article 23D (movement of an animal in which BVDV is present)—

- (a) in paragraph (1)(a), after “reasonably to know” insert “(as determined in accordance with paragraphs (3) and (4))”;
- (b) in paragraph (2)(b), after “veterinary inspector” insert “or the Scottish Ministers”;
- (c) in paragraph (3)(b), after “laboratory has” insert “or the Scottish Ministers have”; and
- (d) after paragraph (3) insert—

“(4) For the purpose of paragraph (1), the keeper of a bovine animal is to be taken to know that BVDV is present in the animal if the animal is the calf of a bovine animal as mentioned in paragraph (3).”.

14. After article 23D insert—

**“Movement of an animal with a not negative BVD status**

**23E.** The keeper of a breeding herd or breeding bovine animal must not move (or arrange to move) any animal forming part of the breeding herd or the breeding bovine animal off the holding on which it is kept where, in accordance with article 21, the BVD status of the breeding herd or breeding bovine animal is “not negative” unless—

- (a) the animal is being moved to slaughter;
- (b) the movement is under a licence granted by a veterinary inspector or the Scottish Ministers;
- (c) subject to article 23D—
  - (i) a sample (of any description) has been taken from the animal which has been tested by a laboratory (by any means) for the presence of BVDV; and
  - (ii) the operator of the laboratory has by notice informed the keeper and the Scottish Ministers of the result of the test which clearly indicates that the result is negative for the presence of BVDV; or
- (d) the animal is the maternal antecedent of any animal which has previously tested negative for the presence of BVDV.”.

15. For article 24(1) (maintenance and provision of information) substitute—

“(1) The Scottish Ministers must maintain a record of information notified or provided in accordance with articles 17(2)(b)(iii), 18(2)(c), 19(2), 20(2), 21(7), 23C(3)(c) and 23E(c)(ii).”.

**Revocation, transitional and savings provisions**

16.—(1) The following provisions are revoked—

- (a) article 4 of the Bovine Viral Diarrhoea (Scotland) Amendment Order 2013(4);

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- (b) article 5 of the Bovine Viral Diarrhoea (Scotland) Amendment (No. 2) Order 2013<sup>(5)</sup>; and
  - (c) article 10 of the Bovine Viral Diarrhoea (Scotland) Amendment (No. 3) Order 2013<sup>(6)</sup>.
- (2) This Order is subject to the transitional and savings provisions specified in the Schedule.

St Andrew's House,  
Edinburgh  
29th April 2015

*RICHARD LOCHHEAD*  
A member of the Scottish Government

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<sup>(5)</sup> S.S.I. 2013/337.  
<sup>(6)</sup> S.S.I. 2013/363.

## SCHEDULE

Article 16(2)

### TRANSITIONAL AND SAVINGS PROVISIONS

#### **First compliance deadline**

1.—(1) This paragraph applies where a person—

- (a) is, immediately before 1st June 2015, keeping a herd or bovine animal in Scotland, as a breeding herd or breeding bovine animal; and
- (b) has done so for a total of not less than 30 days in the period beginning on 9th February 2015 and ending immediately before 1st June 2015.

(2) Where this paragraph applies, article 10(1) of the principal Order, as substituted by article 4 of this Order, applies subject to the modification that the reference to “the date falling 13 calendar months after this article first applies to the breeding herd or breeding bovine animal” is to be construed as a reference to the date falling 13 calendar months after 1st June 2015.

2.—(1) This paragraph applies where a person—

- (a) is, immediately before 1st June 2015, keeping a herd or bovine animal in Scotland, as a breeding herd or breeding bovine animal; and
- (b) has done so for a total of less than 30 days in the period beginning on 9th February 2015 and ending immediately before 1st June 2015.

(2) Where this paragraph applies, article 10(1) of the principal Order, as substituted by article 4 of this Order, applies subject to the modification that the reference to “the date falling 13 calendar months after this article first applies to the breeding herd or breeding bovine animal” is to be construed as a reference to the date falling 13 calendar months after the day on which the herd or animal is kept in Scotland, as a breeding herd or breeding bovine animal, for a total of not less than 30 days.

#### **Second and subsequent compliance deadlines**

3.—(1) This paragraph applies where a person—

- (a) is, immediately before 1st June 2015, the keeper of a breeding herd or breeding bovine animal; and
- (b) in relation to that herd or animal, is for the purpose of article 9(1) of the principal Order subject to the obligations, so far as applicable to that person, in articles 11 and 14 of the principal Order, in order to comply with a second compliance deadline or subsequent compliance deadline set in accordance with article 10 of the principal Order as it had effect prior to its substitution by article 4 of this Order.

(2) Where this paragraph applies, the person is to be treated as if, on 1st June 2015—

- (a) that person is subject to the obligations, so far as applicable, in articles 11 and 14 of the principal Order as amended by articles 5 and 8 of this Order;
- (b) article 10(3)(a) and (4)(a) of the principal Order, as substituted by article 4 of this Order, applies subject to the modification that references to “the first compliance deadline” are to be construed as references to the date on which the person required to comply with article 9(1) of the principal Order in relation to the first compliance deadline set in accordance with article 10 of the principal Order as it had effect prior to its substitution by article 4 of this Order; and
- (c) article 10(3)(b) and (4)(b) of the principal Order, as substituted by article 4 of this Order, applies subject to the modification that references to “the immediately preceding

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compliance deadline” are to be construed as references to the date on which the person complied with article 9(1) of the principal Order in relation to the second or subsequent compliance deadline set in accordance with article 10 of the principal Order as it had effect prior to its substitution by article 4 of this Order.

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## EXPLANATORY NOTE

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

This Order amends the Bovine Viral Diarrhoea (Scotland) Order 2013 (“the 2013 Order”).

The 2013 Order provides for all keepers of breeding bovine animals and breeding herds to take, or arrange to have taken, samples from their herds or animals and submit those for testing on an annual basis. Similar obligations apply in relation to keepers of (qualifying) calves born otherwise than into a breeding herd or to a breeding bovine animal. This is for the purpose of determining whether bovine viral diarrhoea virus (“BVDV”) is or may be present in the herd, bovine animal or qualifying calf and, in respect of a herd or bovine animal, this will generate a BVD status/finding as will other circumstances as described in Part 4 of the 2013 Order. Part 4A of the 2013 Order also makes provisions for movement prohibitions or restrictions in respect of herds, bovine animals or qualifying calves where the keeper has failed to comply with sampling and testing requirements or in respect of animals infected with BVDV. The Scottish Ministers also have powers and duties in respect of informing certain persons of the BVD finding and BVDV test results.

Article 4 substitutes article 10 of the 2013 Order to make provision for compliance deadlines for the sampling and testing of a dairy breeding herd in accordance with article 11(2)(c) of the 2013 Order (as substituted by article 5)). This is subject to the transitional and saving provisions specified in the Schedule. Article 3(a) amends article 2 of the 2013 Order to insert a new definition of “dairy breeding herd” for the purpose of this provision.

Article 5 substitutes article 11 of the 2013 Order and removes provisions for the taking of milk samples from breeding herds (and there are consequential amendments made by articles 3(b), 6, 7, 8 and 9).

Article 10(a) inserts a new article 21(5A) into the 2013 Order to make provision for the “not negative” BVD status of a breeding herd or breeding bovine animal when the herd or animal is on the same holding as another herd or animal which does not have a BVD status (as determined in accordance with article 21 of the 2013 Order).

Article 10(b) amends article 21(6) of the 2013 Order to require the isolation or the taking of other appropriate steps in relation to an animal infected with BVDV, prior to its removal from a breeding herd, in order to minimise the risk of spread of BVDV to any other animal in the herd.

Articles 11, 12 and 13(b) respectively amend articles 23B, 23C and 23D of the 2013 Order to enable the Scottish Ministers (in addition to a veterinary inspector) to issue a movement licence for the purposes of those provisions.

Article 13(a), (c) and (d) amends article 23D of the 2013 Order to provide for an additional circumstance where a keeper will be taken to know, for the purpose of the movement restriction or prohibition in that provision, that BVDV is present in an animal, namely, where the animal is the calf of a bovine animal in which BVDV is present.



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Article 14 inserts a new article 23E into the 2013 Order to prohibit or restrict the movement of any breeding herd or breeding bovine animal which has a “not negative” BVD status (as determined in accordance with article 21 of the 2013 Order). Article 15 consequentially amends article 24(1) of the 2013 Order.

Article 16(1) provides for the revocation of certain provisions in previous amending instruments to the 2013 Order.

This Order has been notified in draft to the European Commission in accordance with [Directive 98/34/EC](#) of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services (OJ L 204, 21.7.1998, p.37), as last amended by Regulation (EU) No 1025/2012 (OJ L 316, 14.11.2012, p.12).

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Rural Affairs and Environment Directorate, Saughton House, Broomhouse Drive, Edinburgh, Edinburgh, EH11 3XD.