

2005 No. 531

ANIMALS

ANIMAL HEALTH

**The Avian Influenza (Preventive Measures in Zoos) (Scotland)
Regulations 2005**

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| <i>Made</i> - - - - | <i>28th October 2005</i> |
| <i>Laid before Parliament</i> | <i>28th October 2005</i> |
| <i>Coming into force</i> - - | <i>28th October 2005</i> |

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Avian Influenza (Preventive Measures in Zoos) (Scotland) Regulations 2005 and shall come into force at midnight on 28 October 2005.

(2) These Regulations shall extend to Scotland only.

Interpretation

2. In these Regulations—

“the Act” means the Animal Health Act 1981(b);

“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;

“avian influenza prevention (zoos) zone” means a zone so declared under regulation 4(2)(a);

“the Commission Decision” means Commission Decision 2005/744/EC laying down the requirements for the prevention of highly pathogenic avian influenza virus caused by influenza A virus of subtype H5N1 in susceptible birds kept in zoos in the Member States(c);

“inspector” means an inspector appointed under the Act;

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

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

(b) 1981 c..22.

(c) O.J. No L 279, 22.10.2005, p.75.

(d) 1994 c.39.

“other captive bird” means any bird kept in captivity other than poultry, including birds 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 purpose of any breeding programme for the production of these categories of birds;

“restrictions notice” means a notice issued under regulation 4(2)(b);

“susceptible bird” means any species of bird that is likely to be susceptible to avian influenza and which is not intended for the production of animal products;

“veterinary inspector” means a veterinary inspector appointed by the Scottish Ministers under the Act;

“zoo” means—

- (a) a permanent establishment where animals of wild species are kept for exhibition to the public for seven or more days a year, with the exception of circuses and pet shops; and
- (b) an approved body, institute or centre, as defined in point (c) of Article 2(1) of Council Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(1) to Directive 90/425(a).

Declarations, notices and licences

3.—(1) Declarations, notices and licences granted under these Regulations shall be in writing, 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 declarations, notices and licences are brought to the attention of those who may be affected by them, and in particular, shall ensure that the extent of any zone declared under these Regulations, the nature of the restrictions and requirements applicable within it and the dates of its declaration and revocation (and any variation or suspension of it) are publicised.

Risk assessment and imposition of restrictions

4.—(1) The Scottish Ministers shall evaluate the risk of the transmission of avian influenza virus (in particular virus of the sub-type H5N1) from birds living in the wild to susceptible birds in zoos, taking into account the criteria and risk factors set out in Annex I to the Commission Decision.

(2) Having carried out such an evaluation, the Scottish Ministers shall, if they consider it necessary to reduce the risk of such transmission—

- (a) declare an avian influenza prevention (zoos) zone in all or part of Scotland; or
- (b) serve (or cause a veterinary inspector or an inspector to serve) a restrictions notice on the owner or occupier of any zoo where susceptible birds are kept.

(3) The Scottish Ministers shall, in a declaration of an avian influenza prevention (zoos) zone or in a restrictions notice, impose such of the following restrictions and requirements as they consider necessary on zoos in the zone or the subject of a notice—

- (a) susceptible birds must be housed or otherwise kept separate from wild birds;
- (b) susceptible birds must not be exposed to risk of exposure to the faeces of wild birds or other material that may have been contaminated with avian influenza virus by wild birds;
- (c) domestic ducks and geese must be kept separate from other susceptible birds;
- (d) susceptible birds must be fed and provided with drinking water indoors or under a shelter which prevents wild birds from gaining access to the food or water supply;

(a) OJ No L 268, 14.9.1992, p.54 as last amended by Council Regulation (EC) No 1398/2003 (OJ No L 198 6.8.2003, p.3.).

- (e) persons other than keepers of the birds must be prohibited from having access to areas where susceptible birds are kept;
- (f) the keeper of susceptible birds must take appropriate biosecurity measures in such areas and when entering and leaving such areas;
- (g) such other restrictions and requirements as the Scottish Ministers consider necessary to reduce the risk of transmission of avian influenza from wild birds to susceptible birds in zoos.

(4) Any zoo which is partly inside and partly outside a zone declared under paragraph (2) shall be deemed to be wholly within it.

(5) A declaration made under paragraph (2) shall specify the restrictions and requirements which apply in the zone and set out the boundaries of the zone.

(6) The Scottish Ministers may, in accordance with article 2 of the Commission Decision, declare that certain premises are exempt from such restrictions and requirements.

(7) Any person the subject of a declaration or a notice under these Regulations shall comply with the declaration or notice, except to the extent that that person is authorised to do otherwise by a licence issued by a veterinary inspector.

Vaccination of susceptible birds

5.—(1) Following a risk assessment, the Scottish Ministers shall, if they consider it necessary to reduce the risk of transmission of avian influenza, vaccinate or require the vaccination of susceptible birds in zoos.

(2) If vaccination is not carried out by the Scottish Ministers, it shall be carried out in accordance with instructions issued by them.

Powers of inspectors

6.—(1) A veterinary inspector or an inspector may enter any premises, on producing, if requested, some duly authenticated document showing their authority, for the purpose of ascertaining whether these Regulations or a declaration made, notice issued or licence granted under them are being or have been complied with and may, in particular—

- (a) inspect and copy any records (in whatever form they are held) kept under these Regulations, or remove such records to enable them to be copied;
- (b) inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford to the veterinary inspector or inspector such assistance as the veterinary inspector or inspector may reasonably require (including providing any necessary passwords) and, where a record is kept by means of a computer, may require the record to be produced in a form in which they may be taken away;
- (c) mark any bird or other thing for identification purposes; and
- (d) take with the veterinary inspector or inspector such persons and equipment as the veterinary inspector or inspector considers necessary.

(2) Any person who defaces, obliterates or removes any mark applied under paragraph (1)(c) shall be guilty of an offence.

(3) If a veterinary inspector or inspector enters any unoccupied premises, the veterinary inspector or inspector shall leave them as effectively secured against unauthorised entry as the veterinary inspector or inspector found them.

Enforcement and offences

7.—(1) The following provisions of the Act shall apply as if these Regulations were an Order made under the Act—

- (a) section 60 (duties and authorities of constables);
- (b) section 66 (refusal and obstruction);
- (c) section 67 (issue of false licences etc.);
- (d) section 68 (issue of licences etc. in blank);
- (e) section 70 (alteration of licences etc.);
- (f) section 71 (other offences as to licences);
- (g) section 73 (general offences);
- (h) section 77 (money recoverable summarily); and
- (i) section 79(1) to (4) (evidence and procedure).

(2) Section 69 of the Act (falsely obtaining licences etc.) shall apply as if licences granted under these Regulations were granted under the Act.

(3) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that director, manager, secretary or other officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) For the purposes of paragraph (3), “director” in relation to a body corporate managed by its members, means a member of the body corporate and “body corporate” includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

(5) The local authority shall enforce these Regulations unless directed otherwise by the Scottish Ministers pursuant to paragraph (6).

(6) 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 (5) shall be discharged by the Scottish Ministers and not by the local authority.

Penalties and time limits

8.—(1) A person guilty of an offence under these Regulations, or who by virtue of these Regulations is guilty of an offence under the Act, is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under these Regulations, or an offence under the Act by virtue of these Regulations, may, subject to paragraph (3), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor.

(3) No such proceedings shall be commenced by virtue of this regulation more than three years after the commission of the offence.

(4) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact;
- (b) a certificate stating that matter purporting to be signed shall be deemed to be so signed unless the contrary is proved.

Powers of inspectors in case of default

9.—(1) If a person fails to comply with a requirement of these Regulations or a requirement or restriction of a declaration made, notice issued or licence granted under them, a veterinary inspector or an inspector may take any steps that the veterinary inspector or inspector considers necessary to ensure the requirement is met, including—

- (a) seizing, detaining or disposing of any bird moved, kept or otherwise dealt with in breach of these Regulations and of any such declaration, notice or licence; and
- (b) directing any person to take or refrain from specified action in respect of any place, bird, animal, vehicle, product or other thing.

(2) Any steps taken are without prejudice to proceedings for an offence arising out of the default.

(3) The person in default shall reimburse any reasonable expenses incurred by the Scottish Ministers or a local authority in taking such steps and any such reimbursement is recoverable summarily.

ROSS FINNIE

A member of the Scottish Executive

St Andrew's House,
Edinburgh
28th October 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force Commission Decision 2005/744/EC laying down the requirements for the prevention of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 in susceptible birds kept in zoos in the Member States (OJ No L 279, 22.10.2005, p. 75).

They require the Scottish Ministers to evaluate the risk of the transmission of avian influenza virus to susceptible birds in zoos and to take appropriate measures to reduce such risk (regulation 4(1) and (2)).

Regulation 4(2) provides for the Scottish Ministers to declare avian influenza prevention (zoos) zones or to serve notices of restrictions on premises. Regulation 4(3) sets out the measures which may be applied.

Regulation 5 provides for the Scottish Ministers to require vaccination of susceptible birds in zoos if they think necessary.

Regulations 6, 7, 8 and 9 deal with the powers of inspectors appointed by the Scottish Ministers and by local authorities, and with penalties and enforcement.

A regulatory impact assessment has not been prepared in respect of these Regulations.

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£3.00

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