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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 196**

**The Avian Influenza (H5N1 in  
Wild Birds) (Scotland) Order 2006**

**Citation, commencement and extent**

**1. –**

(1) This Order may be cited as the Avian Influenza (H5N1 in Wild Birds) (Scotland) Order 2006 and shall come into force at midnight on 5th April 2006.

(2) This Order extends to Scotland only.

**Interpretation**

**2. In this Order—**

“the Act” means the Animal Health Act 1981;

“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;

“controlled meat” means any fresh meat, minced meat, meat preparation, mechanically separated meat or meat product derived from poultry, other captive birds or wild feathered game;

“day-old chicks” means poultry less than 72 hours old which have not yet fed and muscovy ducks (*Cairina moschata*) and their crosses less than 72 hours old, whether or not fed;

“disinfection” means disinfection with a disinfectant which is approved in the Diseases of Animals (Approved Disinfectants) Order 1978(1) for use for the purposes of “Diseases of Poultry” (that term having the meaning given to it in that Order);

“fresh meat” means meat that has not undergone any preserving process other than chilling, freezing or quick-freezing, including meat that is vacuum wrapped or wrapped in a controlled atmosphere(c);

“hatching egg” means an egg for incubation laid by any fowl; turkey, guinea fowl, duck, goose, quail, pigeon, pheasant, partridge or ratite that is reared or kept in captivity for breeding, the production of meat or eggs for consumption or for re-stocking supplies of game;

“keeper” means any person responsible for birds or animals, whether on a permanent or temporary basis, but does not include a person responsible for them solely because he is transporting them;

“meat preparation” means fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat;

“meat product” means a processed product resulting from the processing of meat or from the further processing of such processed products, so that the cut surface shows that the product no longer has the characteristics of fresh meat;

“mechanically separated meat” means the product obtained by removing meat from fleshbearing bones after boning, using mechanical means resulting in the loss or modification of the muscle fibre structure;

“minced meat” means boned meat that has been minced into fragments and contains less than 1% salt;

“occupier” means, in relation to any premises, the person in charge of those premises;

“other captive bird” means a bird kept in captivity which is not poultry and includes a bird kept for shows, races, exhibitions, competitions, breeding or sale;

“pet bird” means a bird, other than poultry, reared or kept in captivity as a pet;

“poultry” means a bird reared or kept in captivity for the production of meat or eggs for consumption, or of other products, for restocking supplies of game or for the purposes of any breeding programme for the production of such categories of bird;

“poultry product” means anything originating or made (whether in whole or in part) from poultry or from a poultry carcass;

“premises” includes any land, building or other place;

“processed fresh meat” means any minced meat, meat preparation, mechanically separated meat or meat product;

“slaughterhouse” means an establishment used for slaughtering poultry, the meat of which is intended for human consumption;

“vehicle” includes—

- (a) a trailer, semi-trailer or other thing which is designed or adapted to be towed by another vehicle,
- (b) a detachable part of a vehicle,
- (c) a container or other structure designed or adapted to be carried by or on a vehicle;

“wild bird protection zone” means a wild bird protection zone declared under article 8(2) or 8(3);

“wild bird surveillance zone” means a wild bird surveillance zone declared under article 8(2) or 8(3);

“wild feathered game” has the meaning given by point 1.5, second indent and point 1.7 of Annex 1 to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin.

## PART 1

### Introduction

#### **Extension of definition of “poultry”**

**3.** For the purposes of the Act in its application to avian influenza and to this Order, the definition of “poultry” in section 87(4) of the Act is extended to comprise all birds.

## **Declarations and notices**

### **4. –**

#### (1) Declarations under this Order—

- (a) must be in writing;
- (b) may be amended or revoked, by further declaration in writing, at any time;
- (c) must designate the extent of any wild bird protection zone or wild bird surveillance zone which is being declared;
- (d) must list or refer to the measures which apply in such a zone;
- (e) must state to which categories of bird measures apply; and
- (f) must be ended by further declaration.

#### (2) Notices issued under this Order—

- (a) may be amended or revoked, by further notice in writing, at any time;
- (b) must specify whether they apply to all or part of a premises.

## **Licences**

### **5. –**

#### (1) Before granting a licence under this Order for the movement of any bird or poultry product, the Scottish Ministers must—

- (a) carry out an assessment of the movement; and
- (b) be satisfied that it will not significantly increase the risk of the spread of avian influenza.

#### (2) Licences granted under this Order—

- (a) must be in writing;
- (b) may be general or specific;
- (c) must be made subject to such conditions as the Scottish Ministers consider necessary to—
  - (i) control the spread of avian influenza; and
  - (ii) ensure poultry products are obtained, handled, treated, stored and transported without contaminating products which may be moved without licence under this Order;
- (d) may be amended, suspended or revoked, in writing, at any time.

#### (3) Except where otherwise directed by the Scottish Ministers, a licence granted—

- (a) in England by the Secretary of State; or
- (b) in Wales by the National Assembly for Wales,

for the same purpose as a licence which may be granted under this Order is valid for that purpose in Scotland and its conditions apply as if it was a licence granted under this Order.

## **Publication of declarations, licences and notices**

### **6. –**

(1) The Scottish Ministers must take such steps as they consider fit to ensure that declarations, licences and notices are brought to the attention of those who may be affected by them as soon as is reasonably practicable.

(2) The Scottish Ministers must, in particular, ensure that the extent of any wild bird protection zone and wild bird surveillance zone declared under this Order, the nature of the restrictions and requirements applicable within it and the dates of its declaration and withdrawal are publicised.

### **Production of licences**

7. –

(1) A person moving anything under the authority of a specific licence granted under this Order must—

- (a) keep the licence or a copy of it with them at all times during the licensed movement;
- (b) on demand by an inspector, veterinary inspector or another officer of the Scottish Ministers, produce the licence and allow a copy or extract of it to be taken; and
- (c) on such demand, furnish their name and address.

(2) A person moving anything under the authority of a general licence granted under this Order must—

- (a) carry with them, at all times during the licensed movement, a consignment note which contains details of the movement, including the name and location of the originating premises, the place of destination and the nature of the consignment;
- (b) on demand by an inspector, veterinary inspector or another officer of the Scottish Ministers, produce the consignment note and allow a copy or extract to be taken; and
- (c) on such demand, furnish their name and address.

## **PART 2**

### **Confirmation or suspicion of H5N1**

#### **Confirmation or suspicion of H5N1 in wild birds**

8. –

(1) This article applies if the Chief Veterinary Officer (Scotland) advises the Scottish Ministers that—

- (a) the avian influenza virus of the H5 subtype is present in a wild bird or the carcase of a wild bird in Great Britain; and
- (b) either—
  - (i) the Chief Veterinary (Scotland) suspects that the neuraminidase type may be N1; or
  - (ii) the neuraminidase has been confirmed as N1.

(2) If the wild bird or carcase was found in Scotland, the Scottish Ministers must declare an area to be a wild bird protection zone and an area to be a wild bird surveillance zone.

(3) If the wild bird or carcase was found in England or Wales—

- (a) subject to sub-paragraphs (b) and (c), the Scottish Ministers may declare an area to be a wild bird protection zone or a wild bird surveillance zone;
- (b) the Scottish Ministers must declare an area to be a wild bird protection zone if the wild bird or carcase was found within three kilometres of the border with Scotland;
- (c) the Scottish Ministers must declare an area to be a wild bird surveillance zone if the wild bird or carcase was found within ten kilometres of the border with Scotland.

(4) An area shall remain a wild bird protection zone until—

- (a) the Scottish Ministers amend the declaration so that the area within its boundaries becomes part of the wild bird surveillance zone; or
  - (b) the Scottish Ministers revoke the declaration.
- (5) An area shall remain a wild bird surveillance zone until the Scottish Ministers revoke the declaration.

### **Extent of wild bird protection and surveillance zones**

#### **9. –**

- (1) Subject to this article, a wild bird protection zone or a wild bird surveillance zone shall be of such size as the Scottish Ministers consider fit to prevent the spread of avian influenza.
- (2) A wild bird protection zone must be centred on the place where the wild bird or carcase was found and its boundaries must be at least three kilometres from that place.
- (3) A wild bird surveillance zone must be centred on the place where the wild bird or carcase was found and its boundaries must be at least ten kilometres from that place.
- (4) The Scottish Ministers must take into account the following factors in deciding the extent of any wild bird protection zone or wild bird surveillance zone—
- (a) the geographical features of the proposed zones;
  - (b) any administrative boundaries;
  - (c) any ecological factors;
  - (d) any epizootic factors;
  - (e) monitoring facilities; and
  - (f) any other factor they consider relevant to the effect of the proposed declaration.

### **Measures applicable in wild bird protection zones and surveillance zones**

#### **10. –**

- (1) The measures in Schedule 1 apply in respect of a wild bird protection zone.
- (2) The measures in Schedule 2 apply in respect of a wild bird surveillance zone.
- (3) The measures in Schedule 3 apply in respect of a wild bird protection zone and a wild bird surveillance zone.

### **Additional measures**

#### **11. –**

- (1) The Scottish Ministers may, in declaration of a wild bird protection zone or a wild bird surveillance zone, impose additional measures if they consider that these are necessary to reduce the risk of the spread of avian influenza, including measures to—
- (a) prevent direct or indirect contact which wild birds might otherwise have with poultry and other captive birds;
  - (b) reduce the risk of feed and water provided to poultry and other captive birds being contaminated with avian influenza virus;
  - (c) reduce the risk of the spread of avian influenza between premises.
- (2) The Scottish Ministers' powers under paragraph (1) include powers to—
- (a) require domestic ducks and geese to be housed or otherwise kept separate from other poultry and captive birds;

- (b) require that poultry and other captive birds are provided with feed and water to which wild birds have no access or which has been treated to render any avian influenza virus inactive;
  - (c) require the separation between domestic ducks and geese on the one hand and other poultry on the other;
  - (d) prohibit the use of birds of the orders Anseriformes (including ducks, geese and swans) and *Charadriiformes* (including gulls, murrets, terns, avocets, puffins, woodcock, oystercatchers, sandpipers, plovers, surfbirds, snipes and skimmers) as decoys during bird hunting; and
  - (e) require keepers of poultry and other captive birds and others who come into contact with such birds to cleanse and disinfect their footwear and take such other biosecurity measures as a veterinary inspector may require;
  - (f) restrict the movement of vehicles or persons involved in—
    - (i) feed supply;
    - (ii) the supply of agricultural equipment;
    - (iii) the collection of eggs;
    - (iv) the transportation of poultry to slaughterhouses;
    - (v) the collection of carcasses for disposal;
  - (g) restrict the movement of those working on premises or of veterinarians;
  - (h) restrict the movement of any person onto any premises (including common, unenclosed and waste land and agricultural buildings), notwithstanding the existence of any public footpath or right of way.
- (3) The power to prohibit or restrict movement under paragraph (2)(h) applies only in relation to a wild bird protection zone and does not include a power to prohibit or restrict movement onto premises by—
- (a) the owner or occupier of the premises;
  - (b) any person whose principal residence or place of employment is those premises;
  - (c) an inspector or other officer of the Scottish Ministers or an inspector of the local authority;
  - (d) a person entering under the authority of a licence granted by a veterinary inspector or by an inspector acting at the direction of a veterinary inspector;
  - (e) a person for the provision of emergency services.
- (4) An inspector must cause a notice of a prohibition declared in accordance with paragraph (2)(h) (“a prohibition notice”) to be displayed at every entrance to the prohibited place.

### **Duty to inspect commercial premises**

#### **12. –**

- (1) The Scottish Ministers must ensure that a veterinary inquiry or veterinary surveillance is started as soon as possible at every commercial premises in a wild bird protection zone.
- (2) Every veterinary inspector carrying out such an inquiry or surveillance must—
  - (a) undertake a clinical inspection of all poultry flocks on the premises; and
  - (b) at the request of the Chief Veterinary Officer (Scotland), collect such samples for laboratory analysis as is necessary to monitor the spread of avian influenza.
- (3) In this article “commercial premises” means premises where poultry or other captive birds are kept for commercial purposes and does not include premises where all poultry and their eggs are kept by their owners for their own consumption or use or, in the case of poultry, as pets.

### **Maintenance of measures**

#### **13. –**

(1) If the Chief Veterinary Officer (Scotland) advises the Scottish Ministers that avian influenza of sub-type H5 and neuraminidase N1 is present in the wild bird or carcass referred to in article 8(1) (a) the Scottish Ministers must not—

- (a) amend any declaration made under article 8 so that the wild bird protection zone becomes part of the wild bird surveillance zone until at least 21 days have elapsed from the date on which the sample showing the presence of the H5 virus was collected from that wild bird or carcass; or
- (b) revoke any declaration made under article 8 until at least 30 days have elapsed from the date the Chief Veterinary Officer (Scotland) advised the Scottish Ministers of the presence of H5 in that wild bird or carcass.

(2) If the Chief Veterinary Officer (Scotland) advises the Scottish Ministers that in the opinion of the Chief Veterinary Officer (Scotland) avian influenza of sub-type H5 and neuraminidase N1 is not present in the wild bird or carcass referred to in article 8(1)(a), the Scottish Ministers must revoke any declaration made under article 8 without delay.

### **Treatment against avian influenza**

14. Where a movement of controlled meat out of the wild bird protection zone is permitted by paragraph 5(1)(c) of Part 3 of Schedule 1, the occupier of the establishment to which it is moved must ensure that it is subjected to a treatment against avian influenza referred to in paragraph 5(2) of that Schedule.

### **Restriction on movement on poultry**

#### **15. –**

(1) If a veterinary inspector, or an inspector acting at the direction of a veterinary inspector, grants a licence for—

- (a) the movement of poultry, farmed feathered game or day-old chicks out of the wild bird protection zone in accordance with paragraph 1(2)(a), paragraph 1(2)(b), paragraph 1(2)(c) or paragraph 1(2)(d) of Part 1 of Schedule 1; or
- (b) the movement of poultry out of the wild bird surveillance zone to premises other than a slaughterhouse in accordance with paragraph 1(2)(a) of Schedule 2,

the occupier of premises to which those poultry or day-old chicks are moved must ensure that neither they nor any other poultry are moved off the premises for 21 days from the date of their arrival.

### **Slaughter of poultry**

16. The occupier of a slaughterhouse to which poultry are moved in accordance with—

- (a) paragraph 1(2)(b) or paragraph 3(2) of Part 1 of Schedule 1; or
- (b) paragraph 1(2)(a) of Schedule 2,

must ensure that the poultry are slaughtered without delay.

## PART 3

### Miscellaneous

#### **Powers of a veterinary inspector to impose biosecurity measures**

**17. –**

(1) A veterinary inspector may, if the inspector considers it necessary to prevent the spread of avian influenza, require—

- (a) the detention and isolation of any vehicle, equipment or other thing by serving a notice on the occupier of the premises where it is, or on the person in charge of it;
- (b) the cleansing and disinfection of any premises where poultry or other captive birds are kept, by serving a notice on the occupier of those premises;
- (c) the relocation of bird food and water supply on any premises where poultry and other captive birds are kept by serving a notice on the occupier of those premises;
- (d) the provision of facilities for disinfection on any premises where poultry or other captive birds are kept, by serving a notice on the occupier of those premises;
- (e) the screening of any body of water on any premises where poultry or other captive birds are kept to prevent access by wild waterfowl, by serving a notice on the occupier of those premises;
- (f) the removal, laundering, cleansing and disinfection or disposal of the clothing or footwear of any person by serving a notice on that person;
- (g) any person to cleanse himself or herself by serving a notice on that person;
- (h) the detention or isolation in a specified place of any bird by serving a notice on the occupier of the premises where it is or on its keeper; and
- (i) the separation of any bird from other birds by serving a notice on the occupier of the premises where it is or on its keeper.

(2) A notice served under this article may contain such directions and conditions as the veterinary inspector consider necessary to prevent the spread of avian influenza.

#### **Powers of entry for enforcement**

**18. –**

(1) An inspector who enters any vehicle, land, building or other place in exercise of the inspector's power under section 64 of the Act may take with them such person or thing as the inspector considers necessary for the enforcement of this Order.

(2) The occupier of the premises under investigation must provide such assistance or information as the veterinary inspector may reasonably require.

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

**19. –**

(1) Where a person fails to comply with a requirement imposed by or under this Order an inspector may take any steps that they consider necessary to ensure the requirement is met.

(2) In taking steps under paragraph (1) an inspector may seize and detain any bird moved, kept or otherwise dealt with in contravention of a restriction or requirement imposed by or under this Order.

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



### **Cost of compliance**

**20.** The costs incurred by any person in taking any action required by, or of refraining from taking action prohibited by, this Order (or of any declaration, licence or notice under it) must be met by that person unless the Scottish Ministers otherwise direct in writing.

### **Reasonable assistance**

**21.** Any person required to give reasonable assistance or information to a person acting under this Order shall, unless that person has reasonable cause, do so without delay.

### **False information**

**22.** No person shall furnish information which that person knows to be false or misleading to a person acting under this Order.

### **Offences by bodies corporate**

**23.** –

(1) If an offence under this Order 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 negligence on the part of that officer, 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 his 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.

### **Offences: no knowledge of restriction or requirement**

**24.** No person shall be guilty of failing to comply with a restriction or requirement which applies because of the declaration of—

- (a) a wild bird protection zone; or
- (b) a wild bird surveillance zone,

if that person shows to the court’s satisfaction that they did not know of that restriction or requirement and that they could not with reasonable diligence have obtained knowledge of it.

### **Enforcement**

**25.** –

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

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

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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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Pentland House,  
Edinburgh  
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