
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 336

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

PART 1

Introduction

Citation, commencement and extent

1.—(1) This Order may be cited as the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006, and comes into force on 1st July 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;

“avian influenza prevention zone” means an area declared to be an avian influenza prevention zone under article 6(1)(a);

“avian influenza (restrictions on mammals) zone” means an avian influenza (restrictions on mammals) zone declared under article 60;

“border inspection post” means a place specified as such in Schedule 2 to the Animals and Animal Products (Import and Export) (Scotland) Regulations 2000(1);

“carcase” means the carcase of any bird and includes any part of a carcase;

“Chief Veterinary Officer (Scotland)” means the Chief Veterinary Officer of the State Veterinary Service for Scotland;

“commercial poultry premises” means commercial premises where poultry are kept;

“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;

“competent authority” means the authority in a member State authorised by the member State to carry out its functions under the Directive;

“contact premises” has the meaning given in article 24;

“controlled zone” means a protection zone, a surveillance zone, a restricted zone, a temporary movement restriction zone, a temporary control zone, a low pathogenic avian influenza

restricted zone , an avian influenza prevention zone or an avian influenza (restrictions on mammals) zone;

“day-old chick” means all 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;

“designated” means designated by the Scottish Ministers in accordance with article 70;

“the Directive” means Council Directive [2005/94/EC](#) on Community measures for the control of avian influenza and repealing Directive [92/40/EEC](#)(2);

“dispose” means treat in accordance with the Animal By-Products (Scotland) Regulations 2003(3) or as a veterinary inspector otherwise directs;

“the Divisional Veterinary Manager” means the veterinary inspector of the State Veterinary Service with this title for the area concerned;

“hatchery” has the same meaning as in Article 1(3)(c) of Council Regulation (EC) No. 2782/75 of the Council of 29th October 1975 on the production and marketing of eggs for hatching and of farmyard poultry chicks(4);

“highly pathogenic avian influenza” means an infection of poultry or other captive birds caused by—

- (a) avian influenza viruses of the subtypes H5 or H7 with genome sequences codifying for multiple basic amino acids at the cleavage site of the haemagglutinin molecule similar to that observed for other highly pathogenic avian influenza viruses, indicating that the haemagglutinin molecule can be cleaved by a host ubiquitous protease; or
- (b) avian influenza viruses with an intravenous pathogenicity index in six-week old chickens greater than 1.2;

“infected premises” means premises declared to be infected under article 19;

“inspector” means an inspector appointed by the Scottish Ministers or a local authority to be an inspector under the Act, and includes a veterinary inspector;

“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;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(5);

“low pathogenic avian influenza” means an infection of poultry or other captive birds caused by avian influenza viruses of subtypes H5 or H7 other than avian influenza viruses of subtypes H5 or H7 which cause highly pathogenic avian influenza;

“low pathogenic avian influenza restricted zone” means an area declared to be a low pathogenic avian influenza restricted zone under article 53;

“mammal” means any mammal, except man;

“non-commercial premises” means premises where poultry or other captive birds are kept by their owners for their own consumption, use or as pets;

“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 for sale;

(2) O.J. No. L 10, 14.1.2006, p16.

(3) S.S.I. 2003/411.

(4) O.J. No L282, 1.11.1975 p.100 as amended

(5) 1994 c. 39.

“packing centre” has the same meaning as in Article 1(9) of Council Regulation (EC) No. 1907/90 of 26th June 1990 on certain marketing standards for eggs⁽⁶⁾;

“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 birds;

“premises” includes any land, place of business or other place where poultry or other captive birds are kept;

“prohibition notice” has the meaning given in article 33(4);

“protection zone” means an area declared to be a protection zone under article 26;

“quarantine centre” means premises where birds are isolated to prevent the spread of disease following importation from another country;

“racing pigeon” means any pigeon transported or intended for transport from its pigeon house so that it may be released and freely fly back there or to another destination;

“regulated place” means a slaughterhouse, quarantine centre or border inspection post or a laboratory authorised by the Scottish Ministers to hold avian influenza virus under the Specified Animal Pathogens Order 1998⁽⁷⁾ or in connection with monitoring and diagnosis of avian influenza or influenza of avian origin in mammals;

“the Regulations” means the Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006⁽⁸⁾;

“restricted zone” means an area declared to be a restricted zone under article 26(5);

“restrictions notice” means a notice served under article 6(1)(b);

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

“special category premises” means non-commercial premises, circuses, zoos, pet shops, wildlife parks, fenced areas where poultry or other captive birds are kept for scientific purposes or for purposes related to the conservation of endangered species, and premises or parts of premises where only breeds of poultry or other captive birds which require to be registered under section 7 of the Wildlife and Countryside Act 1981 or which the Scottish Ministers consider to be rare are kept;

“surveillance zone” means an area declared to be a surveillance zone under article 26;

“suspect premises” means any premises in respect of which an inspector has served a notice under article 10(1) which has neither been revoked, nor superseded by a declaration under article 19 or 45;

“temporary control zone” means a temporary control zone declared under article 13(c);

“temporary movement restriction zone” means a temporary movement control zone declared under article 13(a);

“unregulated period of infection” has the meaning given in article 21(3);

“vehicle” includes any means of transport and includes—

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

(6) O.J. L173, 6.7.90, p.5. Regulation as last amended by Commission Regulation (EC) No. 2052/2003 (O.J. No. L 305, 22.11.03, p.1).

(7) S.I.1998/463.

(8) S.S.I. 2006/337.

“veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary register, kept under the Veterinary Surgeons Act 1966 (c. 36).

Scope of the Act and of this Order

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

(2) For the purposes of the Act in its application to avian influenza and influenza virus of avian origin, and this Order, the definition of “disease” in section 88(1) of the Act is extended to include any infection in mammals caused by influenza virus of avian origin.

(3) Section 32 of the Act applies to any infection in mammals caused by influenza virus of avian origin.

(4) In the application of the Act to avian influenza and influenza virus of avian origin, the definition of “animals” in section 87(1) of the Act is extended to include all mammals, except man.

(5) This Order does not apply to anything done on any premises in accordance with a licence under the Specified Animal Pathogens Order 1998(9).

Declarations, licences, notices and designations under this Order

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 controlled zone being declared;
- (d) must list or refer to the measures which apply in such a zone and state whether they apply in all or part of the zone; and
- (e) must state to which categories of bird or mammal measures apply.

(2) Licences granted under this Order—

- (a) must be in writing;
- (b) may be general or specific;
- (c) may, in addition to any conditions required by this Order, be made subject to such conditions as the Scottish Ministers consider necessary to control avian influenza; and
- (d) may be amended, suspended or revoked, in writing, at any time.

(3) Notices under this Order—

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

(4) Designations under this Order—

- (a) must be in writing;
- (b) may be made subject to such conditions as the Scottish Ministers consider necessary to control avian influenza;
- (c) may be amended, suspended or revoked, in writing, at any time.

(5) 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.

(9) S.I. 1998/463.

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

(7) Except as otherwise directed by the Scottish Ministers—

- (a) licences granted in England, Wales or Northern Ireland for activities which could be licensed in Scotland under this Order have effect in Scotland as if they were licences granted under this Order; and
- (b) premises in England, Wales and Northern Ireland designated respectively by the Secretary of State, the National Assembly or by the Department for Agriculture and Rural Development of Northern Ireland for the same purposes as they may be designated under this Order are deemed to be designated by the Scottish Ministers for the purposes of this Order.

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

- (a) keep the licence with that person at all times during the licensed movement;
- (b) on demand made by an inspector or other officer of the Scottish Ministers or by an inspector of a local authority, produce the licence and allow a copy or extract to be taken; and
- (c) on such demand, furnish that person's name and address.

(9) A person moving anything under the authority of a general licence granted under this Order must, at all times during the licensed movement—

- (a) carry 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) produce it to an inspector or other officer of the Scottish Ministers on demand and allow a copy or extract to be taken; and
- (c) on such demand, furnish that person's name and address.

Controlled zones

5.—(1) Subject to paragraph (2), premises which are only partly in a controlled zone are deemed to be wholly within the controlled zone.

(2) Premises in any controlled zone which are partly in one zone and partly in another are deemed to be wholly in the zone furthest up the following list—

- (a) protection zone;
- (b) surveillance zone;
- (c) restricted zone;
- (d) temporary control zone;
- (e) temporary movement restriction zone;
- (f) low pathogenic avian influenza restricted zone;
- (g) avian influenza prevention zone.

(3) Every controlled zone (other than an avian influenza prevention zone) is an infected area for the purposes of the Act.

PART 2

Preventive measures

Measures to reduce the risk of the transmission of avian influenza

6.—(1) If the Scottish Ministers consider it necessary (having carried out a risk assessment) to reduce the risk of the transmission of avian influenza to poultry or other captive birds in Scotland from wild birds or from any other source, they must do one or more of the following—

- (a) declare an avian influenza prevention zone in all or part of Scotland;
- (b) serve a restrictions notice on the occupier of any premises where poultry, other captive birds or any specified categories of poultry or captive birds are kept;
- (c) ban the collection of poultry or other captive birds at any fair, market, show, exhibition, race or other gathering, unless the gathering is licensed by a veterinary inspector.

(2) The Scottish Ministers must, in a declaration of an avian influenza prevention zone or in a restrictions notice, impose such restrictions and requirements as they consider necessary to reduce the risk of transmission of avian influenza and must consider, in particular, the measures necessary—

- (a) to prevent direct or indirect contact which wild birds might otherwise have with poultry and other captive birds;
- (b) to reduce the risk of feed and water provided to poultry and other captive birds being contaminated with avian influenza virus;
- (c) to reduce the risk of the spread of avian influenza between premises.

(3) The Scottish Ministers' powers under paragraph (2) include powers—

- (a) to require poultry and other captive birds to be housed or otherwise kept separate from wild birds;
- (b) to 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) to prohibit the use of birds of the orders *Anseriformes* (including ducks, geese and swans) and *Charadriiformes* (including gulls, murre, terns, avocets, puffins, woodcock, oystercatchers, sandpipers, plovers, surfbirds, snipes and skimmers) as decoys during bird-hunting;
- (d) to 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.

Surveillance for avian influenza

7.—(1) The Scottish Ministers must carry out surveillance at such premises and of such birds as they consider necessary—

- (a) to detect the prevalence in different species of poultry of infection with avian influenza virus subtypes H5 and H7; and
- (b) to assess the risk of the spread of influenza of avian origin by wild birds.

(2) The Scottish Ministers must give notice to the occupier of premises selected by them for the purposes of such a survey.

PART 3

Measures on suspicion of avian influenza

Disapplication of measures to regulated places

8. Articles 10 to 17 do not apply to regulated places.

Notification procedures and precautions to be taken where avian influenza is suspected

9.—(1) A person who has in that person's possession or charge any bird or carcase which that person knows, or ought reasonable to know, has avian influenza must—

- (a) immediately notify the Divisional Veterinary Manager; and
- (b) take all reasonable steps to ensure that the restrictions and requirements set out in Schedule 1 are complied with.

(2) A person who examines or inspects any bird or carcase or who analyses any sample taken from any bird or carcase and who suspects the presence of avian influenza in the bird, carcase or sample must immediately inform the Divisional Veterinary Manager.

Notice of restrictions where avian influenza is suspected on premises

10.—(1) If an inspector suspects that avian influenza exists on any premises or has existed there within 56 days (whether or not notification has been made under article 9), the inspector must serve a notice on the occupier of the premises requiring that person to comply with such of the restrictions and requirements set out in Schedule 1 as are specified in the notice.

(2) An inspector must not revoke the notice of restrictions unless instructed to do so by the Chief Veterinary Officer (Scotland).

Derogations from restrictions applicable at suspect premises

11.—(1) The Scottish Ministers may grant derogations to the following measures set out in Schedule 1—

- (a) the obligation to house or isolate poultry and other captive birds;
- (b) the prohibition on the movement of poultry and other captive birds onto or off the premises;
- (c) the prohibition on the movement off the premises of anything liable to transmit avian influenza.

(2) The Scottish Ministers must not grant such a derogation unless they have considered—

- (a) the risk of the possible spread of avian influenza were the derogation to be granted;
- (b) any precautionary measures which have been or which could be taken; and
- (c) the destination of any birds or things which would be moved were the derogation to be granted.

(3) A derogation under paragraph (1) may be contained in a notice served under article 10 or in a licence issued by a veterinary inspector or by an inspector acting under the authority of a veterinary inspector.

(4) A veterinary inspector (or an inspector acting under the authority of a veterinary inspector) may, in a notice served under article 10 or by licence, grant a derogation to non-commercial premises from the disinfection requirement in paragraph 9 of Schedule 1, but must not do so unless—

- (a) the premises contain other captive birds but no poultry;

- (b) the inspector has considered the risk of the possible spread of avian influenza were the derogation to be granted and any precautionary measures which have been or which could be taken.

Veterinary inquiries and sampling

12.—(1) The Scottish Ministers must, if they suspect that poultry or other captive birds on, or moved from, premises which are the subject of a notice under article 10 may be infected with avian influenza, ensure that a veterinary inquiry is started at the premises in respect of which the notice was served as soon as reasonably practicable to ascertain whether the disease exists or has existed there.

(2) The Scottish Ministers must, if they authorise a veterinary inspector or other veterinary surgeon to take samples from poultry or other captive birds on premises other than those which are the subject of a notice under article 10, or other than for the purposes of a veterinary inquiry, direct (by notice to the occupier of the premises) whether any of the requirements set out in Schedule 1 apply to the premises where the samples are taken.

Measures to minimise the risk of the spread of avian influenza from suspect premises

13. The Scottish Ministers must, if they consider it necessary to minimise the risk of the spread of avian influenza from suspect premises in Scotland, England, Wales, or Northern Ireland, take one or more of the following measures—

- (a) declare a temporary movement restriction zone in such part or parts of Scotland as they consider necessary;
- (b) serve a notice on the occupier of suspect premises in Scotland requiring that person to comply with some or all of the measures set out in Schedule 2 (as well as those set out in Schedule 1);
- (c) declare a temporary control zone in such part of Scotland and of such size as they consider necessary around suspect premises.

Restrictions where avian influenza is suspected in transit

14. A person exercising powers under articles 10 to 13 must take into account any measures taken in respect of vehicles under articles 40, 41, 42 and 44.

Measures in a temporary movement restriction zone

15.—(1) The Scottish Ministers must, in a declaration of a temporary movement restriction zone (and in relation to such part or parts of the zone as they think fit), ban or restrict the movement of such of the following as they consider necessary—

- (a) poultry;
- (b) other captive birds;
- (c) eggs;
- (d) vehicles used to transport poultry, other captive birds, eggs or anything else likely to transmit avian influenza;
- (e) mammals of domestic species.

(2) If the Scottish Ministers ban or restrict the movement of mammals within a temporary movement restriction zone, they must lift the ban or restriction within 72 hours of it being declared unless they are satisfied that the continuation of such restrictions is necessary to minimise the risk of the spread of avian influenza (notwithstanding any continuing restrictions on the movement of other things listed in paragraph (1)).

(3) If the Scottish Ministers maintain restrictions on the movement of mammals beyond 72 hours from when they were originally declared, they must review their decision to impose such restrictions a maximum of 72 hours after they were originally declared, and a maximum of 72 hours after each review.

Additional restrictions at suspect premises

16. —In a notice served under article 13(b), the Scottish Ministers must—

- (a) set out which of the measures set out in Schedule 2 apply; and
- (b) specify whether restrictions apply—
 - (i) to all poultry and other captive birds on the premises;
 - (ii) only to poultry or other captive birds suspected of being infected;
 - (iii) to part only of the premises.

Declaration of a temporary control zone around the suspect premises

17.—(1) The Scottish Ministers must in a declaration of a temporary control zone (in relation to premises in such part or parts of the zone as they think fit), impose such measures including those listed in Schedule 1 as they consider necessary to reduce the risk of the spread of avian influenza.

PART 4

Measures on confirmation of highly pathogenic avian influenza at premises other than regulated places

Disapplication of measures to regulated places

18. This Part does not apply to regulated places.

Confirmation of highly pathogenic avian influenza

19. If the Chief Veterinary Officer (Scotland) forms the opinion that highly pathogenic avian influenza exists, or has in the previous 56 days existed, on any premises, the Chief Veterinary Officer (Scotland) shall inform the Scottish Ministers of that conclusion, and the Scottish Ministers shall confirm the existence of highly pathogenic avian influenza and declare the premises to be infected premises.

Restrictions on confirmation of highly pathogenic avian influenza

20. If the Scottish Ministers confirm highly pathogenic avian influenza on any premises, they shall (by notice served on the occupier of the infected premises) impose, in addition to the restrictions and requirements set out in Schedule 1, the restrictions and requirements contained in Schedule 2.

Tracing of meat and eggs from infected premises

21.—(1) The Scottish Ministers must (subject to paragraph (2)) endeavour to trace from infected premises—

- (a) the meat of all poultry slaughtered during the unregulated period of infection;
- (b) poultry eggs laid at the premises during that period; and
- (c) poultry hatched from such eggs.

(2) The Scottish Ministers need not trace poultry meat or eggs moved from retail premises.

(3) In this article and in article 50, “unregulated period of infection” means the period from the date when, in the opinion of the Chief Veterinary Officer (Scotland), avian influenza may first have been introduced to premises to the date when restrictions were imposed in relation to the premises under article 10.

Measures when poultry meat and eggs have been traced

22.—(1) The Scottish Ministers must ensure that any meat traced from infected premises in accordance with article 21 is destroyed.

(2) The Scottish Ministers must—

- (a) ensure that all eggs traced in accordance with article 21 are disposed of or moved directly to premises for the manufacture of egg products in accordance with a licence granted by a veterinary inspector; and
- (b) require, by notice to the occupier of any premises to which poultry traced under article 21(1)(c) have been moved, that the poultry are not subsequently moved off the premises for at least 21 days from the date they arrived there; and
- (c) ensure that the health status of poultry which have already hatched from such eggs is investigated and monitored.

(3) A person moving eggs under a licence granted under sub-paragraph (2)(a) must ensure that—

- (a) each consignment of eggs is sealed by a veterinary inspector or in accordance with the instructions of a veterinary inspector before dispatch;
- (b) vehicles used to transport the eggs to the plant have been cleansed and disinfected before the eggs are loaded.

(4) No person shall tamper with a seal attached under sub-paragraph (3)(a) or remove it before the consignment arrives at the designated establishment.

Veterinary inquiry at infected premises

23. The Scottish Ministers must ensure that veterinary inquiries continue at all infected premises for such period as they consider necessary.

Identification of contact premises

24.—(1) The Scottish Ministers must serve a notice on the occupier of any premises if they suspect—

- (a) that highly pathogenic avian influenza may have been carried there from other premises; or
- (b) that highly pathogenic avian influenza may have been carried to other premises from there.

(2) Premises in respect of which a notice is served under this article are contact premises.

Restrictions at contact premises

25.—(1) The provisions of Schedule 1 apply to contact premises until the Scottish Ministers notify the occupier that those restrictions and requirements are withdrawn or that the premises are infected premises.

(2) The Scottish Ministers may, in their notice to the occupier of contact premises require the occupier to comply with the measures set out in Schedule 2.

(3) When considering whether to require an occupier to comply with the measures set out in Schedule 2, the Scottish Ministers must take at least the following criteria into account—

- (a) the existence of any clinical signs of avian influenza in any birds on the contact premises;
- (b) the susceptibility to avian influenza of the species of poultry on the contact premises;
- (c) any movements of poultry or other captive birds from infected premises to the contact premises after the earliest date a veterinary inspector considers avian influenza may have been introduced to the infected premises;
- (d) the density of poultry in the area where the contact premises are located;
- (e) the duration of the outbreak of avian influenza and its spread from infected premises;
- (f) the proximity of the contact premises to infected premises;
- (g) epidemiological links between the contact premises and infected premises; and
- (h) the extent to which measures to control the outbreak are working.

(4) When considering the proximity of the contact premises to infected premises under sub-paragraph (3)(f), the Scottish Ministers must give particular consideration to whether they should impose measures on premises which are—

- (a) within 500 metres of an infected premises; or
- (b) which are 500 metres or more from an infected premises but are in an area with a high density of poultry.

(5) When considering epidemiological links between the contact premises and infected premises in accordance with sub-paragraph (3)(g), the Scottish Ministers must give particular consideration to whether they should impose measures on premises with links to more than one infected premises.

(6) If the Scottish Ministers require poultry or other captive birds on contact premises to be killed, they must ensure that samples are taken from the dead birds and tested for avian influenza.

Declaration of protection, surveillance and restricted zones

26.—(1) The Scottish Ministers must, on confirmation of highly pathogenic avian influenza on premises in Scotland, declare a protection zone and a surveillance zone around the infected premises.

(2) The Scottish Ministers must, on confirmation of highly pathogenic avian influenza in an area of England any part of which is less than 3 kilometres from Scotland, declare a protection zone and a surveillance zone in Scotland.

(3) The Scottish Ministers must, on confirmation of highly pathogenic avian influenza in an area of England which is more than 3 and up to 10 kilometres from Scotland—

- (a) declare a surveillance zone in Scotland; and
- (b) declare a protection zone in Scotland if they consider it necessary to prevent the spread of avian influenza.

(4) The Scottish Ministers may declare protection and surveillance zones in Scotland on confirmation of highly pathogenic avian influenza in an area of England or Wales which is more than 10 kilometres from Scotland.

(5) The Scottish Ministers may, if they consider it necessary to reduce the risk of the spread of highly pathogenic avian influenza, declare restricted zones in addition to protection and surveillance zones.

(6) Paragraphs (1), (2) and (3) do not affect the power of the Scottish Ministers to disapply measures under articles 28(2) or 29(2) or to apply alternative measures under article 31.

Size of zones

27.—(1) A protection zone declared under—

- (a) paragraph (1) of article 26 must be centred on the infected premises or part of those premises and have a radius of at least 3 kilometres;
 - (b) paragraph (2) of article 26 must cover any area in Scotland which is within a radius of 3 kilometres of the infected premises or any part of those premises.
- (2) A surveillance zone declared under–
- (a) paragraph (1) of article 26 must be centred on the infected premises or part of those premises and have a radius of at least 10 kilometres;
 - (b) paragraphs(2) or (3) of article 26 must cover any area in Scotland which is within a radius of 10 kilometres of the infected premises or any part of those premises.
- (3) A restricted zone declared under article 26(5) may be centred on the infected premises or part of those premises or adjacent to the surveillance zone and shall be of such size as the Scottish Ministers consider necessary.
- (4) The Scottish Ministers must take account of the criteria set out in paragraph (5) when deciding–
- (a) the size of zones to declare under paragraphs (1), (2) and (3) of article 26; and
 - (b) whether to declare restricted zones under paragraph (5) of article 26.
- (5) The criteria referred to in paragraph (4) are–
- (a) the results of veterinary inquiries;
 - (b) the geographical features of the area around the infected premises;
 - (c) the location and proximity of other premises containing poultry and other captive birds in the area, and the estimated number of poultry;
 - (d) patterns of movement of and trade in poultry and other captive birds in the area;
 - (e) the facilities and personnel available to control movements within the zone (including any movement of poultry or other captive birds off premises for slaughter and disposal).
- (6) Protection zones and surveillance zones declared under paragraph (4) of article 26 must be of such size as the Scottish Ministers consider necessary to reduce the risk of the spread of the disease.

Measures in protection zones

- 28.**—(1) The measures in Schedule 4 apply in respect of a protection zone, subject to paragraphs (2) and (3) and articles 31 and 33.
- (2) The Scottish Ministers may, in their declaration of a protection zone, if they have carried out a risk assessment and do not believe that to do so would endanger disease control–
- (a) disapply one or more of those measures to movements of racing pigeons into, from and within the zone;
 - (b) disapply one or more of the measures set out in paragraph 15 of Schedule 4 (restrictions on the movement of birds, eggs, poultry meat and carcasses) and article 61(3) (restrictions on the movement of meat) if–
 - (i) the premises where avian influenza has been confirmed are special category premises; and
 - (ii) avian influenza has been confirmed in poultry on those premises.
- (3) The Scottish Ministers must (subject to paragraph (4)), ensure that–
- (a) premises containing poultry and other captive birds within a protection zone are identified as soon as possible; and that

(b) a veterinary inspector examines poultry and other captive birds at all such premises, carrying out examinations at commercial premises as soon as possible.

(4) The Scottish Ministers may authorise a reduced level of surveillance to that provided for in sub-paragraph (3)(b)–

- (a) if the premises on which avian influenza is confirmed are special category premises; and
- (b) if satisfied that this would not endanger disease control.

(5) The Scottish Ministers must ensure that such veterinary enquiries as they consider necessary to monitor for avian influenza are carried out at premises to which things are moved within and outwith a protection zone.

Measures in surveillance zones

29.—(1) The measures in Schedule 5 apply in respect of a surveillance zone, subject to paragraphs (2) and (3) and articles 31 and 33.

(2) The Scottish Ministers may, if they have carried out a risk assessment and do not believe that to do so would endanger disease control–

- (a) disapply one or more of those measures to movements of racing pigeons into, from and within the zone;
- (b) disapply one or more of the measures set out in paragraphs 7 and 12 to 16 of Schedule 5 (restrictions on the movement of poultry and eggs within and outside the zone and of poultry, other captive birds and mammals of domestic species onto premises) if–
 - (i) the premises where avian influenza has been confirmed are special category premises; and
 - (ii) avian influenza has been confirmed in poultry on those premises.

(3) The Scottish Ministers must ensure that all commercial poultry premises within a surveillance zone are identified as soon as possible.

Restrictions on trade in things from areas where measures have been disappplied

30. No person shall allow any poultry, other captive bird, hatching egg, used litter, manure or slurry from premises in respect of which any of the measures in Schedules 4 or 5 have been disappplied under articles 28 or 29 to be supplied for intra-Community or international trade, unless licensed to do so by the Scottish Ministers.

Alternative measures where avian influenza is confirmed at a hatchery or in other captive birds on special category premises

31.—(1) If the Scottish Ministers are satisfied, following confirmation of highly pathogenic avian influenza in other captive birds on special category premises, that applying less stringent measures than those set out in articles 26 to 29 would not endanger disease control, they may decide–

- (a) not to declare any controlled zone around the premises;
- (b) to declare fewer zones than required under article 26;
- (c) to declare a controlled zone smaller in size than provided for in article 27;
- (d) to specify in their declaration of a controlled zone that one or more of the measures set out in Schedules 4 and 5 do not apply in that zone.

(2) If the Scottish Ministers are satisfied, following confirmation of highly pathogenic avian influenza at a hatchery that applying less stringent measures than those set out in articles 26 to 29

would not endanger disease control, they may decide to specify in their declaration of a controlled zone that one or more of the measures set out in Schedules 4 and 5 do not apply in that zone.

(3) The Scottish Ministers must carry out a risk assessment before reaching a decision under paragraph (1) or (2).

Measures in restricted zones

32.—(1) The Scottish Ministers must, in a declaration of a restricted zone under article 26(5), apply such measures as they consider necessary to reduce the risk of the spread of avian influenza.

(2) These measures may include some or all of the measures set out in Schedules 4 and 5 and those referred to in article 33.

Additional measures in protection, surveillance and restricted zones

33.—(1) The Scottish Ministers may, if they consider it necessary to reduce the risk of the spread of avian influenza, impose (by declaration) measures additional to those set out in Schedules 4, 5 and 7.

(2) The Scottish Ministers' power to declare additional measures includes the power to prohibit or restrict—

- (a) the movement of vehicles or people 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;
- (b) the movement of those working on premises including veterinary surgeons;
- (c) the movement of any person onto any premises (including common, unenclosed and waste land and agricultural buildings), notwithstanding the existence of any public footpath, right of way or right of access.

(3) The power to prohibit or restrict movement under paragraph (2)(c) applies only in relation to a 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 officer of the Scottish Ministers;
- (d) a person entering under the authority of a licence granted by a veterinary inspector or by an inspector under the direction of a veterinary inspector;
- (e) a person for the provision of emergency services.

(4) An inspector must cause notice of a prohibition made in accordance with paragraph (2)(c) (“a prohibition notice”) to be displayed at every entrance to the place to which it applies.

Ending of protection, surveillance and restricted zones

34.—(1) The Scottish Ministers may, by declaration, end a protection zone but must not, in the case of a protection zone declared under paragraphs (1), (2) or (3) of article 26 do so until—

- (a) at least 21 days have elapsed since the completion at all infected premises in the zone of the preliminary cleansing and disinfection measures referred to in Part 2 of Schedule 3; and

- (b) a veterinary inquiry has been completed at all premises within the zone identified as containing poultry or other captive birds.
- (2) On the ending of any protection zone, the area which formed that protection zone becomes part of the associated surveillance zone.
- (3) The Scottish Ministers may, by declaration, end a surveillance zone but, in the case of zones declared under paragraphs (1), (2) or (3) of article 26, must not do so until at least 30 days have elapsed since the completion at all infected premises within the zone of the preliminary cleansing and disinfection measures referred to in Part 2 of Schedule 3.

PART 5

Measures on suspicion or confirmation of highly pathogenic avian influenza in regulated places and vehicles

Veterinary measures at slaughterhouses

- 35.**—(1) The Scottish Ministers must, if they suspect that highly pathogenic avian influenza exists at any slaughterhouse or have confirmed that it exists there—
- (a) serve a notice on the occupier of the slaughterhouse informing the occupier; and
 - (b) ensure that a veterinary inquiry is carried out at the slaughterhouse.
- (2) No person shall move poultry from any slaughterhouse where highly pathogenic avian influenza is suspected or has been confirmed.

Veterinary measures where avian influenza is suspected or confirmed in vehicles

- 36.**—(1) The Scottish Ministers must, if they suspect that highly pathogenic avian influenza or highly pathogenic avian influenza virus exists in any vehicle or have confirmed that it exists there—
- (a) serve a notice on the person in charge of the vehicle informing that person; and
 - (b) ensure that a veterinary inquiry is carried out in relation to the vehicle.
- (2) An inspector who knows or suspects that any poultry or other captive birds in transit are infected or contaminated with avian influenza may serve a notice on the keeper of the bird—
- (a) directing movement of the bird to such premises as the inspector thinks fit; and
 - (b) requiring the detention at such place as the inspector directs of any vehicle, equipment or other thing suspected of being contaminated until it has been cleansed and disinfected as directed by the inspector.
- (3) Any expenses arising from the transport of any bird (including feeding, watering and any other expenses incurred in relation to the welfare of the bird) must be paid by its owner.

Killing of birds in slaughterhouses

37. The occupier of a slaughterhouse where highly pathogenic avian influenza is suspected or has been confirmed must ensure that all poultry present on the premises at the date a notice is served on that person under article 36(1) are killed there under paragraph 5 of Schedule 3 to the Act without delay and in accordance with a veterinary inspector's instructions.

Poultry meat and by-products in slaughterhouses where disease is suspected or confirmed

38.—(1) The occupier of a slaughterhouse where highly pathogenic avian influenza is suspected or confirmed must, in accordance with a veterinary inspector's instructions—

- (a) keep poultry referred to in article 37 separate from any other poultry arriving at the slaughterhouse; and
- (b) keep the following separate from other carcasses, poultry meat and by-products–
 - (i) carcasses and poultry meat from poultry referred to in article 37;
 - (ii) the by-products of such poultry;
 - (iii) poultry meat from any other poultry which may have been contaminated at the slaughterhouse during the killing of such poultry or the production process;
 - (iv) the by-products of the poultry referred to in sub-paragraph (iii).
- (2) Paragraph (1) applies to poultry moved to a slaughterhouse–
 - (a) from a border inspection post under article 39(2), as if references to article 37 were to that article; and
 - (b) on a vehicle under article 40, as if references to article 37 were to that article.
- (3) The occupier of a slaughterhouse where highly pathogenic avian influenza is suspected or confirmed must, in accordance the Scottish Minister’s instructions, dispose of the things set out in sub-paragraphs (1)(b)(i) to (iv) (both inclusive) or assist a veterinary inspector in removing those things from the premises.

Measures at border inspection posts

- 39.**—(1) The Scottish Ministers must if they consider it necessary to reduce the risk of the spread of disease–
- (a) require a veterinary inquiry to be carried out at a border inspection post where avian influenza is suspected or has been confirmed; and
 - (b) impose (by notice to the occupier of the border inspection post) some or all of the measures set out in Schedule 1.
- (2) The Scottish Ministers must, by notice to the occupier of the border inspection post direct where birds specified in the notice are to be killed, slaughtered or isolated.
- (3) The Scottish Ministers must ensure that poultry and other captive birds at border inspection posts which are to be killed under paragraph 5 of Schedule 3 to the Act or the Regulations are killed or slaughtered without delay.
- (4) The Scottish Ministers must ensure that poultry and other captive birds which are not to be so killed or slaughtered are kept isolated in accordance with a veterinary inspector’s instructions.

Measures if avian influenza is suspected or confirmed in a vehicle

40. The Scottish Ministers must, by notice to the owner or driver of any vehicle transporting birds which are suspected or confirmed as having highly pathogenic avian influenza, direct where birds specified in the notice are to be moved to be killed, slaughtered or isolated.

Disposal or removal of things which may be contaminated

- 41.** The occupier of a border inspection post or owner or driver of a vehicle where highly pathogenic avian influenza is confirmed must–
- (a) dispose of such things which may be contaminated with avian influenza virus as a veterinary inspector, by notice, requires, in accordance with the notice;
 - (b) provide such assistance to a veterinary inspector in removing from the border inspection post or vehicle such things as the veterinary inspector may, by notice, reasonably require.

Cleansing and disinfection of regulated places and vehicles

42.—(1) The occupier of any regulated places where highly pathogenic avian influenza is suspected or confirmed must cleanse and disinfect those premises and any equipment and vehicles on those premises which may be contaminated in accordance with a veterinary inspector’s instructions.

(2) The owner or driver of any vehicle on which highly pathogenic avian influenza is suspected or confirmed must cleanse and disinfect the vehicle in accordance with a veterinary inspector’s instructions.

Reintroduction of poultry and other captive birds

43.—(1) No person shall reintroduce poultry to a slaughterhouse where highly pathogenic avian influenza was suspected or confirmed until 24 hours after the cleansing and disinfection referred to in article 42 has been carried out, and an inspector has confirmed that it has been carried out.

(2) No person shall reintroduce poultry or other captive birds to a border inspection post where highly pathogenic avian influenza was suspected or confirmed until 24 hours after the cleansing and disinfection referred to in article 42 has been carried out, and an inspector has confirmed that it has been carried out.

(3) The Scottish Ministers may, by notice to the occupier of such a border inspection post, and if they consider it necessary to reduce the risk of the spread of avian influenza, prohibit the introduction of animals other than birds onto the premises until 24 hours after such cleansing and disinfection has been carried out, and an inspector has confirmed that it has been carried out.

Measures at other premises

44.—(1) The Scottish Ministers must, if they suspect that highly pathogenic avian influenza or highly pathogenic avian influenza virus exists at any slaughterhouse or in any vehicle or have confirmed that it exists there—

- (a) apply the measures set out in Schedule 1 to the premises of origin;
- (b) apply the measures set out in Schedule 1 to premises which they consider to be suspect premises (because of their epidemiological link with the premises of origin);
- (c) apply the measures set out in Schedule 2 to the premises of origin, unless they are satisfied (having considered the results of veterinary inquiries) that this is not necessary.

(2) The Scottish Ministers must, if they suspect that highly pathogenic avian influenza exists at any border inspection post or have confirmed that it exists there, apply the measures set out in Schedule 1 to premises which they consider to be suspect premises (because of their epidemiological link with the border inspection post).

(3) The Scottish Ministers must apply measures under this article by notice to the occupier of the relevant premises.

(4) In this article, “premises of origin” means any premises from which poultry or other captive birds which may be infected were moved to the slaughterhouse or onto the vehicle.

PART 6

Measures on confirmation of low pathogenic avian influenza

Confirmation of low pathogenic avian influenza

45. If the Chief Veterinary Officer (Scotland), as a result of a veterinary inquiry established under article 12, or otherwise, forms the opinion that low pathogenic avian influenza exists, or has in the

previous 56 days existed, on any premises, the Chief Veterinary Officer (Scotland) shall inform the Scottish Ministers of that conclusion, and the Scottish Ministers shall confirm the existence of low pathogenic avian influenza and declare the premises to be infected premises.

Measures when low pathogenic avian influenza is confirmed

46.—(1) If the Scottish Ministers confirm low pathogenic avian influenza on any premises other than regulated places, they must—

- (a) apply (by notice to the occupier of the premises) such of the measures set out in Part 1 of Schedule 6 as they consider necessary to reduce the risk of the spread of avian influenza; and
- (b) ensure that a veterinary inquiry continues at the infected premises.

(2) The Scottish Ministers must not permit any movement otherwise prohibited under Part 1 of Schedule 6 unless they are satisfied that it would not significantly increase the risk of the spread of low pathogenic avian influenza.

(3) In reaching a decision under paragraph (2), the Scottish Ministers must, in particular, take into account the criteria set out in Part 2 of Schedule 6.

(4) An inspector who knows or suspects that any poultry or other captive bird in transit is infected or contaminated with low pathogenic avian influenza must serve a notice on the keeper of the bird—

- (a) directing transport of the bird to such premises as the inspector thinks fit; and
- (b) requiring the detention at such place as the inspector directs of any vehicle, equipment or other thing suspected of being contaminated until it has been cleansed and disinfected as directed by the inspector.

(5) The owner of the bird is liable for any expenses arising from the transport of any bird (including feeding, watering and any other expenses incurred in relation to the welfare of the bird).

Movement of eggs from premises where low pathogenic avian influenza is confirmed

47.—(1) Where the Scottish Ministers direct that poultry on any premises on which low pathogenic avian influenza is confirmed are to be slaughtered at a slaughterhouse, a licence for the movement of eggs off the premises (prior to the poultry being sent for slaughter) may not be granted unless the Scottish Ministers are satisfied that the movement would not significantly increase the risk of the spread of low pathogenic avian influenza.

- (2) The Scottish Ministers may only license the movement of such eggs—
 - (a) to a designated packing centre, in disposable packaging;
 - (b) to an establishment for the manufacture of egg products; or
 - (c) for disposal.

Veterinary surveillance of poultry

48. The Scottish Ministers shall make arrangements for any premises where poultry are kept before being sent to a slaughterhouse for slaughter under paragraph 5 of Schedule 3 to the Act or under regulation 4 of the Regulations to be kept under veterinary surveillance.

Veterinary surveillance of birds

49. The Scottish Ministers shall make arrangements for birds which are on special category premises and which the Scottish Ministers decide are not to be killed under paragraph 5 of Schedule 3 to the Act or under regulation 4 of the Regulations, to be monitored for avian influenza.

Tracing of poultry and eggs

50.—(1) The Scottish Ministers must endeavour to trace from premises where low pathogenic avian influenza has been confirmed—

- (a) hatching eggs from poultry laid during the unregulated period of infection; and
- (b) poultry hatched from eggs laid during that period.

(2) The Scottish Ministers must ensure that such veterinary enquiries as they consider necessary to monitor for avian influenza are carried out at premises to which eggs and poultry are so traced.

Identification of contact premises

51.—(1) The Scottish Ministers must serve a notice on the occupier of any premises (other than regulated places) if they suspect—

- (a) that low pathogenic avian influenza may have been carried there from other premises; or
- (b) that low pathogenic avian influenza may have been carried to other premises from there.

(2) Premises in respect of which a notice is served under this article are contact premises for the purposes of this Part.

Restrictions at contact premises

52.—(1) The provisions of Schedule 1 apply to contact premises until the Scottish Ministers notify the occupier that those measures no longer apply.

(2) The Scottish Ministers must, if they consider it necessary to prevent the spread of low pathogenic avian influenza, require the occupier to comply with such of the requirements of Schedule 6 as they may direct.

(3) When considering whether to require an occupier to comply with the requirements of Schedule 6, the Scottish Ministers must take into account at least the criteria set out in paragraph (3) of article 25, as read with paragraphs (4) and (5) of article 25.

(4) If the Scottish Ministers require poultry or other captive birds on contact premises to be killed, they must ensure that samples are taken from the dead birds and tested for avian influenza.

Declaration of a low pathogenic avian influenza restricted zone

53.—(1) The Scottish Ministers must, on confirmation of low pathogenic avian influenza on premises other than regulated places in Scotland (and subject to paragraph (4)), declare a low pathogenic avian influenza restricted zone around the infected premises.

(2) The Scottish Ministers must, on confirmation of low pathogenic avian influenza in an area of England which is less than 1 kilometre from Scotland, declare a low pathogenic avian influenza restricted zone in Scotland.

(3) The Scottish Ministers may declare a low pathogenic avian influenza restricted zone on confirmation of low pathogenic avian influenza in an area of England or Wales which is one kilometre or more from Scotland.

(4) The Scottish Ministers may, on the basis of a risk assessment, decide not to declare a low pathogenic avian influenza restricted zone if the premises where low pathogenic avian influenza is confirmed are—

- (a) a hatchery; or
- (b) special category premises.

Size of zones

54. A low pathogenic avian influenza restricted zone must be centred on the part of the infected premises which the Scottish Ministers consider most appropriate and have a radius of at least 1 kilometre.

Measures in low pathogenic avian influenza restricted zones

55.—(1) The measures in Schedule 7 apply in respect of a low pathogenic avian influenza restricted zone, subject to paragraphs (2) and (3).

(2) In their declaration under article 53, the Scottish Ministers may, if they have carried out a risk assessment and do not believe that to do so would endanger disease control, disapply some or all of the measures set out in Schedule 7 if the premises where low pathogenic avian influenza has been confirmed is a hatchery or special category premises.

(3) The Scottish Ministers may, if they consider it necessary to reduce the risk of the spread of low pathogenic avian influenza, impose (by declaration) measures additional to those set out in Schedule 7.

(4) The Scottish Ministers must ensure that—

- (a) commercial premises in the zone containing poultry or other captive birds are identified as soon as possible;
- (b) tests for avian influenza are carried out on commercial poultry premises within a radius of at least 1 kilometre of the infected premises or part of the premises or, if they think it more appropriate, of the part of the premises where avian influenza was found.

PART 7

Measures to reduce the risk of the spread of influenza viruses of avian origin to other species

Tests on animals at premises where avian influenza is confirmed

56.—(1) The Scottish Ministers must ensure that any pigs kept on premises where avian influenza is confirmed are tested for infection with influenza virus of avian origin.

(2) The Scottish Ministers may, if they think it necessary to prevent the spread of avian influenza or influenza of avian origin, require such tests to be carried out on other mammals kept on the premises.

Killing of mammals

57.—(1) Influenza virus of avian origin is hereby specified for the purposes of section 32(2) of the Act.

(2) The Scottish Ministers must ensure that pigs to be killed under section 32 of the Act are—

- (a) killed as soon as possible, in accordance with a veterinary inspector's instructions;
- (b) transported in accordance with a veterinary inspector's instructions (if they are moved off the premises for slaughter).

(3) The Scottish Ministers may also require the killing of other mammals infected with influenza virus of avian origin which they consider to be a serious threat to animal or human health.

Movements off the premises

58.—(1) No person shall (subject to paragraph (2)) move any mammal tested under article 56 off the premises until a veterinary inspector has confirmed that the mammal is not infective and licenses the movement.

(2) A veterinary inspector may license the following movements of pigs and other mammals in which infection with influenza virus of avian origin is confirmed—

- (a) pigs to other premises where pigs are kept;
- (b) other mammals to other premises;
- (c) pigs or other mammals to a slaughterhouse.

(3) A veterinary inspector must not license any movement under paragraph (2) unless satisfied (as a result of further tests on the animals) that the movement would not significantly increase the risk of the spread of avian influenza or influenza virus of avian origin.

Measures at other premises

59.—(1) The Scottish Ministers may, after carrying out a risk assessment and by notice to the occupier of contact premises, impose such of the requirements set out in articles 56, 57 and 58 as they consider necessary.

(2) Premises where influenza virus of avian origin may have been carried from premises where the virus has been confirmed or from where the virus may have been carried to the latter are contact premises for the purposes of this Part.

Additional measures to control the spread of virus in mammals

60. The Scottish Ministers may, if they consider it necessary to monitor or detect the spread of avian influenza or influenza virus of avian origin in mammals—

- (a) require surveillance for avian influenza or influenza virus of avian origin to be carried out on any premises; and
- (b) impose by declaration of an avian influenza (restrictions on mammals) zone or by notice to the occupier of any premises such measures additional to those set out in articles 56 to 58 as they consider necessary.

PART 8

General measures on suspicion or confirmation of avian influenza

Treatment, labelling and movement of meat from poultry from a protection zone

61.—(1) The occupier of a slaughterhouse within or outside a protection zone to which poultry from premises in a protection zone are sent must ensure that—

- (a) the poultry are kept separate from poultry from outside the zone;
- (b) the poultry are slaughtered separately or at different times from poultry from outside the zone; and
- (c) the part of the slaughterhouse and any equipment and any other thing which has been used for the slaughter or subsequent processing of the poultry are cleansed and disinfected in accordance with a veterinary inspector's instructions before poultry from outside the zone are slaughtered.

(2) No person shall move poultry meat from any slaughterhouse, cutting plant or cold store in a protection zone unless—

- (a) the poultry from which it was produced originated outside a protection zone and meat from it is stored and transported separately from meat produced from poultry originating in a protection zone;
- (b) the poultry meat was produced at least 21 days before the date a veterinary inspector estimates as the date of earliest infection at premises in the protection zone and has been stored and transported separately from meat produced after that date;
- (c) the poultry meat was produced from poultry originating in the protection zone and complies with the requirements set out in paragraph (3); or
- (d) the Scottish Ministers declare otherwise in a declaration made in accordance with article 28(2)(b).

(3) Poultry meat from poultry originating in the protection zone and referred to in paragraph (2) (c) must—

- (a) not be supplied for intra-Community or international trade;
- (b) be marked in accordance with the instructions of the Scottish Ministers;
- (c) be obtained, cut, stored and transported separately from meat intended for intra-Community or international trade;
- (d) not be used in meat products intended for intra-Community or international trade unless—
 - (i) it is obtained, cut, transported and stored separately from poultry meat intended for such trade; and
 - (ii) it has been heat treated at a minimum temperature of 70°C, which temperature must be reached throughout the meat.

(4) Poultry meat from poultry originating outside a protection zone must be cut, transported and stored separately from poultry meat from poultry originating in such a zone.

(5) In this article, “meat product” means a product resulting from the processing of poultry meat or from the further processing of such a product, the cut surface of which shows that it is no longer fresh meat.

Poultry and eggs moved to premises outside controlled zones other than for slaughter

62.—(1) The occupier of any premises (other than a slaughterhouse) not in a protection zone or a surveillance zone to which day old chicks hatched from eggs originating in such a zone are moved must ensure that they are not moved off the premises for at least 21 days from the date they arrive there.

(2) The occupier of any premises (other than a slaughterhouse) not in a protection zone or a surveillance zone to which ready to lay poultry from a protection zone are moved must ensure that they are not moved off the premises for at least 21 days from the date they arrive there.

(3) The occupier of any premises (other than a slaughterhouse) outside a low pathogenic avian influenza restricted zone to which poultry (including day old chicks) are moved from such a zone must ensure that the poultry are not moved off the premises for at least 21 days from the date they arrived there.

(4) The Scottish Ministers must ensure that such veterinary surveillance as they consider necessary to monitor for avian influenza take place at the premises to which things are moved.

Records at premises to which things are moved

63.—(1) The occupier of any premises to which any thing is moved under article 62 must, for at least 21 days from the date the thing was moved to the premises, maintain the following records—

- (a) the number or approximate number of poultry (if any) on the premises;
- (b) the number of poultry falling ill on the premises;
- (c) the number of poultry dying on the premises;
- (d) the amount of feed and, where possible, water being consumed by any poultry on the premises;
- (e) any egg production on the premises,

and report any abnormalities to the Divisional Veterinary Manager.

(2) The occupier of commercial poultry premises must ensure that records made under paragraph (1) are kept for at least 6 weeks from the date the last record was made.

(3) The Scottish Ministers must ensure that such veterinary inquiries as they consider necessary to monitor for avian influenza take place at the premises to which things are moved.

Egg processing plants

64.—(1) The occupier of an egg processing plant to which eggs are moved from suspect premises (under paragraph 6 of Schedule 1) or from infected premises during the unregulated period of infection (under article 22(2)(a)) must ensure that—

- (a) the eggs are kept separate from other eggs at the plant from the time they arrive until they are processed;
- (b) the shells of the eggs are disposed of;
- (c) the packaging used to transport the eggs is destroyed or cleansed and disinfected;
- (d) any person involved in the handling and processing of eggs take appropriate biosecurity measures.

(2) The owner or driver of any vehicle used to transport eggs to an egg processing plant must ensure that it is cleansed and disinfected before the eggs are loaded and after they are unloaded.

(3) Any person involved in the transportation of eggs to an egg processing plant must take appropriate biosecurity measures to prevent the spread of disease.

Cleansing, disinfection and treatment

65.—(1) Any person who is required under this Order to cleanse, disinfect or treat any premises (other than regulated places) or any thing (including any vehicle under the control of that person) on those premises must do so in accordance with Schedule 3.

(2) Any person who is required under this Order to cleanse, disinfect or treat regulated places, any thing on those premises or any vehicle not referred to in paragraph (1) must do so in accordance with a veterinary inspector's instructions.

(3) A veterinary inspector may, by notice to the occupier of premises referred to in paragraph (1), provide that part of the premises the subject of that notice and which would otherwise be subject to the requirements of Schedule 3, are subject instead to the requirements of paragraph (2).

(4) Any person who is required to disinfect under this Order must—

- (a) use disinfectants authorised by the Scottish Ministers under the Diseases of Animals (Approved Disinfectants) Order 1978(10);

(10) S.I. 1978/32, amended by S.I. 2005/1908; there are other amending instruments but none is relevant.

- (b) use them at the concentrations approved under that Order; and
 - (c) use them in accordance with manufacturer's instructions (if any), or, if a veterinary inspector has instructed otherwise, in accordance with the instructions of the veterinary inspector.
- (5) A veterinary inspector must, by notice to the occupier of any premises or to the owner or driver of any vehicle, require the destruction of any thing which may be contaminated with avian influenza virus and which the veterinary inspector considers cannot be cleansed, disinfected or treated.
- (6) A veterinary inspector may, by notice to the occupier of any premises where avian influenza has been confirmed—
- (a) prohibit the keeping of poultry or other captive birds on the premises or on any part of the premises where the veterinary inspector believes avian influenza virus may still exist; and
 - (b) prohibit the entry of any person, vehicle, poultry, other captive bird, mammal or thing onto any premises or part of premises which the veterinary inspector believes cannot be cleansed and disinfected.
- (7) A veterinary inspector must not revoke a notice served under paragraph (6) unless—
- (a) at least a year has passed since the date the notice was served; or
 - (b) (in the case of fields on the premises or of any other part of the premises which is not a building or part of a building), the Chief Veterinary Officer (Scotland) has confirmed that the occupier may do so.

Restocking premises

- 66.** No person shall (unless licensed by a veterinary inspector) restock—
- (a) premises on which poultry or other captive birds have been killed under paragraph 5 of Schedule 3 to the Act or regulation 4 of the Regulations; or
 - (b) premises from which poultry have been sent for slaughter under this Order.
- (2) A veterinary inspector must not license the restocking of commercial poultry premises until at least 21 days after the date final cleansing and disinfection was completed at the premises in accordance with Part 2 of Schedule 3.

Surveillance at restocked commercial poultry premises

- 67.—**(1) The Scottish Ministers must ensure that the following measures are taken no later than 21 days after the last date on which poultry are brought onto commercial poultry premises or part of those premises for restocking—
- (a) the clinical examination of any poultry on the premises by a veterinary inspector;
 - (b) such samples taken from such poultry as the Scottish Ministers require are laboratory tested for avian influenza;
 - (c) such testing for avian influenza as a veterinary inspector considers necessary of poultry which die on the premises.
- (2) A veterinary inspector who examines poultry under paragraph (1)(a) may carry out more than one examination of the birds and shall ensure that the veterinary inspector carries out at least one examination as close as possible to the end of the 21 day period referred to in paragraph (1).

Additional measures at restocked commercial poultry premises

- 68.—**(1) The occupier of commercial poultry premises which have been restocked must, for at least 21 days from the date of restocking, maintain the following records—

- (a) the number or approximate number of poultry on the premises;
- (b) the number of poultry falling ill on the premises;
- (c) the number of poultry dying on the premises;
- (d) the amount of feed and, where possible, water being consumed by poultry on the premises;
- (e) any egg production on the premises.

(2) The occupier of commercial poultry premises must ensure that records made under paragraph (1) are kept for at least 6 weeks from the date the last record was made.

(3) The occupier shall ensure that any abnormalities are reported to the Divisional Veterinary Manager.

Measures at other restocked premises

69. The Scottish Ministers may carry out the measures set out in articles 67 and 68 at other restocked premises where poultry or other captive birds are kept.

Designation of premises to which things may be moved

70.—(1) The occupier of the following premises may apply in writing to the Scottish Ministers for them to be designated for the following purposes—

- (a) a slaughterhouse for the purpose of receiving poultry moved under a licence granted under this Order;
- (b) a hatchery for the purpose of receiving eggs moved under a licence granted under this Order;
- (c) an egg packing centre for the purpose of receiving eggs moved under a licence granted under this Order;
- (d) any premises for the purpose of receiving eggs moved under a licence granted under this Order for use for scientific, diagnostic or pharmaceutical purposes.

(2) The Scottish Ministers may, on such application, if satisfied that the premises are so constructed and operated that the risk of the transmission of avian influenza from them is minimal, make such a designation.

(3) The following premises are deemed to be designated under paragraph (1)(d), unless the Scottish Ministers direct otherwise by notice to the occupier of the premises—

- (a) premises licensed to manufacture or assemble human vaccines under section 8 of the Medicines Act 1968(**11**);
- (b) premises authorised to manufacture animal vaccines under Regulation 5 of the Veterinary Medicines Regulations 2005(**12**);
- (c) premises licensed under sections 4 or 5 of the Animals (Scientific Procedures) Act 1986(**13**);
- (d) premises licensed under article 4 of the Specified Animal Pathogens Order 1998(**14**).

Duty to provide reasonable assistance

71.—(1) Any person required to give reasonable assistance or information to a person executing this Order must, unless the person has reasonable cause, do so without delay.

(11) 1968 c. 67.

(12) S.I. 2005/2745.

(13) 1986 c. 14.

(14) S.I. 1998/463.

(2) The occupier of any premises from, or to, which the occupier wishes any thing to be moved under licence under this Order must allow any person authorised by the Scottish Ministers to enter those premises for the purposes of deciding whether or not such a licence should be granted or maintained.

Provision of information

72. No person shall furnish information which the person knows to be false or misleading to a person executing this Order.

Records of movements authorised by general licence

73. Any person moving poultry, other captive birds or their products under a general licence granted under this Order must keep a record of the date of the movement and the registration of any vehicle used, for at least six weeks after the date of the movement.

Retention and production of records

74.—(1) A person who is required by this Order to keep a record must—

- (a) retain it for at least twelve months from the date the record is made (unless otherwise required under this Order); and
- (b) produce it on demand to an inspector and provide the inspector with copies if required.

(2) An inspector may enter any premises for the purpose of inspecting any records required to be kept under this Order and may copy any such records (in whatever form they are held), take them away and require any computer records to be produced in a form which can be taken away.

Duty to comply with declarations, licences, notices and designations

75. Any person to whom any requirement in a declaration, licence, notice or designation under this Order applies must—

- (a) comply with the requirement (unless authorised otherwise by licence); and
- (b) comply with any reasonable requests which an inspector may make to that person to ensure that the requirement is met.

Costs of compliance

76. 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, notice or designation under it) must be met by that person unless the Scottish Ministers direct otherwise in writing.

Killing of birds and destruction of things which may be contaminated

77.—(1) Before causing poultry or other birds to be killed under paragraph 5 of Schedule 3 to the Act or the Regulations, the Scottish Ministers must give notice of their intention to do so to the occupier of the premises where the birds are kept or to their keeper.

(2) Before causing any mammal to be killed under section 32 of the Act, the Scottish Ministers must give notice of their intention to do so to the occupier of the premises where the mammal is kept or to its keeper.

(3) Before causing the seizure of any thing under the Diseases of Animals (Seizure) Order 1993(15), the Scottish Ministers must give notice of their intention to do so—

(15) S.I. 1993/1685.

- (a) to the occupier of the premises where the thing is kept; or
- (b) to the owner or keeper of the thing.

Duty of the local authority to erect signs

78.—(1) The local authority must, if reasonably practicable, ensure that the boundaries of controlled zones other than avian influenza (restrictions on mammals) zones are indicated by signs erected in a conspicuous position on roads entering the zones on which poultry are likely to be moved.

(2) The local authority must, if reasonably practicable, ensure that the boundaries of avian influenza (restrictions on mammals) zones are indicated by signs erected in a conspicuous position on roads entering the zones on which mammals, or mammals specified in the declaration of the zones, are likely to be moved.

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 or 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(16) is amended by inserting after article 1(2)—

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

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

(2) In article 2 of the Diseases of Animals (Approved Disinfectants) Order 1978⁽¹⁷⁾, the definition of “Diseases of Poultry Order” is substituted by—

““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;”.

St Andrew’s House,
Edinburgh
7th June 2006

ROSS FINNIE
A member of the Scottish Executive

⁽¹⁷⁾ S.I. 1978/32, as amended by S.I. 1994/3141. Other amendments are not relevant to this Order.