
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 147

ANIMALS

ANIMAL HEALTH

The Tuberculosis (Scotland) Order 2007

<i>Made</i>	- - - -	<i>1st March 2007</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>5th March 2007</i>
<i>Coming into force</i>	- -	<i>6th April 2007</i>

The Scottish Ministers in exercise of the powers conferred by sections 1, 7(1), 8(1), 15(4), 25, 32(2) and (3), 34(7), 83(2), 87(2) and 88(2) of the Animal Health Act 1981(1), and of all other powers enabling them in that behalf, hereby make the following Order:

PART 1

Introductory provisions

Citation, commencement and extent

1.—(1) This Order may be cited as the Tuberculosis (Scotland) Order 2007 and shall come into force on 6th April 2007.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the Act” means the Animal Health Act 1981;

“affected animal” means a bovine animal which is affected with tuberculosis of the udder or is giving tuberculous milk or is affected with tuberculous emaciation or is excreting or discharging tuberculous material or is affected with a chronic cough or shows any other clinical signs of tuberculosis, and includes a reactor;

(1) 1981 c. 22. The functions of the Secretary of State in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). See section 86 of the Animal Health Act 1981 for the exercise of functions in relation to tuberculosis. The requirement to obtain Treasury consent in section 32(3) of the Animal Health Act 1981 was removed by section 55 of the Scotland Act 1998.

“approved disinfectant” means a disinfectant listed in the Diseases of Animals (Approved Disinfectants) Order 1978(2) as being approved for the time being for use against tuberculosis;

“bovine animal” means domestic cattle of the genus *Bos*, *Bubalus bubalis* or *Bison bison*;

“Divisional Veterinary Manager” means the veterinary inspector appointed by the Scottish Ministers to receive information about animals or carcasses affected or suspected of being affected with specified diseases, for the area in which the animal or carcass is;

“high incidence area” means an area in Great Britain where bovine animals are required to be subject to routine tuberculin testing on a yearly or two yearly basis in accordance with the requirements of Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine(3);

“market value” means—

- (a) in the case of a bovine animal born before 1st August 1996, the higher of—
 - (i) the price which might reasonably have been obtained for it at the time of valuation from a purchaser in the open market if the animal was not an affected animal; or
 - (ii) the purchase price which would have applied had the animal been slaughtered in accordance with Commission Regulation (EC) No. 716/96 adopting exceptional support measures for the beef market in the United Kingdom, as amended(4); and
- (b) in the case of a bovine animal born on or after 1st August 1996, the price which might reasonably have been obtained for it at the time of valuation from a purchaser in the open market if the animal was not an affected animal;

“milk” includes cream and separated or skimmed milk;

“premises” includes land, with or without buildings;

“reactor” means a bovine animal that produces a reaction consistent with its being affected with tuberculosis when tested for that disease;

“suspected animal” means a bovine animal that is suspected of being affected with tuberculosis;

“tuberculosis” means infection with *Mycobacterium bovis* (*M.bovis*); and

“veterinary surgeon” means a veterinary surgeon or veterinary practitioner registered under the Veterinary Surgeons Act 1966(5).

(2) A reference in this Order to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000(6) which has been recorded and is consequently capable of being reproduced.

Extension of definition of “disease” and power to slaughter on account of tuberculosis

3. For the purposes of the Act, the definition of “disease” in section 88(1) of the Act is hereby extended to include tuberculosis and section 32 of the Act (power to slaughter animals) shall apply to that disease.

(2) S.I. 1978/32; relevant amending instruments are S.I. 1978/934, S.S.I. 2001/45, S.S.I. 2003/334 and S.S.I. 2006/352. .

(3) O.J. No. L 121, 29.7.64, p.1977; relevant amending instruments are Council Directive 98/46/EC (O.J. L 198, 15.7.98, p.22) Directive 2000/20/EC of the European Parliament and of the Council (O.J. L 163, 4.7.00, p.35) and Commission Regulation (EC) No. 1226/2002 (O.J. L 179, 9.7.2002, p. 13).

(4) O.J. No. L 99, 20.4.96, p.14; relevant amending instrument is Commission Regulation (EC) No. 2109/2005 (O.J. No. L 337, 22.12.2005, p.25).

(5) 1966, c. 36; amended by S.I. 1988/526, S.I. 1991/1412 and S.I. 2002/1479.

(6) 2000 c. 7; amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

PART 2

Notification

Notification of disease in bovine animals

4.—(1) A person who has possession of or is in charge of an affected animal (other than a reactor) or a suspected animal shall immediately—

- (a) notify the Divisional Veterinary Manager of that fact;
- (b) pending conclusion of the veterinary inquiry under article 6 and the service of any notice under that article—
 - (i) detain the animal on the premises where it then is;
 - (ii) isolate the animal as far as reasonably practicable from other bovine animals; and
 - (iii) adopt precautions with respect to milk produced by the animal as if a notice under article 6 had already been served.

(2) A veterinary surgeon who examines an affected animal (other than a reactor) or a suspected animal in the course of practice as a veterinary surgeon shall immediately notify the Divisional Veterinary Manager of that fact.

Notification of disease in carcasses

5.—(1) A person who—

- (a) has possession of or is in charge of a carcass which is affected with or suspected of being affected with tuberculosis;
- (b) in the course of that person's practice as a veterinary surgeon, examines such a carcass; or
- (c) in the course of carrying out duties under the Food Hygiene (Scotland) Regulations 2006(7) or when inspecting meat for any other purpose, inspects such a carcass,

shall immediately give notice of that fact to the Divisional Veterinary Manager.

(2) A person who has possession of or is in charge of a carcass to which paragraph (1) applies shall detain it, or so much of it as is affected with or suspected of being affected with tuberculosis, on the premises where it then is until it has been examined by a veterinary inspector.

(3) In this article "carcass" means the carcass of a bovine animal or other farmed or pet mammal.

Veterinary inquiry

6.—(1) Where on receipt of information provided under articles 4 or 5 or otherwise, a veterinary inspector has reason to believe that there is on any premises an affected animal (other than a reactor), a suspected animal or a carcass which is affected with or suspected of being affected with tuberculosis, the inspector shall, as soon as reasonably practicable, take such steps as may be necessary to establish whether the animal or carcass is affected or suspected of being affected with tuberculosis.

(2) A veterinary inspector who has examined a bovine animal and is of the opinion that it is an affected animal or a suspected animal shall serve a notice on the keeper of the animal requiring that person to—

- (a) detain the animal on the premises where it then is in accordance with the requirements of the notice and keep it isolated from other bovine animals;

- (b) where appropriate take steps to ensure that milk produced by the animal is not mixed with other milk and is boiled or otherwise sterilised and that any utensil with which the animal's milk has been in contact before being sterilised shall be thoroughly cleansed and scalded with steam or boiling water before being used again; and
 - (c) ensure that no bovine animal is moved on to or off the premises or such part of the premises as is specified in the notice except under the authority of a licence issued by a veterinary inspector.
- (3) A notice served under this article shall remain in force until—
- (a) the animal to which it relates has died; or
 - (b) the notice is withdrawn by a further notice in writing served by a veterinary inspector.

PART 3

Testing of bovine animals

Meaning of premises

7. For the purposes of articles 8 and 9, premises does not include any assembly centre, collection centre, agricultural show, market or slaughterhouse.

Pre movement testing

8.—(1) The keeper of any bovine animal on any premises in a high incidence area in Scotland shall not allow that animal to be moved from the premises unless a diagnostic test for tuberculosis has been applied to it no more than 60 days before the date of its movement from the premises.

(2) The occupier of any premises in Scotland shall not allow to enter those premises any bovine animal from premises in a high incidence area unless that animal has had applied to it a diagnostic test for tuberculosis no more than 60 days before the date of its movement from the premises.

(3) Where a bovine animal on any premises in Scotland which has been moved from any premises in a high incidence area has not had applied to it a diagnostic test for tuberculosis no more than 60 days before the date of its movement from the premises in the high incidence area, the keeper of the animal shall—

- (a) ensure that test is applied to the animal as soon as reasonably practicable after it is known to that person that a test was not applied before the animal was moved from the high incidence area; and
- (b) where the result of the test carried out under paragraph (a) is read by and to the satisfaction of a veterinary inspector, ensure that a second test is applied to the animal no fewer than 60 days and no more than 120 days from the date of application of the first test.

(4) This article shall not apply to any bovine animal under 42 days of age at the time it is moved from any premises in a high incidence area.

Post movement testing

9. Any bovine animal on any premises in Scotland which has been moved from premises in a high incidence area shall have a diagnostic test for tuberculosis applied to it no fewer than 60 days and no more than 120 days after the date on which it first arrives at premises in Scotland.

Application of test

10.—(1) Subject to paragraph (2), the keeper of any bovine animal to which a test must be applied in accordance with article 8(1) or (3) or article 9 shall arrange for a veterinary inspector to apply the test and shall meet the expense of its application.

(2) Paragraph (1) shall not apply where any bovine animal has had applied to it within the relevant periods a diagnostic test for tuberculosis for purposes other than those of articles 8 and 9.

Restriction on movement after application of test

11. Where a diagnostic test for tuberculosis has been applied to a bovine animal by a veterinary inspector, no person shall move that animal from the premises on which it is kept unless—

- (a) the movement is under the authority of a licence issued by a veterinary inspector; or
- (b) the results of the diagnostic test for tuberculosis have been read by a veterinary inspector who is satisfied that the result is negative.

Reporting test results

12. Any person who has tested a bovine animal with tuberculin shall report the result of that test, as soon as reasonably practicable, to the Scottish Ministers.

Obstruction

13. No person shall interfere with or obstruct the application of or the reading of a diagnostic test for tuberculosis applied under this Order.

PART 4

Prevention of spread of infection

Precautions against spread of infection

14.—(1) Where the Scottish Ministers are satisfied that any bovine animal kept on any premises is an affected animal a veterinary inspector may, by notice in writing served on the keeper of any such animal, require that person—

- (a) to take such steps as may be reasonably practicable to prevent any bovine animal kept on the premises from infecting any bovine animal kept on any adjoining premises;
- (b) to arrange for the isolation of any bovine animal which may be specified in the notice on any part of the premises so specified;
- (c) to ensure that any part of the premises specified in the notice shall not be used by any bovine animal on the premises, or by such animal as may be so specified;
- (d) at that person's expense and within such time and in such manner as may be specified in the notice, to cleanse and disinfect with an approved disinfectant such part or parts of the premises as may be so specified;
- (e) not to treat and store manure or slurry from any place which has been used by any such animal otherwise than in accordance with the requirements of the notice;
- (f) not to spread any manure or to spray or spread any slurry from any place which has been used by any such animal otherwise than in accordance with the requirements of the notice; and

(g) to cleanse and wash all utensils and other articles used for or about an animal to which the notice relates within such time and in such manner as may be specified in the notice.

(2) Where a veterinary inspector reasonably believes that any bovine animal which is on, or which has been on any premises that are used for any show, exhibition, market, sale or fair, is an affected animal or has been exposed to the infection of tuberculosis, such veterinary inspector may, by notice in writing served on the occupier of such premises, require the occupier—

(a) to ensure that any part or parts of the premises specified in the notice shall not be used by any other bovine animal for such period as may be specified in the notice; and

(b) at the occupier's own expense, and within such time and in such manner as may be specified in the notice—

(i) to cleanse and disinfect with an approved disinfectant such part or parts of the premises as may be specified in the notice; and

(ii) to dispose of any manure, slurry or other animal waste, straw, litter or other matter that has or might have come into contact with such animal.

(3) If any person on whom a notice is served under this article fails to comply with the requirements of the notice, the Scottish Ministers may, without prejudice to any proceedings arising out of such default, carry out or cause to be carried out the requirements of the notice, and any expenses reasonably incurred by them for the purpose of making good the default shall be recoverable from the person in default.

Suspected bovine animals in shows, exhibitions etc

15.—(1) Where a veterinary inspector reasonably believes that a bovine animal on any premises at which a show, exhibition, market, sale or fair is being held, is affected with or has been exposed to the infection of tuberculosis, the inspector may, by notice in writing served on the keeper of the animal, require that animal to be removed from those premises, and, as the keeper of the animal may elect, taken either—

(a) to a slaughterhouse for immediate slaughter; or

(b) back to the premises from which the animal was brought to the show, exhibition, market, sale or fair; or

(c) to such other premises as may be approved by the inspector for the purpose.

(2) A bovine animal shall only be moved in accordance with the provisions of paragraphs (1)(b) or (c) on condition that it is immediately put into isolation for a period to be terminated by a notice in writing served on the keeper of the animal by a veterinary inspector.

Control of infection from other animals

16.—(1) Where a veterinary inspector reasonably believes that an animal kept on any premises is or may be affected with tuberculosis that inspector may by notice in writing served on the occupier of the premises—

(a) require the occupier to keep the animal under control in such manner as may be specified in the notice or to confine it to such part of the premises as may be specified; or

(b) prohibit the movement of any animal on to or off the premises or any part of such premises except under the authority of a licence issued by an inspector.

(2) In this article, “animal” means any kind of mammal except man.

PART 5

Slaughter and compensation

Notification of intended slaughter of bovine animals

17.—(1) Where the Scottish Ministers intend to cause a bovine animal to be slaughtered under section 32 of the Act in its application to tuberculosis, a veterinary inspector may serve a notice on the keeper of the animal informing that person of the intended slaughter and requiring that person to detain the animal pending such slaughter (or pending its surrender and removal for such slaughter) on such part of the premises as is specified in the notice and to isolate it as far as reasonably practicable from such other animals as are so specified.

(2) The person on whom such a notice has been served—

- (a) shall comply with the notice; and
- (b) shall not move the animal, or cause or permit it to be moved, off that part of the premises on which it is required to be detained, except under the authority of a licence issued by a veterinary inspector.

Compensation

18.—(1) Where the Scottish Ministers cause a bovine animal to be slaughtered under section 32 of the Act in its application to tuberculosis, they shall pay compensation in accordance with this article and article 19.

(2) The compensation payable shall be the market value of the animal.

Ascertainment of market value

19.—(1) Notwithstanding the provisions of article 4 of the Diseases of Animals (Ascertainment of Compensation) Order 1959⁽⁸⁾ the market value of a bovine animal shall, for the purposes of payment of compensation under this Order, be determined—

- (a) by agreement between the Scottish Ministers and the owner of the animal;
- (b) by agreement between two valuers, one appointed by the Scottish Ministers and the other by the owner;
- (c) by one valuer, appointed jointly by the Scottish Ministers and the owner; or
- (d) failing agreement or appointment, by a valuer nominated by the President of the Institute of Auctioneers and Appraisers in Scotland.

(2) The valuer or valuers shall give to the Scottish Ministers and the owner of the animal, a certificate in writing of the value of the animal.

(3) Any valuer appointed or nominated under paragraph (1) shall be paid by the Scottish Ministers.

(4) Only individuals acting alone may be appointed or nominated for the purposes of this article.

⁽⁸⁾ S.I. 1959/1335.

PART 6

Administration and enforcement

Notices, licences etc

- 20.**—(1) Any notice, licence or approval issued or given under this Order—
- (a) shall be in writing;
 - (b) may be made subject to conditions; and
 - (c) may be amended, suspended or revoked in writing at any time.
- (2) Where a bovine animal is moved under the authority of a licence issued under this Order—
- (a) the animal shall be accompanied throughout such movement by the licence; and
 - (b) the person in charge of the animal being moved shall, on demand made under this Order by a veterinary inspector—
 - (i) provide that person's name and address;
 - (ii) produce the licence; and
 - (iii) allow a copy of the licence to be taken.

Facilitating examination etc

21. The keeper of any bovine animal shall comply with all reasonable requirements of an inspector with a view to facilitating—

- (a) the examination of that animal by a veterinary inspector;
- (b) the application to the animal of any diagnostic test for tuberculosis; or
- (c) the valuation of the animal when the Scottish Ministers intend to cause it to be slaughtered under section 32 of the Act in its application to tuberculosis,

and in particular shall arrange, if so required, for the collection, penning and securing of any such animal and the movement of the animal to and from any premises specified by the inspector for the purposes of facilitating such examination, testing or valuation.

Default

22.—(1) If any person fails to comply with any reasonable requirement of an inspector made in accordance with article 21, the Scottish Ministers may, without prejudice to any proceedings for an offence arising out of such default—

- (a) take or cause to be taken all such steps as may be necessary to facilitate the examination and valuation of the animal or the application to it of any diagnostic test for tuberculosis, including, subject to paragraph (2), the movement of the animal to other premises; and
- (b) prohibit the movement of bovine animals on to or off the premises, except under the authority of a licence issued by an inspector.

(2) Where a bovine animal has been moved to other premises in accordance with subparagraph (1)(a), the Scottish Ministers shall ensure the return of the animal to the premises from which it was moved within a reasonable time after the examination, valuation or test has been carried out.

(3) Any expenses reasonably incurred by the Scottish Ministers for the purposes of making good any default shall be recoverable from the person in default.

Marking of bovine animals

23.—(1) If so required in writing by a veterinary inspector, the keeper of bovine animals kept on any premises shall mark such animals in the manner required by the veterinary inspector.

(2) That veterinary inspector may paint, stamp, clip, tag or otherwise mark bovine animals kept on any premises.

(3) No person shall without reasonable excuse alter, remove, obliterate, or deface any mark or identification applied in accordance with paragraphs (1) and (2).

Prohibition on movement of bovine animals

24. A veterinary inspector may by notice in writing served on the keeper of bovine animals kept on such premises as are specified in the notice, prohibit the movement of bovine animals on to or off such premises or any part of such premises, except under the authority of a licence issued by an inspector.

Prohibition on removal of manure, slurry etc.

25. Where a notice has been served under the provisions of article 24, no manure, slurry or other animal waste shall be removed from such premises except under the authority of a licence issued by an inspector.

Prohibition on testing, vaccination and therapeutic treatment

26. No person shall—

- (a) test a bovine animal with tuberculin;
- (b) vaccinate a bovine animal against tuberculosis; or
- (c) treat a bovine animal for tuberculosis,

without the written consent of the Scottish Ministers.

Isolation of *M. bovis* in a laboratory

27.—(1) Subject to paragraph (2), where the presence of the organism *M. bovis* is identified by a laboratory examination of a sample taken from any kind of mammal except man or from the carcase, products or surroundings of any such mammal, the person in charge of that laboratory shall immediately notify a laboratory approved by the Scottish Ministers to carry out further investigations.

(2) The duty to notify set out in paragraph (1) shall not apply where *M. bovis* is present in the sample as a result of its deliberate introduction as part of research involving the use of that organism.

Enforcement by local authority

28.—(1) Subject to paragraph (2), this Order shall be enforced by the local authority.

(2) The Scottish Ministers may direct in any particular case or class of case that they will enforce the Order instead.

Offences by bodies corporate

29.—(1) Where a body corporate is guilty of an offence under the Act by virtue of this Order and that offence is shown to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

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

that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply 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 corporate.

(3) For the purposes of paragraph (1), "director" in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate and "body corporate" includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

Revocations

30. The instruments specified in the first column of the Schedule are revoked to the extent specified in the corresponding entry in the third column, subject to any savings provision in article 31.

Savings

31. The provisions of the Brucellosis and Tuberculosis Compensation (Scotland) Order 1978(9) shall continue to apply to any bovine animal for which compensation is determined before 6th April 2007 in accordance with article 3 of that Order.

St Andrew's House, Edinburgh
1st March 2007

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

Article 30

REVOCATIONS

<i>Column 1 – enactment</i>	<i>Column 2 – references</i>	<i>Column 3 – extent</i>
The Brucellosis and Tuberculosis Compensation (Scotland) Order 1978	S.I. 1978/1485	In so far as it relates to tuberculosis
The Brucellosis and Tuberculosis Compensation (Scotland) Amendment Order 1996	S.I. 1996/1358	In so far as it relates to tuberculosis
The Brucellosis and Tuberculosis Compensation (Scotland) Amendment Order 1998	S.I. 1998/2181	In so far as it relates to tuberculosis
The Tuberculosis (Scotland) Order 2005	S.S.I. 2005/434	The whole Order

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes and re-enacts the Tuberculosis (Scotland) Order 2005 and the Brucellosis and Tuberculosis Compensation (Scotland) Order 1978 insofar as it relates to bovine tuberculosis. It incorporates existing control measures and compensation provisions in one instrument and introduces amendments to each.

This Order implements Council Directive [64/432/EEC](#) in so far as it relates to the operation of a monitoring and testing programme for bovine tuberculosis.

The amendments

The principal changes are the extension of the definition of carcass in the duty to notify disease so that it covers the carcasses of all farmed and pet mammals (article 5) and the relaxation of the prohibition on vaccinating or treating animals for tuberculosis so that it can be done with the written consent of the Scottish Ministers (article 26).

The articles

Article 3 extends the definition of disease and the power to slaughter in the Animal Health Act 1981 to cover tuberculosis.

Articles 4 and 5 provide for notification of animals or carcasses affected with or suspected of being affected with tuberculosis.

Article 6 provides for veterinary inquiry and the taking of samples when an animal or carcase is affected with or suspected of being affected with tuberculosis and for restrictions relating to movement of animals and handling of milk.

Article 7 defines premises for the purposes of articles 8 and 9. Article 8 provides for testing of animals before they move from premises in areas where there is a high incidence of tuberculosis and article 8 provides for testing of animals after they arrive on such premises.

Article 10 regulates the application and payment of tests.

Article 11 prohibits the movement of an animal which has had a test applied to it pending the result of that test, article 12 imposes a duty to report the results of a test to the Scottish Ministers and article 13 prohibits interference with or obstruction of tests.

Article 14 sets out precautionary measures to be taken if an animal is affected with tuberculosis, including isolation of the animal and cleansing and disinfection.

Article 15 provides for removal of an affected or suspected animal from a market etc and for isolation after removal.

Article 16 allows notices to be served requiring that an animal which is or may be affected with tuberculosis to be kept under control.

Article 17 provides for the service of notices of intended slaughter to be carried out under section 32 of the Animal Health Act 1981 and for movement restrictions pending slaughter. Articles 18 and 19 provide for compensation.

Article 20 relates to the issuing of notices, licences etc.

Article 21 imposes an obligation to facilitate the examination, testing and valuation of animals and article 22 provides for measures to be taken in the event of failure to comply with that obligation.

Article 23 provides for marking of animals for identification purposes.

Article 24 allows for the serving of notices restricting the movement of animals and article 25 restricts the movement of manure, slurry etc if a notice is served under article 24.

Article 26 prohibits testing, vaccinating or treating an animal for tuberculosis without the consent of the Scottish Ministers.

Article 27 imposes on laboratories a duty to notify positive test results.

Article 28 provides that the Order shall be enforced by the local authority and article 28 deals with corporate liability for offences.

Article 30 deals with revocations and article 31 is a savings provision.

Failure to comply with any provision of the Order is an offence under section 73 of the Animal Health Act 1981.

A Regulatory Impact Assessment has not been produced for this instrument because it has no impact on the costs of business.