

2007 No. 375

ANIMALS

ANIMAL HEALTH

**The Animals and Animal Products (Import and Export)
(Scotland) Amendment Regulations 2007**

Made - - - - - *7th August 2007*

Laid before the Scottish Parliament *9th August 2007*

Coming into force - - - *28th September 2007*

The Scottish Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 56(1) and (2) of the Finance Act 1973(b) and of all other powers enabling them to do so.

Citation and commencement

1. —These Regulations may be cited as the Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2007 and shall come into force on 28th September 2007.

Amendment to the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007

2. The Animals and Animal Products (Import and Export) (Scotland) Regulations 2007(c) are amended in accordance with regulations 3 to 16.

3. In regulation 1(2) (Citation, commencement, interpretation and extent)—

(a) for the definition of “captive bird” substitute—

““captive birds” means birds as defined in Article 3(a) of Commission Regulation (EC) No. 318/2007(d);”;

(b) omit the definition of “Commission Decision 2000/666/EEC”;

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

(b) 1973 c.51. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of article 2(2) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820) and the functions of the Minister transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The requirement to obtain the consent of the Treasury was removed by section 55 of the 1998 Act.

(c) S.S.I. 2007/194.

(d) O.J. No. L 84, 24.3.2007, p.7.

- (c) after the definition of “Commission Regulation (EC) No. 1/2005” insert–
- ““Commission Regulation (EC) No. 1739/2005” means Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between member States^(a);
- ““Commission Regulation (EC) No. 318/2007” means Commission Regulation (EC) No. 318/2007 laying down animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof;”;
- (d) for the definitions of “quarantine centre”, “quarantine facility” and “quarantine unit” substitute–
- ““quarantine centre” and “quarantine facility” in relation to captive birds means a centre or facility for which approval is required for the purposes of Article 11 of Commission Regulation (EC) No. 318/2007;”;
- (e) for the definition of “quarantine manager” substitute–
- ““quarantine manager” in relation to captive birds has the meaning given in regulation 20(10)(b)”.

4. After regulation 5(6) (Exports) insert–

 “(7) For the purposes of Commission Regulation (EC) No. 1739/2005 the Scottish Ministers are the competent authority, and may charge such fees as they consider appropriate to meet the expenses incurred by them in the registration of a circus or animal act under Article 4 of that Regulation.

 (8) Such fees shall be paid by the applicant for registration and shall be due after submission of the application upon the written demand of the Scottish Ministers.

 (9) A demand under paragraph (8) may be addressed to the applicant concerned at the applicant’s last known address, whether or not it is the applicant’s address for business.

 (10) An operator must comply with Article 8(3) of Commission Regulation (EC) No. 1739/2005 (obliging operators of circuses, to which that Regulation applies, to retain for at least five years the information in their registers of animals and of venues).

 (11) In paragraph (10), “operator” means a circus operator within the meaning of Commission Regulation (EC) No. 1739/2005, or the operator of an animal act in so far as that Regulation applies to that operator.”.

5. In regulation 17 (Importation) for paragraph (4) substitute–

 “(4) No person may import a captive bird unless it is from an approved breeding establishment as defined in Article 3(b) of Commission Regulation (EC) No. 318/2007.”.

6. In regulation 19 (Import procedure), for paragraph (3) substitute–

 “(3) In relation to a captive bird, the importer or the importer’s agent shall at the expense of the importer ensure that–

 (a) the bird is conveyed from the border inspection post referred to in paragraph (2) to an approved quarantine centre or approved quarantine facility in accordance with Article 7 of Commission Regulation (EC) No. 318/2007 (which provides for the direct transport of birds to approved quarantine facilities or centres); and

 (b) the bird is placed and remains in quarantine at that approved quarantine centre or approved quarantine facility in accordance with Article 11(1) of Commission Regulation (EC) No. 318/2007 (which requires that birds are quarantined for at least 30 days).”.

(a) O.J. No. L 279, 22.10.2005, p.47.

7. For regulation 20 (Quarantine for captive birds) substitute—

“Quarantine of captive birds

20.—(1) No person may operate a quarantine centre or quarantine facility for the quarantine of captive birds pursuant to Article 11(1) of Commission Regulation (EC) No. 318/2007 unless the quarantine centre or quarantine facility has been approved by the Scottish Ministers.

(2) Schedule 8 (quarantine of captive birds) has effect.

(3) A quarantine manager shall—

(a) ensure that the quarantine centre or quarantine facility is maintained and operated in accordance with—

(i) the minimum conditions in Chapter 1 of Annex IV to Commission Regulation (EC) No. 318/2007 (requirements as to construction and equipment);

(ii) paragraph (1)(a) and (c) of Chapter 2 of that Annex (management requirements); and

(iii) any other conditions attached to an approval granted under this regulation;

(b) provide such information to the Scottish Ministers as they may request to enable them to comply with Article 17(2) of Commission Regulation (EC) No. 318/2007 (requiring annual reports from member States to the European Commission as to the number of imported birds, mortality rates and confirmed cases of disease); and

(c) provide such assistance to any veterinary inspector carrying out the functions of the official veterinarian under Commission Regulation (EC) No. 318/2007 as that veterinary inspector may reasonably require.

(4) In relation to any consignment of captive birds placed in quarantine pursuant to Article 11(1) of Commission Regulation (EC) No. 318/2007, the quarantine manager shall—

(a) ensure compliance with the following Articles of that Commission Regulation—

(i) 10(1)(b) (requiring notification of the arrival of a consignment at the quarantine centre or quarantine facility);

(ii) 11(1);

(iii) 12(2) and (3) (imposing requirements in relation to the use of sentinel birds); and

(iv) 15 (requiring action where *Chlamydophyla psittaci* is suspected);

(b) ensure there is surveillance of the captive birds during their quarantine which is adequate for the purposes of Commission Regulation (EC) No. 318/2007, and consult with and seek the supervision of a veterinary inspector in respect of any analyses or treatments required under Commission Regulation (EC) No. 318/2007;

(c) ensure compliance with the management requirements in paragraphs (2) to (10), and (12) to (15) of Chapter 2 of Annex IV to the Commission Regulation (EC) No. 318/2007; and

(d) where any captive bird or sentinel bird dies during quarantine, make its carcase available to the veterinary inspector for examination in the official laboratory.

(5) No person may—

(a) contravene any requirement in paragraphs (4) to (6) of Chapter 2 of Annex IV to Commission Regulation (EC) No. 318/2007;

(b) in relation to a captive bird or a sentinel bird which dies during quarantine, remove or dispose of its carcase during the quarantine of captive birds, unless that person is authorised to do so by a veterinary inspector;

- (c) release captive birds in breach of Article 16 of Commission Regulation (EC) No. 318/2007 (requiring written authorisation by the official veterinarian for the release of birds from quarantine).

(6) The following persons are authorised to enter a quarantine centre or quarantine facility—

- (a) the quarantine manager;
- (b) a member of staff who enters with the authority of the quarantine manager;
- (c) a person authorised to enter by the Scottish Ministers or by a veterinary inspector; or
- (d) a person who otherwise enters in fulfilment of a statutory function in relation to animal health, animal welfare or species conservation which that person is appointed by the Scottish Ministers or by the local authority to perform.

(7) In so far as not provided for under regulation 32, a veterinary inspector may, in relation to the quarantine of captive birds—

- (a) enter a quarantine centre or quarantine facility to check compliance with these Regulations or with an approval granted under this regulation, or to assess whether it is appropriate to grant such an approval;
- (b) inspect and arrange for copies to be taken of any documents or records (in whatever form they are held) which the veterinary inspector reasonably considers relevant for checking compliance with this regulation and Schedule 8; and
- (c) take samples and carry out official veterinary supervision.

(8) A veterinary inspector exercising powers under this regulation shall produce, if required to do so, some duly authenticated document showing the veterinary inspector's authority to exercise those powers.

(9) For the purposes of sampling and testing required under or in connection with Commission Regulation (EC) No. 318/2007, the Veterinary Laboratories Agency is designated the official laboratory.

(10) In this regulation and Schedule 8—

- (a) “official veterinary supervision” means the functions of the official veterinarian under Commission Regulation (EC) No. 318/2007 in relation to a consignment of captive birds to which Article 11(1) of that Commission Regulation applies;
- (b) “quarantine manager” means the person in charge of a quarantine centre or quarantine facility for which approval is required pursuant to Article 11 of Commission Regulation (EC) No. 318/2007; and
- (c) references to sampling and the taking of samples are to the taking of samples required under Commission Regulation (EC) No. 318/2007, or which are taken for purposes of reaching a suspected or confirmed diagnosis of *Chlamydophila psittaci*.”.

8. In regulation 22 (Consignments constituting a danger to health), for paragraphs (2) and (3), substitute—

“(2) A veterinary inspector—

- (a) shall take or require to be taken, the action required under Article 13(1) and (2) of Commission Regulation (EC) No. 318/2007 in relation to avian influenza or Newcastle disease suspected at a quarantine centre or quarantine facility where captive birds are quarantined, imposing such restrictions as are required by that Article;
- (b) shall, where the Scottish Ministers grant a derogation provided for in Article 14 of Commission Regulation (EC) No. 318/2007 (relating to findings of low pathogenic avian influenza or Newcastle disease), take or require to be taken such further measures and impose such restrictions as are required by that Article;

- (c) who requires action to be taken by, or imposes restrictions upon, a quarantine manager or other person under this paragraph, shall do so by serving notice specifying the action or restrictions to be taken or observed.

(3) In the event of non-compliance by a quarantine manager with Article 15 of Commission Regulation (EC) No. 318/2007 (requiring treatment of birds suspected of infection with *Chlamydophyla psittaci*), a veterinary inspector may treat the captive birds concerned, or cause them to be treated, as required by that Article, and shall serve notice extending the period of quarantine required under Commission Regulation (EC) No. 318/2007.”.

9. After regulation 32 (Powers of inspectors) insert–

“Entry warrants

32A.—(1) If a sheriff or justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any land or premises by an inspector under regulations 20(7) and 32 for any of the purposes specified in those regulations and either–

- (a) that entry has been refused, or a refusal is reasonably expected, and the inspector has given notice of their intention to apply for an entry warrant to the occupier; or
- (b) a request for entry, or the giving of such a notice, would defeat the object of entry, or entry is urgently required, or the land or premises are unoccupied, or the occupier is temporarily absent, and it would defeat the object of entry to await the occupier's return,

the sheriff or justice may by signed warrant, valid for one month, authorise the inspector to enter the land or premises, if need be by reasonable force.

(2) An inspector leaving any unoccupied premises which that person has entered by virtue of a warrant must leave them as effectively secured against unauthorised entry as they were found.”.

10. In regulation 36 (Offences and Penalties) for paragraph (2) substitute–

“(2) The provisions referred to in paragraph (1) are those contained in–

- (a) regulation 5(8);
- (b) paragraph 6 of Part I of Schedule 4;
- (c) paragraphs 2 and 6 of Part I of Schedule 5; and
- (d) paragraphs 3(7), 4(5) and 5(3) of Part II of Schedule 8.”.

11. For regulation 37 (Transitional arrangements and disapplication of provisions) substitute–

“Disapplication of provisions

37. To the extent specified in column 3 of the table in Schedule 9 the provisions of the legislation listed in Schedule 9 shall not apply to–

- (a) imports from another member State of animals and animal products to which an instrument in Part I of Schedule 3 applies; or
- (b) imports of an animal to which an instrument in Schedule 7 applies from a country subject to that instrument.”.

12. In Part I of Schedule 3 (Intra-Community Trade: Legislation and Additional Requirements), after paragraph 10, insert–

“Circuses and animal acts

10A. Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circuses between member States.

Relevant provisions in that instrument: Articles 8(2), 9 and 10(1) and (3).”.

13. In Part I of Schedule 5 (Approval of Laboratories under the Poultry Health Scheme), after paragraph 5 add–

“6. A fee charged under paragraphs 1, 2 or 4 shall be paid by the operator of the laboratory and is due upon written demand.”.

14. Schedule 7 (Community Legislation in Relation to Third Countries) is amended in accordance with the following paragraphs–

(a) in Part I, for paragraph 3 substitute–

“Captive Birds

3. Commission Regulation (EC) No. 318/2007, as read with Commission Decision 2006/696/EC laying down a list of third countries from which poultry, hatching eggs, day-old chicks, meat of poultry, ratites and wild game-birds, eggs and egg products and specified pathogen-free eggs may be imported into and transit through the Community and the applicable veterinary certification conditions, and amending Decisions 93/342/EEC, 2000/585/EC and 2003/812/EC(a).”; and

(b) in Part II, for paragraph 6 substitute–

“Captive Birds

6. Instrument: Commission Regulation (EC) No. 318/2007, as read with Council Directive 92/65/EEC.

Relevant provisions in that instrument: Articles 4, 5 and 8.”.

15. For Schedule 8 (Quarantine of Captive Birds) substitute the Schedule 8 in the Schedule to these Regulations.

16. For the text in the third column of the fifth entry in Schedule 9, substitute–

“Articles 4 to 7, 9(3) to (6), 10 to 12 except that article 4 shall continue to apply to all birds (including domestic fowl) and their hatching eggs other than–

(a) those subject to the provisions of Council Directive 90/539/EEC (excluding domestic fowl),

(b) those birds and their hatching eggs traded within the Community which are subject to the provisions of Council Directive 92/65, and

(a) O.J. No. L 295, 25.10.2006, p.1.

- (c) captive birds whose import is provided for in Article 4 of Commission Regulation (EC) No. 318/2007.”.

St Andrew's House,
Edinburgh
7th August 2007

RICHARD LOCHHEAD
A member of the Scottish Executive

SCHEDULE

Regulation 15

“SCHEDULE 8

Regulation 20

Quarantine of Captive Birds

PART I

Approvals

1. The Scottish Ministers may, if they are satisfied in all the circumstances that it is appropriate to do so, grant to a quarantine manager an approval in respect of a quarantine centre or a quarantine facility for which the quarantine manager has charge and which at least meets the minimum conditions set out in Annex IV to Commission Regulation (EC) No. 318/2007.

2. The Scottish Ministers shall give reasons in writing—

- (a) for refusing to grant an approval provided for in this Schedule; and
- (b) for attaching conditions to an approval.

3. Notice of a revocation or suspension of an approval shall—

- (a) state—
 - (i) the reasons for the revocation or suspension; and
 - (ii) the time and date when it is to take effect;
- (b) be served upon the quarantine manager—
 - (i) in person;
 - (ii) by leaving it at the quarantine centre or quarantine facility concerned; or
 - (iii) by post addressed to the quarantine manager at the quarantine centre or quarantine facility concerned; and
- (c) be copied to the importer and if the importer is not the owner of the birds concerned, so far as is practicable, to the owner birds kept at the quarantine centre or quarantine facility at the date the revocation or suspension is to take effect.

4. Where an approval is revoked or is to be revoked and the continuation of quarantine at the quarantine centre or quarantine facility concerned would in the opinion of a veterinary inspector cause a significant public or animal health risk, the veterinary inspector may issue directions by notice as to the movement or disposal of birds held in quarantine at the time the notice of revocation is stated to take effect, and such notice shall be served and copied to any importer and owner concerned as if it were a notice to which paragraph 3(c) and (d) applied.

PART II

Charges in relation to approvals of avian quarantine centres and facilities, official supervision, sampling and laboratory testing

General charging provisions

1. Using such criteria they consider appropriate in all the circumstances to avoid an over-recovery of costs for which a charge is made under this Schedule, the Scottish Ministers may make a reduced charge, if during a veterinary inspector’s attendance at a quarantine centre or

quarantine facility the veterinary inspector undertakes official activity for which a charge may be made to another party under this Schedule.

2. A demand for payment of charges made under this Schedule may be addressed to the importer or quarantine manager concerned, as appropriate, at the importer or quarantine managers' last known address, whether or not it is the address for business.

Charges relating to approvals

3.—(1) The Scottish Ministers may make a charge in connection with the granting, suspension, amendment or revocation of an approval under regulation 20 and this Schedule in accordance with this paragraph.

(2) A fee (“the approval administration fee”) may be charged in relation to the receipt and processing of an application for—

- (a) an approval;
- (b) the lifting of the suspension of an approval; or
- (c) the lifting of or amendment of conditions attached to an approval.

(3) The Scottish Ministers shall from time to time determine the fee for each type of application described in sub-paragraph (2) and shall publish the current fee on the website of the Scottish Executive^(a).

(4) The approval administration fee for any type of application shall represent costs and expenses which the Scottish Ministers reasonably consider attributable to the receipt and processing of an application of that type.

(5) The veterinary inspector rate may be charged for time spent by a veterinary inspector inspecting premises to assess compliance with the minimum approval conditions.

(6) The Scottish Ministers may make a charge at no more than the veterinary inspector rate determined for the purposes of this paragraph for time spent by a veterinary inspector travelling to or from premises for purposes of inspecting them to assess compliance with the minimum approval conditions.

(7) Charges and fees under this paragraph shall be paid by the quarantine manager and shall be due upon written demand.

(8) In this paragraph—

- (a) “approval” means an approval as provided for in regulation 20 and this Schedule; and
- (b) “minimum approval conditions” means the minimum conditions set out in Annex IV to Commission Regulation (EC) No. 318/2007.

Charges for official veterinary supervision and sampling

4.—(1) The Scottish Ministers shall make a charge at the veterinary inspector rate for time spent by a veterinary inspector at a quarantine centre or quarantine facility in relation to any consignment of captive birds placed in quarantine pursuant to regulation 20—

- (a) carrying out official veterinary supervision; or
- (b) taking samples.

(2) The Scottish Ministers may make a charge at no more than the inspector rate determined for the purposes of this paragraph for time spent by a veterinary inspector travelling to or from premises to carry out official veterinary supervision or take samples.

(3) The Scottish Ministers may make a charge for the administrative costs of official supervision and the taking of samples (“the consignment administration fee”).

(a) www.scotland.gov.uk.

- (4) The Scottish Ministers shall—
- (a) from time to time determine the consignment administration fee in relation to consignments of different types and sizes as representing the costs and expenses which the Scottish Ministers reasonably consider attributable to the administration of official supervision and the taking of samples in relation to a type or size of consignment, including the recovery of costs provided for under this Part; and
 - (b) publish the current fee on the website of the Scottish Executive.
- (5) Charges under this paragraph shall be paid by the importer and shall be due upon written demand.

Charges for testing of samples by the official laboratory

- 5.—(1) The Scottish Ministers may make a charge for the testing of samples.
- (2) The Scottish Ministers shall—
- (a) from time to time determine the fee for each type of test as representing the costs and expenses which the Scottish Ministers reasonably consider attributable to the undertaking by the official laboratory of a test of that type; and
 - (b) publish the current fee on the website of the Scottish Executive.
- (3) Charges under this paragraph shall be paid by the importer and shall be due upon written demand.
- (4) In this paragraph “testing of samples” means testing and analysis of samples carried out by the official laboratory pursuant to Articles 12 to 15 of and Annex VI to Commission Regulation (EC) No. 318/2007, and includes the removal of tissue *post mortem*.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007 (S.S.I. 2007/194) (“the principal Regulations”).

They apply and enforce Commission Regulation (EC) No. 1739/2005 laying down animal health requirements for the movement of circus animals between member States (O.J. No. L 279, 22.10.2005, p.47). Regulation 5 of the principal Regulations (Exports) is amended to make provision for the Scottish Ministers’ designation as competent authority for the purpose of Commission Regulation (EC) No. 1739/2005, and for fees to be charged for expenses incurred in registering circuses and animal acts as required under that Commission Regulation (regulation 4). Commission Regulation (EC) No. 1739/2005 is also added to the list of instruments imposing conditions on the movement of animals within the Community in Part I of Schedule 3 (Intra-Community Trade: Legislation and Additional Requirements) to the principal Regulations (regulation 12).

These Regulations also apply and enforce Commission Regulation (EC) No. 318/2007 laying down animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof (O.J. No. L 84, 24.3.2007, p.7). Regulation 17(4) of the principal Regulations (Importation) is amended to prohibit the import of captive birds unless they are from an approved breeding establishment within the meaning of Commission Regulation (EC) No. 318/2007 (regulation 5). Regulation 20 of the principal Regulations (Quarantine of captive birds) is substituted to reflect the new requirements for quarantine (regulation 7). Measures to deal with the presence or the suspicion of avian influenza, Newcastle disease, and *Chlamydothlyps psittaci* are provided for by amendment to regulation 22 of the principal Regulations (Consignments constituting a danger to health) (regulation 8). The import conditions in relation to captive birds set out in Commission Regulation (EC) No. 318/2007 are applied by introduction of additional paragraphs in Parts I and II of Schedule 7 (Community Legislation in relation to Third Countries) (regulation 14). Schedule 8 (Quarantine of Captive Birds) is replaced with new provisions relating to approvals of quarantine centres and facilities, and fees, including new fees for such approvals (regulation 15).

Regulation 9 of these Regulations makes provision for entry warrants to be sought by inspectors.

A Regulatory Impact Assessment has not been prepared for these Regulations.

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