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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 61**

**The Avian Influenza (H5N1 in  
Wild Birds) (Scotland) Order 2007**

**PART 3**

Miscellaneous

**Designation of premises to which things may be moved**

**13.**—(1) Unless the Scottish Ministers direct otherwise by notice to the occupier of the premises, the following premises are deemed to be designated for the purpose of receiving poultry, eggs or bird by products (as the case may be) which are moved in accordance with this Order—

- (a) premises that are designated under article 70 (designation of premises to which things may be moved) of the Avian Influenza Order;
- (b) premises that are deemed to be designated under article 4(7) (declarations, licences, notices and designations under this Order) of that Order; and
- (c) the following plants, if approved under regulation 14 (approval of premises) of the Animal By Products (Scotland) Regulations 2003<sup>(1)</sup>—
  - (i) incineration plants;
  - (ii) processing plants;
  - (iii) oleochemical plants;
  - (iv) biogas plants;
  - (v) composting plants;
  - (vi) petfood plants; and
  - (vii) technical plants.

(2) Plants referred to in paragraph (1)(c) in England, Wales or Northern Ireland which are 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 are designated under this Order are deemed to be designated for the purposes of this Order.

**General duties relating to execution of this Order**

**14.**—(1) Any person required to give reasonable assistance or information to a person executing this Order must, unless they have reasonable cause, do so without delay.

(2) The occupier of any premises from or to which that person wishes any thing to be moved under licence under this Order must allow an inspector or any person authorised by the Scottish Ministers to enter those premises for the purposes of deciding whether such a licence should be granted or maintained.

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(1) S.S.I. 2003/411 as amended by S.S.I. 2006/3 and 530.

(3) No person shall provide information which that person knows to be false or misleading to a person executing this Order.

(4) No person may deface, obliterate or remove any mark applied by an inspector under this Order except with the written authority of a veterinary inspector.

### **Record keeping**

**15.**—(1) A person moving poultry, other captive birds or their products under a licence granted under this Order must—

(a) as soon after the movement as is reasonably practicable, make a record of—

- (i) what is moved, including its quantity;
- (ii) the date of the movement;
- (iii) the name of the consignor;
- (iv) the address of the premises from which the movement started;
- (v) the registration number of any vehicle used;
- (vi) the name of the consignee; and
- (vii) the address of the destination; and

(b) retain it for at least six weeks from the date the movement was completed.

(2) A person who is required under this Order to make any other record must retain it for at least twelve months from the date the record is made.

(3) A person required to produce a record by a person executing this Order must do so without delay.

(4) On production of the record, the person executing this Order may—

- (a) copy the record, in whatever form it is held;
- (b) require any computer record to be produced in a form which can be taken away; and
- (a) remove any record and retain it until the person has carried out the person's functions under this Order.

### **Duty to comply with declarations, licences and notices**

**16.**—(1) Any person to whom any requirement in a declaration, licence, notice or designation under this Order applies must—

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

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

### **Change of occupation of premises under restriction**

**17.**—(1) This article applies if the keeper of any poultry or other captive bird is unable to move it from premises on the termination of their 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) The person entitled to occupation of the premises on termination of the keeper's right of occupation must—

- (a) provide such facilities for feeding, tending or otherwise using the poultry or other captive bird (including selling it) as the keeper may reasonably require; and
- (b) allow entry to the premises to that keeper and any person authorised by them at reasonable times for feeding, tending or otherwise using the poultry or other captive bird.

(3) If the keeper is unable or unwilling to feed or tend the poultry or other captive bird, the person entitled to occupation of the premises must take such steps as are necessary to ensure it is properly fed and tended.

(4) The keeper is liable to pay the reasonable costs incurred by any person feeding or tending it, or providing facilities for feeding, tending or otherwise using it in accordance with this article.

### **Cleansing and disinfection**

**18.**—(1) Any person who is required under this Order to carry out disinfection at any premises or of any thing must—

- (a) use disinfectants approved by the Scottish Ministers under the Diseases of Animals (Approved Disinfectants) Order 1978<sup>(2)</sup> (“the Disinfectants Order”) for use under the Avian Influenza Order;
- (b) use them at the concentrations approved under the Disinfectants Order; and
- (c) use them—
  - (i) in accordance with the manufacturer’s instructions (if any); or
  - (ii) if a veterinary inspector has instructed otherwise, in accordance with those instructions.

(2) Where cleansing and disinfection of vehicles is required at any premises under this Order, the occupier of those premises must provide adequate facilities and proper equipment and materials for that cleansing and disinfection.

### **Disapplication of measures to those executing or enforcing this Order**

**19.**—(1) Measures in this Order prohibiting or restricting the movement or use of any thing do not apply to the following in their execution of the Order—

- (a) the Scottish Ministers;
- (b) the local authority; and
- (c) any person authorised by the Scottish Ministers or the local authority to execute this Order.

(2) No breach of this Order by the Scottish Ministers, the local authority or a person so authorised shall give rise to a criminal offence.

### **Veterinary investigations and marking**

**20.**—(1) An inspector performing functions under this Order who enters any premises or inspects any vehicle may—

- (a) mark, or cause to be marked, for identification purposes any bird, mammal, carcase or other thing;
- (b) count birds and mammals;
- (c) take samples from any bird, mammal, carcase or other thing; and
- (d) be accompanied by such people and things as the inspector considers necessary.

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(2) S.I.1978/32 as amended by S.S.I. 2006/352; there are other amending instruments that are not relevant to this Order.

(2) Any person who enters premises under paragraph (1)(d) may return unaccompanied to take any further steps necessary to carry out the relevant function.

### **General powers of inspectors**

**21.**—(1) An inspector may, when performing the inspector’s functions under this Order, require by notice the person in charge of any vehicle or equipment to cleanse and disinfect it.

(2) A veterinary inspector or an inspector acting under the direction of a veterinary inspector may, when performing functions under this Order—

- (a) cleanse and disinfect any part of premises or any thing on those premises;
- (b) require, by notice, the occupier of any premises to cleanse and disinfect any part of those premises or any thing on those premises;
- (c) require, by notice, the occupier of any premises or the keeper of any poultry or other captive bird—
  - (i) to keep or isolate any poultry, other captive bird or animal in a specified place; and
  - (ii) to separate any poultry, other captive bird or animal from any other animal or bird;
- (d) require, by notice, the occupier of any premises or the person in charge of any thing to detain or isolate any vehicle, equipment or other thing.

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

**22.**—(1) If any person fails to comply with a requirement under this Order, an inspector may take any steps which the inspector considers necessary to ensure the requirement is met or to prevent the spread of avian influenza, at the expense of that person.

(2) An inspector’s powers under paragraph (1) include powers to—

- (a) require, by notice, any person to take or refrain from specified action in respect of any place, animal, bird, vehicle, or other thing; and
- (b) seize and detain any thing.

### **Offences by bodies corporate**

**23.**—(1) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to negligence on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if that 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.

### **Enforcement**

**24.**—(1) This Order must be enforced by the local authority.

(2) The Scottish Ministers may direct, in relation to cases of a particular description or to a particular case, that they will enforce this Order instead.

**Revocation**

**25.** The Avian Influenza (H5N1 in Wild Birds) (Scotland) Order 2006<sup>(3)</sup> is hereby revoked.

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(3) [S.S.I. 2006/196](#) as amended by [S.S.I. 2006/277](#).