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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 45**

**ANIMALS**

**ANIMAL HEALTH**

**The Specified Animal Pathogens (Scotland) Order 2009**

*Made* - - - - *10th February 2009*

*Coming into force* - - *1st March 2009*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 7, 35(1), 87(2) and (5)(a) and 88(2) and (4)(a) of the Animal Health Act 1981(1) and all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Specified Animal Pathogens (Scotland) Order 2009 and comes into force on 1st March 2009.

(2) This Order extends to Scotland only.

**Extension of the definition of “animal”, “poultry” and “disease”**

2. For the purposes of the Animal Health Act 1981 in relation to this Order—

- (a) the definition of “animal” is extended so as to comprise any kind of mammal except man, and any kind of four-footed beast which is not a mammal;
- (b) the definition of “poultry” is extended so as to comprise any species of bird; and
- (c) the definition of “disease” is extended so as to comprise any disease of animals and poultry which may be caused by one or more specified animal pathogens.

**Interpretation**

3.—(1) In this Order—

“animal” includes poultry;

“carrier” means any living creature except man which may carry or transmit a specified animal pathogen or the tissue, cell culture, body fluid, excreta, carcase or part of a carcase of such creature by or by means of which a specified animal pathogen may be transmitted or carried;

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

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(1) 1981 c. 22; see section 86(1) for the definition of “the Ministers”. The functions of the Ministers, so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

“specified animal pathogen” means an animal pathogen listed in Schedule 1, including—

- (a) intact pathogens;
- (b) pathogens which have been attenuated or genetically modified by any means; and
- (c) any nucleic acid derived from a specified animal pathogen that could produce that pathogen when introduced into a biological system in which the nucleic acid is capable of replicating.

(2) In this Order “inspector” does not include an inspector appointed by a local authority.

(3) A licence or notice issued under this Order must be in writing, may be subject to conditions, and may be amended, suspended or revoked by notice in writing at any time.

### **Prohibitions and notifications in relation to specified animal pathogens**

4.—(1) No person may have in their possession—

- (a) any animal pathogen specified in Part 1 of Schedule 1;
- (b) any carrier in which they know such a pathogen is present,

except under the authority of a licence issued by the Scottish Ministers.

(2) No person may deliberately introduce into any animal a specified animal pathogen, except under the authority of a licence issued by the Scottish Ministers.

(3) A person must immediately notify the Scottish Ministers if that person—

- (a) has possession of any thing in respect of which they have reasonable grounds for suspecting that an animal pathogen specified in Part 1 of Schedule 1 is present; and
- (b) is not acting under the authority of a licence in respect of that pathogen.

### **Exceptions**

5.—(1) Article 4 does not apply to any person who is transporting a specified animal pathogen or carrier and who does not own or have any rights in that specified animal pathogen or carrier.

(2) It does not apply in relation to any specified animal pathogen or carrier contained in a product—

- (a) authorised to be placed on the market in the United Kingdom as a veterinary medicinal product, or authorised to be administered to an animal in the United Kingdom;
- (b) authorised to be placed on the market under the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994(2);
- (c) licensed in accordance with the provisions of section 7(2) (general provisions as to dealing with medicinal products) of the Medicines Act 1968(3).

### **Powers of inspectors**

6. In addition to the powers listed in the Animal Health Act 1981, an inspector enforcing this Order has the powers listed in Schedule 2.

### **Improvement notice**

7.—(1) If an inspector is of the opinion that a person—

- (a) is carrying on any activity contravening one or more of the conditions of a licence issued to that person under this Order; or

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(2) S.I.1994/3144; relevantly amended by S.I. 2000/292, 2001/795, 2002/236, 2005/2759 and 2006/1952.

(3) 1968 c. 67; amended by S.I. 1992/604, 1994/101 and 276, 2004/1031, 2005/2745 and 2006/2407.

(b) has contravened one or more of those conditions in circumstances that make it likely that the contravention will continue or be repeated,  
that inspector may serve on that person a notice (“an improvement notice”).

(2) An improvement notice must—

- (a) specify the conditions of the licence that have been contravened in the opinion of the inspector;
- (b) explain the reasons why the inspector is of that opinion; and
- (c) require the person on whom the notice is served to remedy the contravention or the matters occasioning it, within such period as may be specified in the notice.

(3) A notice must include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

### **Prohibition notices**

**8.**—(1) This article applies to any activities for which a licence is required under this Order.

(2) If an inspector is of the opinion that the activities involve or may involve a risk of serious harm to animals, the inspector may serve on any person carrying on such activities a notice (“a prohibition notice”).

(3) A prohibition notice must—

- (a) state that the inspector is of that opinion;
- (b) specify the matters which in that inspector’s opinion give or may give rise to a risk of serious harm to animals;
- (c) specify remedial measures; and
- (d) direct that the activities to which the notice relates must not be carried on unless the matters specified in the notice have been remedied.

(4) A direction contained in a prohibition notice under sub paragraph (3)(d) takes effect—

- (a) at the end of the period specified in the notice; or
- (b) if the notice so declares, immediately.

### **Appeals against improvement and prohibition notices**

**9.**—(1) A person (“the appellant”) on whom an improvement or prohibition notice is served may within 21 days appeal against the notice to a person appointed for the purpose by the Scottish Ministers.

(2) The appointed person must consider the appeal and any representations made by the Scottish Ministers and report in writing, with a recommended course of action, to the Scottish Ministers.

(3) The Scottish Ministers may then either cancel the notice or confirm it, with or without modifications, and must notify the appellant, together with the reasons for the cancellation or confirmation with modifications.

### **Licences**

**10.** No person may contravene a licence condition imposed upon him or her.

### **Enforcement**

**11.** This Order is enforced by the Scottish Ministers.

## **Revocations**

**12.** The following Orders are revoked—

- (a) the Specified Animal Pathogens Order 1998<sup>(4)</sup> in its application to Scotland; and
- (b) the Specified Animal Pathogens Amendment (Scotland) Order 2007<sup>(5)</sup>.

St Andrew's House, Edinburgh  
10th February 2009

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

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<sup>(4)</sup> S.I. 1998/463; amended by S.S.I.2007/30.  
<sup>(5)</sup> S.S.I. 2007/30.

## SCHEDULE 1

Article 3

### Specified animal pathogens

#### PART 1

1. African horse sickness virus.
2. African swine fever virus.
3. Aujeszky's disease virus.
4. Avian influenza viruses that are—
  - (a) uncharacterised;
  - (b) Type A viruses which have an intravenous pathogenicity index in six week old chickens of greater than 1.2; or
  - (c) Type A viruses H5 or H7 subtype for which nucleotide sequencing has demonstrated multiple basic amino acids at the cleavage site of haemagglutinin.
5. *Babesia bovis*.
6. *Babesia bigemina*.
7. *Babesia caballi*.
8. *Bacillus anthracis*.
9. Bluetongue virus.
10. Bovine leucosis virus.
11. *Brucella abortus*.
12. *Brucella melitensis*.
13. *Brucella ovis*.
14. *Brucella suis*.
15. *Burkholderia mallei*.
16. Classical swine fever virus.
17. *Cochliomyia hominivorax*.
18. Eastern and Western equine encephalomyelitis viruses.
19. *Echinococcus multilocularis*.
20. *Echniococcus granulosus*.
21. Ehrlichia ruminantium.
22. Equine infectious anemia virus.
23. Foot and mouth disease virus.
24. Hendra disease virus.
25. *Histoplasma farciminosum*.
26. Japanese encephalitis virus.
27. Lumpy skin disease virus.

28. *Mycoplasma agalactiae*.
29. *Mycoplasma capricolum* sub species *capripneumoniae*.
30. *Mycoplasma mycoides* sub species *mycoides SC* and *mycoides LC* variants.
31. *Mycoplasma mycoides* var *capri*.
32. Newcastle disease (avian paramyxovirus type 1) viruses which are—
  - (a) uncharacterised; or
  - (b) have an intracerebral pathogenicity index in one-day-old chicks of 0.4 or more, when not less than 10 million 50% egg infectious doses (EID50) are administered to each bird in the test.
33. Nipah disease virus.
34. Peste des petits ruminants virus.
35. Rabies virus and all viruses of the genus *Lyssavirus*.
36. Rift Valley Fever virus.
37. Rinderpest virus.
38. St. Louis equine encephalomyelitis virus.
39. Sheep and goat pox virus.
40. Swine vesicular disease virus.
41. Teschen disease virus.
42. *Theileria annulata*.
43. *Theileria equi*.
44. *Theileria parva*.
45. *Trichinella spiralis*.
46. *Trypanosoma brucei*.
47. *Trypanosoma congolense*.
48. *Trypanosoma equiperdum*.
49. *Trypanosoma evansi*.
50. *Trypanosoma simiae*.
51. *Trypanosoma vivax*.
52. Venezuelan equine encephalomyelitis virus.
53. Vesicular stomatitis virus.
54. West Nile virus.

## PART 2

55. The live virus causing viral hæmorrhagic disease of rabbits.

## SCHEDULE 2

Article 6

### Powers of inspectors

#### **General powers of inspectors**

1.—(1) The inspector may be accompanied by such other persons as the inspector considers necessary.

(2) For the purposes of enforcing this Order an inspector may—

- (a) take any necessary equipment or materials on to any premises;
- (b) make such examination and investigation as may in any circumstances be necessary, and may direct that any premises, any part of the premises or anything in the premises be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation;
- (c) take measurements or photographs or make recordings;
- (d) take samples of any articles or substances, or the atmosphere (both on any premises and in the vicinity of any premises);
- (e) cause any article or substance to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary for the purpose of the process or test);
- (f) take possession of any article or substance and detain it for so long as is necessary—
  - (i) to examine it and do to it anything that the inspector has power to do;
  - (ii) to ensure that it is not tampered with before the examination is completed;
  - (iii) to ensure that it is available for use as evidence in any civil or criminal proceedings;
- (g) require any person whom the inspector has reasonable cause to believe to be able to give any information (including that person's name and address) relevant to any examination or investigation—
  - (i) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask; and
  - (ii) to sign a declaration of the truth of the answers;
- (h) require the production of, inspect, and take copies of any licence issued under this Order or any record, or remove it to enable it to be copied and examined;
- (i) require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred by this Schedule;
- (j) have access to, inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as may reasonably be required and, where a record is kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(3) An inspector who proposes to exercise the power conferred by sub paragraph (2)(e) above in the case of an article or substance found in any premises must, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(4) Before exercising the power conferred by sub paragraph (2)(e) in the case of any article or substance, an inspector must consult such persons as the inspector considers appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything proposed to be done under that power.

(5) Where an inspector takes possession of any article or substance found in any premises, the inspector must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that it has been taken under that power; and before taking possession of any such substance under that power an inspector must, if it is practicable to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) No answer given by a person in pursuance of a requirement imposed under sub paragraph (2)(g) is admissible in evidence against that person or the spouse or civil partner of that person in any proceedings.

### **Seizure of specified animal pathogens**

2.—(1) Where an inspector has reasonable grounds for suspecting that a specified animal pathogen or a carrier is in the possession of a person who does not hold a licence required by this Order or in contravention of a condition of a licence granted under this Order, that inspector may at any time seize, or caused to be seized, such pathogen, carrier or any material in which the inspector reasonably suspects such pathogen to have been kept or into which they reasonably suspect it to be introduced.

(2) If the inspector considers it expedient to do so, that inspector may for the purpose of preventing the introduction or spreading of disease, detain, treat or destroy any specified animal pathogen, which has been seized.

### **Cleansing and disinfection**

3.—(1) An inspector may, by notice served upon the occupier of any premises or upon the owner or person in charge of any vehicle by which a specified animal pathogen, carrier or material is or has been present in contravention of this Order or of a licence issued under it, require the person on whom the notice was served to cleanse and disinfect such premises, place or vehicle in such manner as that inspector may by such notice specify at the expense of the person on whom the notice is served.

(2) Where the requirements of such a notice have not been complied with, the inspector may carry out or cause to be carried out the cleansing and disinfection specified in the notice at the expense of the person on whom the notice has been served.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order revokes in its application to Scotland and re-enacts with amendments the Specified Animal Pathogens Order 1998.

The principal change is to provide for additional powers for inspectors (Schedule 2).

As in the previous Order, it provides that possession of an animal pathogen specified in Part 1 of Schedule 1, or introduction into an animal of an animal pathogen specified in Parts 1 and 2 of that Schedule, requires a licence from the Scottish Ministers.

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

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.