

2013 No. 337

ANIMALS

ANIMAL HEALTH

**The Bovine Viral Diarrhoea (Scotland) Amendment (No. 2)
Order 2013**

Made - - - - 21st November 2013

Laid before the Scottish Parliament 22nd November 2013

Coming into force - - 1st January 2014

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1) and 83(2) of the Animal Health Act 1981(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Bovine Viral Diarrhoea (Scotland) Amendment (No. 2) Order 2013 and comes into force on 1st January 2014.

(2) In this Order “the 2013 Order” means the Bovine Viral Diarrhoea (Scotland) Order 2013(b).

Amendment of the 2013 Order

2. The 2013 Order is amended in accordance with articles 3 to 17.

3. In article 2 (interpretation)—

(a) after the definition of “CPH number” insert—

““current BVD finding” means, in relation to a breeding herd or breeding bovine animal, the most recent BVD finding determined for the herd or animal where the keeper has complied with the obligations, so far as applicable to that keeper, in articles 11 and 14;” and

(b) after the definition of “holding” insert—

““infected animal” means a calf, qualifying calf or bovine animal in respect of which a sample (of any description) has been taken which has been tested by a laboratory (by any means) for the presence of BVDV and the result of the test has confirmed the presence of BVDV in relation to that calf, qualifying calf or bovine animal;”.

(a) 1981 c.22. Powers to make Orders under these sections were originally conferred on “the Ministers”, as defined in section 86(1) of the Animal Health Act 1981. The functions of the Ministers were, so far as within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2013/3, amended by S.S.I. 2013/21.

4. In article 3 (notices and other instruments), after paragraph (3) insert—

“(4) Any person moving a bovine animal under the authority of a licence granted under this Order must—

- (a) keep upon that person the licence or a copy of it at all times during such movement;
- (b) on demand by a veterinary inspector, an inspector or an officer of the Scottish Ministers, produce the licence or a copy of it and allow a copy or extract to be taken; and
- (c) keep the licence or a copy of it for the period of 6 months after the movement is completed.”.

5. In article 11(2) (taking of samples)—

(a) for sub-paragraph (d) substitute—

“(d) except in a case mentioned in sub-paragraph (da), a sample of blood from—

- (i) each of 5 calves between the age of 9 and 18 months in the herd at the time, or, where the herd contains separately managed groups, each of 5 such calves from each such group or, if there are fewer than 5 such calves in the herd or, as the case may be, group, each of such calves in the herd or group;
- (ii) each of 10 calves between the age of 6 and 18 months in the herd at the time or, where the herd contains separately managed groups, each of 10 such calves from each such group or, if there are fewer than 10 such calves in the herd or, as the case may be, group, each of such calves in the herd or group; or
- (iii) where there are no calves as referred to in head (ii) in the herd at the time or, as the case may be, separately managed group, each of 5 bovine animals over the age of 18 months in the herd at the time or, as the case may be, each of 5 such animals from each such group, where those animals have not left the holding since birth or, if there are fewer than 5 such animals in the herd or, as the case may be, group, each of such animals in the herd or group, where those animals have not left the holding since birth;”;

(b) after sub-paragraph (d) insert—

“(da) in the case of a breeding herd kept in any area within the local government area of the Shetland Islands^(a), a sample of blood from each of 5 calves between the age of 6 and 18 months in the herd at the time or, where the herd contains separately managed groups, each of 5 such calves from each such group or, if there are fewer than 5 such calves in the herd or, as the case may be, group, each of such calves in the herd or group;”.

6. In article 12(1)(a) (decision on type of sample to take), for “article 11(2)(d)” substitute “article 11(2)(d) or (da)”.

7. In article 14(3)(b)(v) (submission of samples), for “article 11(2)(d), (e) or (f)” substitute “article 11(2)(d), (da), (e) or (f)”.

8. Article 16 (movement of a qualifying calf) is revoked.

9. In article 17 (duties of operators of approved laboratories – breeding herds or breeding bovine animals)—

(a) after paragraph (2)(b)(i) insert—

“(ia) in the case of a sample or samples as described in article 11(2)(e) or (f) or (5A), determine the result of the test of the sample or samples and whether

(a) The local government area of the Shetland Islands comprises the area of Shetland Islands Council as set out in section 1(2) of, and Schedule 1 to, the Local Government etc. (Scotland) Act 1994 (c.39).

this confirms the presence of BVDV in any calf or bovine animal (as identified by reference to the ear tag number from ear tags applied under the 2007 Regulations to that calf or bovine animal from which the sample derives);”;

- (b) in paragraph (2)(b)(ii), after “finding” insert “and, in the case mentioned in head (ia), the result of the test for the identified calf or bovine animal”; and
- (c) in paragraph (3)(a), for “article 11(2)(a), (b), (c) or (d)” substitute “article 11(2)(a),(b),(c), (d) or (da)”.

10. For article 18(2)(b) (duties of operators of approved laboratories – qualifying calves) substitute—

“(b) by notice inform the keeper of the result of the test, clearly indicating to the keeper whether the result confirms the presence of BVDV in the qualifying calf;”.

11. For article 20(1) (reporting of tests for presence of BVDV) substitute—

“(1) This article applies where, other than under Part 2, a laboratory (including an approved laboratory) tests for evidence of exposure to BVDV or for the presence of BVDV a sample (of any description) taken from a bovine animal.”.

12. In article 21 (BVD status of a breeding herd or breeding bovine animal)—

(a) in paragraph (2), for “paragraph (3)” substitute “paragraphs (2A) and (3)”;

(b) after paragraph (2) insert—

“(2A) The BVD status of the breeding herd or breeding bovine animal is deemed to be “not negative” during any period when—

- (a) the breeding herd is subject to a movement restriction under article 23B; or
- (b) the breeding bovine animal is subject to a movement restriction under article 23B or 23D.”; and

(c) in paragraph (3), after “BVD finding,” insert “or is deemed to have such a finding by virtue of paragraph (2A).”.

13. For article 22 (notification where BVD finding is “not negative”) substitute—

“Notification of “not negative” BVD finding or BVDV test result

22.—(1) This article applies where the keeper of a breeding herd or breeding bovine animal has been informed—

- (a) under article 17(2)(b)(ii) or in the case mentioned in article 21(4), that the herd or animal has a “not negative” BVD finding; or
- (b) under article 17(2)(b)(ii), of the result of the test for the identified calf or bovine animal.

(2) The keeper must give the keeper of any other breeding herd or breeding bovine animal which is kept on the same holding notice of—

- (a) where paragraph (1)(a) applies—
 - (i) that finding; or
 - (ii) any change to that finding; or
- (b) where paragraph (1)(b) applies, the result of that test.

(3) Notice under paragraph (2) is to be given within 7 days of the later of—

- (a) the keeper being informed of the finding or change or, as the case may be, the result of the test; and
- (b) the other herd or animal being first kept on the holding after the finding or change or, as the case may be, the result of the test.”.

14. In article 23 (change of BVD finding by approved veterinary surgeon), in paragraphs (1) and (3) after “determination of the finding as “not negative”” insert “, or by virtue of article 21(2A) the BVD status is deemed to be “not negative”,”.

15. After article 23 insert—

“Notification of BVD finding prior to movement of a breeding herd or breeding bovine animal

23A.—(1) This article applies where the keeper of a breeding herd or breeding bovine animal—

- (a) is proposing to move (or arrange to move) the herd or animal off the holding on which the herd or animal is kept other than for the purpose of slaughter; and
- (b) has not been informed by a person mentioned in paragraph (2)(a) to (c) that the person is aware of the current BVD finding for that herd or animal.

(2) Where this article applies, the keeper must give, prior to the movement of any animal forming part of the herd or the breeding bovine animal, notice of the current BVD finding to—

- (a) the operator of a market to which the herd or animal is to be moved;
- (b) the prospective keeper of the herd or animal; or
- (c) any person with whom the herd or animal is to be temporarily placed.”.

16. After Part 4 (BVD findings and status) insert—

“PART 4A

Movement restrictions

Movement of bovine animals

23B.—(1) This article applies to the keeper of a breeding herd or breeding bovine animal if, by the date of the most recent compliance deadline (set in accordance with article 10), the keeper has failed to comply with any obligations, so far as applicable to that keeper, in articles 11 and 14 (in this article “the applicable obligations”).

(2) The keeper must not, during the relevant period, move (or arrange to move) any animal forming part of the breeding herd or the breeding bovine animal off the holding on which it is kept unless—

- (a) the animal is being moved to slaughter;
- (b) the movement is under a licence granted by a veterinary inspector; or
- (c) an approved veterinary surgeon reasonably considers that appropriate testing has been carried out which shows that the animal is not or is no longer an infected animal and has notified the Scottish Ministers of that fact.

(3) In paragraph (2), “the relevant period” is the period—

- (a) beginning with the later of—
 - (i) 1st January 2014; or
 - (ii) the date of the most recent compliance deadline; and
- (b) ending on the date on which the keeper has complied with all of the applicable obligations and has been informed under article 17(2)(b)—
 - (i) of the BVD finding; and

- (ii) where the case mentioned in article 17(2)(b)(ia) is applicable, of the result of the BVDV test in relation to the identified calf or bovine animal.

Movement of a qualifying calf

23C.—(1) The keeper of a qualifying calf must not move (or arrange to move) the calf off the holding on which it is born unless paragraph (2) or (3) applies.

(2) This paragraph applies where—

- (a) a sample has been taken from the calf under article 15(1)(a) and submitted under article 15(1)(b); and
- (b) the keeper has, in accordance with article 18(2)(b), been informed that the calf has tested negative for the presence of BVDV.

(3) This paragraph applies where—

- (a) the calf is being moved to slaughter;
- (b) the move is under a licence granted by a veterinary inspector; or
- (c) an approved veterinary surgeon reasonably considers that appropriate testing has been carried out which shows that the calf is not or is no longer an infected animal and has notified the Scottish Ministers of that fact.

Movement of an infected animal

23D.—(1) This article applies—

- (a) where the keeper of a bovine animal knows, or ought reasonably to know, that it is an infected animal; and
- (b) until an approved veterinary surgeon considers, following appropriate further testing, that the animal is not or is no longer an infected animal and has notified the Scottish Ministers of that fact.

(2) The keeper must not move (or arrange to move) the animal off the holding on which it is kept unless—

- (a) the animal is being moved to slaughter under arrangements which do not give rise to any appreciable risk of the infection with BVDV of any other bovine animal (except a bovine animal which is also being moved to slaughter); or
- (b) the movement is under a licence granted by a veterinary inspector.

(3) For the purposes of paragraph (1), the keeper of a bovine animal is to be taken to know that the animal is an infected animal if—

- (a) on at least one occasion a sample (of any description) has been taken from the animal which has been tested by a laboratory (by any means) for the presence of BVDV; and
- (b) on that occasion or, where the keeper knows of more than one such occasion, the last such occasion, the result of the test has confirmed the presence of BVDV and the operator of the laboratory has informed the keeper of that fact.”.

17. In article 24 (maintenance and provision of information)—

- (a) in paragraph (1), for “articles 17(2)(b)(iii), 18(2)(c) and 20(2)” substitute “articles 17(2)(b)(iii), 18(2)(c), 20(2), 23(3), 23B(2)(c), 23C(3)(c) and 23D(2)(c)”;
- (b) in paragraph (3)(a), for “that” substitute “any”; and

(c) in paragraph (4), for “paragraph (2)(b)” substitute “paragraph (2)”.

St Andrew’s House,
Edinburgh
21st November 2013

RICHARD LOCHHEAD
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Bovine Viral Diarrhoea (Scotland) Order 2013 (“the 2013 Order”).

The 2013 Order provides for all keepers of breeding bovine animals and breeding herds to take, or arrange to have taken, samples from their herds or animals and submit those for testing on an annual basis. Similar obligations apply in relation to keepers of (qualifying) calves born otherwise than into a breeding herd or to a breeding bovine animal. This is for the purpose of determining whether bovine viral diarrhoea virus (“BVDV”) is or may be present in the herd, animal or qualifying calf and, in respect of a herd or animal, this will generate a BVD status/finding. In addition, the Scottish Ministers have powers and duties in respect of informing certain persons of the current BVD finding and the results of BVDV tests.

Article 3 of this Order amends article 2 of the 2013 Order to insert new definitions of “current BVD finding” and “infected animal”.

Article 4 amends article 3 of the 2013 Order, which makes provision for the issuing of notices, licences or approvals.

Article 5(a) amends article 11 of the 2013 Order in relation to blood sampling arrangements for breeding herds, and article 5(b) provides for alternative arrangements in respect of breeding herds kept within the local government area of the Shetland Islands. Articles 6, 7 and 9(c) respectively amend articles 12, 14 and 17 of the 2013 Order in consequence of article 5(b).

Article 9(a) and (b) of this Order amends article 17 of the 2013 Order to make provision for the notification of test results confirming the presence of BVDV in relation to an identified calf or bovine animal. Article 10 of this Order amends article 18 of the 2013 Order to make similar provision for the notification of test results in relation to a qualifying calf.

Article 11 amends article 20 of the 2013 Order to require the operator of a laboratory to notify to the Scottish Ministers the test results of all samples tested for evidence of exposure to BVDV or for the presence of BVDV.

Article 12 amends article 21 of the 2013 Order (and article 14 makes a consequential amendment to article 23 of the 2013 Order). This is to make provision for the circumstances in which the BVD status of a breeding herd or breeding bovine animal is deemed to be “not negative”.

Article 13 amends article 22 of the 2013 Order to require a keeper of a breeding herd or breeding bovine animal to notify a “not negative” BVD finding or a BVDV test result to the keeper of any other breeding herd or breeding bovine animal kept on the same holding.

Article 15 inserts a new article 23A into the 2013 Order to require the keeper of a breeding herd or breeding bovine animal to notify certain persons about the current BVD finding prior to any movement of the herd or animal.

Article 16 inserts a new Part 4A into the 2013 Order containing the following provisions—

- New article 23B of the 2013 order prohibits or restricts the movement of breeding bovine animals or breeding herds until the keeper of those animals or herds has complied with the sampling and testing requirements under articles 11 and 14 of the 2013 Order;
- New article 23C of the 2013 Order prohibits or restricts the movement of qualifying calves until the keeper has complied with the sampling and testing requirements under article 15 of the 2013 Order; and
- New article 23D of the 2013 Order prohibits or restricts the movement of bovine animals infected with BVDV.

Article 17 amends article 24 of the 2013 Order to extend the powers and duties of the Scottish Ministers in respect of providing information about current BVD findings and BVDV test results.

This Order has been notified in draft to the European Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society Services (OJ L 204, 21.7.1998, p.37), as last amended by Regulation (EU) No 1025/2012 (OJ L 316, 14.11.2012, p.12).

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Rural Affairs and Environment Directorate, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.

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