

ANIMAL HEALTH ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Scrapie

14. *Section 6* gives effect to *The Schedule* which inserts a new Part 2A into the 1981 Act.

Sheep genotypes

15. New section 36A empowers the Secretary of State by order to specify sheep genotypes which in her opinion are more susceptible than other sheep genotypes to infection by transmissible spongiform encephalopathies (TSE) generally, or by a particular form of TSE, or to becoming carriers. (TSEs include Scrapie and BSE).

Genetically susceptible Sheep

16. New section 36B provides power for the Secretary of State by regulations to make provision for the arrangements to enable genotypes in sheep to be established. These arrangements include taking samples from sheep and administering electronic identification devices to them and requiring the keepers of sheep subject to the arrangements to keep records of the genotype of the sheep.
17. New section 36C makes provision where sheep are identified as being of a genotype specified in an Order under section 36A. Subsection (2) requires the Secretary of State to consider whether there are exceptional circumstances, which allow the sheep to be used for breeding. Subsection (3) requires the Secretary of State, in the absence of exceptional circumstances, to give notice on the keeper of the sheep. The effect of the notice is that subsections (7) to (9) apply. These prohibit the use of the sheep, or its semen, eggs or embryos, for breeding or connected purposes, require the destruction of any of its semen, eggs or embryos taken from the sheep and require the keeper of the sheep to arrange either within one month for the sheep to be castrated/sterilised or within 7 months to be slaughtered. Subsection (10) provides that the likelihood of extinction of the breed is taken into account when considering whether there are exceptional circumstances under subsection (2)
18. New section 36D makes provisions for appeals against a restriction notice. The appeal would be heard by an independent person (“an assessor”) appointed by the Secretary of State. An appeal must be brought within 21 days of the service of the restriction notice. In exceptional circumstances there is an extended period for bringing an appeal. If the assessor allows the appeal, he may revoke the restriction notice or direct that a further test in relation to the sheep is carried out. Subsection (7) provides a power for the Secretary of State to make Regulations to supplement the provisions of section 36D. Subsection (8) provides that these regulations may make provision for an appeals procedure, costs of further sampling or tests and recovery of these costs.

Enforcement

19. New section 36E applies where a person has not complied with a requirement of a restriction notice in relation to a sheep which is not subject to an appeal or which as a result of a successful appeal are no longer subject to a restriction notice. Subsection (3) enables the Secretary of State to take such reasonable steps as he considers appropriate to remedy the failure to comply. Subsection (4) provides that these may include arrangements for the slaughter or castration or sterilisation of the sheep. Subsection (5) provides power for the Secretary of State to make Regulations supplementing the provisions of section 36E.
20. New section 36F creates offences. Subsection (1) creates offences committed by the person given a restriction notice of selling a sheep to which the restriction notice applies, or its semen, eggs or embryos, or failing without reasonable excuse to comply with any of the restrictions imposed on him by subsections (7) to (9) of section 36C. Subsection (2) creates an offence for anyone else knowingly to use semen, eggs or embryos taken from a sheep subject to a restriction notice. Subsection (3) creates an offence of failing to comply with provisions of Regulations made under section 36B (provision for arrangements to enable genotypes in sheep to be established). Subsection (4) creates an offence of obstructing an inspector or anyone else in the discharge of their functions under Part 2A of the Act.

Power of entry

21. New section 36G provides powers of entry for inspectors or constables to carry out functions under new Part 2A. It will be possible to exercise this power at all reasonable times except for premises which are used only as private dwelling-houses, where 24 hours notice must be given.
22. New section 36H makes further provision about powers of entry. These apply if there are reasonable grounds and if either of the two further conditions in subsection (4) or (5) are satisfied. Where there are, a justice of the peace may issue a warrant authorising an inspector or a constable to enter premises, if necessary using reasonable force, for the purposes of carrying out their functions under Part 2A of the Act or to ascertain whether one of their functions should be exercised. New section 36I contains provisions where inspectors or constables enter premises under the powers in section 36G(1) or section 36H. It enables them to inspect and, if necessary seize and detain, records.
23. New section 36J creates offences relating to these powers of entry.
General
24. New section 36K creates powers for the Secretary of State to make regulations providing for payment of compensation for losses suffered or costs incurred as a result of the exercise of powers under Part 2A of the Act.
25. New section 36L provides that powers to make regulations under Part 2A of the Act are exercisable by statutory instrument subject to negative resolution procedure.