

ANIMAL HEALTH ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

8. The sections to the Act which make additional provision for tackling FMD and extension to other diseases amend or extend existing provisions in the 1981 Act. The Schedule containing the TSE provisions inserts a new Part into the 1981 Act.

Part 1: Slaughter

9. *Section 1* extends the categories of animals which the Minister may cause to be slaughtered in relation to FMD. *Subsection (2)* adds a new paragraph to sub-paragraph (1) of paragraph 3 of Schedule 3 to the 1981 Act. This adds to the categories of animals which may be slaughtered because of FMD any animal which the Secretary of State thinks should be slaughtered with a view to preventing the spread of FMD. *Subsection (3)* adds a new sub-paragraph (1A) which makes it clear that the new power may be exercised whether or not the animals concerned are affected or suspected of being affected with the disease, have been in contact with affected animals, or have been exposed to or vaccinated against the disease.
10. *Section 2* enables the Secretary of State to extend to diseases other than FMD the power to cause to be slaughtered for disease control purposes animals other than those affected, suspected of being infected or exposed to disease. *Subsection (1)* inserts a new section 32A into the 1981 Act. Subsection (1) of the new section gives the Secretary of State power to make an order extending to diseases other than FMD the power to cause animals to be slaughtered and requiring the payment of compensation. Subsection (2) of the new section enables an order to include amendments corresponding to those made by clause 1 of the Act and makes clear that the power may be exercised in respect of diseases not already covered by Schedule 3 to the 1981 Act. The exercise of the power is subject to the affirmative resolution procedure. *Subsection (2)* extends the powers to seize and dispose of carcasses to apply specifically to animals slaughtered because of transmissible spongiform encephalopathies and to animals slaughtered in pursuance of the exercise of powers by order under new Section 32A.
11. *Section 3* provides for a disease control (slaughter) protocol to be produced indicating action that would be taken by inspectors in the exercise of the preventive slaughter power introduced in Section 1. The scope of the protocol may be extended to diseases other than FMD and to other powers by order. The protocol must be consulted upon and published.
12. *Section 4* places a duty on the Secretary of State to publish the reasons for using the preventive slaughter power (Section 1). The reasons must include an explanation of why the use of vaccination is not appropriate in the prevailing circumstances, and must be published before the preventive slaughter power is used.
13. *Section 5* confers on the Secretary of State the power to cause to be slaughtered animals where they have been vaccinated against FMD or other animal diseases specified by order. *Subsection (3)* provides a power to take any action required to slaughter the animals or required in connection with the slaughter. *Subsection (4)* requires

the Secretary of State to pay compensation for the slaughtered vaccinated animals. *Subsections (5) to (7)* provide that compensation will be paid at market value for slaughtered animals vaccinated to prevent the spread of FMD, and for compensation to be prescribed by order for any other disease to which this provision is extended. *Subsection (8)* provides that an order to extend the power to slaughter vaccinated animals to other animal diseases is subject to affirmative resolution. *Subsection (9)* provides that an order prescribing an amount for payment of compensation is subject to negative resolution.

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.

Part 3: Enforcement

Powers

26. *Section 7* makes provision for powers of entry to carry out vaccination. *Subsection (4)* adds 15 new subsections to section 16 of the 1981 Act. If there are reasonable grounds and either of the two further conditions in new subsections (6) or (7) are satisfied, a justice of the peace may issue a warrant authorising an inspector to enter land or premises, if necessary using reasonable force, for the purpose of the power to vaccinate. New subsections (9) to (13) contain provisions where inspectors enter land or premises under powers to vaccinate or a warrant.
27. *Section 8* inserts a new section 62A into the 1981 Act to provide a power of entry for the purpose of ascertaining whether any power to cause animals to be slaughtered should be exercised and for the purpose of doing anything in pursuance of the exercise of that power.
28. It also inserts new sections 62B and 62C. New section 62B makes provision for issuing of warrants. These apply if there are reasonable grounds and if either of the two further conditions in subsection (4) or (5) are satisfied. Where they are, a justice of the peace

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which received Royal Assent on 7th November 2002*

may issue a warrant authorising an inspector to enter premises, if necessary using reasonable force, for the purpose of ascertaining whether any power to cause animals to be slaughtered should be exercised and doing anything in pursuance of the exercise of that power. New section 62C contains provisions where inspectors enter premises under the powers in section 62A(1) or section 62B.

29. Finally, it inserts a new section 66A which makes provision about refusal and obstruction.
30. *Section 9* inserts new section 62D into the 1981 Act to provide powers of entry for the purpose of ascertaining whether animals are carrying antibodies, are infected with disease, or whether any causative agent of disease is present. Subsection (2) provides for this power to be extended to diseases other than FMD as the Secretary of State may specify by order.
31. It also inserts new sections 62E and 62F. New section 62E makes provision for issuing of warrants. These apply if there are reasonable grounds and if either of the two further conditions in subsection (4) or (5) are satisfied. Where they are, a justice of the peace may issue a warrant authorising an inspector to enter premises, if necessary using reasonable force, for the purpose of ascertaining whether animals are carrying antibodies to FMD, are infected with FMD or the causative agent of disease is present. New section 62F contains provisions where inspectors enter premises under the powers in section 62D or 62E.
32. *Section 10* creates a new power for inspectors to inspect vehicles to check compliance with disease control measures by inserting a new section 65A into the 1981 Act. It will be possible to exercise this power only in areas and periods designated in an order and the inspector must be accompanied by a uniformed police officer.
33. *Section 11* clarifies the powers under the Animal Health Act 1981 to arrest for obstruction. It makes clear that police officers and Departmental inspectors may arrest anyone who prevents them from carrying out their functions under the Act.

Offences

34. *Subsection (1) of Section 12* inserts new sections 28A and 28B into the 1981 Act. Section 28A creates a new offence of deliberately infecting an animal with certain diseases or intending to do so and sets the penalties. The penalty on conviction by a Magistrates' Court could be up to 6 months' imprisonment and/or a fine of up to the statutory maximum (currently £5,000) and the penalty on conviction by a Crown Court could be up to 2 years' imprisonment and/or an unlimited fine. Section 28B gives the court power to disqualify a person convicted with the offence from keeping or dealing in animals for such period as it sees fit. After one year (and each subsequent period of one year) the person may apply to have the disqualification lifted or its duration reduced. The diseases to which this new offence applies are listed in new Schedule 2A to the 1981 Act, inserted by subsection (2) of clause 12.
35. *Section 13* substitutes a new section 75 in the 1981 Act which standardises the maximum penalties for offences against the Act for which no penalty is specified to a new maximum of a fine not exceeding level 5 on the standard scale (currently £5,000) and/or 6 months' imprisonment.
36. *Section 14* inserts a new section 71A which extends the time limit within which prosecutions for offences under the 1981 Act can be brought. It enables prosecutions to be brought within six months of the date on which evidence of the offence is discovered, provided this is within three years of the date on which the offence was committed.

Part 4: General

37. *Section 15* places a duty upon the Secretary of State to consider what is the most appropriate method of preventing the spread of FMD in the event of an occurrence

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of the disease. The consideration must include an assessment of whether vaccination would be more appropriate than any other method of disease control.

38. *Section 16* provides for the publication of biosecurity guidance. The provision applies to guidance for persons having functions under the 1981 Act, and to guidance for those involved or associated with handling livestock. The guidance must be consulted on and published, and will be admissible in court proceedings.
39. *Section 17* provides for the publication of an annual review of import controls. The report must include details of the activities undertaken by Government directed towards the prevention of the introduction of animal disease through illegal importation of animal products.
40. *Section 18* requires the Secretary of State and National Assembly for Wales to produce a contingency plan for FMD. The provisions may be extended to other diseases by order. The contingency plan must be consulted on, published and laid before Parliament.
41. *Section 19* provides that the Act extends to England and Wales only.