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WELSH STATUTORY INSTRUMENTS

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**2005 No. 3385 (W.269)**

**ANIMALS, WALES  
ANIMAL HEALTH**

**The Avian Influenza (Preventive Measures  
in Zoos) (Wales) (No. 2) Regulations 2005**

*Made* - - - - 8 December 2005

*Coming into force* - - 9 December 2005

The National Assembly for Wales, is designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> in relation to the common agricultural policy of the European Community<sup>(2)</sup>. Exercising the powers conferred upon it by that section, the National Assembly for Wales makes the following Regulations:

**Title, commencement and application**

1. The title of these Regulations is the Avian Influenza (Preventive Measures in Zoos) (Wales) (No2) Regulations 2005; they apply in relation to Wales and come into force on 9 December 2005.

**Interpretation**

2. In these Regulations —

“the Act” means the Animal Health Act 1981<sup>(3)</sup>;

“avian influenza” means an infection of poultry or other captive birds caused by any influenza A virus of the subtypes H5 or H7 or with an intravenous pathogenicity index in six week old chickens greater than 1.2;

“the Commission Decision” means Commission Decision [2005/744/EC](#) laying down the requirements for the prevention of highly pathogenic avian influenza virus caused by influenza A virus of subtype H5N1 in susceptible birds kept in zoos in the Member States<sup>(4)</sup>;

“inspector” means an inspector appointed by a local authority for the purposes of these Regulations or under the Act;

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(1) 1972, C.68.

(2) S.I.2005/2766.

(3) 1981, c. 22.

(4) OJ No L279, 22.10.2005, p.75.

“local authority” means in relation to an area the county council or county borough council for that area.

“the National Assembly” means the National Assembly for Wales of Cathays Park, Cardiff CF10 3NQ;

“other captive bird” means any bird kept in captivity other than poultry, including birds kept for shows, races, exhibitions and competitions (such as ornamental birds and racing pigeons);

“poultry” means all birds that are reared or kept in captivity for the production of meat or eggs for consumption, the production of other commercial products, for restocking supplies of game or for the purposes of any breeding programme for the production of these categories of birds;

“susceptible bird” means any species of bird that is likely to be susceptible to avian influenza and which is not intended for the production of animal products;

“veterinary inspector” means an inspector appointed by the National Assembly under or for the purposes of these Regulations or under the Act;

“zoo” means —

- (i) a permanent establishment where animals of wild species are kept for exhibition to the public for seven or more days a year, with the exception of circuses and pet shops; and
- (ii) an "approved body, institute or centre", as defined in point (c) of Article 2(1) of Council Directive [92/65/EC](#) laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive [90/425/EEC](#)(5).

### **Licences, notices and declarations**

3.—(1) Licences, notices and declarations granted under these Regulations must be in writing, may be subject to conditions and may be amended, suspended or revoked in writing at any time.

(2) The National Assembly must take such steps as it considers necessary to ensure that licences, notices and declarations are brought to the attention of those who may be affected by them and, in particular, must ensure that the extent of any zone declared under these Regulations, the nature of the restrictions and requirements applicable within it and the dates of its declaration and withdrawal (and any suspension of it) are publicised.

### **Risk assessment and imposition of restrictions**

4.—(1) The National Assembly must evaluate the risk of the transmission of avian influenza virus (in particular virus of the sub-type H5N1) from wild birds to susceptible birds in zoos, taking into account the criteria and risk factors set out in Annex I to the Commission Decision.

(2) Having carried out such an evaluation, the National Assembly must, if it considers it necessary to reduce the risk of such transmission —

- (a) declare an avian influenza prevention (zoos) zone in all or part of Wales; or
- (b) serve (or cause a veterinary inspector or an inspector to serve) a restrictions notice on the owner or occupier of any zoo where susceptible birds are kept.

(3) The National Assembly must, in a declaration of an avian influenza prevention (zoos) zone or in a restrictions notice, impose such of the following requirements as it considers necessary on zoos in the zone or the subject of a notice —

- (a) susceptible birds must be housed or otherwise kept separate from wild birds;

(5) OJ No L268, 14.9.1992, p.54, as last amended by Council Regulation (EC) No 1398/2003 (OJ No L198, 6.8.2003, p.3.).

- (b) susceptible birds must not be exposed to the risk of exposure to the faeces of wild birds or other material that may have been contaminated with avian influenza virus by wild birds;
  - (c) domestic ducks and geese must be kept separate from other susceptible birds;
  - (d) susceptible birds must be fed and provided with drinking water indoors or under a shelter which prevents wild birds from gaining access to the food or water supply;
  - (e) persons other than keepers of the birds must be prohibited from having access to areas where susceptible birds are kept;
  - (f) the keeper of susceptible birds must take appropriate biosecurity measures in such areas and when entering and leaving such areas;
  - (g) such other requirements as the National Assembly considers necessary to reduce the risk of transmission of avian influenza from wild birds to susceptible birds in zoos.
- (4) A declaration made under paragraph (2) must specify the requirements which apply in the zone and set out the boundaries of the zone.
- (5) The National Assembly may, in accordance with Article 2 of the Commission Decision, declare that certain premises are exempt from such requirements.
- (6) Any person the subject of a declaration or a notice under these Regulations must comply with the declaration or notice, except to the extent that he or she is authorised to do otherwise by a licence issued by a veterinary inspector.

### **Vaccination of Susceptible Birds**

- 5.—(1) Following a risk assessment, the National Assembly must, if it considers it necessary to reduce the risk of transmission of avian influenza, vaccinate or require the vaccination of susceptible birds in zoos.
- (2) If vaccination is not carried out by the National Assembly, it must be carried out in accordance with instructions issued by it.

### **Powers of inspectors**

- 6.—(1) A veterinary inspector or an inspector may enter any premises for the purpose of ascertaining whether these Regulations (or any declaration, notice or licence under them) are being or have been complied with and may —
- (a) inspect and copy any records (in whatever form they are held) kept under these Regulations, or remove such records to enable them to be copied;
  - (b) inspect and check the operation of any computer and any associated apparatus or material which 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 him or her such assistance as he or she may reasonably require (including providing him or her with any necessary passwords) 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;
  - (c) mark any bird or other thing for identification purposes; and
  - (d) take with him or her such persons and equipment as he or she considers necessary.
- (2) Any person who defaces, obliterates or removes any mark applied under paragraph (1)(c) is guilty of an offence.
- (3) If a veterinary inspector or an inspector enters any unoccupied premises he or she must leave them as effectively secured against unauthorised entry as he or she found them.

**Enforcement and offences**

7.—(1) The following provisions of the Act apply as if these Regulations were an Order made under the Act—

- (a) section 60 (duties and authorities of constables);
- (b) section 66 (refusal and obstruction);
- (c) section 67 (issue of false licences etc.);
- (d) section 68 (issue of licences etc. in blank);
- (e) section 71 (other offences as to licences);
- (f) section 71A (prosecutions: time limit);
- (g) section 73 (general offences);
- (h) section 75 (penalties for certain summary offences), except that a person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both;
- (i) section 77 (money recoverable summarily); and
- (j) section 79(1) to (4) (evidence and procedure).

(2) Section 69 of the Act (falsely obtaining licences etc.) applies as if licences granted under these Regulations were granted under an Order made under the Act.

(3) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he or she, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) For the purposes of paragraph (3), “director” in relation to a body corporate managed by its members, means a member of the body corporate.

(5) The local authority must enforce these Regulations unless directed otherwise by the National Assembly pursuant to paragraph (6).

(6) The National Assembly may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under paragraph (5) is to be discharged by the National Assembly and not by the local authority.

**Powers of inspectors in case of default**

8.—(1) If a person fails to comply with a requirement of these Regulations or of a declaration, notice or licence under them, a veterinary inspector or an inspector may take any steps he or she considers necessary to ensure the requirement is met, including —

- (a) seizing, detaining or disposing of any bird moved, kept or otherwise dealt with in breach of these Regulations and of any such declaration, notice or licence; and
- (b) directing any person to take or refrain from specified action in respect of any place, bird, animal, vehicle, product or other thing.

(2) Any steps taken are without prejudice to proceedings for an offence arising out of the default.

(3) The person in default must reimburse any reasonable expenses incurred by the National Assembly or the local authority in taking such steps and any such reimbursement is recoverable summarily.

**Revocation of The Avian Influenza (Preventive Measures in Zoos)(Wales) Regulations 2005**

9. The Avian Influenza (Preventive Measures in Zoos)(Wales) Regulations 2005(6) are revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7).

8 December 2005

*Dafydd Elis-Thomas*  
The Presiding Officer of the National Assembly

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(6) S.I. 2005/2984 (W.218).  
(7) 1998 c. 38.

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## EXPLANATORY NOTE

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

These Regulations revoke and replace The Avian Influenza (Preventive Measures in Zoos) (Wales) Regulations 2005.

They bring into force Commission Decision [2005/744/EC](#) laying down the requirements for the prevention of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 in susceptible birds kept in zoos in the Member States (OJ No L 279, 22.10.2005, p.75).

They require the National Assembly to evaluate the risk of the transmission of avian influenza virus to susceptible birds in zoos and to take appropriate measures to reduce such risk (Regulation 4(1) and (2)).

Regulation 4(2) provides for the National Assembly to declare avian influenza prevention (zoos) zones or to serve notices of restrictions on premises. Regulation 4(3) sets out the measures which may be applied.

Regulation 5 provides for the National Assembly to require vaccination of susceptible birds in zoos if it thinks necessary.

Regulations 6, 7 and 8 deal with the powers of inspectors appointed by the National Assembly and by local authorities and with enforcement.

Regulation 9 revokes The Avian Influenza (Preventive Measures in Zoos) (Wales) Regulations 2005.

A regulatory appraisal has not been prepared in respect of these Regulations.