



Animal Health and Welfare (Scotland) Act 2006 2006 asp 11

PART 1

ANIMAL HEALTH

Particular provision for TSE

11 Livestock genotypes: specification, breeding and slaughter

After Part 2A of the 1981 Act there is inserted—

“PART 2B

TSE: SCOTLAND

Livestock genotypes

36N Power to specify livestock genotypes and TSEs

- (1) Where the Scottish Ministers are satisfied that an animal of a particular livestock genotype has (or has had) a form of TSE, they may by order specify for the purposes of this Part—
 - (a) that livestock genotype; and
 - (b) if they consider it appropriate, the form of TSE concerned.
- (2) In subsection (1), “satisfied” means satisfied on the basis of scientific evidence.
- (3) Subsection (1) does not apply in relation to any animal which has (or has had) a form of TSE solely as a consequence of scientific experimentation on the animal.
- (4) For the purposes of subsection (1), it is immaterial where (whether in Scotland or elsewhere)—

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- (a) an animal has (or has had) a form of TSE;
 - (b) evidence as to that fact is obtained.
- (5) For the purposes of subsection (1), it is immaterial—
- (a) to what extent an animal has (or has had) a form of TSE;
 - (b) that an animal does not show (or has never shown) outward signs of being (or having been) affected by a form of TSE.

36O Ascertaining genotypes and identifying livestock

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision requiring the keeper of any livestock—
- (a) to allow an inspector to take a sample from it, for the purpose of ascertaining its genotype;
 - (b) to allow an inspector to administer or otherwise attach to it an identification device;
 - (c) where the genotype of the livestock has been ascertained (whether or not as a result of the exercise of powers conferred by or under this Part), to keep a record of its genotype.
- (2) The regulations may include provision—
- (a) with respect to the testing of samples;
 - (b) that only identification devices of a kind specified in the regulations may be administered or attached;
 - (c) requiring the issuing and keeping of certificates recording the genotypes of livestock.
- (3) The regulations may also include provision requiring the keeper of any livestock to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise of the inspector's functions under the regulations.

36P Restrictions on breeding

- (1) This section applies where it appears to the Scottish Ministers that livestock is of a genotype specified in an order under section 36N.
- (2) If it appears to the Scottish Ministers that there are no exceptional circumstances that justify allowing the livestock, or its semen, eggs or embryos, to be used for or in connection with breeding, they may give a notice (in this Part referred to as a “restriction notice”) to its keeper.
- (3) A restriction notice—
- (a) may be made so as to apply to more than one creature;
 - (b) may describe the livestock to which it applies in such a way as the Scottish Ministers consider appropriate; and
 - (c) must specify the restrictions and requirements provided for in subsections (6) to (8) so far as applicable in the circumstances of the case.
- (4) If the keeper of the livestock is not the same person as its owner, the Scottish Ministers may give a separate restriction notice to the owner.

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- (5) If the keeper of the livestock is not the same person as the person in possession of the semen, eggs or embryos of the livestock, the Scottish Ministers may give a separate restriction notice to the person in possession of the semen, eggs or embryos.
- (6) A person to whom a restriction notice is given must not—
- (a) use livestock to which the notice applies, or its semen, eggs or embryos, for the purposes of or in connection with breeding; or
 - (b) cause or permit such livestock or such semen, eggs or embryos to be used by another person for those purposes.
- (7) A person to whom a restriction notice is given must arrange for any semen, egg or embryo which—
- (a) has at any time been taken from livestock to which the notice applies; and
 - (b) is in the person’s possession or under the person’s control,
- to be destroyed within such period, of not less than 21 days, as may be specified in the notice.
- (8) A person to whom a restriction notice is given must arrange for each creature to which the notice applies and which is owned by the person—
- (a) to be castrated or (as appropriate) sterilised within such period, of not less than 21 days, as may be specified in the notice; or
 - (b) to be slaughtered within such period, of not less than 21 days, as may be specified in the notice,
- whichever the person considers appropriate.
- (9) But where a request for a review is made under section 36Q(1), the operation of the restriction notice is, so far as relating to the matters subject to review, suspended until the review is determined.
- (10) For the purposes of subsection (2), exceptional circumstances include circumstances in which the imposition in relation to the livestock of the restrictions and requirements mentioned in subsections (6) to (8) is likely to—
- (a) cause the extinction of the breed or type of which the livestock is a member; or
 - (b) jeopardise the sustainability of a common or well-established breed.
- (11) For the purposes of this Part, “slaughter” includes the killing of a fish.

36Q Review

- (1) A person to whom a restriction notice is given may, within the period referred to in subsection (2)—
- (a) make a written request to the Scottish Ministers for a review of the restriction notice or any part of it;
 - (b) make written representations to the Scottish Ministers; and
 - (c) request—
 - (i) an appearance, for the purposes of the review, before the assessment panel;
 - (ii) that the appearance be in public.

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- (2) The period is—
 - (a) 21 days beginning with the day on which the notice is given; or
 - (b) in exceptional circumstances, such longer period as the Scottish Ministers may agree to.
- (3) The Scottish Ministers must arrange for an assessment panel to consider a review as requested under subsection (1).
- (4) The proceedings of an assessment panel are to be conducted in such form and manner as the panel considers fit.
- (5) The assessment panel must prepare and send a report to the Scottish Ministers which—
 - (a) states its findings in relation to the representations and information before it; and
 - (b) makes a recommendation as to how to determine the review.
- (6) The Scottish Ministers, having regard to any representations made under subsection (1)(b) and the report sent to them under subsection (5), must—
 - (a) determine the review; and
 - (b) give to the person who requested the review—
 - (i) written notification of their determination and their reasons for it; and
 - (ii) if the person so requests, a copy of the report sent to them under subsection (5).
- (7) The Scottish Ministers may, in so far as a review upholds a restriction notice, recover from the person who requested the review such reasonable expenses as arise from any sampling or testing carried out in connection with the review.
- (8) In this section, an assessment panel—
 - (a) consists of one or more persons appointed by the Scottish Ministers for the purposes of this section; and
 - (b) must not, except with the consent of the person who requested the review, include members of the staff of the Scottish Administration.

Enforcement

36R Scottish Ministers' powers of enforcement

- (1) This section applies if the Scottish Ministers are satisfied that a person has failed to comply with one or more of the restrictions or requirements imposed on that person by a restriction notice.
- (2) But this section does not apply in relation to any livestock—
 - (a) which is the subject of a review under section 36Q which has not been determined; or
 - (b) which, as the result of a successful review, is no longer subject to the restriction notice.
- (3) The Scottish Ministers may take such reasonable steps as they consider appropriate to secure that effect is given to any restriction or requirement.

- (4) In particular, the Scottish Ministers may—
- (a) cause to be destroyed any semen, egg or embryo which has not been destroyed as required under section 36P(7);
 - (b) cause to be castrated (or as appropriate sterilised) or slaughtered any livestock—
 - (i) which is the subject of the notice; but
 - (ii) which has neither been castrated (or as appropriate sterilised) nor slaughtered as required under section 36P(8).
- (5) The Scottish Ministers may recover from the person to whom a restriction notice has been given such reasonable expenses as arise from any steps taken under subsection (3) in relation to that notice.

36S Offences

- (1) A person to whom a restriction notice is given commits an offence (whether or not the notice is the subject of a review under section 36Q) if that person—
- (a) sells (or otherwise transfers to another person) livestock to which the notice applies, or any of its semen, eggs or embryos;
 - (b) fails, without excuse (proof of which lies on the person) to comply with any of the restrictions or requirements specified in the notice.
- (2) Any other person commits an offence if that person uses any semen, egg or embryo which the person knows, or ought reasonably to know, has been taken from livestock which is the subject of a restriction notice.
- (3) A person commits an offence if, without excuse (proof of which lies on the person), that person fails to comply with any provision of regulations made under section 36O.
- (4) A keeper of livestock commits an offence if the keeper fails to give an inspector such assistance or information as the inspector may reasonably request in connection with the exercise by the inspector of a function under this Part.

Powers of slaughter

36T Powers of slaughter: TSE

- (1) With a view to preventing the spread of any form of TSE, the Scottish Ministers may, if they think fit, cause any livestock to which this subsection applies to be slaughtered.
- (2) Subsection (1) applies to livestock—
- (a) whose genotype is specified by virtue of section 36N; and
 - (b) in relation to whose genotype the form of TSE concerned is so specified.
- (3) Subsection (1) also applies to livestock whose genotype is not ascertained because—
- (a) it is not reasonable in the circumstances, by reason of urgency or otherwise, to seek to ascertain the genotype; or

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- (b) the genotype cannot, in the absence for the time being of scientific knowledge, established method or otherwise, reasonably be ascertained.

Powers of entry

36U Powers of entry

- (1) An inspector may enter any premises in Scotland for the purpose of—
 - (a) ascertaining whether a function of the Scottish Ministers or inspectors under this Part should be exercised; or
 - (b) doing anything in pursuance of or in connection with the exercise of that function.
- (2) An inspector acting under subsection (1) must, if required, produce evidence of the inspector's authority.

Compensation

36V Compensation

- (1) The Scottish Ministers must pay compensation, of such amount as they may prescribe by order, in respect of—
 - (a) any livestock slaughtered, or other thing destroyed, in accordance with a restriction notice;
 - (b) any livestock slaughtered, or other thing destroyed, by virtue of section 36R;
 - (c) any livestock slaughtered by virtue of section 36T(1).
- (2) An order under subsection (1) may make different provision for different cases or classes of case.

General

36W Orders and regulations

A statutory instrument containing an order or regulations under this Part is subject to annulment in pursuance of a resolution of the Scottish Parliament.

36X Interpretation

In this Part—

“keeper” includes an owner;

“inspector” means—

- (a) a person appointed as an inspector for the purposes of this Act by the Scottish Ministers; or
- (b) a person authorised by the Scottish Ministers for those purposes;

“livestock” means—

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- (a) any creature, including a fish, which is kept, fattened or bred for the production of food, wool, skin or fur;
 - (b) any creature, other than a dog, which is kept for use in the farming of land; and
 - (c) any equine animal;
- “premises” includes—
- (a) any land or building; or
 - (b) any other place, in particular—
 - (i) a vehicle or vessel; or
 - (ii) a tent or moveable structure;
- “TSE” means transmissible spongiform encephalopathy.”.