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STATUTORY INSTRUMENTS

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**2021 No. 1305**

**ANIMALS, ENGLAND**

**ANIMAL HEALTH**

**The Avian Influenza (H5N1 in Wild Birds)  
(England) (Amendment) Order 2021**

*Made* - - - - 23rd November 2021

*Coming into force* - - 24th November 2021

The Secretary of State, in exercise of the powers conferred by sections 1, 8(1), 15(5), 17(1), 23 and 25 of the Animal Health Act 1981(1), makes the following Order.

**Citation and commencement**

1. This Order may be cited as the Avian Influenza (H5N1 in Wild Birds) (England) (Amendment) Order 2021 and comes into force on 24th November 2021.

**The Avian Influenza (H5N1 in Wild Birds) (England) Order 2006**

2. The Avian Influenza (H5N1 in Wild Birds) (England) Order 2006(2) is amended as follows.

**Amendment to article 2 (interpretation)**

3. In article 2 (interpretation)—

(a) after the definition of “hatching egg” insert—

““avian influenza of public health concern found in wild birds” means any influenza A virus—

(a) of the subtype H5 or H7, or

(b) with an intravenous pathogenicity index in six-week-old birds greater than 1.2,

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(1) 1981 c. 22, as amended by the Animal Health Act 2002 (c. 42), S.I. 1992/3293 and S.I. 2003/1734. Powers of the Secretary of State under that Act were previously exercised by the Minister of Agriculture, Fisheries and Food (see section 86(1)). Functions were transferred to the Secretary of State by S.I. 1999/3141 and 2002/794. Functions exercisable by the Secretaries of State for Scotland and Wales in relation to England were transferred to the Minister by S.I. 1999/3141 and were then transferred to the Secretary of State by S.I. 2002/794. The powers in the Animal Health Act 1981, when read with paragraph 5 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16), allow for modifications to be made to “retained direct minor EU legislation” as defined in section 7(6) of the Act. “Modify” is defined in section 20(1) of the European Union (Withdrawal) Act 2018 and includes “amend, repeal or revoke”.

(2) S.I. 2006/3249 as amended by S.I. 2007/3303, S.I. 2011/881, S.I. 2012/2897, S.I. 2013/2952 and S.I. 2019/1488.

- which is capable of having a significant impact on public health; ;”;
- (b) in the definition of “wild bird control area” omit “or 5(3)”;
- (c) in the definition of “wild bird monitoring area” omit “or 5(3)”.

**Amendments to article 5 (confirmation or suspicion of H5N1 in wild birds)**

4. In article 5 (confirmation or suspicion of H5N1 in wild birds)—
- (a) in paragraph (1)(b)—
    - (i) in paragraph (i), omit “or”;
    - (ii) at the end of paragraph (ii), insert “; or”;
    - (iii) after paragraph (ii), insert—
      - “(iii) she suspects an avian influenza of public health concern found in wild birds may be present.”;
  - (b) for paragraph (2) substitute—
    - “(2) Where this article applies, the Secretary of State, after considering a risk assessment which takes into account the factors in paragraph (2A) may declare—
      - (a) a wild bird monitoring area or a wild bird monitoring area, or
      - (b) a wild bird control area and a wild bird area.”;
  - (c) after paragraph (2) insert—
    - “(2A) The risk assessment referred to in paragraph (2) must, amongst other considerations, take into account—
      - (a) the geographical features of the proposed area;
      - (b) any administrative boundaries;
      - (c) any limnological, ecological and epizootic factors;
      - (d) any monitoring facilities.”;
  - (d) omit paragraphs (3), (4) and (5);
  - (e) in paragraph (6) omit “, (3)(a) or (3)(b)”;
  - (f) in paragraph (7) omit “, (3)(a) or (3)(b)”.

**Amendment to article 6 (extent of wild bird control and monitoring areas)**

5. In article 6 (extent of wild bird control and monitoring areas)—
- (a) in paragraph (9), for “article 5(3)” substitute “article 5”;
  - (b) for paragraph (10) substitute—
    - “(10) Where an area declared under article 5(2) would otherwise include land in Scotland or Wales, the area declared must extend only to such part of that land as is in England.”.

**Amendment to article 8 (measures applicable in a wild bird control area or monitoring area)**

6. In article 8 (measures applicable in a wild bird control area or monitoring area) in paragraph (5) (b), for “H5N1” substitute “avian influenza”.

### **Amendments to article 12 (maintenance of areas)**

7. In article 12 (maintenance of areas)—
- (a) in paragraph (1)—
    - (i) for the words from the beginning to “neuraminidase N1,” substitute “Where article 5(1) applies”;
    - (ii) in sub-paragraph (a), for “H5” substitute “avian influenza”;
  - (b) for paragraph (4) substitute—
    - “(4) Where, on the basis of a risk assessment, the Chief Veterinary Officer is satisfied that the strain of avian influenza present in a wild bird or carcass is not an avian influenza of public health concern found in wild birds, paragraph (1) does not apply.”.

### **Revocation**

8. Commission [Decision 2006/563/EC](#) of 11 August 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds in the Community<sup>(3)</sup> is revoked.

*Benyon of Englefield*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

23rd November 2021

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(3) OJ No. L 222, 15.8.2006, p.11.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Order, which applies in England only, amends the Avian Influenza (H5N1 in Wild Birds) (England) Order 2006 (S.I. 2006/3249) (“the principal Order”).

It replaces the obligation on the Secretary of State to declare a wild bird control area or a wild bird monitoring area, or both, in certain circumstances with a discretion to do so (article 5).

The circumstances in which such a declaration may be made now include where the Chief Veterinary Officer advises the Secretary of State that the avian influenza virus of the H5 subtype is present in a wild bird or the carcase of a wild bird in Great Britain and she suspects an avian influenza of public health concern found in wild birds may be present.

Article 3 amends article 2 of the principal Order to include a definition of “avian influenza of public health concern found in wild birds”.

Article 5 and 6 make consequential amendments to articles 6 and 8 of the principal Order.

Article 7 amends the restriction in article 12(1) of the principal Order which prohibits the Secretary of State from amending the declaration of a wild bird control area so that it becomes part of the wild bird monitoring area or revoking the declaration of either area within a specified timeframe. The prohibition is disapplied (by an amendment to article 12(4) of the principal Order) where, on the basis of a risk assessment, the Chief Veterinary Officer is satisfied that the strain of avian influenza present in a wild bird or carcase is not an avian influenza of public health concern found in wild birds.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen.