

Commission Decision of 11 August 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds in the Community and repealing Decision 2006/115/EC (notified under document number C(2006) 3585) (Text with EEA relevance) (2006/563/EC)

Article 4

Derogations from measures provided for in Article 3(1)

1 By way of derogation from Article 3(1), the affected Member State may refrain from the establishment of control and monitoring areas on basis of the favourable results of a risk assessment by the competent authority.

That assessment shall take into account geographical considerations, the ecology of the infected bird species and lead the competent authority to conclude that HPAI H5N1 is not present in the area in poultry or other captive birds or wild birds, or that the infected wild bird did not present a risk of spreading that virus to poultry or other captive birds or wild birds in the locality.

In those circumstances the competent authority shall attempt, where necessary in liaison with the competent authorities of other Member States or third countries, to establish with the help of ornithological experts whether the wild birds are resident or migrating, such that an assessment can be made as to whether HPAI H5N1 exists in wild birds in other areas under their jurisdiction.

2 By way of derogation from Article 3(1) (a) and on the basis of favourable results to a risk assessment which has taken into account at least the criteria referred to in Article 3(2) and confirmed the existence of sufficient protection of the local poultry or other captive birds based on natural barriers or the absence of suitable habitats for wild birds presenting a risk of spreading HPAI H5N1 the control area may be:

- a amended to an area of sufficient size but in any event not less than of 1 km in radius; or
- b established as a band of 1 km in width from the banks of a river or the shores of a lake or coast for a length of at least 3 km.

In this case and by way of derogation from Article 3(1)(b) the competent authority shall then also adapt the shape and the size of the monitoring area accordingly to separate the control area from the unaffected parts of the territory.

Changes to legislation:

There are outstanding changes not yet made to Commission Decision of 11 August 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds in the Community and repealing Decision 2006/115/EC (notified under document number C(2006) 3585) (Text with EEA relevance) (2006/563/EC). Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Decision revoked by [S.S.I. 2021/444 art. 3](#)
- Decision revoked by [S.I. 2021/1305 art. 8](#)
- Art. 4(1) words omitted by [S.I. 2018/1410 reg. 11\(5\)\(b\)](#)
- Art. 4(1) words substituted by [S.I. 2018/1410 reg. 11\(5\)\(a\)](#)
- Art. 4(1) words substituted in earlier amending provision S.I. 2018/1410, reg. 11(5)(a) by [S.I. 2020/1388 reg. 25\(8\)\(e\)](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 1(2)(a) omitted by [S.I. 2018/1410 reg. 11\(2\)\(b\)](#)
- Art. 2(d)-(f) inserted by [S.I. 2018/1410 reg. 11\(3\)\(b\)](#)
- Art. 6(g) words inserted by [S.I. 2018/1410 reg. 11\(7\)\(b\)](#)
- Art. 6(g) words substituted in earlier amending provision S.I. 2018/1410, reg. 11(7)(b) by [S.I. 2020/1388 reg. 25\(8\)\(e\)](#)
- Art. 9(1)(b) words substituted by [S.I. 2018/1410 reg. 11\(9\)\(a\)\(ii\)](#)
- Art. 9(1)(b) words substituted in earlier amending provision S.I. 2018/1410, reg. 11(9)(a)(ii) by [S.I. 2020/1388 reg. 25\(8\)\(e\)](#)
- Art. 11(2)(b) words inserted by [S.I. 2018/1410 reg. 11\(11\)\(b\)](#)
- Art. 11(2)(b) words substituted in earlier amending provision S.I. 2018/1410, reg. 11(11)(b) by [S.I. 2020/1388 reg. 25\(8\)\(e\)](#)
- Art. 12(1)(b) words substituted by [S.I. 2018/1410 reg. 11\(12\)\(b\)](#)
- Art. 12(1)(b) words substituted in earlier amending provision S.I. 2018/1410, reg. 11(12)(b) by [S.I. 2020/1388 reg. 25\(8\)\(e\)](#)