

2004 No. 453

ANIMALS

ANIMAL HEALTH

**The Avian Influenza (Survey Powers) (Scotland)
Regulations 2004**

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| <i>Made</i> - - - - | <i>20th October 2004</i> |
| <i>Laid before the Scottish Parliament</i> | <i>21st October 2004</i> |
| <i>Coming into force</i> - - | <i>25th October 2004</i> |

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Avian Influenza (Survey Powers) (Scotland) Regulations 2004 and shall come into force on 25th October 2004, and shall cease to have effect on 16th March 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“bird” means any member of the following species, provided it is kept in captivity for breeding, the production of meat or eggs or for re-stocking supplies of game; namely, domestic fowls, turkeys, geese, ducks, guinea fowls, pigeons (other than racing pigeons), quails, ratites, pheasants and partridges;

“carcase” means the carcase of any bird and includes part of a carcase;

“Commission Decision 2004/630/EC” means Commission Decision 2004/630/EC(b) dated 27th July 2004 approving the programmes for the implementation of Member States’ surveys for avian influenza in poultry and wild birds during 2004 and laying down reporting and eligibility rules for the financial contribution from the Community to the implementation costs of those programmes;

“the disease” means avian influenza, and shall be deemed to include a current or previous infection by a causative agent of the disease;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) O.J. No. L 287, 8.9.04, p.7.

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

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

“person”, except in regulations 4(1)(g) and 6(3) of these Regulations, includes a body corporate or a partnership;

“pigeon house” means any installation used for keeping or breeding pigeons;

“premises” includes land with or without buildings but does not include any place used only as a dwelling; and

“racing pigeon” means any pigeon transported or intended for transport from its pigeon house to be released so that it may freely fly back to its pigeon house or to any other destination.

Surveys

3. An inspector may, on giving notice in writing to the occupier or person in charge of any premises upon which any bird or carcass is or has been located, carry out a survey of those premises for the purposes of Commission Decision 2004/630/EC in order to ascertain whether the disease exists or has existed on those premises.

Powers of inspectors in relation to surveys

4.—(1) An inspector carrying out a survey of premises in terms of regulation 3 may, on producing, if requested, some duly authenticated document showing that inspector’s authority—

- (a) enter those premises;
- (b) make inquiries of any person (whether on those premises or not);
- (c) examine, retain or copy any records including computerised records;
- (d) examine any bird or carcass;
- (e) take and retain such samples (including samples from birds and carcasses), and carry out such examinations and laboratory or other tests, as that inspector considers necessary to ascertain whether the disease exists or has existed on those premises and, in particular, to establish—
 - (i) the length of time that the disease has existed on those premises;
 - (ii) the possible origin of the disease on those premises;
 - (iii) whether other premises may have been exposed to contamination by the disease from those premises; and
 - (iv) the extent to which the disease has been carried to or from those premises from or to other premises;
- (f) mark, or cause to be marked, for identification purposes any bird, carcass or other thing in relation to which any of the powers under sub-paragraphs (c) to (e) above have been exercised; and
- (g) for any purpose relating to the execution and enforcement of these Regulations, be assisted by such other persons and accompanied by such vehicles and equipment as that inspector considers necessary.

(2) No person shall deface, obliterate or remove any mark applied under paragraph (1)(f).

(3) The occupier or person in charge of those premises or any employee or agent of that occupier or person shall provide such reasonable assistance to an inspector as that inspector may require for the exercise of any powers under paragraph (1).

(4) Nothing in paragraphs (1)(b) or (3) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

(a) 1994 c.39.

Notices

5.—(1) A notice in writing to be given to any person under regulation 3 may be given—

- (a) by delivering it to that person; or
- (b) by leaving it, or sending it in a pre-paid envelope addressed to that person, at the usual or last known place of business or residence of that person, or in the case of a body corporate or partnership at any place of business or the registered office of that body corporate or partnership.

(2) A notice in writing given under regulation 3 may be sent to a person as an electronic communication (as defined in the Electronic Communications Act 2000(a)), only if that person has consented to the use of that method of communication.

(3) A notice in writing sent to a person as an electronic communication shall be regarded as sent when the text of it is received in a legible form.

Offences and penalties

6.—(1) If any person—

- (a) intentionally obstructs an inspector (or anyone assisting an inspector in accordance with regulation 4(1)(g)) in the exercise of the powers conferred by regulation 4 (1)(a) to (f); or
- (b) knowingly provides to an inspector or anyone assisting an inspector acting in the execution of these Regulations any information which is false or misleading;

that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person—

- (a) fails to comply with any other requirement imposed on that person under these Regulations; or
- (b) contravenes any prohibition contained in these Regulations;

that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where a body corporate or a partnership 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 be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate;
- (b) any person who was purporting to act in any such capacity; or
- (c) in the case of a partnership, a partner or person who was purporting to act as such,

any such person, as well as the body corporate or partnership, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

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

Enforcement

7.—(1) These Regulations shall be executed and enforced by the local authority.

(2) The Scottish Ministers may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under paragraph (1) shall be discharged by the Scottish Ministers and not the local authority.

(a) 2000 c.7.

Amendment to the Diseases of Poultry (Scotland) Order 2003

8. In article 3(1) of the Diseases of Poultry (Scotland) Order 2003(a) (interpretation) after the definition of “1981 Act”, insert ““avian influenza” shall be deemed to include a current or previous infection by a causative agent of avian influenza;”.

St Andrew’s House,
Edinburgh
20th October 2004

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2003/354.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement Commission Decision 2004/630/EC (O.J. No. L 287, 8.9.04, p.7 providing for surveys for avian influenza. These Regulations–

- (a) provide that inspectors, on giving notice in writing, may carry out surveys on any premises where birds are or have been kept for the purposes of Commission Decision 2004/630/EC (regulation 3);
- (b) give powers to inspectors to enter premises, make inquiries, examine records, examine birds and carcasses, take samples and carry out laboratory tests (regulation 4);
- (c) set out requirements for notices in writing (regulation 5);
- (d) prescribe offences and penalties (regulation 6);
- (e) provide for enforcement (regulation 7); and
- (f) add a definition of avian influenza to the Diseases of Poultry (Scotland) Order 2003 (S.S.I. 2003/354) in line with the definition in these Regulations (regulation 8).

Where avian influenza is detected, the disease control measures set out in the Diseases of Poultry (Scotland) Order 2003 will be available.

A Regulatory Impact Assessment has not been prepared for these Regulations.

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