
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 61

**The Avian Influenza (H5N1 in
Wild Birds) (Scotland) Order 2007**

PART 2

Confirmation or suspicion of H5N1

Confirmation or suspicion of H5N1 in wild birds

5.—^[F1](1) This article applies if the Chief Veterinary Officer (Scotland) advises the Scottish Ministers that—

- (a) a highly pathogenic avian influenza virus of the H5 subtype and neuraminidase N1 is present in a wild bird or the carcase of a wild bird in Great Britain, and
 - (b) the Chief Veterinary Officer (Scotland) suspects, or is of the opinion, that the virus is a significant risk to animal and human health.]
- (2) If the wild bird or carcase was found in Scotland, the Scottish Ministers must declare—
- (a) a wild bird control area; and
 - (b) a wild bird monitoring area.
- (3) If the wild bird or carcase was found in England or Wales—
- (a) subject to sub paragraphs (b) and (c), the Scottish Ministers may declare a wild bird control area or a wild bird monitoring area;
 - (b) the Scottish Ministers must declare a wild bird control area if the wild bird or carcase was found within three kilometres of the border with Scotland;
 - (c) the Scottish Ministers must declare a wild bird monitoring area if the wild bird or carcase was found within ten kilometres of the border with Scotland.
- (4) Paragraphs (2), (3)(b) and (3)(c) do not apply if the Scottish Ministers are satisfied, pursuant to a risk assessment, that—
- (a) H5N1 is not present in poultry, other captive birds or wild birds in the area which would otherwise be declared as the wild bird monitoring area; and
 - (b) the infected wild bird or carcase did not present a risk of spreading that virus to such birds in that area.
- (5) The risk assessment under paragraph (4) must take into account any geographical and ecological considerations.
- (6) An area remains a wild bird control area until—
- (a) the Scottish Ministers amend the declaration made under paragraph (2)(a), (3)(a) or (3)(b) so that the area within its boundaries becomes part of the wild bird monitoring area; or
 - (b) the Scottish Ministers revoke the declaration.

(7) An area remains a wild bird monitoring area until the Scottish Ministers revoke the declaration made under paragraph (2)(b), (3)(a) or (3)(c).

(8) Subject to paragraph (9), premises which are only partly in a wild bird control area or a wild bird monitoring area are deemed to be wholly within that area.

(9) Premises which are partly in a wild bird control area and partly in a wild bird monitoring area are deemed to be wholly in the wild bird control area.

Textual Amendments

F1 Art. 5(1) substituted (4.12.2021) by *The Avian Influenza (H5N1 in Birds etc.) (Miscellaneous Amendment and Revocation) (Scotland) Order 2021 (S.S.I. 2021/444)*, art. 4(3), reg. 1(1)

Extent of wild bird control and monitoring areas

6.—(1) A wild bird control area must—

- (a) be centred on the place where the wild bird or carcass referred to in article 5(1) was found (“the outbreak point”); and
- (b) have a boundary which is at least three kilometres from the outbreak point.

(2) A wild bird monitoring area must—

- (a) be centred on the outbreak point; and
- (b) have a boundary which is at least ten kilometres from the outbreak point.

(3) The Scottish Ministers must take into account the following factors in deciding the extent of any wild bird control area or wild bird monitoring area—

- (a) the geographical features of the proposed areas;
- (b) any administrative boundaries;
- (c) any limnological factors;
- (d) any ecological factors;
- (e) any epizootic factors;
- (f) monitoring facilities; and
- (g) any other factor they consider relevant.

(4) Paragraphs (5) and (6) apply if the Scottish Ministers are satisfied, having carried out a risk assessment, that due to natural barriers or the absence of suitable habitats for wild birds, there is sufficient protection of poultry and other captive birds in the area that would otherwise be declared to be the wild bird control area.

(5) The wild bird control area may have a boundary which is at least one kilometre from the outbreak point.

(6) Where the outbreak point is less than one kilometre away from a river, a lake or the coast, the wild bird control area may be an area of land—

- (i) having a width of one kilometre from the river bank, lake shore or coast; and
- (ii) at least three kilometres in length.

(7) The risk assessment under paragraph (4) must take account of the factors listed at paragraph (3).

(8) If the Scottish Ministers declare a wild bird control area of the dimensions provided for under paragraph (5) or (6), the wild bird monitoring area must be of such size and shape as the Scottish Ministers consider necessary to prevent the spread of avian influenza.

(9) A wild bird control area or a wild bird monitoring area declared under article 5(3) must be of such size and shape as the Scottish Ministers consider necessary to prevent the spread of avian influenza.

(10) If an area declared in accordance with this article would otherwise include land in England, the Scottish Ministers must declare an area only of such part of that land as is in Scotland.

Wild bird or carcass found within a protection zone or surveillance zone

7. If the wild bird or carcass referred to in article 5(1) is found within a protection zone or surveillance zone declared under article 26 (declaration of protection, surveillance and restricted zones) of the Avian Influenza Order, the Scottish Ministers must, when declaring a wild bird control area and a wild bird monitoring area, consider, on the basis of a risk assessment, whether the control and monitoring areas should include part or all of the protection or surveillance zone.

Measures applicable in a wild bird control area or wild bird monitoring area

8.—(1) The measures in Schedule 1 apply in respect of a wild bird control area, including movements from that area.

(2) The measures in Schedule 2 apply in respect of a wild bird monitoring area, including movements from that area.

(3) The biosecurity measures in Schedule 3 apply in respect of a wild bird control area and a wild bird monitoring area.

(4) Where the conditions in paragraph (5) are fulfilled, the Scottish Ministers may—

- (a) amend the declaration of the wild bird control area to disapply any of the measures listed at paragraphs 1 to 16 of Schedule 1; and
- (b) amend the declaration of the wild bird monitoring area to disapply any of the measures listed in Schedule 2.

(5) The conditions are—

- (a) a risk assessment indicates that the disapplication of the measure in that wild bird control area or wild bird monitoring area would not endanger disease control;
- (b) there has been no outbreak of H5N1 in poultry or other captive birds in either of those areas;
- (c) the wild bird control area or the wild bird monitoring area (as the case may be) has been established for at least 21 days; and
- (d) the Scottish Ministers do not suspect that there is avian influenza in poultry or other captive birds within either of those areas.

(6) When carrying out a risk assessment under paragraph (5)(a) the Scottish Ministers must take account of the factors listed in article 6(3).

(7) Paragraph (4)(b) does not apply in relation to the measures in paragraphs 4 and 6 of Schedule 2 where the Scottish Ministers have amended the declaration of a wild bird control area so that it has become part of the wild bird monitoring area before 21 days have elapsed from the date the sample was collected from the wild bird or carcass in accordance with article 12(1)(a).

(8) Paragraph (9) applies if—

- (a) at the time of its establishment, a wild bird control area or a wild bird monitoring area centred on the same outbreak point overlaps with a surveillance zone declared under article 26 of the Avian Influenza Order;
- (b) that surveillance zone is subsequently ended by a declaration; and

- (c) a risk assessment indicates that the disapplication in that wild bird control area of the measure or the article referred to in paragraph (9) would not endanger disease control.
- (9) The Scottish Ministers may amend the declaration of the wild bird control area so that—
 - (a) any of the measures listed in Schedule 1; or
 - (b) article 11,
 do not apply in respect of that wild bird control area.

Additional measures

9.—(1) The Scottish Ministers must, in their declaration of a wild bird control area or a wild bird monitoring area, impose additional measures if they consider that these are necessary to reduce the risk of the spread of avian influenza.

(2) When deciding what measures to impose under paragraph (1), the Scottish Ministers must consider whether measures are necessary—

- (a) to prevent direct or indirect contact which wild birds might otherwise have with poultry and other captive birds;
- (b) to reduce the risk of feed and water provided to poultry and other captive birds being contaminated with avian influenza virus or with any virus that causes avian influenza; and
- (c) to reduce the risk of the spread of avian influenza between premises.

(3) The power of the Scottish Ministers to impose measures by declaration under this article includes the power to require—

- (a) poultry or other captive birds to be housed or otherwise kept separate from wild birds;
- (b) poultry or other captive birds or categories of such birds specified in the declaration to be housed or otherwise kept separate from other poultry and captive birds;
- (c) that poultry or other captive birds are provided with feed and water to which wild birds have no access; and
- (d) keepers of poultry or other captive birds and others who come into contact with such birds to cleanse and disinfect their footwear and take such other biosecurity measures as a veterinary inspector or an inspector under the direction of a veterinary inspector may require.

Restrictions relating to things moved from England, Wales or Northern Ireland

10.—(1) Measures in this Order which apply in respect of any thing moved from a wild bird control area or wild bird monitoring area apply in respect of any such thing moved from an equivalent area in England, Wales or Northern Ireland.

(2) Paragraph (1) only applies if the person to whom the measure applies is aware or should reasonably have been aware that the thing moved is from such an equivalent area.

Duty to inspect poultry premises

11.—(1) Subject to article 8(9), the Scottish Ministers must ensure that—

- (a) premises where poultry are kept within the wild bird control area and the wild bird monitoring area are identified as soon as is reasonably practicable; and
- (b) a veterinary inspector visits all premises where poultry are kept within the wild bird control area as often as the Scottish Ministers consider necessary to monitor the possible spread of avian influenza.

(2) Every veterinary inspector making such a visit must—

- (a) carry out a clinical inspection of poultry and any other captive birds that are on the premises and, if so directed by the Scottish Ministers, collect samples for laboratory examination; and
- (b) assess the extent to which the biosecurity measures referred to in Schedule 3 are being applied.

Maintenance of Areas

12.—(1) [^{F2}Subject to paragraph (4), where article 5 applies], the Scottish Ministers must not—

- (a) amend any declaration made under article 5 so that the wild bird control area becomes part of the wild bird monitoring area until at least 21 days have elapsed from the date on which the sample showing the presence of the H5 virus was collected from that wild bird or carcase except where the conditions in paragraph (2) are fulfilled; or
- (b) revoke any declaration made under article 5 until at least 30 days have elapsed from that date.

(2) The conditions referred to in paragraph (1)(a) are—

- (a) the Scottish Ministers have carried out an assessment of the risk of the possible spread of avian influenza, taking into account the factors listed in article 6(3), which indicates that the amendment of the declaration would not endanger disease control;
- (b) the Scottish Ministers have identified premises where poultry are kept within the control area, in accordance with article 11(1)(a); and
- (c) a veterinary inspector has carried out at least one visit to each of those premises in accordance with article 11(1)(b) and the results of any laboratory tests carried out on samples taken from poultry or other captive birds on those premises in accordance with article 11(2)(a) have not given rise to the service of a notice under article 10(1) (notice of restrictions where avian influenza is suspected on premises) of the Avian Influenza Order.

(3) The Scottish Ministers may amend any declaration so that a wild bird control area becomes part of the wild bird monitoring area before 21 days have elapsed from the date referred to in paragraph (1)(a), provided that where article 6(5) and (6) apply the wild bird control area remains of a size required under those provisions and provided that the wild bird monitoring area continues to meet the requirements of article 6(8).

(4) If the Chief Veterinary Officer (Scotland) advises the Scottish Ministers that in the opinion of the Chief Veterinary Officer (Scotland) the avian influenza virus of sub type H5 [^{F3}and neuraminidase N1] present in the wild bird or carcase referred to in article 5 is not [^{F4}a significant risk to animal and human health], the Scottish Ministers must revoke any declaration made under article 5 without delay.

Textual Amendments

- F2** Words in art. 12(1) substituted (4.12.2021) by [The Avian Influenza \(H5N1 in Birds etc.\) \(Miscellaneous Amendment and Revocation\) \(Scotland\) Order 2021 \(S.S.I. 2021/444\)](#), **art. 4(4)(a)**, reg. 1(1)
- F3** Words in art. 12(4) inserted (4.12.2021) by [The Avian Influenza \(H5N1 in Birds etc.\) \(Miscellaneous Amendment and Revocation\) \(Scotland\) Order 2021 \(S.S.I. 2021/444\)](#), **art. 4(4)(b)(i)**, reg. 1(1)
- F4** Words in art. 12(4) substituted (4.12.2021) by [The Avian Influenza \(H5N1 in Birds etc.\) \(Miscellaneous Amendment and Revocation\) \(Scotland\) Order 2021 \(S.S.I. 2021/444\)](#), **art. 4(4)(b)(ii)**, reg. 1(1)

Changes to legislation:

There are currently no known outstanding effects for the The Avian Influenza (H5N1 in Wild Birds) (Scotland) Order 2007, PART 2.