

2007 No. 62

ANIMALS

ANIMAL HEALTH

The Avian Influenza (H5N1 in Poultry) (Scotland) Order 2007

Made - - - - *8th February 2007*

Coming into force - - *15th February 2007*

The Scottish Ministers, in exercise of the powers conferred on them by sections 1, 7, 8(1), 11, 15(5), 17(1), 23, 25, 28, 35(1), 35(3) and 83(2) of the Animal Health Act 1981(a), and of all other powers enabling them in that behalf, make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Avian Influenza (H5N1 in Poultry) (Scotland) Order 2007 and comes into force on 15th February 2007.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order—

“the Act” means the Animal Health Act 1981;

“approved body” means a body approved in accordance with Article 2(1)(c) of Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC(b);

“avian influenza” means an infection of poultry or other captive birds caused by any influenza A virus of the subtypes H5 or H7 or with an intravenous pathogenicity index in six week old chickens greater than 1.2;

“the Avian Influenza Order” means the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006(c);

“bird by-product” means entire bodies or parts of birds or products of avian origin, not intended for human consumption, included in Articles 4, 5 or 6 of Regulation (EC) No. 1774/2002;

“the Chief Veterinary Officer (Scotland)” means the Chief Veterinary Officer of the State Veterinary Service in Scotland;

(a) 1981 c.22 (“the 1981 Act”), amended by the Animal Health and Welfare (Scotland) Act 2006 (asp 11) and the Animal Health Act 1981 (Amendment) Regulations 1992 (S.I. 1992/3293). The functions conferred under the 1981 Act on “the Ministers” (as defined by section 86 of that Act) were transferred, so far as within devolved competence, to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) O.J. No. L 268, 14.9.1992, p.54, as corrected by O.J. No. L 226, 25.6.2004, p.128.

(c) S.S.I. 2006/336.

“the Commission Decision” means Commission Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in the Community and repealing Decision 2006/135/EC(a);

“competent authority” means the authority in a member State or third country authorised by it to carry out its functions under the Commission Decision;

“designated” means designated in accordance with article 3(5) to (7), except where the context otherwise requires, and “undesignated” is construed accordingly;

“disinfect” means disinfect in accordance with article 17;

“fresh meat” means meat which has not undergone any preserving process other than chilling, freezing, quick-freezing, vacuum wrapping or wrapping in a controlled atmosphere;

“H5N1 controlled zone” means any of–

- (a) a temporary control zone;
- (b) a temporary movement restriction zone;
- (c) a protection zone;
- (d) a surveillance zone; or
- (e) a restricted zone;

“keeper” means any person responsible for birds, whether on a permanent or temporary basis, but does not include a person responsible for them solely because that person is transporting them;

“meat product” means a processed product resulting from the processing of meat or from the further processing of such processed product, so that the cut surface shows that the product no longer has the characteristics of fresh meat;

“occupier” means, in relation to any premises, the person in charge of those premises;

“other captive bird” means a bird kept in captivity which is not poultry and includes a bird kept–

- (a) as a pet;
- (b) for shows, races, exhibitions or competitions;
- (c) for breeding;
- (d) for sale; or
- (e) for use by an approved body;

“poultry” means birds reared or kept in captivity for the production of meat or eggs for consumption, for the production of other products, for restocking supplies of game or for the purposes of any breeding programme for the production of such categories of birds;

“premises” includes any land, building or other place;

“protection zone” means a protection zone declared under article 26 of the Avian Influenza Order;

“Regulation (EC) No. 1774/2002” means Regulation (EC) No. 1774/2002 of the European Parliament and of the Council laying down health rules concerning animal by-products not intended for human consumption(b);

“restricted zone” means a restricted zone declared under the Avian Influenza Order in accordance with article 8(2) of this Order;

“surveillance zone” means a surveillance zone declared under article 26 of the Avian Influenza Order;

“temporary control zone” means a temporary control zone declared under the Avian Influenza Order in accordance with article 6 of this Order;

(a) O.J. No. L 164, 16.6.2006, p.51.

(b) O.J. No. L 273, 10.10.2002, p.1, as last amended by Commission Regulation (EC) No. 208/2006 (O.J. No. L 36, 8.2.2006, p.25).

“temporary movement restriction zone” means a temporary movement restriction zone declared under the Avian Influenza Order in accordance with article 6 of this Order;

“unrestricted area” means any part of the United Kingdom which is not part of an H5N1 controlled zone declared under this Order or of an equivalent zone in England, Wales or Northern Ireland;

“vehicle” includes—

- (a) a trailer, semi-trailer or other thing designed or adapted to be towed by another vehicle;
- (b) a detachable part of a vehicle;
- (c) a container or other structure designed or adapted to be carried by or on a vehicle; and

“wild game bird” means a bird which lives freely in the wild and is hunted for human consumption.

Licences, notices and designations under this Order

3.—(1) Licences granted under this Order—

- (a) must be in writing;
- (b) may be general or specific;
- (c) may be made subject to such conditions as the person granting the licence considers necessary to control avian influenza; and
- (d) may be amended, suspended or revoked, in writing, at any time.

(2) A veterinary inspector or an inspector acting under the direction of a veterinary inspector must not license a movement under article 9, 10, 11 or 14 unless either inspector has taken account of the relevant risk assessment.

(3) In paragraph (2), “the relevant risk assessment” means the Scottish Ministers’ assessment of the risk that the particular movement or a movement of that type would spread avian influenza.

(4) Notices under this Order—

- (a) may be amended or revoked, by further notice, at any time;
- (b) must, if they apply only to part of premises, specify to which part they apply.

(5) Designations under this Order—

- (a) must be in writing;
- (b) may be made subject to such conditions as the Scottish Ministers consider necessary to control avian influenza; and
- (c) may be amended, suspended or revoked in writing at any time.

(6) Unless the Scottish Ministers direct otherwise by notice to the occupier of the premises, the following premises are deemed to be designated for the purposes of this Order:—

- (a) premises designated under article 70 of the Avian Influenza Order;
- (b) premises deemed to be so designated under article 4(7) of that Order;
- (c) the following plants, if approved under regulation 14 of the Animal By-Products (Scotland) Regulations 2003^(a):—
 - (i) incineration plants;
 - (ii) processing plants;
 - (iii) oleochemical plants;
 - (iv) biogas plants;
 - (v) composting plants;
 - (vi) petfood plants; and
 - (vii) technical plants.

(a) S.S.I. 2003/411.

(7) Premises in England, Wales and Northern Ireland designated respectively by the Secretary of State, the National Assembly or by the Department for Agriculture and Rural Development of Northern Ireland for the same purposes as they may be designated under this Order are deemed to be designated by the Scottish Ministers for the purposes of this Order.

(8) Licences granted in England, Wales or Northern Ireland for activities which could be licensed in Scotland under this Order have effect in Scotland as if they were licences granted under this Order but an inspector acting under the direction of the Scottish Ministers may serve a notice on any person moving any thing under the authority of such a licence, requiring that person to move it or to keep it on premises specified in the notice or to move it out of Scotland.

(9) A person moving anything under the authority of a specific licence granted under this Order must—

- (a) keep the licence or a copy of it with them at all times during the licensed movement;
- (b) on demand by a veterinary inspector, other officer of the Scottish Ministers or by a local authority inspector, produce the licence or copy and allow a copy or extract to be taken; and
- (c) on such demand, provide their name and address.

(10) A person moving anything under the authority of a general licence granted under this Order must—

- (a) carry with them, at all times during the licensed movement, a copy of that general licence and a consignment note which contains details of—
 - (i) what is moved, including its quantity;
 - (ii) the date of the movement;
 - (iii) the name of the consignor;
 - (iv) the address of the premises from which the movement started;
 - (v) the name of the consignee; and
 - (vi) the address of the premises of destination;
- (b) on demand by a veterinary inspector, an officer of the Scottish Ministers or by a local authority inspector, produce the consignment note and a copy of that general licence, and allow a copy or extract to be taken; and
- (c) on such demand, provide their name and address.

(11) Any reference in this regulation to anything done in writing includes a reference to an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000^(a), which has been recorded and is consequently capable of reproduction.

(12) An electronic communication may only be sent to a person where the recipient has consented to that method of communication.

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

4.—(1) Measures in this Order applying in respect of any thing moved from an H5N1 controlled zone apply in respect of any such thing moved from an equivalent zone in England, Wales or Northern Ireland.

(2) No person shall be guilty of an offence by virtue of paragraph (1) unless the person to whom the measure applies is aware or should reasonably have been aware that the thing moved is from such an equivalent zone.

Areas A and B

5.—(1) The following are an area A for the purposes of the Commission Decision:—

- (a) a first zone declared in accordance with article 6;

(a) 2000 c.7, as amended by the Communications Act 2003, c.21, Schedule 17, paragraph 158.

- (b) a protection zone; and
- (c) a surveillance zone.

(2) The following are an area B for the purposes of the Commission Decision:–

- (a) a second zone declared in accordance with article 6; and
- (b) a restricted zone.

Establishment of zones on suspicion of avian influenza of subtype H5N1 in poultry

6.—(1) This article applies if the Chief Veterinary Officer (Scotland) advises the Scottish Ministers that the Chief Veterinary Officer (Scotland) suspects that–

- (a) highly pathogenic avian influenza virus of the H5 subtype is present in poultry, or in a poultry carcass, in Great Britain; and
- (b) the neuraminidase virus type is N1.

(2) The Scottish Ministers must declare two zones under article 13 of the Avian Influenza Order if the poultry or carcass in which highly pathogenic avian influenza of subtype H5N1 is suspected was found–

- (a) in Scotland; or
- (b) in England, less than 10 kilometres from the border with Scotland.

(3) The zones referred to in paragraph (2) may be–

- (a) a temporary movement restriction zone and a temporary control zone;
- (b) two temporary movement restriction zones; or
- (c) two temporary control zones.

(4) In a declaration made in accordance with paragraph (2), the Scottish Ministers must specify which of the two zones declared is the first zone (“first zone”) and which the second zone (“second zone”).

(5) Premises which are partly in a first zone declared in accordance with paragraph (2) and partly in a second zone so declared are deemed to be wholly in the first zone.

Location and size of zones declared on suspicion of avian influenza of subtype H5N1 in poultry

7.—(1) A first zone declared in accordance with article 6 must–

- (a) be centred on the outbreak point; and
- (b) have a boundary which is at least 10 kilometres from the outbreak point.

(2) A second zone declared in accordance with article 6 must be in such location and of such size as the Scottish Ministers consider necessary to minimise the risk of the spread of avian influenza.

(3) When deciding the extent of the first and second zones the Scottish Ministers must consider–

- (a) the results of veterinary inquiries;
- (b) the geographical features of the area around the premises;
- (c) the location and proximity of other premises containing poultry in the area;
- (d) patterns of movement and trade in poultry and other captive birds in the area; and
- (e) the facilities and personnel available to control movements within the zone (including any movement of poultry or other captive birds off premises for slaughter and disposal).

(4) “Outbreak point” means that part of any premises where any poultry or carcass referred to in article 6(1) has been found which the Scottish Ministers deem to be the centre of the suspected outbreak.

(5) If a zone declared in accordance with paragraphs (1) or (2) would otherwise include land in England, the Scottish Ministers must declare a zone of such part of that land as is in Scotland.

Establishment of a restricted zone on confirmation of avian influenza of subtype H5N1 in poultry

- 8.—(1) This article applies if the Chief Veterinary Officer (Scotland) confirms that—
- (a) highly pathogenic avian influenza virus of the H5 subtype is present in poultry or in a poultry carcass in Great Britain; and
 - (b) the neuraminidase virus type is N1.
- (2) The Scottish Ministers must declare a restricted zone under article 26(5) of the Avian Influenza Order if the poultry or carcass in which highly pathogenic avian influenza of subtype H5N1 is confirmed was found—
- (a) in Scotland; or
 - (b) in England, less than 10 kilometres from the border with Scotland.

Restrictions on the movement of poultry and other captive birds

9.—(1) No person shall move any poultry or other captive bird from a restricted zone to an unrestricted area, other member State or third country unless that person is licensed by a veterinary inspector or an inspector acting under the direction of a veterinary inspector.

(2) Paragraph (1) does not apply to the movement of—

- (a) a bird, other than poultry, reared or kept in captivity as a pet; or
- (b) any other captive bird to an approved body.

(3) A veterinary inspector or an inspector acting under the direction of a veterinary inspector may license the movement of—

- (a) poultry directly to a designated slaughterhouse;
- (b) poultry directly to any premises in an unrestricted area, if the veterinary inspector or inspector acting under the direction of a veterinary inspector is satisfied that they will be kept there for 21 days from their date of arrival;
- (c) poultry to another member State or to a third country, if the movement is authorised by the competent authority of that member State or third country;
- (d) day-old chicks to any premises in an unrestricted area;
- (e) other captive birds to any premises in an unrestricted area.

(4) The Scottish Ministers must ensure that veterinary surveillance is carried out at any premises to which day-old chicks are moved under paragraph (3)(d) for such period as they consider necessary.

(5) Paragraph (4) does not apply if the day-old chicks so moved were hatched—

- (a) from eggs from a designated hatchery in a restricted zone where the Scottish Ministers are satisfied that poultry have tested negative in a serological survey for avian influenza capable of detecting 5% prevalence of disease with at least a 95% level of confidence; or
- (b) from eggs—
 - (i) from premises which, on the date the eggs were collected, were in an unrestricted area; and
 - (ii) which were transported from those premises in new disposable packaging or in disinfected packaging.

(6) The occupier of premises to which poultry are moved under paragraph (3)(b) must ensure that no poultry are moved off the premises for at least 21 days from the date the poultry so moved arrived there.

(7) In this article—

- (a) “day-old chicks” means—
 - (i) poultry less than 72 hours old which have not yet fed; or

- (ii) muscovy ducks (*Cairina moschata*) and their crosses which are less than 72 hours old, whether or not fed; and
- (b) “slaughterhouse” means premises used for slaughtering poultry, the meat of which is intended for human consumption.

Restrictions on the movement of hatching eggs

10.—(1) No person shall move hatching eggs from a restricted zone to an unrestricted area, other member State or third country unless that person is licensed by a veterinary inspector or an inspector acting under the direction of a veterinary inspector.

(2) Paragraph (1) does not apply to a movement to an approved body.

(3) A veterinary inspector or an inspector acting under the direction of a veterinary inspector may license the movement of hatching eggs from any premises which, on the day of collection, are in a restricted zone, to—

- (a) a designated hatchery;
- (b) an undesignated hatchery in the United Kingdom, if the premises where the eggs were collected contain poultry which the Scottish Ministers are satisfied have tested negative in a serological survey for avian influenza capable of detecting 5% prevalence of disease with at least a 95% level of confidence;
- (c) a hatchery in another member State or in a third country, if the movement is authorised by the competent authority of that member State or third country;
- (d) designated premises for use for scientific, diagnostic or pharmaceutical purposes;
- (e) premises for use for scientific, diagnostic or pharmaceutical purposes in another member State or in a third country, if the movement is authorised by the competent authority of that member State or third country; or
- (f) premises for disposal.

(4) A veterinary inspector or an inspector acting under the direction of a veterinary inspector may also license the movement of SPF-eggs to the premises referred to in paragraph (3)(d) and (e).

(5) The occupier of an undesignated hatchery to which hatching eggs are moved in accordance with paragraph (3)(b) must—

- (a) keep the eggs separate from eggs from premises which, on the day of collection, were not in a restricted zone;
- (b) ensure that trolleys and packaging trays used to move the eggs are cleansed and disinfected before they leave the hatchery or before they are reused there; and
- (c) keep a record of the cleansing and disinfection carried out under sub-paragraph (b).

(6) A person moving hatching eggs under paragraph (3) or (4) must ensure that they are kept separate from eggs from outside the restricted zone.

(7) Hatching eggs which come into contact with hatching eggs from within a restricted zone are subject to the provisions in paragraphs (1) to (5) applying to such eggs.

(8) In this article—

- (a) “hatching egg” means an egg for incubation; and
- (b) “SPF-egg” means a hatching egg for use for diagnostic procedures in laboratories, for the production and testing of vaccines or for research or pharmaceutical purposes.

Restrictions on the movement of wild game bird products

11.—(1) No person shall move any wild game bird product intended for human consumption from a protection, surveillance or restricted zone to an unrestricted area, other member State or third country.

(2) But a veterinary inspector or an inspector acting under the direction of a veterinary inspector may license the movement of–

- (a) meat products, from wild game birds originating in a protection, surveillance or restricted zone, which have been heated to a minimum temperature of 70°C throughout;
- (b) fresh meat, from wild game birds originating outside a protection, surveillance or restricted zone, which has been–
 - (i) produced in accordance with Section IV of Annex III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin^(a) (“Regulation (EC) No. 853/2004”); and
 - (ii) subjected to the official controls set out in Chapter VIII of Section IV of Annex I to Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption^(b);
- (c) processed fresh meat and products containing such meat, from wild game birds originating outside the protection, surveillance and restricted zones, produced in accordance with Sections V and VI of Annex III to Regulation (EC) No. 853/2004;
- (d) fresh meat and meat products, from wild game birds originating in a protection, surveillance or restricted zone, to an unrestricted area in Scotland which have been–
 - (i) marked in accordance with article 12; and
 - (ii) obtained, cut and stored separately from other fresh meat and meat products originating outside those zones.

(3) A person moving a wild game bird product referred to in paragraph (2)(d) must ensure that it does not come into contact with any other such product.

(4) Any wild game bird product which comes into contact with a wild game bird product moved under paragraph (2)(d) is subject to the measures applicable to such products under paragraphs (2)(d) and (3).

(5) In this article–

- (a) “processed fresh meat” means any of–
 - (i) minced meat, being boned meat which has been minced into fragments and contains less than 1% salt;
 - (ii) meat preparation, being fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat;
 - (iii) mechanically separated meat, being the product obtained by removing meat from flesh-bearing bones after boning, using means resulting in the loss or modification of the muscle fibre structure; and
- (b) “wild game bird product” means any wild game bird carcass, egg or any other thing originating or made (whether in whole or in part) from a wild game bird or from a wild game bird carcass and includes bird by-products from wild birds.

Requirements for the marking of wild game bird meat and meat products

12.—(1) Fresh meat and meat products referred to in article 11(2)(d) must be marked–

- (a) with the mark set out in the Schedule; or
- (b) with the national mark described in paragraph (2) if the meat or product was produced in premises in accordance with Article 4 of Commission Regulation (EC) No. 2076/2005^(c).

(a) O.J. No. L 139, 30.4.2004, p.55, as corrected by O.J. No. L 226, 25.6.2004, p.22.

(b) O.J. No. L 139, 30.4.2004, p.206, as corrected by O.J. No. L 226, 25.6.2004, p.83.

(c) O.J. No. L 338, 22.12.2005, p.83 as last amended by Commission Regulation (EC) No. 1666/2006 of 6th November 2006 (O.J. No. L 320, 18.11.2006, p.47).

- (2) The national mark referred to in paragraph (1)(b) must–
- (a) be square;
 - (b) be clear and visible; and
 - (c) contain, in legible form–
 - (i) on the upper part, the letters “UK”;
 - (ii) in the centre, the approval number of the premises where the meat or product was produced;
 - (iii) on the lower part, the letter “N”.

(3) No person other than the final consumer of meat or of a meat product, marked in accordance with this article, may deface, obliterate or remove that mark, unless so authorised by the Scottish Ministers.

Duties on the occupier of premises to which the carcasses of wild game birds are sent

13. The occupier of premises to which the carcass of any wild game bird from a protection, surveillance or restricted zone is sent must ensure that meat from that bird is obtained, cut, transported and stored separately from other meat.

Restrictions on the movement of bird by-products

14.—(1) No person shall move any bird by-product derived wholly or partially from any bird in a protection, surveillance or restricted zone–

- (a) from a protection or surveillance zone to a restricted zone;
- (b) from a restricted zone to a protection or surveillance zone;
- (c) to an unrestricted area;
- (d) to another member State; or
- (e) to a third country.

(2) But a veterinary inspector or an inspector acting under the direction of a veterinary inspector may license the movement of any of the following bird by-products:–

- (a) processed animal protein, within the meaning of paragraph 42 of Annex I to Regulation (EC) No. 1774/2002, which complies with the requirements in Part A of Chapter II of Annex VII to that Regulation and with paragraph (3) below;
- (b) blood products, within the meaning of paragraph 4 of Annex I to Regulation (EC) No. 1774/2002, which comply with the requirements in Part B of Chapter III of Annex VII to that Regulation and with paragraph (3) below;
- (c) rendered fats, within the meaning of paragraph 50 of Annex I to Regulation (EC) No. 1774/2002, which comply with the requirements in Part A of Chapter IV of Annex VII to that Regulation and with paragraph (3) below;
- (d) gelatine, within the meaning of paragraph 26 of Annex I to Regulation (EC) No. 1774/2002, which complies with the requirements in Part A of Chapter VI of Annex VII to that Regulation and with paragraph (3) below;
- (e) hydrolysed protein, within the meaning of paragraph 31 of Annex I to Regulation (EC) No. 1774/2002, which complies with the requirements in Part B of Chapter VI of Annex VII to that Regulation and with paragraph (3) below;
- (f) dicalcium phosphate, within the meaning of Part A of Chapter VII of Annex VII to Regulation (EC) No. 1774/2002, which complies with the requirements of that Part and with paragraph (3) below;
- (g) tricalcium phosphate, within the meaning of Part A of Chapter VIII of Annex VII to Regulation (EC) No. 1774/2002, which complies with the requirements of that Part and with paragraph (3) below;

- (h) collagen, within the meaning of paragraph 59 of Annex I to Regulation (EC) No. 1774/2002, which complies with the requirements in Part A of Chapter IX of Annex VII to that Regulation and with paragraph (3) below;
- (i) egg products, within the meaning of Part A of Chapter X of Annex VII to Regulation (EC) No. 1774/2002, which comply with that Part and with paragraph (3) below;
- (j) processed petfood, within the meaning of paragraph 43 of Annex I to Regulation (EC) No. 1774/2002, which complies with the requirements in Part B of Chapter II of Annex VIII to that Regulation;
- (k) dogchews, within the meaning of paragraph 22 of Annex I to Regulation (EC) No. 1774/2002, which comply with the requirements in Part B of Chapter II of Annex VIII to that Regulation;
- (l) processed manure and processed manure products, within the meaning of Part A of Chapter III(II) of Annex VIII to Regulation (EC) No. 1774/2002, which comply with the requirements for placing on the market in that Part;
- (m) by-products to a designated incineration plant, processing plant, oleochemical plant, biogas and composting plant, petfood plant or technical plant; for disposal, treatment, transformation or use;
- (n) by-products to users or collection centres authorised and registered in accordance with Article 23(2) of Regulation (EC) No. 1774/2002 for the feeding of animals after the by-products have been treated in accordance with paragraph 5(a)(ii) of Annex IX to that Regulation or by another treatment which ensures that no virus causing avian influenza remains;
- (o) game trophies of birds having undergone a complete taxidermy treatment ensuring their preservation at ambient temperatures;
- (p) poultry feathers or parts of poultry feathers which have been treated with a steam current, or by another method which ensures that no virus causing avian influenza remains; and
- (q) untreated feathers or parts of untreated feathers produced from poultry or wild game birds from a restricted zone which comply with the requirements of point 1(a) of Part A of Chapter VIII of Annex VIII to Regulation (EC) No. 1774/2002;

(3) No person shall move any bird by-product referred to in paragraph (2)(a) to (i) unless it has been processed at a processing plant in accordance with Annex V to Regulation (EC) No. 1774/2002.

(4) By-products from poultry, referred to in paragraphs (2)(p) and (q), must be accompanied by a commercial document in accordance with Chapter X of Annex II to Regulation (EC) No. 1774/2002.

(5) Paragraph (4) does not apply to—

- (a) processed decorative feathers;
- (b) processed feathers carried by travellers for their private use; or
- (c) consignments of processed feathers sent to private individuals for non-industrial purposes.

(6) Point 6.1 of the commercial document accompanying by-products referred to in paragraph (2)(p) must state that they have been treated with a steam current or by another method to ensure that no virus causing avian influenza remains.

Ban on bird gatherings

15.—(1) No person shall arrange any fair, market, show, exhibition or other gathering involving the collecting together of poultry or other captive birds in a restricted zone.

(2) No person shall bring any poultry or other captive bird to such a gathering in such a zone.

General duties relating to execution of this Order

16.—(1) Any person required to give reasonable assistance or information to a person executing this Order must, unless that person has reasonable cause, do so without delay.

(2) No person shall deface, obscure or remove any mark applied by an inspector under article 21(1).

(3) No person shall provide information which that person knows to be false or misleading to a person executing this Order.

(4) The costs incurred by any person in taking action required, or in refraining from taking action prohibited, under this Order must be met by that person unless the Scottish Ministers direct otherwise in writing.

Cleansing and disinfection

17.—(1) Any person who is required under this Order to carry out disinfection at any premises or of any thing must—

- (a) use disinfectants approved by the Scottish Ministers under the Diseases of Animals (Approved Disinfectants) Order 1978(a) (“the Disinfectants Order”) for use under the Diseases of Poultry (Scotland) Order 2003(b);
- (b) use them at the concentrations approved under the Disinfectants Order; and
- (c) use them—
 - (i) in accordance with the manufacturer’s instructions (if any); or
 - (ii) if a veterinary inspector has instructed otherwise, in accordance with those instructions.

(2) Where cleansing and disinfection of vehicles is required at any premises under this Order, the occupier of those premises must provide adequate facilities and proper equipment and materials for that cleansing and disinfection.

Record keeping

18.—(1) A person moving poultry, other captive birds or their products under a licence granted under this Order must—

- (a) as soon after the movement as is reasonably practicable, make a record of—
 - (i) what is moved, including its quantity;
 - (ii) the date of the movement;
 - (iii) the name of the consignor;
 - (iv) the address of the premises from which the movement started;
 - (v) the registration number of any vehicle used;
 - (vi) the name of the consignee; and
 - (vii) the address of the destination; and
- (b) retain it for at least 6 weeks from the date the movement was completed.

(2) A person who is required under this Order to make any other record must retain it for at least 12 months from the date the record is made.

(3) A person required to produce a record by a person executing this Order must do so without delay.

(4) On production of the record, the person executing this Order may—

- (a) copy the record, in whatever form it is held;
- (b) require any computer record to be produced in a form which can be taken away; and

(a) S.I. 1978/32. The relevant amending instruments are S.S.I. 2006/336 and 352.

(b) The definition of the Diseases of Poultry Order in article 2 of the Disinfectants Order was substituted by S.S.I. 2006/336.

- (c) remove any record and retain it until that person has carried out functions under this Order.

Change of occupation of premises under restriction

19.—(1) This article applies if the keeper of any poultry, other captive bird or mammal is unable to move it from premises on the termination of the keeper's right of occupation because of a movement restriction imposed under this Order and continues to apply for 7 days after any such restriction has been removed.

(2) The person entitled to occupation of the premises following that termination must—

- (a) provide such facilities for feeding, tending or otherwise using the poultry, other captive bird or mammal (including selling it) as the keeper may reasonably require; and
- (b) allow entry to the premises to that keeper and any person authorised by that keeper at reasonable times for feeding, tending or otherwise using the poultry, other captive bird or mammal.

(3) If the keeper is unable or unwilling to feed or tend the poultry, other captive bird or mammal, the person entitled to occupation of the premises must take such reasonable steps as are necessary to ensure it is properly fed and tended.

(4) The keeper is liable to pay the reasonable costs incurred under this article by any person feeding or tending it, or providing facilities for feeding, tending or otherwise using it.

Disapplication of provisions to any person executing this Order

20.—(1) Provisions in this Order which prohibit or restrict the movement or use of any thing do not apply, in their execution of this Order, to—

- (a) the Scottish Ministers;
- (b) the local authority; and
- (c) any person authorised by the Scottish Ministers or by the local authority to execute this Order.

(2) No breach of this Order by the Scottish Ministers, the local authority or a person so authorised shall give rise to a criminal offence.

Powers of inspectors

21.—(1) An inspector executing this Order may mark any bird or other thing for identification purposes.

(2) An inspector executing this Order may require—

- (a) the person in charge of any vehicle or equipment to cleanse and disinfect it, by serving a notice on that person; and
- (b) the detention and isolation of any vehicle, equipment or other thing, by serving a notice on the occupier of the premises where it is kept, or on the person in charge of it.

(3) A veterinary inspector executing this Order, or an inspector acting under the direction of a veterinary inspector, may cleanse and disinfect any premises.

(4) A veterinary inspector executing this Order, or an inspector acting under the direction of a veterinary inspector, may require—

- (a) the cleansing and disinfection of any thing, by serving a notice on the occupier of the premises where it is kept, or on the person in charge of it;
- (b) the cleansing and disinfection of any premises, by serving a notice on the occupier of the premises;
- (c) the detention or isolation in a specified place of any animal or bird, by serving a notice on the occupier of the premises where it is kept, or on its keeper;

- (d) the separation of any animal or bird from any other animal or bird, by serving a notice on the occupier of the premises where it is kept, or on its keeper.

Powers of inspectors in case of default

22.—(1) If any person fails to comply with a requirement under this Order, an inspector may take such steps as that inspector considers necessary to ensure the requirement is met, at the expense of that person.

- (2) An inspector's powers under paragraph (1) include powers—
 - (a) to require, by notice, any person to take or refrain from specified action in respect of any place, animal, bird, vehicle, or other thing; and
 - (b) to seize and detain any thing.

Offences by bodies corporate

- 23.—(1) If an offence committed by a body corporate is shown—
- (a) to have been committed with the consent or connivance of an officer; or
 - (b) to be attributable to any neglect on that officer's part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(3) "Officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) "Body corporate" includes a partnership in Scotland and, in relation to such a partnership, a reference to an officer of a body corporate is a reference to a partner.

Enforcement

24.—(1) This Order must be enforced by the local authority.

(2) The Scottish Ministers may direct, in relation to cases of a particular description or to a particular case, that they will enforce this Order instead.

ROSS FINNIE
A member of the Scottish Executive

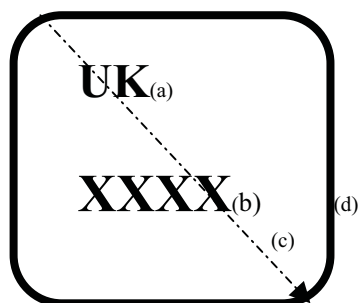
St Andrew's House,
Edinburgh
8th February 2007

SCHEDULE

Article 12(1)(a)

Marking of meat and meat products from wild game birds originating in a protection, surveillance or restricted zone

1. The mark referred to in article 12(1)(a) must be–
 - (a) in the form set out in paragraph 2;
 - (b) of the dimensions referred to in paragraph 2 or of proportionate dimensions; and
 - (c) legible to the naked eye.
2. The mark must be in the following form–



- (a) UK – letters 8 mm high;
- (b) XXXX (where XXXX is the approval number of the premises, as referred to in point 7 of Part B of Section I of Annex II to Regulation (EC) No 853/2004(a)) – numbers 11 mm high;
- (c) diameter (to outer edge of border) - not less than 30 mm;
- (d) thickness of border - 3 mm.

(a) O.J. No. L 139, 30.4.2004, p.55, as corrected by O.J. No. L 226, 25.6.2004, p.22.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transposes Commission Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in poultry in the Community and repealing Decision 2006/135/EC (O.J. No. L 164, 16.6.2006, p.51) (“the Commission Decision”). It also specifies the health mark, and the alternative health mark pursuant to Council Directive 2002/99/EC laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (O.J. No. L 18, 23.1.2003, p.11), to be applied to fresh and processed poultry meat and meat products which are to be moved out of a wild bird control area to another part of the UK. These marks are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health of 1st December 2006.

The Order supplements the general measures to control avian influenza set out in the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006 (S.S.I. 2006/336) (“the main Order”). Measures to control highly pathogenic avian influenza of subtype H5N1 in wild birds are set out in the Avian Influenza (H5N1 in Wild Birds) (Scotland) Order 2007 (S.S.I. 2007/61).

Article 5 specifies which zones declared under the main Order are zones A and B for the purposes of the Commission Decision.

Article 6 requires the Scottish Ministers to declare temporary control zones or temporary movement restriction zones under the main Order if highly pathogenic avian influenza of subtype H5N1 is suspected in poultry. Article 7 relates to the location and size of such zones. Article 8 requires the Scottish Ministers to declare a restricted zone under the main Order on confirmation of highly pathogenic avian influenza of subtype H5N1 in poultry.

The general measures which may be imposed on suspicion and confirmation of highly pathogenic avian influenza of sub-type H5N1 are set out in the main Order. Additional measures in articles 9 to 14 of this Order restrict movements of the following:

- (a) poultry and other captive birds from restricted zones (article 9);
- (b) hatching eggs from restricted zones (article 10);
- (c) wild game bird products from protection, surveillance and restricted zones (articles 11 to 13);
- (d) by-products from any bird in a protection, surveillance or restricted zone (article 14).

Article 15 bans bird gatherings in restricted zones. Articles 16 to 24 contain measures relating to enforcement of the Order. The Schedule sets out the mark to be applied to meat and meat products from wild game birds from protection, surveillance and restricted zones.

A breach of this Order is an offence under section 73 of the Animal Health Act 1981, punishable under section 75 of that Act.

A Regulatory Impact Assessment has not been prepared for this Instrument. The measures complement closely those of the main Order, for which a full RIA was prepared. It is available from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh EH14 1TY.

2007 No. 62

ANIMALS

ANIMAL HEALTH

The Avian Influenza (H5N1 in Poultry) (Scotland) Order 2007

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