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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 3**

**ANIMALS**

**ANIMAL HEALTH**

**The Bovine Viral Diarrhoea (Scotland) Order 2013**

<i>Made</i>	- - - -	<i>8th January 2013</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th January 2013</i>
<i>Coming into force</i>	- -	<i>9th February 2013</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1), 83(2) and 88(2) of the Animal Health Act 1981<sup>(1)</sup> and all other powers enabling them to do so.

**PART 1**

**Preliminary**

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Bovine Viral Diarrhoea (Scotland) Order 2013 and comes into force on 9th February 2013.

(2) It extends to Scotland only.

**Interpretation**

**2.** In this Order unless the context otherwise requires—

“the 2007 Regulations” means the Cattle Identification (Scotland) Regulations 2007<sup>(2)</sup>;

“the 2012 Order” means the Bovine Viral Diarrhoea (Scotland) Order 2012<sup>(3)</sup>;

“the Act” means the Animal Health Act 1981;

“approved laboratory” means a laboratory approved by the Scottish Ministers under article 6;

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(1) 1981 c.22. Powers to make Orders under these sections were originally conferred on “the Ministers”, as defined in section 86(1) of the Animal Health Act 1981. The functions of the Ministers were, so far as within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) S.S.I. 2007/174, amended by S.S.I. 2007/312 and 2011/412 and S.I. 2011/1043.

(3) S.S.I. 2012/78.

“approved veterinary surgeon” means a veterinary surgeon approved by the Scottish Ministers under article 5;

“bovine animal” means a domestic animal of the genus *Bos* or the species *Bubalus bubalus* or *Bison bison*;

“breeding bovine animal” means a bovine animal not forming part of a herd of bovine animals which, whether by natural, assisted or artificial means, is intended by its keeper to breed and no steps are taken to prevent or minimise the chances of its breeding;

“breeding herd” means a group of two or more bovine animals in which breeding, whether by natural, assisted or artificial means, is intended by its keeper to take place and no steps are taken to prevent or minimise the chances of such breeding;

“bulk milk sample” means a sample taken from a container of milk comprising milk from more than one bovine animal;

“BVD” means bovine viral diarrhoea;

“BVD finding” means, in relation to a breeding herd or breeding bovine animal in respect of which samples have been tested by the operator of an approved laboratory under article 17 or the operator of a laboratory as mentioned in article 20, the finding of—

- (a) negative for the presence of BVDV or, as the case may be, evidence of exposure to BVDV; or
- (b) not negative for the presence of BVDV or, as the case may be, evidence of exposure to BVDV,

as determined by the operator of an approved laboratory under article 17(2)(b)(i) or, as the case may be, the operator of a laboratory as mentioned in article 20; and “negative” and “not negative”, in relation to BVD finding, are to be construed accordingly;

“BVDV” means BVD virus;

“calves” means bovine animals which are aged 18 months or less;

“coming into force day” means the day on which this Order comes into force;

“CPH number” means the county parish holding number assigned to a holding or part of a holding by the Scottish Ministers;

“holding” means a holding or part of a holding to which a CPH number has been assigned;

“keeper” means, in relation to a bovine animal, the person who is in day-to-day charge of the animal; and that person remains the keeper where the animal is placed temporarily in the control of another person (including where it is placed in the control of a transporter);

“management tag” means an ear tag, other than an ear tag applied under the 2007 Regulations, which is suitable to be applied to a bovine animal for the purpose of taking a sample of tissue;

“milk collector” means a person employed by, or contracted to, a dairy or other facility for the purpose of collecting milk for human consumption from the holding on which it is produced;

“milk recorder” means a person employed by, or contracted to—

- (a) a milk recording organisation which is a member of the International Committee for Animal Recording; or
- (b) the operator of an approved laboratory,

for the purpose of taking representative samples from individual bovine animals and bulk milk tanks;

“qualifying calf” means a calf of a bovine animal that is born otherwise than into a breeding herd or to a breeding bovine animal; and

“separately managed group” means, within a breeding herd, any bovine animals that, for a period of two months or more, graze or are housed together—

- (a) separately from any other animals in the herd; and
- (b) in sufficient proximity to each other to allow BVDV to circulate amongst them.

### **Notices and other instruments**

**3.**—(1) Any notice, licence or approval under this Order—

- (a) may be subject to conditions; and
- (b) unless specified otherwise, may be amended, suspended or revoked by the same type of instrument at any time.

(2) Any licence or approval under this Order must be in writing.

(3) Where anything under this Order is to be done in writing that includes an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000<sup>(4)</sup>, which has been recorded and is consequently capable of being reproduced.

### **Extension of definition of “disease”**

**4.** The definition of “disease” in section 88(1) of the Act is extended to include BVD for all the purposes of the Act<sup>(5)</sup>.

### **Approval of veterinary surgeons**

**5.**—(1) The Scottish Ministers may approve any veterinary surgeon whom they consider to be suitable for the purposes of carrying out the functions conferred on an approved veterinary surgeon by Parts 2 and 4 of this Order.

(2) For the purpose of deciding whether to grant an approval under this article, the Scottish Ministers may require a veterinary surgeon to complete such training as they consider necessary.

(3) An approved veterinary surgeon must comply with any condition of the approval.

(4) The Scottish Ministers may by notice given to the veterinary surgeon suspend or revoke an approval granted under this article.

(5) Suspension of an approval under this article lasts for such period, or until such steps are taken, as the Scottish Ministers specify in the notice.

(6) An approved veterinary surgeon may by notice given to the Scottish Ministers indicate that the veterinary surgeon no longer wishes approval, in which case the approval ceases to have effect on the date on which Ministers receive that notice.

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(4) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

(5) The definition was so extended by S.S.I. 2012/78, which is revoked by article 30 of this Order.

## PART 2

### BVD screening

#### CHAPTER 1

##### General provisions

##### **Approval of laboratories**

6.—(1) The Scottish Ministers may approve any laboratory that they consider to be suitable for the purpose of testing samples submitted under this Part.

(2) For the purpose of deciding whether to grant an approval under this article, the Scottish Ministers may require the operator of a laboratory to arrange or permit such inspections and quality assurance testing as Ministers consider necessary.

(3) The operator of an approved laboratory must comply with any condition of the approval.

##### **Suspension and revocation of approval of laboratories**

7.—(1) The Scottish Ministers may by notice given to the operator of an approved laboratory suspend or revoke an approval granted under article 6 if—

- (a) they consider that the approved laboratory is no longer suitable for the purpose of carrying out testing of samples submitted to it under this Part; or
- (b) they have reason to believe that any conditions of its approval have not been, or are not being, complied with.

(2) For the purpose of deciding whether to suspend or revoke an approval under this article, the Scottish Ministers may require the operator of the laboratory to arrange or permit such inspections and quality assurance testing as Ministers consider necessary.

(3) Suspension of an approval under this article lasts for such period, or until such a state of affairs exists, as the Scottish Ministers specify when suspending the approval.

(4) The operator of an approved laboratory may by notice given to the Scottish Ministers indicate that the operator no longer wishes approval of the laboratory, in which case the approval ceases to have effect on the date on which Ministers receive that notice.

##### **Management tags**

8.—(1) This article applies where—

- (a) a management tag has been used to take a sample of tissue from a bovine animal under this Part; and
- (b) the tag, or any replacement of it, has been removed or lost or has become illegible.

(2) The keeper of the animal who applied the tag must, within 28 days (or such longer period as the Scottish Ministers approve in the particular circumstances) of the removal or of becoming aware of the loss or illegibility, apply to the animal a replacement tag bearing the same identification number as the previous tag.

(3) Except for the purpose of replacing an illegible tag or safeguarding the welfare of the animal, the keeper of the animal must not remove or replace a management tag without the approval of the Scottish Ministers.

## CHAPTER 2

### Sampling and testing requirements

#### **Obligations to sample and submit for testing**

**9.—**(1) The keeper of a breeding herd or breeding bovine animal must by each compliance deadline (set in accordance with article 10) comply with articles 11 and 14.

(2) Compliance with paragraph (1) is to be at the keeper's expense.

(3) Anything done by a previous keeper for the purposes of complying with paragraph (1) in relation to a particular compliance deadline may, if the current keeper so elects, be relied on by the current keeper for the purpose of determining compliance with that paragraph in relation to that compliance deadline.

(4) The duties imposed by this article cease to apply in relation to a breeding herd or breeding bovine animal where the herd or animal ceases to exist.

#### **Compliance deadlines**

**10.—**(1) The first compliance deadline is the date falling 13 calendar months after this article first applies to the breeding herd or breeding bovine animal.

(2) This article first applies to a herd or animal on the day on which the herd or animal has been kept in Scotland, as a breeding herd or breeding bovine animal, for a total of not less than 30 days in any period of one year beginning no earlier than the coming into force day.

(3) Subject to paragraphs (4) and (5)—

(a) the second compliance deadline is the date falling 13 calendar months after the first compliance deadline; and

(b) compliance deadlines subsequently occur on the date falling 13 calendar months after the immediately preceding compliance deadline.

(4) Where in any case article 9(1) is complied with before a compliance deadline, the date of such compliance is substituted as the starting point for the determination of the next compliance deadline in relation to the breeding herd or breeding bovine animal concerned.

(5) Where a herd or animal is kept in Scotland as a breeding herd or breeding bovine animal for a total of less than 30 days in the period between two compliance deadlines—

(a) the keeper does not have to comply with article 9(1) in relation to the later of those compliance deadlines; and

(b) the herd or animal is treated, as at the later of those compliance deadlines, as not previously having been kept in Scotland.

#### **Taking of samples**

**11.—**(1) The keeper of a breeding herd or breeding bovine animal must take (or arrange to have taken) a sample or samples as described in any one of the sub-paragraphs of paragraph (2).

(2) The samples described in this paragraph are—

(a) on 4 occasions occurring at intervals of not less than 80 days and not more than 100 days, a sample of milk comprising milk from all of the lactating bovine animals in the herd at the time whose milk is being taken for human consumption;

(b) a sample of milk comprising milk from all of the lactating bovine animals in the herd at the time and a sample of blood from each of the non-lactating female bovine animals that have been in-calf at least once before and in-calf heifers in the herd at the time;

- (c) a sample of milk comprising milk from all of the dairy bovine animals in the herd at the time that are lactating and have been pregnant once;
- (d) a sample of blood from—
  - (i) each of 5 calves between the age of 9 and 18 months in the herd at the time, or, where the herd contains separately managed groups, each of 5 such calves from each such group;
  - (ii) where there are fewer than 5 calves between the age of 9 and 18 months in the herd at the time or, as the case may be, separately managed group, each of 10 calves between the age of 6 and 18 months in the herd at the time or, as the case may be, each of 10 such calves from each such group;
  - (iii) where there are fewer than 10 calves between the age of 6 and 18 months in the herd at the time or, as the case may be, separately managed group, each of 5 bovine animals over the age of 18 months in the herd at the time or, as the case may be, each of 5 such animals from each such group, where those animals have not left the holding since birth; or
  - (iv) where there are fewer than 10 calves as referred to in head (ii) and fewer than 5 bovine animals as referred to in head (iii) in the herd at the time or, as the case may be, separately managed group—
    - (aa) each of the calves between the age of 6 and 18 months in the herd at the time or, as the case may be, each of such calves from each such group; and
    - (bb) where there are fewer than 5 calves between the age of 6 and 18 months in the herd at the time or, as the case may be, separately managed group, each of the bovine animals over the age of 18 months which have not left the holding since birth;
- (e) subject to paragraphs (3) and (4), from each of the calves in the herd born since the immediately preceding compliance deadline either—
  - (i) an ear tag sample of tissue taken in accordance with paragraphs (6) and (7); or
  - (ii) a sample of blood; and
- (f) from each of the bovine animals in the herd at the time either—
  - (i) an ear tag sample of tissue taken in accordance with paragraphs (6) and (7); or
  - (ii) a sample of blood.

(3) Paragraph (2)(e) applies only where since the immediately preceding compliance deadline no calves have been removed from the herd.

(4) In relation to the first compliance deadline the reference in paragraph (2)(e) to the immediately preceding compliance deadline is to be read as a reference to the day on which article 10 first applies to the herd.

(5) For the purposes of paragraphs (2)(e) and (f), (3) and (4), the herd does not include any bovine animals which, so far as known by the keeper, have previously tested negative for the presence of BVDV or which are the maternal antecedents of any which have previously tested negative for the presence of BVDV.

- (6) An ear tag sample of tissue is taken in accordance with this paragraph if—
  - (a) the tag used when the sample is collected is an ear tag applied under the 2007 Regulations; or
  - (b) the tag used is a management tag, and the tag and the vessel for collecting the sample have an identical, pre-printed, identification number; and that identification number—

- (i) in the case of a sample taken from a bovine animal in a breeding herd, is used only once within the same herd; and
- (ii) is notified along with the animal's ear tag number required by article 14(3)(b)(v) or (vi) when the sample is submitted.

(7) For the purposes of paragraph (2)(e) and (f) the keeper of a breeding herd or breeding bovine animal must not take (or arrange to have taken) an ear tag sample of tissue from any calves or bovine animals in the herd from which such a sample has previously been collected from a management tag.

### **Decision on type of sample to take**

**12.**—(1) Subject to paragraph (2), the keeper of a breeding herd or breeding bovine animal may take and submit (or arrange to have taken and submitted) a sample or samples described in article 11(2) (other than a sample described in article 11(2)(d)) without consulting a veterinary surgeon.

(2) The taking and submission of, or arranging to take and submit, a sample of blood must be authorised by a veterinary surgeon.

### **Persons authorised to take milk samples**

**13.**—(1) The following persons may, for the purposes of article 11, take a milk sample from a bovine animal—

- (a) a veterinary surgeon;
- (b) a veterinary nurse authorised to do so by a veterinary surgeon; and
- (c) a milk recorder.

(2) The following persons may, for the purposes of article 11, take a bulk milk sample—

- (a) a veterinary surgeon;
- (b) a veterinary nurse authorised to do so by a veterinary surgeon;
- (c) a milk recorder; and
- (d) a milk collector.

(3) Where a milk collector takes a bulk milk sample for the purposes of article 11, that collector may do so only from a bulk milk tank.

### **Submission of samples**

**14.**—(1) Subject to paragraph (2), the keeper must, in accordance with paragraph (3), submit (or arrange to have submitted) any sample or samples taken under article 11 to an approved laboratory with whose operator arrangements have been made for testing in relation to BVDV.

(2) Where the keeper of the breeding herd elects to submit (or arrange to have submitted) the samples described in article 11(2)(a) and as a result of testing the first, second or third sample the approved laboratory determines the BVD finding as “not negative”—

- (a) the keeper is not required to submit the remaining sample or samples for testing; and
- (b) the date of that determination is taken to be the date of compliance with article 9(1).

(3) A sample must be—

- (a) submitted in accordance with such requirements as to storage, handling and timing as are indicated to be necessary for the effective testing of the sample by the operator of the laboratory to which the sample is to be submitted or, as the case may be, the instructions accompanying the equipment used to take the sample; and

- (b) accompanied by a notice containing the following information—
  - (i) the keeper's name and address;
  - (ii) by reference to the relevant provision of article 11, the description of the sample;
  - (iii) the date the sample was taken;
  - (iv) the CPH number for the holding on which the herd or animal was kept at the time the sample was taken;
  - (v) in the case of a sample described in article 11(2)(d), (e) or (f), the ear tag numbers from ear tags applied under the 2007 Regulations to all animals from which the sample derives;
  - (vi) in the case of a sample described in article 11(6)(a), the ear tag numbers from ear tags applied to the animal under the 2007 Regulations; and
  - (vii) any other information reasonably requested by the operator of the laboratory.

### **Qualifying calves**

- 15.—**(1) The keeper of a qualifying calf must—
- (a) before the calf is 40 days old take (or arrange to have taken)—
    - (i) an ear tag sample of tissue taken in accordance with paragraph (3); or
    - (ii) a sample of blood; and
  - (b) in accordance with paragraph (4), submit (or arrange to have submitted) the sample to an approved laboratory with whose operator arrangements have been made for testing in relation to BVDV.
- (2) Compliance with paragraph (1) is to be at the keeper's expense.
- (3) An ear tag sample of tissue is taken in accordance with this paragraph if—
- (a) the tag used when the sample is collected is an ear tag applied under the 2007 Regulations; or
  - (b) the tag used is a management tag, and the tag and the vessel for collecting the sample have an identical, pre-printed, identification number; and, where ear tags have been applied to the calf, that identification number is notified along with the calf's ear tag number required by paragraph (4)(b)(iv) when the sample is submitted.
- (4) A sample is submitted in accordance with this paragraph if—
- (a) it is submitted in accordance with such requirements as to storage, handling and timing as are indicated to be necessary for the effective testing of the sample by the operator of the laboratory to which the sample is to be submitted or, as the case may be, the instructions accompanying the equipment used to take the sample; and
  - (b) it is accompanied by a notice containing the following information—
    - (i) the keeper's name and address;
    - (ii) the date the sample was taken;
    - (iii) the CPH number for the holding on which the calf was kept at the time the sample was taken;
    - (iv) where applied, the ear tag numbers from ear tags applied to the calf under the 2007 Regulations; and
    - (v) any other information reasonably requested by the operator of the laboratory.



(5) Anything done by a previous keeper for the purposes of complying with paragraph (1) may, if the current keeper so elects, be relied on by the current keeper for the purpose of determining compliance with that paragraph.

### **Movement of a qualifying calf**

**16.**—(1) No person may move a qualifying calf from the holding on which it is born before a sample has been taken from it under article 15(1)(a), unless the move is under the authority of a licence granted by an inspector or an approved veterinary surgeon.

(2) Any person moving a qualifying calf under the authority of a licence granted under paragraph (1) must—

- (a) keep upon that person the licence or a copy of it at all times during such movement;
  - (b) on demand by a veterinary inspector, an approved veterinary surgeon, an inspector or an officer of the Scottish Ministers, produce the licence or a copy of it and allow a copy or extract to be taken; and
  - (c) keep the licence or a copy of it for the period of 6 months after the movement is completed.
- (3) A person to whom the licence is granted must comply with any condition of the licence.

## **CHAPTER 3**

### **Testing requirements**

#### **Duties of operators of approved laboratories – breeding herds or breeding bovine animals**

**17.**—(1) This article applies where—

- (a) the keeper of a breeding herd or a breeding bovine animal has in accordance with article 14 arranged for the testing of a sample or samples by an approved laboratory; and
  - (b) the sample has, or those samples have, been submitted to the laboratory.
- (2) The operator of the laboratory must—
- (a) test the sample or samples in accordance with paragraph (3); and
  - (b) subject to paragraph (4)—
    - (i) make a finding in relation to the herd or animal of negative or not negative for the presence of BVDV or, as the case may be, evidence of exposure to BVDV;
    - (ii) by notice inform the keeper of the finding; and
    - (iii) by notice inform the Scottish Ministers, within 40 days of testing the sample or samples under sub-paragraph (a), of the matters mentioned in paragraph (5).
- (3) The sample or samples are tested in accordance with this paragraph if—
- (a) in the case of a sample or samples described in article 11(2)(a), (b), (c) or (d), it is or they are tested for evidence of exposure to BVDV; and
  - (b) in the case of any other sample, it is tested for the presence of BVDV.
- (4) In relation to the samples described in article 11(2)(a), the operator of the laboratory—
- (a) may make a finding of “negative” under paragraph (2)(b)(i)—
    - (i) only after the operator has tested under paragraph (2)(a) each of the 4 samples which the keeper is required to submit; and
    - (ii) in the opinion of the operator, the results indicate that the herd or animal is negative for evidence of exposure to BVDV; and

- (b) in such a case, must give notice under paragraph (2)(b)(iii) within 40 days of the testing of the last of the 4 samples.
- (5) The matters mentioned in this paragraph are—
  - (a) the keeper's name and address;
  - (b) by reference to the relevant provision of article 11, the description of the sample or samples;
  - (c) the date the sample was or the samples were taken;
  - (d) the date the sample was or the samples were tested;
  - (e) the results of the tests of the sample or samples;
  - (f) the CPH number for the holding on which the herd or animal was kept at the time the sample was or the samples were taken;
  - (g) in the case of a sample or samples described in article 11(2)(e) or (f), the ear tag numbers from ear tags applied under the 2007 Regulations to all animals from which the sample derives or the samples derive; and
  - (h) the finding under paragraph (2)(b)(i).
- (6) The duties imposed by this article cease to apply in relation to a breeding herd or breeding bovine animal where the herd or animal ceases to exist.

#### **Duties of operators of approved laboratories – qualifying calves**

- 18.**—(1) This article applies where—
- (a) the keeper of a qualifying calf has in accordance with article 15 arranged for the testing of a sample by an approved laboratory; and
  - (b) the sample has been submitted to the laboratory.
- (2) The operator of the laboratory must—
- (a) test the sample submitted for the presence of BVDV;
  - (b) by notice inform the keeper of the result of the test, clearly indicating to the keeper whether the result is negative or not negative for the presence of BVDV; and
  - (c) by notice inform the Scottish Ministers, within 40 days of testing the sample under subparagraph (a), of—
    - (i) the keeper's name and address;
    - (ii) the date the sample was taken;
    - (iii) the date the sample was tested;
    - (iv) the result of the test;
    - (v) the CPH number for the holding on which the calf was kept at the time the sample was taken; and
    - (vi) the ear tag numbers from ear tags applied to the calf under the 2007 Regulations.

#### **Approved laboratories - record keeping and disclosure**

- 19.**—(1) The operator of an approved laboratory must maintain a record of any test carried out under this Part for 3 years from the date of such a test.
- (2) The operator of the approved laboratory must, if requested by notice by the Scottish Ministers to do so, provide the Scottish Ministers with such records.

## PART 3

### Reporting of tests

#### **Reporting of tests for presence of BVDV**

**20.**—(1) This article applies where, other than under Part 2, a laboratory (including an approved laboratory) tests for the presence of BVDV a sample (of any description) taken from a bovine animal.

(2) The operator of the laboratory must by notice inform the Scottish Ministers, within 40 days of testing the sample, of—

- (a) a description of the sample;
- (b) the date the sample was tested;
- (c) the result of the test; and
- (d) in so far as known by the operator—
  - (i) any ear tag numbers from ear tags applied to the animal under the 2007 Regulations;
  - (ii) the keeper's name and address;
  - (iii) the CPH number for the holding on which the animal was kept at the time the sample was taken; and
  - (iv) the date the sample was taken.

## PART 4

### BVD findings and status

#### **BVD status of a breeding herd or breeding bovine animal**

**21.**—(1) Every breeding herd and breeding bovine animal which has a current BVD finding has BVD status in accordance with this article.

(2) Subject to paragraph (3), the BVD status of a breeding herd or breeding bovine animal is the same as the current BVD finding for the herd or animal.

(3) During any period when the breeding herd or breeding bovine animal is kept on the same holding as another breeding herd or breeding bovine animal which currently has a “not negative” BVD finding, the BVD status of the former breeding herd or breeding bovine animal is “not negative”.

(4) Where the result of a laboratory test under article 20 has confirmed the presence of BVDV in relation to a breeding bovine animal and the operator of the laboratory has informed the keeper about that, the BVD status of that animal, or the herd of which that animal forms part, is “not negative”.

#### **Notification where BVD finding is “not negative”**

**22.**—(1) This article applies where under article 17(2)(b)(ii), or in a case mentioned in article 21(4), the keeper of a breeding herd or breeding bovine animal is informed that the herd or animal has a “not negative” BVD finding.

(2) The keeper must give the keeper of any other breeding herd or breeding bovine animal which is kept on the same holding a notice of—

- (a) that finding; and
- (b) any change to that finding.

(3) Notice under paragraph (2) is to be given within 7 days of the keeper being informed of the finding or change or, if later, the other herd or animal being first kept on the holding after the finding or change.

### **Change of BVD finding by approved veterinary surgeon**

**23.**—(1) An approved veterinary surgeon may, on behalf of the keeper of a breeding herd, by notice inform the Scottish Ministers of a change in BVD finding to “negative” where, following a determination of the finding as “not negative”, the veterinary surgeon reasonably considers that—

- (a) follow-up action or investigation as appropriate has been carried out to identify individual animals infected with BVDV; and
- (b) either—
  - (i) no such animals could be identified; or
  - (ii) animals so identified have been removed from the herd.

(2) Where the follow-up action or investigation has identified animals infected with BVDV, the notice under paragraph (1) must include the ear tag numbers from ear tags applied under the 2007 Regulations to all such animals.

(3) An approved veterinary surgeon may, on behalf of the keeper of a breeding bovine animal, by notice inform the Scottish Ministers of a change in BVD finding to “negative” where, following a determination of the finding as “not negative”, the veterinary surgeon reasonably considers that appropriate further testing has been carried out which shows that the animal is now “negative”.

(4) The notice under paragraph (3) must include the ear tag numbers from ear tags applied under the 2007 Regulations to the animal.

## **PART 5**

### **Maintenance and provision of information**

#### **Maintenance and provision of information**

**24.**—(1) The Scottish Ministers must maintain a record of information as notified to them in accordance with articles 17(2)(b)(iii), 18(2)(c) and 20(2), or as provided to them under article 19(2).

(2) The Scottish Ministers must provide information so far as held by them to a relevant person about—

- (a) the BVD status of a breeding herd or breeding bovine animal; and
- (b) the result of a laboratory test for the presence of BVDV in relation to a sample taken from a bovine animal.

(3) In paragraph (2), “a relevant person” means—

- (a) the keeper of that herd or animal; or
- (b) the operator of a market to which the herd or animal is moved or is to be moved.

(4) Where they consider it appropriate to do so, the Scottish Ministers may provide information so far as held by them, as described in paragraph (2)(b), to any other person who requests that information.

## PART 6

### Enforcement and offences

#### Interpretation of Part 6

25. In this Part, “premises” means any land, building or vehicle, of any description.

#### Enforcement

26.—(1) Subject to paragraph (2), this Order is enforced by the local authority.

(2) The Scottish Ministers may, in relation to such particular cases or such cases of a particular description, as they may specify, enforce this Order in place of the local authority.

#### Powers of entry

27.—(1) An inspector may, on producing a duly authenticated authorisation if requested, enter any premises (except premises used wholly as a private dwelling house) at any reasonable hour for the purpose of enforcing this Order.

(2) A justice of the peace or sheriff may by signed warrant permit an inspector to enter any premises as mentioned in paragraph (1), if necessary by reasonable force, if satisfied, on sworn information in writing, that—

- (a) there are reasonable grounds to enter those premises for the purpose of enforcing this Order; and
  - (b) any of the conditions in paragraph (3) are met.
- (3) The conditions referred to in paragraph (2)(b) are—
- (a) entry to the premises has been, or is likely to be, refused, and notice of intention to apply for a warrant has been given to the occupier;
  - (b) asking for admission to the premises, or giving such notice, would defeat the object of entry;
  - (c) entry is required urgently; or
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (4) A warrant may be granted for a period of up to 3 months.

#### Powers of inspectors

28.—(1) An inspector entering any premises under article 27 may for the purpose of enforcing this Order—

- (a) inspect any animal or article there;
- (b) take samples;
- (c) carry out any inquiries, examinations or tests;
- (d) have access to, inspect and copy any relevant documents or records (in whatever form they are held), and remove them to enable them to be copied;
- (e) inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the records.

(2) Where an inspector has entered premises and it is not reasonably practicable to determine whether documents on those premises are relevant, the inspector may seize them to ascertain whether or not they are relevant.

- (3) The inspector may—
- (a) take any necessary equipment or vehicle on to the premises; and
  - (b) be accompanied by such other persons as the inspector considers necessary.

### **Offences by bodies corporate**

- 29.**—(1) Where—
- (a) an offence against the Act in relation to this Order is committed by a body corporate or a Scottish partnership or other unincorporated association;
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual; or
    - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

- (2) In paragraph (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body;
    - (ii) where the affairs of the body are managed by its members, a member;
  - (b) in relation to a Scottish partnership, a partner;
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

## **PART 7**

### **Revocation, transitional and savings provisions**

#### **Revocation, transitional and savings provisions**

- 30.**—(1) Subject to paragraph (2), the 2012 Order is revoked.
- (2) The Schedule contains transitional and savings provisions.

St Andrew’s House,  
Edinburgh  
8th January 2013

*RICHARD LOCHHEAD*  
A member of the Scottish Government

## SCHEDULE

Article 30(2)

### TRANSITIONAL AND SAVINGS PROVISIONS

#### **Testing and sampling requirements – first compliance deadline**

- 1.—(1) This paragraph applies where a person—
- (a) is, immediately before the coming into force day, keeping a herd or bovine animal in Scotland, as a breeding herd or breeding bovine animal;
  - (b) has done so for a total of not less than 30 days in the period starting on 1st January 2013 and ending immediately before the coming into force day; and
  - (c) has not before the coming into force day—
    - (i) taken (or arranged to have taken) a sample or samples in accordance with article 7(2) (a) of the 2012 Order; and
    - (ii) submitted (or arranged to have submitted) a sample or samples to an approved laboratory (within the meaning of the 2012 Order) in accordance with article 7(2) (b) of the 2012 Order.

- (2) Where this paragraph applies—
- (a) subject to the modification mentioned in sub-paragraph (2)(c), the keeper of the herd or animal is to be treated as if—
    - (i) on the coming into force day; and
    - (ii) in relation to that herd or animal,the keeper is subject to the duties imposed by Chapter 2 of Part 2 of this Order in relation to that herd or animal;
  - (b) subject to sub-paragraph (2)(c), Parts 1 to 6 of this Order apply on and after the coming into force day in relation to the keeper of that herd or animal; and
  - (c) article 10(1) of this Order applies subject to the modification that the reference to “the date falling 13 calendar months after this article first applies to the breeding herd or breeding bovine animal” is to be construed as a reference to the date falling 13 calendar months after the day on which the herd or animal is kept in Scotland, as a breeding herd or breeding bovine animal, for a total of not less than 30 days in the period of 1 year beginning on 1st January 2013.

2.—(1) This paragraph applies where a person is, immediately before the coming into force day, keeping a herd or bovine animal in Scotland, as a breeding herd or breeding bovine animal, and has done so for a total of less than 30 days in the period starting on 1st January 2013 and ending immediately before the coming into force day.

- (2) Where this paragraph applies—
- (a) subject to the modification mentioned in sub-paragraph (2)(c), the keeper of the herd or animal is to be treated as subject to the duties imposed by Chapter 2 of Part 2 of this Order in relation to that herd or animal as soon as the herd or animal has been kept for a total of not less than 30 days;
  - (b) subject to sub-paragraph (2)(c), Parts 1 to 6 of this Order apply on and after the coming into force day in relation to the keeper of that herd or animal; and
  - (c) article 10(1) of this Order applies subject to the modification that the reference to “the date falling 13 calendar months after this article first applies to the breeding herd or breeding bovine animal” is to be construed as a reference to the date falling 13 calendar months after the day on which the herd or animal is kept in Scotland, as a breeding herd or breeding

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bovine animal, for a total of not less than 30 days in the period of 1 year beginning on 1st January 2013.

### **Testing and sampling requirements – second and subsequent compliance deadlines**

**3.**—(1) This paragraph applies where, immediately before the coming into force day, the keeper of a breeding herd or breeding bovine animal is, in relation to that herd or animal, subject to a requirement under article 7(2) of the 2012 Order—

- (a) to take (or arrange to have taken) a sample or samples in accordance with article 7(2)(a) of the 2012 Order; and
- (b) submit (or arrange to have submitted) a sample or samples to an approved laboratory (within the meaning of the 2012 Order), in accordance with article 7(2)(b) of the 2012 Order,

in order to comply with a second compliance deadline or subsequent compliance deadline set in accordance with article 9 of the 2012 Order.

(2) Where this paragraph applies, the keeper of the breeding herd or breeding bovine animal is to be treated as if, on the coming into force day—

- (a) the keeper is, in relation that herd or animal, subject to the duties imposed by Chapter 2 of Part 2 of this Order;
- (b) subject to sub-paragraph (2)(c) and (d), Parts 1 to 6 of this Order apply in relation to the herd or animal;
- (c) article 10(3)(a) applies subject to the modification that the reference to “the first compliance deadline” is to be construed as a reference to the date on which the keeper complied with article 7(2) of the 2012 Order in relation to the first compliance deadline set in accordance with article 8 of the 2012 Order; and
- (d) article 10(3)(b) applies subject to the modification that the reference to “the immediately preceding compliance deadline” is to be construed as a reference to the date on which the keeper complied with article 7(2) of the 2012 Order in relation to the second or subsequent compliance deadline set in accordance with article 9 of the 2012 Order.

### **Qualifying calves**

**4.**—(1) This paragraph applies where—

- (a) a qualifying calf (within the meaning of the 2012 Order) is born at any time in the period starting on 8th January 2013 and ending immediately before the coming into force day; and
- (b) the keeper of the qualifying calf has not before the coming into force day taken (or arranged to have taken) a sample in accordance with article 15(2)(a) of the 2012 Order.

(2) Where this paragraph applies, the keeper of the qualifying calf is to be treated as if, on the coming into force day, the keeper is, in relation to that calf, subject to the duties imposed by Chapter 2 of Part 2 of this Order.

### **Approvals of laboratories**

**5.** Any approval of a laboratory granted by the Scottish Ministers under article 4 of the 2012 Order, which is in force immediately before the coming into force day, continues to have effect for the purposes of this Order as if it had been granted under article 6 of this Order.



### **Approvals of veterinary surgeons**

6. Any approval of a veterinary surgeon granted by the Scottish Ministers under article 6 of the 2012 Order, which is in force immediately before the coming into force day, continues to have effect for the purposes of Parts 2 and 4 of this Order as if it had been granted under article 5 of this Order.

### **Operators of approved laboratories**

7.—(1) This paragraph applies where—

- (a) before the coming into force day a sample or samples have in accordance with article 7(2)(b) or 15(2)(b) of the 2012 Order, been submitted for testing under the 2012 Order to an approved laboratory for the purposes of that Order; and
- (b) as at the coming into force day the operator of the laboratory has not fulfilled the duties imposed by article 13 or 16 of the 2012 Order in relation to the sample or samples.

(2) Where this paragraph applies, the operator of the approved laboratory must comply with—

- (a) article 17 of this Order, in relation to a sample or samples taken from a breeding herd or a breeding bovine animal; and
- (b) article 18 of this Order, in relation to a sample taken from a qualifying calf,

as if the sample or samples had been submitted under Part 2 of this Order.

### **Approved laboratories – record keeping and disclosure**

8. Article 14 of the 2012 Order continues to apply to an operator of an approved laboratory (within the meaning of that Order) in relation to a record of any test carried out under that Order before the coming into force day.

### **BVD status**

9. Where a breeding herd or a breeding bovine animal has, immediately before the coming into force day, a BVD status in accordance with article 17 of the 2012 Order, that herd or animal is to be treated at the coming into force day as having that status for the purposes of the application of this Order in relation to the herd or animal.

### **Change of BVD finding by approved veterinary surgeon**

10.—(1) This paragraph applies where before the coming into force day—

- (a) an approved veterinary surgeon (within the meaning of the 2012 Order) has, in accordance with article 12 of the 2012 Order, considered a change in BVD finding to “negative” (within the meaning of that Order) in relation to a breeding herd or a breeding bovine animal; but
- (b) no notice of a change to “negative” has been given in relation to the herd or animal in accordance with article 12(1) or (3) of the 2012 Order.

(2) Where this paragraph applies, the veterinary surgeon may give notice under article 23 of this Order as if the BVD finding of “not negative” and any follow-up testing had been made or carried out under Part 2 of this Order.

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## EXPLANATORY NOTE

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

This Order restates with amendments the Bovine Viral Diarrhoea (Scotland) Order 2012 (“the 2012 Order”).

Article 9 of the Order requires all keepers of breeding cattle to:—

- take or arrange to have taken samples from their breeding bovine animals or herds annually (by the compliance deadlines set in accordance with article 10); and
- submit those samples for testing (in accordance with article 14) to laboratories as approved by the Scottish Ministers under article 6.

This is for the purposes of determining whether bovine viral diarrhoea virus (“BVDV”) is or may be present in the herd or the animal.

Every keeper of a breeding herd or animal must take or arrange to have taken samples by one of the methods provided for in article 11. In accordance with article 12, samples other than blood samples can be taken without consulting a veterinary surgeon. However, in relation to milk samples or bulk milk samples, those samples may be taken by any of the persons mentioned in article 13(1) or (2) respectively.

On receipt of samples, approved laboratories must test for the presence of BVDV or evidence of exposure to BVDV and make a finding in relation to the herd or animal of either negative (“negative”) for the presence of BVDV or evidence of exposure to BVDV or not-negative (“not negative”) and report these findings to the keeper and to the Scottish Ministers together with certain other information (article 17).

Where a laboratory has determined the BVD finding to be “not negative”, a veterinary surgeon approved for this purpose by the Scottish Ministers may, if he or she considers that appropriate follow-up testing or investigation has been carried out, notify the Scottish Ministers of a change in BVD finding from “not negative” to “negative” (article 23).

Where the BVD finding is “not negative”, the keeper must notify that finding to the keeper of any other breeding herd or breeding bovine animal kept on the same holding (article 22).

Similar provision is made in relation to any calf which is born other than to breeding cattle (a “qualifying calf”). Under article 15, the keeper must take (or arrange to have taken) a blood or ear tag tissue sample within 40 days of its birth and submit it to an approved laboratory for testing for the presence of BVDV. The laboratory must report the results to the keeper and to the Scottish Ministers (article 18).

Approved laboratories must keep records of any test carried out under this Order for 3 years and, if requested, provide these to the Scottish Ministers (article 19).

Under article 20, where any laboratory, otherwise than under Part 2, tests a sample of any description taken from a bovine animal for the presence of BVDV, it must inform the Scottish Ministers.

Article 21 makes provision as to the BVD status of breeding herds and breeding bovine animals which have a current BVD finding (as defined in article 2).

Article 24 requires and also enables the Scottish Ministers to inform the keepers of bovine animals, the operators of any markets to which the animal is to be moved and certain other persons, of the current BVD finding or the results of any laboratory tests for the presence of BVDV.

Articles 25 to 29 make provision in relation to enforcement and offences.

Article 30 provides for the revocation of the 2012 Order, subject to the savings and transitional provisions specified in the Schedule.

The principal changes made by this Order to the 2012 Order are as follows:—

- to align the provisions for sampling breeding herds and breeding bovine animals (article 11);
- to clarify how blood samples may be taken from breeding herds or bovine animals (article 11(2)(d));
- to make provision in relation to management (ear) tags (article 8) and sampling involving the use of such tags (article 11(6) and (7));
- to clarify when samples may be taken with or without consultation with, or authorisation from, a veterinary surgeon (article 12);
- to extend the requirements for reporting of tests for the presence of BVDV to all laboratories (article 20) and, in consequence, what constitutes BVD status (article 21) and a BVD finding (as defined in article 2); and
- to require the Scottish Ministers to maintain and provide information about current BVD findings and the results of tests for the presence of BVDV (article 24)

No business and regulatory impact assessment has been prepared for this Order as no further impact on business, charities or voluntary bodies is foreseen.