

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Avian Influenza (Preventive Measures) (Scotland) Amendment Order 2024

2. Purpose and intended effect

Context:

Avian Influenza Virus

Avian influenza refers to the disease caused by infection with avian influenza Type A viruses. These viruses naturally spread among wild aquatic birds worldwide and can infect domestic poultry and other wild bird species. Avian influenza (also known as bird flu) is a highly contagious viral disease, and its associated viruses are classified as either high or low pathogenicity viruses depending on the severity of the disease in poultry.

Influenza type A viruses are classified into subtypes according to the combinations of different virus surface proteins hemagglutinin (HA) and neuraminidase (NA). There are 16 different H proteins and 9 N proteins in influenza affecting birds. The H5 and H7 are considered to be the most important from an animal health perspective, as they are the only subtypes to have been identified as causing highly pathogenic infection in birds. However, there are five strains of avian influenza that have caused public health concern in recent years: H7N9, H9N2, H5N6, H5N8 and a type of H5N1 strain more common in Asia.

None of these strains easily infect people and are not usually spread from human to human. However, a small number of people have been infected around the world, and so precautionary steps are taken to mitigate this risk as much as possible. The clinical severity as a result of avian influenza virus infection varies dependent upon both species infected and virus strain.

UK Outbreak

Over 90% of all recorded highly pathogenic avian influenza (HPAI) virus detections in UK poultry occurred during the 2021-23 epizootic. During this period, approximately 370 poultry or other captive bird premises were declared as infected with the virus in the UK, 51 of these in Scotland. Thousands of infected dead wild birds have also tested positive for the virus across the UK. HPAI H5N1 is now globally distributed in birds, with large-scale outbreaks across Europe and the Americas.

Prior to 2021, HPAI in the UK was seasonal, and outbreaks would start when wild waterfowl migrated into GB in Autumn, and would end when these wild waterfowl departed in summer. During the last three years, **a change in the epidemiology of the disease has occurred**. The currently circulating strain of HPAI H5N1 has been detected in a wider range of wild bird species, **with maintenance of the virus in different native UK wild bird species throughout the summer months**, creating a **sustained** threat to UK poultry and wildlife.

During this short time, significant viral genetic diversity has been reported through both mutation and exchange of genetic material between non-notifiable influenza A viruses, as well as notifiable low pathogenic avian influenza (LPAI) viruses and HPAI viruses. **Spill-over of infection in a broad range of mammalian hosts has been observed globally**, highlighting the potential for viral adaptation and a resultant increased zoonotic risk.

3. Objectives

The changing nature of the virus has resulted in a greater need for surveillance. The main objective of this proposal is to amend the Avian Influenza (Preventive Measures) (Scotland) Order 2007 to reduce the threshold requirement to register poultry and other captive birds from 50 birds to one, with certain exemptions (mainly for parrots and finches kept indoors).

Rationale for Government intervention

If an outbreak of a notifiable avian disease (NAD) such as avian influenza or Newcastle disease occurs, government intervention is important to eradicate the disease. Government uses the GB Poultry Register, where keepers have provided a range of information fields about their kept birds, such as number of birds kept, location and species, to carry out vital surveillance and tracing activities, designed to prevent further spread of the disease. Activities such as risk assessments and tracing investigations require accurate and comprehensive information on the location of bird premises from the register, to be effective and resource-efficient in these activities.

The information on the register is also used to communicate with keepers that there is a heightened risk of bird flu incursion, and during AI and Newcastle disease outbreaks, on measures they need to take to protect public health, the health of their birds, and to prevent disease spread. Due to the risk of exotic disease and the operational need to reach all poultry owners when an outbreak occurs, without adequate and accurate information on the location on all bird premises, it is impossible for government to communicate with all bird keepers during outbreaks of disease, or to effectively undertake outbreak related activities.

However, registering on the current GB Poultry Register, although open to voluntary registration by keepers of less than 50 birds, has been a mandatory requirement for keepers of over 50 birds only, since 2007. Therefore, this limits the information available to operatives in the field when managing a NAD outbreak, and thus requires greater operational resource to ensure disease containment and eradication. In addition, smaller backyard flocks of less than 50 birds are equally susceptible to the virus as those birds in larger flocks, and the impact of an outbreak in a smaller flock still presents a potential risk to public health, and can have the same potential impact on trade and EU country disease freedom requirements as a larger flock.

Benefits of a reduced reporting threshold to include all kept birds (with exceptions)

The aim of the amendment of the Avian Influenza (Preventive Measures) (Scotland) Order 2007 is, from 1 September 2024, to ensure that all birds are registered, with the exception of *psittacines* (parrots, cockatoos and budgerigars) and *passerines* (small 'perching' birds) that are fully housed either within a dwelling, or within a bird house on the same premises with no access to the outdoors, which have been deemed to be a low risk to contracting the virus. The legislative amendments also include the introduction of a requirement for a mandatory annual update of keeper information, to come into force 12 months after the legislation.

The extension of the reporting requirement to all kept birds (with exceptions) will vastly increase visibility in terms of the location and nature of kept bird flocks for operational colleagues during an disease outbreak. Knowledge of the location of all kept birds within a disease control area will not only significantly reduce the resources required for disease control surveillance, it will significantly speed up this surveillance process, thereby reducing the risk of unchecked onward spread of the virus.

The availability of data on all kept bird flocks will also allow speedier and more efficient tracing investigations, whilst the requirement for keepers to annually refresh their data will ensure the information available to government is both comprehensive and accurate – a problem that the existing system has suffered from.

The key benefit of lowering the threshold of mandatory registration is that it will allow government and operational partners to communicate directly with bird keepers that they were previously unable to make contact with. Although contact with larger commercial poultry keepers is at a high level, the smallholder sector has proved difficult to engage with. Hence government has faced challenges in sharing disease control information during 'peacetime', in terms of preventive biosecurity measures, and during periods where there is a heightened risk of bird flu incursion/disease outbreaks, where information such as the measures keepers need to take to protect the health of their birds, and to prevent disease spread, especially the legal requirements for those caught up in a disease control zone, are all vital.

These changes will help government meet the disease control measures set out in domestic legislation and the Notifiable Avian Disease Control Strategy for Great Britain, such as undertaking surveillance activities in any restricted zone following confirmation of a disease outbreak. It will also help government meet EU disease freedom requirements for trade purposes following an outbreak of disease in GB.

4. Consultation

Within government

Similar amendments are being made to English and Welsh legislation. Once implemented, this will mirror current Northern Irish legislation.

The following government agencies and departments were consulted by all administrations in reaching this decision, via the Animal Disease Policy Group (ADPG):

- Public Health Scotland

- Food Standards Scotland
- Defra (UK Government)
- The Welsh Government
- DAERA (NI)
- The Animal and Plant Health Agency (APHA)
- Food Standards Agency
- UKHSA
- Department of Health and Social Care

Public consultation

In March 2023, Scottish Ministers gave approval for the launch of a joint Scottish Government, Defra and Welsh Government public consultation on plans to make it compulsory for bird keepers to register all their birds with the Animal and Plant Health Agency (APHA). The consultation ran from March to 31 May 2023.

Options

The consultation proposed three main options:

Option 1) – do nothing

Under this option, the mandatory threshold for registration would be maintained at 50 birds, (poultry only);

Option 2) – change the threshold to 1

This requirement would also extend to all birds except those within a dwelling;

Option 3) – change the threshold to 10

This requirement would also extend to all birds except those within a dwelling; in addition, questions were posed relating to mandatory annual updates to register entries.

The consultation report will be published on 18 March 2024.

The consultation report clearly demonstrated that, across the 3,300 responses to the consultation (over 550 of which were from Scottish-based responders), the majority of respondents strongly opposed the reduction of the current mandatory reporting threshold of over 50 poultry or captive birds, either to 10 or one bird, and instead supported Option 1 – the ‘do nothing’ option.

However, although individual keepers were, in the majority, supported Option 1, many industry bodies and local authorities indicated their support for Option 2.

In the consultation response, all GB administrations stated that the governments’ response to this consultation would involve legislative amendments to be made to introduce Option 2 (Option 2 – to change the mandatory reporting threshold to 1 bird),

and to extend this requirement to all birds, except those *psittacines* (parrots, cockatoos and budgerigars) and *passerines* (small 'perching' birds, such as sparrows, tits, wrens and jays) that are fully housed either within a dwelling, or within a bird house on the same premises with no access to outdoors.

The report stated that legislative amendments would also include the introduction of a requirement for a mandatory annual update of keeper information to come into force 12 months after the legislation.

Business

Consultation with business was carried out through the GB Avian Diseases Core Group, which includes, but is not limited to, representatives of:

- The British Egg Industry Council (BEIC)
- The British Poultry Council (BPC)
- The National Farmers Union (NFU) / The National Farmers Union (Scotland) (NFUS)
- The British Free Range Egg Producers Association (BFREPA)
- The British and Irish Association of Zoos and Aquariums (BIAZA)
- Aviagen
- Avara Foods

The GB Avian Diseases Core Group were all fully supportive of the lowering of the threshold for reporting poultry and captive birds.

5. Communication

Although the Avian Influenza (Preventive Measures) (Scotland) Amendment Order 2024 is due to be laid in March 2024, it will not come into force until September 2024. A national communications campaign will run between these two dates informing all keepers of the new legal requirements and encouraging registration of those with less than 50 birds at the September deadline.

It is intended that the amendment coming into force will be accompanied by the launch of the Scottish Kept Bird Register (SKBR) online reporting tool. This tool will allow keepers to register, access and update their own poultry and other kept bird records electronically (previously, registration was done by email to the national GB Poultry Register). It is believed that the portal will encourage registration by making the process faster and more simple, whilst also incorporating an automatic annual prompt for keepers to update their information. This tool will be vital in supporting the enforcement, from September 2024, of the amended mandatory reporting threshold for poultry and other kept birds, which forms the basis of the consultation report in question.

As we will require all keepers to register on the SKBR, a grace period of three months (1st September to 1st December 2024) will be applied to allow keepers to register without being deemed non-compliant.

6. Costs

The costs of reducing the threshold will require this legislative amendment and this Business Regulatory Impact Assessment. However, we do not expect the impact to be significant, as the move to a Scottish online register (which was scheduled regardless of this legislative change) should simplify the registration process for keepers of less than 50 birds, with registration time expected to take only several minutes, and future annual updates made even quicker than the initial registration. It is also anticipated that these changes will lead to efficiencies in terms of operational practice and, as outbreaks of these diseases can have significant costs to government, industry, and the taxpayer, savings may be made.

7. Scottish Firms Impact Test

These legislative changes are unlikely to have any impact on international trade or international investment.

8. Competition Assessment

These amendments to the Preventive Measures Order will not impact negatively on competition within the sector.

- Will the measures directly or indirectly limit the number or range of suppliers?
No
- Will the measures limit the ability of suppliers to compete?
No
- Will the measures limit suppliers' incentives to compete vigorously?
No
- Will the measure limit the choices and information available to consumers?
No

9. Consumer Assessment

This amendment will not have any impact on consumers.

10. Test Run of Business Forms

As a new online portal will be available for keepers to register their birds, no new Business Forms are being developed out with this system. For those who cannot register electronically, the existing options to email/post an application or to call the system administrator will remain.

11. Digital Impact Test

The development of the new online registration portal does not feature in the legislative amendment being made, and it, in itself, has no digital impact.

12. Legal Aid Impact Test

It is not anticipated that these changes will give rise to any additional need for legal aid.

13. Enforcement, sanctions and monitoring

APHA, as Scottish Government's operational delivery partner, are responsible for all aspects of disease control for avian influenza, for reported or suspected cases of disease (investigations, testing, valuation and payment of compensation) including any follow up in relation to non-compliance and all activity associated with the judicial process.

Local authorities will be responsible for enforcement of the Avian Influenza (Preventive Measures) (Scotland) Amendment Order 2024 under the Animal Health Act 1981 due to the potential health risk to both humans and animals as a result of non-compliance with the rules.

This Order is made under the Animal Health Act and so inspector powers of entry, testing, seizure and slaughter are all contained in that Act. Obstruction of inspectors in exercise of their duties and non-compliance with any requirements of the Order will be prosecuted under the Animal Health Act.

14. Implementation and delivery plan

Implementation

The making date for this legislation will be the 19th March 2024, with the laying date of 21st March 2024 and then a subsequent coming into force date of 1st September 2024.

Delivery Plan

Legislation for all GB administrations will be amended accordingly by the end of March 2024. At this point, a national Communications Campaign will be launched to do the following:

- Inform all bird keepers of the legal requirement to register their birds from 1st September 2024 (noting exceptions). The grace period for registration until 1st December will also be made clear.
- Inform all keepers already registered on the GB Poultry Register to make a fresh application on the new Scottish online system (and equivalent for England and Wales) from 1 September 2024.

The campaign will take the form of media and social media adverts, letters to, and discussions with, a wide range of stakeholder groups. A SG (and Defra and WG) press release will be issued prior to the 1st September deadline.

Monitoring

Disease Control measures for avian Influenza are subject to continuous monitoring and review.

15. Summary and Recommendations

The 2021 to 2023 HPAI outbreak was the most severe in UK history, and placed a significant strain on our operational partners in their attempts to control and eradicate the virus. The additional information that will be gained by these changes will transform APHA's understanding of the number and nature of the kept bird flocks located within the vicinity of infected premises. This will cause their actions to be significantly streamlined and more efficient.

Furthermore, the changes will allow direct communication between government and bird keepers, regardless of the size of their operation, allowing government to communicate information and best practice biosecurity activities designed to protect flocks and businesses from the virus and its significant consequential impacts to keepers mental health, to their flocks, to their business and to their ability to trade internationally.

16. Summary costs and benefits

Beyond the administrative cost of making these changes, we do not anticipate any cost implications for government or keepers beyond potential savings achieved through streamlined operational practices. In summary, the changes to the legislation will contribute to improved operational activities and increased disease control advice reaching all bird keepers in Scotland. Therefore, we intend to proceed with the amendments to the legislation.

17. Declaration and Publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Jim Fairlie

Date: 20/3/2024

Minister's Name: Jim Fairlie

Minister's Title: Minister for Agriculture and Connectivity

Scottish Government Contact Point

Any queries about this BRIA should be addressed to:

Chris Bain

ARE: Animal Health and Welfare – Disease Control Branch

Email: chris.bain2@gov.scot

Telephone: (0131 24) 49613

P Spur

Saughton House, Broomhouse Drive

Edinburgh, EH11 3XD