
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 530

ANIMALS

ANIMAL HEALTH

**The Avian Influenza (Preventive
Measures) (Scotland) Regulations 2005**

Made - - - - 28th October 2005
Laid before Parliament 28th October 2005
Coming into force - - 28th October 2005

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Avian Influenza (Preventive Measures) (Scotland) Regulations 2005 and shall come into force on 28 October 2005 at midnight.

(2) These Regulations shall extend to Scotland only.

Interpretation

2. In these Regulations—

“the Act” means the Animal Health Act 1981⁽²⁾;

“the 2005 avian influenza survey” means the survey for avian influenza being carried out by the Scottish Ministers in accordance with Commission Decision [2005/464/EC](#) on the implementation of survey programmes for avian influenza in poultry and wild birds to be carried out in the Member States⁽³⁾ and with the national plan approved by Commission Decision [2005/732/EC](#) approving the programmes for the implementation of Member States' surveys for avian influenza in poultry and wild birds during 2005 and laying down reporting

(1) [1972 c. 68](#). Section 2(2) was amended by the Scotland Act [1998 \(c. 46\)](#), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown by section 2(2) were transferred, so far as within devolved competence, to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) [1981 c. 22](#).

(3) O.J. L No. 164, 24.6.2005, p.52 as amended by Commission Decision [2005/726/EC](#), O.J. L 273, 19.10.2005, p.21.

and eligibility rules for the Community financial contribution to the implementation costs of those programmes⁽⁴⁾;

“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;

“avian influenza prevention zone” means a zone so declared under regulation 4(2)(a);

“commercial poultry premises” means premises where poultry are kept for commercial purposes and does not include premises where all poultry and their eggs are kept by their owners for their own consumption or, in the case of poultry, as pets;

“the Commission Decision” means Commission Decision [2005/734/EC](#) laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 from birds living in the wild to poultry and other captive birds and providing for an early detection system in areas at particular risk⁽⁵⁾ as amended by Commission Decision [2005/745/EC](#)⁽⁶⁾;

“inspector” means an inspector appointed under the Act;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁷⁾;

“other captive bird” means any bird, other than poultry, kept in captivity including any bird kept for shows, races, exhibitions and competitions (such as ornamental birds and racing pigeons);

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

“restrictions notice” means a notice issued under regulation 4(2)(b);

“veterinary inspector” means a veterinary inspector appointed by the Scottish Ministers under the Act.

Declarations, notices and licences

3.—(1) Declarations, notices and licences under these Regulations shall be in writing and may be subject to conditions and may be varied, suspended or revoked in writing at any time.

(2) The Scottish Ministers shall take such steps as they consider necessary to ensure that declarations, notices and licences are brought to the attention of those who may be affected by them and, in particular, shall ensure that the extent of any zone declared under these Regulations, the nature of the restrictions and requirements applicable within it and the date of its declaration, suspension or withdrawal are publicised.

Risk assessment and imposition of restrictions

4.—(1) The Scottish Ministers shall evaluate the risk of the transmission of avian influenza virus (in particular virus of the subtype H5N1) from birds living in the wild to poultry or other captive birds in Scotland, taking into account the criteria and risk factors set out in Annex I to the Commission Decision.

(2) Having carried out such an evaluation, the Scottish Ministers shall, if they consider it necessary to reduce the risk of transmission of avian influenza (in particular virus of the subtype H5N1)–

(4) O.J. L 274, 20.10.2005, p.95.

(5) O.J. L 274, 20.10.2005, p.105.

(6) O.J. L 279, 22.10.2005, p.79.

(7) [1994 c. 39](#).

- (a) declare an avian influenza prevention zone in all or part of Scotland; or
 - (b) serve a restrictions notice on the owner or occupier of any premises where poultry or other captive birds are kept.
- (3) A restrictions notice may, on the instruction of the Scottish Ministers, be served by an inspector.
- (4) The Scottish Ministers shall, in a declaration of an avian influenza prevention zone or in a restrictions notice, impose such of the following restrictions and requirements as they consider necessary—
- (a) poultry and other captive birds must be housed or otherwise kept separate from wild birds;
 - (b) domestic ducks and geese must be housed or otherwise kept separate from other poultry and captive birds;
 - (c) poultry and other captive birds must be fed and provided with drinking water indoors or under a shelter which prevents wild birds from gaining access to the food or water supply;
 - (d) bodies of water to which poultry have access for animal welfare reasons must be sufficiently screened off from wild waterfowl;
 - (e) drinking water provided to poultry and other captive birds must not be sourced from surface water reservoirs unless the water has been treated to render any virus it may contain inactive;
 - (f) birds of the orders *Anseriformes* (including ducks, geese and swans) and *Charadriiformes* (including gulls, murrelets, terns, avocets, puffins, woodcock, oystercatchers, sandpipers, plovers, surfbirds, snipes and skimmers) must not be used as decoys during bird-hunting except—
 - (i) for the purpose of attracting birds for sampling as part of the 2005 avian influenza survey⁽⁸⁾; and
 - (ii) under the authority of a licence granted by a veterinary inspector;
 - (g) keepers of poultry or other captive birds must immediately notify the Scottish Ministers of the following as regards those birds—
 - (i) any drop in feed and water intake of more than 20%;
 - (ii) any drop in egg production of more than 5% for more than 2 days;
 - (iii) a mortality rate greater than 3% in a week.
 - (h) keepers of poultry and other captive birds and any other person who comes into contact with such birds or who enters or leaves premises where they are kept must take appropriate bio security measures;
 - (i) such other measures as the Scottish Ministers consider necessary—
 - (aa) to prevent any direct or indirect contact which wild birds might otherwise have with poultry and other captive birds; and
 - (bb) to ensure separation between domestic ducks and geese on the one hand and other poultry on the other.
- (5) A declaration of an avian influenza prevention zone shall—
- (a) specify the boundaries of the avian influenza prevention zone; and
 - (b) specify the restrictions and requirements which apply in the zone.
- (6) Any premises which are partly inside and partly outside an avian influenza prevention zone shall be deemed to be wholly within it.

(8) O.J. L 274, 20.10.2005, p.95.

(7) Any person subject to a declaration or a notice under these Regulations shall comply with such declaration or notice except to the extent that the person is authorised to do otherwise by a licence issued by a veterinary inspector.

Prohibition on fairs, markets, shows and other gatherings

5.—(1) No person shall permit birds to be collected together at any fair, market, show, exhibition or other gathering except under the authority of a licence issued by a veterinary inspector.

(2) A veterinary inspector shall only grant a licence if a veterinary risk assessment has been carried out and the veterinary inspector is satisfied that the gathering and the transit of birds to and from the gathering would not significantly increase the risk of the transmission of avian influenza virus (in particular of virus of the subtype H5N1).

Identification of commercial poultry premises

6.—(1) Any person who keeps 50 or more poultry on any commercial poultry premises shall make a written record of the following—

- (a) the address of the premises and their holding number (if they have one);
- (b) the owner of the poultry and the person with day to day management of the premises where they are kept (if different);
- (c) the species kept at the premises;
- (d) the husbandry system or systems in use at the premises (for example, whether poultry are kept for meat, hatching eggs or eggs for consumption);
- (e) the maximum number of each species of poultry that could be present on the premises;
- (f) any factors (such as seasonal stocking variations) which might result in significant differences in the numbers or species of poultry on the premises;
- (g) the number and species of any poultry with access to the open air;
- (h) the presence on or in the vicinity of the premises of any body of water which attracts wild birds; and
- (i) such other information as the Scottish Ministers require for the purpose of carrying out a risk assessment under regulation 4 or 5 or otherwise complying with the Commission Decision.

(2) The written record referred to in paragraph (1) shall be notified to the Scottish Ministers by the date which the Scottish Ministers shall specify in further regulations.

(3) Any person who has in the past 12 months kept poultry on their premises but is no longer doing so shall notify the Scottish Ministers of that fact.

Identification of other premises

7.—(1) The Scottish Ministers shall (if they consider it necessary for the purpose of carrying out a risk assessment under regulation 4 or 5, or otherwise complying with the Commission Decision) require, in writing, any keeper of poultry or other captive birds on premises other than those to which regulation 6 applies to comply with some or all of the requirements of regulation 6.

(2) For the purposes of this regulation, regulation 6 shall be read as if references to poultry included reference to other captive birds.

Monitoring of premises

8. The Scottish Ministers shall ensure that veterinary inspectors and inspectors who inspect premises where poultry or other captive birds are kept monitor compliance with these Regulations.

Powers of inspectors

9.—(1) A veterinary inspector or inspector may enter any premises, on producing, if requested some duly authenticated document showing their authority, for the purpose of ascertaining whether these Regulations (or any declaration, notice or licence made under them) are being or have been complied with and in particular may—

- (a) inspect and copy any records (in whatever form they are held) kept under these Regulations, or remove such records to enable them to be copied;
- (b) inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and for this purpose may require any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material to afford the veterinary inspector or inspector such assistance as the veterinary inspector or inspector may reasonably require (including providing the veterinary inspector or inspector with any necessary passwords) and where a record is kept by means of a computer, require the record to be produced in a form in which it may be taken away;
- (c) mark any bird or other thing for identification purposes; and
- (d) take on to the premises such persons as the veterinary inspector or inspector considers necessary to give the veterinary inspector or inspector such assistance as the veterinary inspector or inspector considers necessary, and such equipment as the veterinary inspector or inspector considers necessary.

(2) Any person who defaces, obliterates or removes any mark applied under paragraph (1)(c) shall be guilty of an offence.

(3) If a veterinary inspector or an inspector enters any unoccupied premises, the veterinary inspector or inspector, as the case may be, shall leave them as effectively secured against entry as the veterinary inspector or inspector found them.

(4) In this regulation “premises” includes—

- (a) any land or building;
- (b) any other place, in particular—
 - (i) a vehicle or vessel;
 - (ii) a tent or moveable structure.

Enforcement and offences

10.—(1) The following provisions of the Act apply as if these Regulations were an Order made under the Act—

- (a) section 60 (duties and authorities of constables);
- (b) section 66 (refusal and obstruction);
- (c) section 67 (issue of false licences etc.);
- (d) section 68 (issue of licences etc. in blank);
- (e) section 70 (alteration of licences etc.);
- (f) section 71 (other offences as to licences);
- (g) section 73 (general offences);

- (h) section 77 (money recoverable summarily); and
- (i) section 79(1) to (4) (evidence and procedure).

(2) Section 69 of the Act (falsely obtaining licences etc.) shall apply as if licences granted under these Regulations were granted under the Act.

(3) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

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

that director, manager, secretary or officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) For the purposes of paragraph (3), “director” in relation to a body corporate managed by its members, means a member of the body corporate and “body corporate” includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

(5) The local authority shall enforce these Regulations unless directed otherwise by the Scottish Ministers pursuant to paragraph (6);

(6) The Scottish Ministers may direct, in relation to cases of a particular description or a particular case, that any duty imposed on a local authority under paragraph (5) shall be discharged by the Scottish Ministers and not by the local authority.

Penalties and time limits

11.—(1) A person guilty of an offence under these Regulations, or who by virtue of these Regulations is guilty of an offence under the Act, is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) Proceedings for an offence under these Regulations, or an offence under the Act by virtue of these Regulations may, subject to paragraph (3), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor.

(3) No such proceedings shall be commenced by virtue of this regulation more than three years after the commission of the offence.

(4) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact;
- (b) a certificate stating that matter purporting to be signed shall be deemed to be so signed unless the contrary is proved.

Powers of inspectors in case of default

12.—(1) If a person fails to comply with a requirement of these Regulations or a restriction or a requirement of a declaration made, notice issued or licence granted under them, a veterinary inspector or an inspector may take any steps which the veterinary inspector or inspector, as the case may be, considers necessary to ensure the restriction or requirement is met, including—

- (a) seizing, detaining or disposing of any bird moved, kept or otherwise dealt with in breach of these Regulations and of any such declaration, notice or licence; and

- (b) directing any person to take or refrain from specified action in respect of any place, bird, animal, vehicle, product or other thing.
- (2) Any steps taken are without prejudice to proceedings for an offence arising out of the default.
- (3) The person in default shall reimburse any reasonable expenses incurred by the Scottish Ministers, or by the local authority, in taking such steps and any such reimbursement is recoverable summarily.

St Andrew's House, Edinburgh
28th October 2005

ROSS FINNIE
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Commission Decision [2005/734/EC](#) laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 from birds living in the wild to poultry and other captive birds and providing for an early detection system in areas at particular risk (O.J. No. L 274, 20.10.2005, p.105), as amended by Commission Decision [2005/745/EC](#) (O.J. No. L 279, 22.10.2005, p.79).

These Regulations require the Scottish Ministers to evaluate the risk of the transmission of avian influenza virus and to take appropriate measures to reduce that risk (regulation 4(1) and (2)).

Regulation 4(2) and (3) provides for the Scottish Ministers to declare avian influenza prevention zones or to serve notices on premises at risk and lists the measures which may be imposed in zones and premises. These include the housing of poultry and the feeding of poultry indoors.

Regulation 5 prohibits the holding of poultry gatherings of birds anywhere in Scotland unless they are licensed by a veterinary inspector after a risk assessment.

Regulation 6(1) requires keepers of 50 or more poultry on commercial poultry premises anywhere in Scotland to keep written records of their poultry and of other information, including whether poultry have access to the open air. Regulation 6(2) requires keepers to notify the Scottish Ministers of this information. The date by which they must do this will be specified in further Regulations. Regulation 7 allows the Scottish Ministers to require other keepers to provide some or all of this information if they consider this necessary.

Regulations 8 and 9 relate to the monitoring of premises and the powers of inspectors appointed by the Scottish Ministers and by local authorities. Regulation 10 provides for provisions in the Animal Health Act 1981 relating to enforcement and offences to apply to these Regulations. Regulation 11 provides default powers for inspectors in case of any breach of the Regulations.

A regulatory impact assessment has not been prepared in respect of these Regulations.