

2005 No. 2990

ANIMALS, ENGLAND

ANIMAL HEALTH

**The Avian Influenza (Preventive Measures in Zoos) Regulations
2005**

Made - - - - - *11:10am on 28th October 2005*

Laid before Parliament *28th October 2005*

Coming into force - - - *12 p.m. on 28th October 2005*

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common agricultural policy of the European Community(b).

Exercising the powers conferred upon her by that section, she makes the following Regulations:

Title, application and commencement

1. These Regulations may be cited as the Avian Influenza (Preventive Measures in Zoos) Regulations 2005; they apply in England only and come into force at 12 p.m. on 28th October 2005.

Interpretation

2. In these Regulations—

“the Act” means the Animal Health Act 1981;

“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 Commission Decision” means Commission Decision 2005/744/EC laying down the requirements for the prevention of highly pathogenic avian influenza virus caused by influenza A virus of subtype H5N1 in susceptible birds kept in zoos in the Member States(c);

“inspector” means an inspector appointed by a local authority for the purposes of these Regulations or under the Act;

“local authority” means—

(a) 1972, c.68.

(b) S.I. 1972/1811.

(c) OJ No L. 279 22.10.2005, p. 75.

(a) in any part of England where there is, within the meaning of Local Government Changes for England Regulations 1994(a), a unitary authority for that local government area, that authority;

(b) where there is not a unitary authority—

(i) in a metropolitan district, the council of that district;

(ii) in a non-metropolitan county, the council of that county;

(iii) in each London borough, the council of that borough;

(iv) in the city of London, the Common Council;

“other captive bird” means any bird kept in captivity other than poultry, including birds 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;

“susceptible bird” means any species of bird that is likely to be susceptible to avian influenza and which is not intended for the production of animal products;

“veterinary inspector” means an inspector appointed by the Secretary of State under these Regulations or under the Act;

“zoo” means—

(i) a permanent establishment where animals of wild species are kept for exhibition to the public for seven or more days a year, with the exception of circuses and pet shops; and

(ii) an approved body, institute or centre, as defined in point (c) of Article 2(1) of Council Directive 92/65 EC 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(b).

Licences, notices and declarations

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

(2) The Secretary of State shall take such steps as she considers 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 dates of its declaration and withdrawal (and any suspension of it) are publicised.

Risk assessment and imposition of restrictions

4.—(1) The Secretary of State shall evaluate the risk of the transmission of avian influenza virus (in particular virus of the sub-type H5N1) from wild birds to susceptible birds in zoos, 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 Secretary of State shall, if she considers it necessary to reduce the risk of such transmission—

(a) declare an avian influenza prevention (zoos) zone in all or part of England; or

(b) serve (or cause a veterinary inspector or an inspector to serve) a restrictions notice on the owner or occupier of any zoo where susceptible birds are kept.

(a) S.I. 1994/867 to which there are amendments not relevant to this Order.

(b) OJ No L 268, 14.9.1992, p. 54, as last amended by Council Regulation (EC) No 1398/2003 (OJ No L 198 6.8.2003, p. 3).

(3) The Secretary of State shall, in a declaration of an avian influenza prevention (zoos) zone or in a restrictions notice, impose such of the following requirements as she considers necessary on zoos in the zone or the subject of a notice—

- (a) susceptible birds must be housed or otherwise kept separate from wild birds;
- (b) susceptible birds must not be exposed to the risk of exposure to the faeces of wild birds or other material that may have been contaminated with avian influenza virus by wild birds;
- (c) domestic ducks and geese must be kept separate from other susceptible birds;
- (d) susceptible 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;
- (e) persons other than keepers of the birds must be prohibited from having access to areas where susceptible birds are kept;
- (f) the keeper of susceptible birds must take appropriate biosecurity measures in such areas and when entering and leaving such areas;
- (g) such other requirements as the Secretary of State considers necessary to reduce the risk of transmission of avian influenza from wild birds to susceptible birds in zoos.

(4) A declaration made under paragraph (2) shall specify the requirements which apply in the zone and set out the boundaries of the zone.

(5) The Secretary of State may, in accordance with Article 2 of the Commission Decision, declare that certain premises are exempt from such requirements.

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

Vaccination of susceptible birds

5.—(1) Following a risk assessment, the Secretary of State shall, if she considers it necessary to reduce the risk of transmission of avian influenza, vaccinate or require the vaccination of susceptible birds in zoos.

(2) If vaccination is not carried out by the Secretary of State, it shall be carried out in accordance with instructions issued by her.

Powers of inspectors

6.—(1) A veterinary inspector or an inspector may enter any premises for the purpose of ascertaining whether these Regulations (or any declaration, notice or licence under them) are being or have been complied with and 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 him such assistance as he may reasonably require (including providing him with any necessary passwords) and, where a record is kept by means of a computer, may require the records to be produced in a form in which they may be taken away;
- (c) mark any bird or other thing for identification purposes; and
- (d) take with him such persons and equipment as he 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 an inspector enters any unoccupied premises he shall leave them as effectively secured against unauthorised entry as he found them.

Enforcement and offences

7.—(1) The following provisions of the Act shall 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 71 (other offences as to licences);
- (f) section 71A, (prosecutions: time limit)
- (g) section 73 (general offences);
- (h) section 75 (penalties for certain summary offences);
- (i) section 77 (money recoverable summarily); and
- (j) 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 an Order made 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 person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he, 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.

(5) The local authority shall enforce these Regulations unless directed otherwise by the Secretary of State pursuant to paragraph (6).

(6) The Secretary of State 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 Secretary of State and not by the local authority.

Powers of inspectors in case of default

8.—(1) If a person fails to comply with a requirement of these Regulations or of a declaration, notice or licence under them, a veterinary inspector or an inspector may take any steps he considers necessary to ensure the 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 Secretary of State or the local authority in taking such steps and any such reimbursement is recoverable summarily.

Ben Bradshaw
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations bring into force Commission Decision 2005/744/EC laying down the requirements for the prevention of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 in susceptible birds kept in zoos in the Member States (OJ No L 279, 22.10.2005, p. 75).

They require the Secretary of State to evaluate the risk of the transmission of avian influenza virus to susceptible birds in zoos and to take appropriate measures to reduce such risk (Regulation 4(1) and (2)).

Regulation 4(2) provides for the Secretary of State to declare avian influenza prevention (zoos) zones or to serve notices of restrictions on premises. Regulation 4(3) sets out the measures which may be applied.

Regulation 5 provides for the Secretary of State to require vaccination of susceptible birds in zoos if she thinks necessary.

Regulations 6, 7 and 8 deal with the powers of inspectors appointed by the Secretary of State and by local authorities and with enforcement.

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