

2005 No. 3394

ANIMALS, ENGLAND

ANIMAL HEALTH

**The Avian Influenza (Preventive Measures) (No 2) Regulations
2005**

<i>Made</i> - - - -	<i>8th December 2005</i>
<i>Laid before Parliament</i>	<i>9th December 2005</i>
<i>Coming into force</i> - -	<i>9th December 2005</i>

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.—(1) These Regulations may be cited as the Avian Influenza (Preventive Measures) (No 2) Regulations 2005.

(2) These Regulations apply in England only and come into force on 9th December 2005.

Interpretation

2. In these Regulations—

“the Act” means the Animal Health Act 1981;

“the 2005 avian influenza survey” means the survey for avian influenza being carried out by the Secretary of State 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(c) 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 and eligibility rules for the Community financial contribution to the implementation costs of those programmes(d);

“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;

(a) 1972, c.68

(b) S.I. 1972/1811

(c) OJ L No 164, 24.6.2005, p. 52, as amended by Commission Decision 2005/726/EC (OJ No L 273, 19.10.2005, p. 21).

(d) OJ No L 274, 20.10.2005, p. 95.

“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(a), as amended by Commission Decision 2005/745/EC(b) and Commission Decision 2005/855/EC(c);

“the Commission Decision on Zoos” 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(d);

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

“local authority” means—

- (a) in any part of England where there is, within the meaning of Local Government Changes for England Regulations 1994(e), 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 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;

“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 for the purposes of 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(f).

(a) OJ No L 274, 20.10.2005, p. 105.

(b) OJ No L 279, 22.10.2005, p. 79.

(c) OJ No L 316, 2.12.2005, p. 21.

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

(e) S.I. 1994/867 to which there are amendments not relevant to these Regulations.

(f) 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).

Licences, notices and declarations

3.—(1) Declarations, notices and licences 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, licences and notices 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) within or to England, 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 transmission of avian influenza (in particular virus of the sub-type H5N1)—

- (a) declare an avian influenza prevention zone in all or part of England; or
- (b) serve a restrictions notice on the occupier of any premises where poultry, other captive birds or any specified species of poultry or captive birds are kept.

(3) A restrictions notice may, on the instruction of the Secretary of State, be served by an inspector.

(4) The Secretary of State shall, in a declaration of an avian influenza prevention zone or in a restrictions notice, impose (to the extent that they are appropriate and practicable), such of the following restrictions as she considers 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, murrets, 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; 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 Secretary of State 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 persons who come into contact with such birds or who enter or leave premises where they are kept must take appropriate biosecurity measures;
 - (i) such other appropriate and practicable requirements as the Secretary of State considers 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 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.

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 the Secretary of State.

(2) The Secretary of State shall only grant a licence if a veterinary risk assessment has been carried out and she 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 sub-type H5N1).

Identification of poultry premises

6.—(1) Any person who keeps 50 or more poultry on commercial 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;
- (i) such other information as the Secretary of State requires for the purpose of carrying out a risk assessment under regulation 4 or 5 or otherwise complying with the Commission Decision.

(2) The person who makes this written record shall notify this information to the Secretary of State on or before 28 February 2006.

(3) The person who makes the written record shall inform the Secretary of State if poultry have not been kept on the premises for over a year.

Identification of other premises

7.—(1) The Secretary of State shall (if she considers 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 Secretary of State shall ensure that veterinary inspectors and inspectors who inspect premises where poultry or other captive birds are kept monitor compliance with these Regulations.

Measures in zoos

9.—(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 on Zoos.

(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.

(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 on Zoos, declare that certain premises are exempt from such requirements.

Vaccination of susceptible birds in zoos

10.—(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.

Duty to comply with declarations and notices

11. Any person to whom restrictions in a declaration or a notice under these Regulations apply shall comply with such restrictions, except to the extent that he is authorised to do otherwise by a licence issued by a veterinary inspector.

Powers of inspectors

12.—(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 (3) 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

13.—(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 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), except that a person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or both;
- (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

14.—(1) If a person fails to comply with a requirement of these Regulations or of a declaration made, notice issued or licence granted 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.

Revocations

15. The Avian Influenza (Preventive Measures) Regulations 2005(a) and the Avian Influenza (Preventive Measures in Zoos) Regulations 2005(b) are revoked.

8th December 2005

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations revoke and replace the Avian Influenza (Preventive Measures) Regulations 2005 (S.I. 2005/2989) (“the main Regulations”) and the Avian Influenza (Preventive Measures in Zoos) Regulations 2005 (S.I. 2005/2990) (“the Zoos Regulations”). The measures introduced by the main Regulations and the Zoos Regulations are combined and largely reproduced in these Regulations, with the following changes:

- (a) the reference in the main Regulations to Commission Decision 2005/734/EC (OJ No. L274, 20.10.2005, p. 105) is updated to include reference to amending Commission Decision 2005/855 (OJ No. L 316, 2.12.2005, p. 21);
- (b) February 28, 2006 is specified as the date by which information on commercial poultry premises must be notified to the Secretary of State (regulation 6(2)); and

(a) S.I. 2005/2989.
(b) S.I. 2005/2990.

- (c) regulation 13(1) sets out the penalties for committing an offence under the Regulations. It provides for imprisonment up to 3 months on summary conviction. Regulation 10(1)(h) of the main Regulations and regulation 7(1)(h) of the Zoos Regulations incorrectly applied the offence provision in section 75 of the Act, which provides for imprisonment for up to six months.

2. These Regulations continue to give effect to—

- (a) 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 (OJ No L 274, 20.10.2005, p. 105), as amended by Commission Decision 2005/745/EC (OJ No L 279, 22.10.2005, p. 79) and Commission Decision 2005/855/EC (OJ No L 316, 2.12.2005, p. 21); and
- (b) 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 (OJ No. L 279, 22.10.2005, p. 75).

3. These Regulations require the Secretary of State 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)).

4. Regulation 4(2) and (3) provides for the Secretary of State 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.

5. Regulation 5 prohibits the holding of poultry gatherings unless they are licensed by the Secretary of State after a risk assessment.

6. Regulation 6(1) requires keepers of 50 or more poultry 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 Secretary of State of this information by 28 February 2006. Regulation 7 allows the Secretary of State to require other keepers to provide some or all of this information if she considers this necessary. Regulation 8 relates to the monitoring of premises where birds are kept.

7. Regulations 9 and 10 provide for measures to be taken in zoos. 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 9(1) and (2)). Regulation 9(2) provides for the Secretary of State to declare avian influenza prevention (zoos) zones or to serve notices of restrictions on premises. Regulation 9(3) sets out the measures which may be applied.

8. Regulation 10 provides for the Secretary of State to vaccinate or require the vaccination of susceptible birds in zoos if she thinks it necessary.

9. Regulations 11 to 14 provide a duty to comply with restrictions and set out measures on enforcement and offences. Regulation 13 provides for provisions in the Animal Health Act 1981 relating to enforcement and offences to apply to these Regulations. Regulation 14 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.

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