

2008 No. 11

ANIMALS

ANIMAL HEALTH

The Bluetongue (Scotland) Order 2008

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| <i>Made</i> - - - - | <i>16th January 2008</i> |
| <i>Laid before the Scottish Parliament</i> | <i>18th January 2008</i> |
| <i>Coming into force</i> - - | <i>11th February 2008</i> |

CONTENTS

PART 1

Preliminary

1. Citation, commencement and extent
2. Interpretation
3. Licences
4. Licences granted outside Scotland
5. Extension of definition of “disease”
6. Exemptions
7. Competent authority
8. Reporting requirement under bluetongue surveillance programmes

PART 2

Suspicion of, and infection with, bluetongue

9. Notifications and initial requirements where bluetongue is suspected
10. Suspect and contact premises
11. Temporary control zones
12. Notices on infection with bluetongue

PART 3

Confirmation of bluetongue

13. Control zones
14. Protection and surveillance zones
15. Protection zone or surveillance zone where bluetongue confirmed outside Scotland
16. Premises straddling zones
17. Powers of veterinary inspectors in restricted zones

18. Slaughterhouses

PART 4

Enforcement and offences

19. Subsequent movement of animals
20. Slaughter of animals
21. Powers of inspectors and officers
22. Surveillance
23. Vaccination against bluetongue
24. Compliance with notices
25. General powers of inspectors when entering premises
26. Damage
27. Provision of assistance
28. Offences by bodies corporate
29. Enforcement
30. Revocation

The Scottish Ministers make the following Order in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a), and sections 1, 7(1), 8(1), 15(4), 17(1), 23, 25, 28, 32(2), 35, 72, 83(2) and 88(2) of the Animal Health Act 1981(b), and all other powers enabling them to do so.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the reference to the Community instrument referred to in article 2(1) to be a reference to that instrument as amended from time to time.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) This Order may be cited as the Bluetongue (Scotland) Order 2008 and comes into force on 11th February 2008.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order—

“animal” means a ruminating animal, other than a wild animal, and “carcase”, “embryo”, “ovum” and “semen” mean the carcase, embryo, ovum and semen of such an animal;

(a) 1972 c.68. Section 2(2) was amended by Schedule 8, paragraph 15(3) of the Scotland Act 1998 (c.46) and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act.

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

“Commission Regulation” means Commission Regulation (EC) No. 1266/2007 on implementing rules for Council Directive 2000/75/EC as regards the control, monitoring, surveillance and restrictions on movements of certain animals of susceptible species in relation to bluetongue, as amended from time to time (a);

“confirmation of bluetongue” means a declaration by the Scottish Ministers, based on laboratory results, that the bluetongue virus is circulating in a specific area or, in the event of an epidemic, confirmation by the Scottish Ministers of the presence of bluetongue based upon either or both of clinical or epidemiological results;

“Divisional Veterinary Manager” means the veterinary inspector authorised by the Scottish Ministers to receive information about animals or carcasses infected or suspected of being infected with bluetongue, for the area in which such animals or carcasses are situated;

“free area” means an area not subject to bluetongue restrictions under this Order;

“midge” means an insect of the genus *Culicoides*;

“premises” includes any place;

“Restricted zone” means a zone consisting of both protection and surveillance zones established pursuant to Article 8(1) of Council Directive 2000/75/EC; and

“veterinary inspector”, except as provided for in article 21, includes an inspector acting under the instruction of a veterinary inspector.

(2) Any authorisation, notice, designation or direction under this Order must be in writing, may be subject to conditions, and may unless specified otherwise be amended, suspended or revoked, by notice in writing at any time.

(3) Declarations of zones under this Order—

- (a) must be in writing;
- (b) must designate the extent of the zone being declared;
- (c) may be subject to conditions; and
- (d) may unless specified otherwise be amended, suspended or revoked, at any time, by way of further declaration.

Licences

3.—(1) Licences granted under this Order—

- (a) may (unless specified otherwise) be general or specific;
- (b) must be in writing;
- (c) may be subject to conditions; and
- (d) may be amended, suspended or revoked in writing at any time.

(2) Any person moving anything under the authority of a general or specific licence granted under this Order must—

- (a) keep upon them the licence or a copy of it at all times during such movement;
- (b) on demand by a veterinary inspector or other officer of the Scottish Ministers, produce the licence or a copy of it and allow a copy or extract to be taken.

(3) Any person moving anything under the authority of a general licence granted under this Order must—

- (a) carry, at all times during that movement, a consignment note containing details of—
 - (i) what is being transported, including the quantity;
 - (ii) the date of the movement;
 - (iii) the name of the consignor;

(a) O.J. No. L 283, 27.10.2007, p.37 and O.J. No. L 327, 22.12.2000, p.74 respectively. At the date of making this order, this Directive last amended by Directive 2006/104/EC (O.J. No. L 363, 20.12.2006, p.352).

- (iv) the address of the premises from which the movement started;
 - (v) the name of the consignee; and
 - (vi) the address of the premises of destination; and
- (b) on demand by a veterinary inspector or other officer of the Scottish Ministers, produce the consignment note and allow a copy or extract to be taken.

Licences granted outside Scotland

4.—(1) Except as otherwise directed by the Scottish Ministers, licences granted in England or Wales for activities which could be licensed in Scotland under this Order have effect in Scotland as if they were licences granted under this Order.

(2) Except as otherwise directed by the Scottish Ministers, premises in England or Wales designated respectively by the Secretary of State or the National Assembly for Wales for the same purposes as they may be designated under this Order are deemed to be designated by the Scottish Ministers for the purposes of this Order.

Extension of definition of “disease”

5. The definition of “disease” in section 88(1) of the Animal Health Act 1981 is extended to include bluetongue for all the purposes of that Act.

Exemptions

6. This Order does not apply to—
- (a) bluetongue virus possessed under a licence issued under the Specified Animal Pathogens Order 1998(a); or
 - (b) quarantine centres or quarantine facilities approved under the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007(b).

Competent authority

7. The Scottish Ministers are the competent authority for the purposes of the Commission Regulation.

Reporting requirement under bluetongue surveillance programmes

8. It is an offence against the Animal Health Act 1981 for the owner or keeper of an animal, or a veterinarian, not to report promptly any suspicion of bluetongue in accordance with the first indent of point 2(1) of Annex 1 to the Commission Regulation.

PART 2

Suspicion of, and infection with, bluetongue

Notifications and initial requirements where bluetongue is suspected

9.—(1) The owner or keeper of any animal or carcase, or any person who examines or inspects any animal or carcase, who suspects that the animal or carcase is infected with bluetongue, must—

- (a) immediately notify the Divisional Veterinary Manager;
- (b) not move any animal or carcase off the premises where that animal or carcase is located; and

(a) S.I. 1998/463.

(b) S.S.I. 2007/194 as amended by S.S.I. 2007/375.

- (c) where there are means available for doing so, ensure that any animals located on those premises are confined indoors during any period of midge activity.

(2) Any person who analyses a sample taken from any animal or carcase and who finds evidence of antibodies to, or antigens or nucleic acids of, the bluetongue virus or any evidence of vaccination for bluetongue, must immediately notify the Divisional Veterinary Manager.

Suspect and contact premises

10.—(1) Where suspicion of bluetongue has been notified in respect of any animal or carcase, a veterinary inspector must serve a notice ('a suspect case notice') on either the occupier of, or keeper of any animal on, those premises ('the suspect premises'), or both, requiring that—

- (a) no animal enters or leaves the premises;
- (b) an inventory of all animals on the premises is made, recording, for each species—
 - (i) the number dead;
 - (ii) the number alive; and
 - (iii) the number of those alive which are infected or likely to be infected with bluetongue;
- (c) the inventory is kept up to date to take account of animals which are born or die, including details of the dates of birth and death of such animals;
- (d) all animals on the premises are confined indoors except as directed by a veterinary inspector; and
- (e) the premises and animals on them are subject to the midge control measures specified in the notice.

(2) The person making the inventory must also keep a record of it for at least two years from the date of the last entry.

(3) A veterinary inspector may serve a suspect case notice on the occupier of, or keeper of any animal at other premises ('the contact premises'), or both, in the event that the location of those premises, their geographical situation or contacts with the suspect premises provides grounds for suspecting the possibility of contamination with bluetongue at the contact premises.

(4) A notice under paragraph (1) or (3) must not be revoked until the suspected presence of bluetongue has been ruled out by the Scottish Ministers.

Temporary control zones

11.—(1) The Scottish Ministers may declare a temporary control zone where there is reason to suspect the possibility that bluetongue is circulating in an area.

(2) When a temporary control zone has been established in England, the boundary of which extends to the border with Scotland, the Scottish Ministers may declare an associated temporary control zone in Scotland.

(3) The location and size of the temporary control zone shall be such as the Scottish Ministers consider appropriate to prevent the spread of bluetongue.

(4) The Scottish Ministers may apply such of the requirements as are referred to in article 10(1)(b) to (e) to premises within a temporary control zone as they consider appropriate.

(5) A temporary control zone ceases to exist in any area subsequently incorporated into a control zone or restricted zone.

(6) No person may move any animal, embryo, ovum or semen to or from premises in a temporary control zone except as authorised by a licence granted by the Scottish Ministers.

Notices on infection with bluetongue

12.—(1) If a veterinary inspector is satisfied that the bluetongue virus is present in any animal or at any premises ('the infected premises') the veterinary inspector may serve a notice, doing one or

more of the following things, on the occupier of or keeper of any animals on the infected premises, or both—

- (a) stating that the virus is present;
- (b) suspending the requirement under article 9 to notify any further suspected cases of bluetongue on the premises to the Divisional Veterinary Manager;
- (c) removing or altering a requirement imposed by article 10 or by a notice served under that article.

(2) The veterinary inspector may also serve a notice on the occupier of any laboratory analysing samples for bluetongue, suspending the requirement under article 9 to notify the Divisional Veterinary Manager of any further evidence of bluetongue, or vaccination for bluetongue, from the infected premises.

PART 3

Confirmation of bluetongue

Control zones

13.—(1) The Scottish Ministers must, on confirmation of bluetongue on premises in Scotland, declare a control zone with a radius of 20 kilometres centred on the infected premises.

(2) The Scottish Ministers must, on confirmation of bluetongue outside Scotland by a competent authority other than the Scottish Ministers, declare a control zone extending to that part of Scotland within a radius of 20 kilometres centred on the infected premises outside Scotland.

(3) No person may move an animal, into, out of, or within a control zone declared under paragraph (1) or (2).

(4) A control zone declared under paragraph (1) or (2) may be extended or reduced by the Scottish Ministers on the basis of epidemiological, geographical, ecological or meteorological circumstances.

(5) The Scottish Ministers may, in declaring a control zone under paragraph (1) or (2), specify such other measures as they consider necessary to reduce the risk of the spread of bluetongue.

Protection and surveillance zones

14.—(1) On confirmation of bluetongue the Scottish Ministers must declare a—

- (a) protection zone (incorporating the control zone declared under paragraph (1) of article 13) with a radius of at least 100 kilometres centred on the infected premises; and
- (b) surveillance zone with a depth of at least 50 kilometres extending beyond the limits of the protection zone.

(2) A surveillance zone must not include any area in which vaccination has been carried out in the twelve month period before confirmation of bluetongue.

(3) No person may move an animal from a protection zone to a surveillance zone except as authorised by a licence granted by the Scottish Ministers.

(4) No person may move an animal, embryo, ovum or semen out of a restricted zone except as authorised by a licence granted by Scottish Ministers.

(5) No person may move an animal out of or within a restricted zone in which bluetongue is circulating if it is showing clinical signs of bluetongue on the day of movement.

(6) The Scottish Ministers must grant a licence under paragraphs (3) and (4) if the movement is permitted under the Commission Regulation, and the conditions of such a licence must be such as to ensure that the movement is made in accordance with the Commission Regulation.

(7) The Scottish Ministers may, in declaring a protection zone and surveillance zone, specify such other measures as they consider necessary to reduce the risk of the spread of bluetongue.

Protection zone or surveillance zone where bluetongue confirmed outside Scotland

15.—(1) The Scottish Ministers must, on confirmation of bluetongue outside Scotland by a competent authority other than the Scottish Ministers, declare a protection zone, or a surveillance zone, or both.

(2) The zone or zones declared under paragraph (1) must extend to that part of Scotland within the radius of the protection zone and surveillance zone required under article 14 (1), centred on the infected premises outside Scotland.

(3) The Scottish Ministers may, in declaring a protection zone, or a surveillance zone, or both, under paragraph (1), specify such other measures so they consider necessary to reduce the risk of the spread of bluetongue.

Premises straddling zones

16.—(1) Premises partly inside a temporary control zone or control zone are treated as being wholly inside that zone.

(2) Premises partly inside a protection zone and partly inside a surveillance zone are treated as being wholly inside the protection zone.

(3) Premises partly inside a surveillance zone and partly in a free area are treated as being wholly inside the surveillance zone.

Powers of veterinary inspectors in restricted zones

17.—(1) A veterinary inspector may, by notice, require the occupier of premises in a restricted zone or the keeper of any animal on such premises to allow the vaccination of any animal kept there and to

- (a) retain an animal for use as a sentinel animal; or
- (b) allow the introduction of a sentinel animal onto those premises.

(2) In this article “sentinel animal” means an animal that does not have antibodies to bluetongue virus when first introduced or retained at the premises, and is used for surveillance for bluetongue virus.

Slaughterhouses

18.—(1) The Scottish Ministers may designate slaughterhouses for the purposes of slaughtering animals transported out of a restricted zone.

(2) The conditions of any designation must be such as to ensure that the slaughterhouse operates in accordance with the Commission Regulation.

PART 4

Enforcement and offences

Subsequent movement of animals

19.—(1) If an animal is moved from a restricted zone, to premises in a free area, the occupier of the premises at which the animal is received must notify the Scottish Ministers of such movement within 3 working days of it taking place.

(2) If an animal is moved from a restricted zone within the United Kingdom, to premises in a free area, an inspector may serve a notice on the occupier of, or keeper of, any animal at those

premises prohibiting the movement of any animal from those premises except under the authority of a licence issued by an inspector.

Slaughter of animals

20. Section 32 of the Animal Health Act 1981 (which relates to slaughter and compensation) applies to bluetongue.

Powers of inspectors and officers

21.—(1) On notification of, suspicion of, infection with, or confirmation of bluetongue a veterinary inspector, or, subject to paragraph (2), an inspector or an officer of the Scottish Ministers acting under the direction of a veterinary inspector, may do, or require the owner of any premises or the owner or keeper of any animal on those premises to do, one or more of the following things—

- (a) examine any animal;
- (b) examine any carcase, inventory or thing;
- (c) require the detention, isolation, restraint or treatment of any animal;
- (d) carry out an epidemiological investigation relevant to the control of bluetongue;
- (e) carry out tests and take samples (including blood samples) from any animal, carcase or thing for the purpose of diagnosis or epidemiological investigation;
- (f) mark for identification purposes any animal, carcase or thing;
- (g) trap midges;
- (h) implement midge control measures;
- (i) require the destruction, burial, disposal or treatment of any carcase or other thing;
- (j) require the cleansing and disinfection of any part of the premises or of any person, animal or thing on the premises;
- (k) require any person who knows about an animal's movements to give details of those movements and of any other animal with which it has been in contact.

(2) Only a veterinary inspector may examine an animal.

Surveillance

22.—(1) An officer of the Scottish Ministers may enter any premises on which animals are kept (whether or not subject to bluetongue restrictions) for the purposes of monitoring or surveillance for the bluetongue virus or antibodies to the bluetongue virus, or otherwise for the purposes of monitoring or surveillance for midge activity.

(2) Such monitoring or surveillance may include setting traps for midges.

Vaccination against bluetongue

23. No person may vaccinate an animal against bluetongue unless such vaccination is authorised by the Scottish Ministers.

Compliance with notices

24. A notice served under this Order must be complied with at the expense of the person on whom it is served, and, if it is not complied with, an inspector may arrange for it to be complied with at the expense of that person.

General powers of inspectors when entering premises

25. An inspector or officer of the Scottish Ministers who enters premises under this Order may take on to those premises—

- (a) a vehicle;
- (b) any equipment; and
- (c) such other person as they consider appropriate.

Damage

26. No person may—

- (a) damage, interfere with or remove any traps set for midges as provided for under this Order; or
- (b) deface, obliterate or remove any mark made by any person as provided for under this Order.

Provision of assistance

27.—(1) Any person required to give reasonable assistance or information to a person acting under this Order must, unless having reasonable cause to do otherwise, do so without delay.

(2) No person shall provide information, knowing it to be false or misleading, to anyone acting under this Order.

Offences by bodies corporate

28.—(1) Where a body corporate is guilty of an offence, 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, officer or other similar person of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence.

(2) For the purposes of this article, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) “Body corporate” includes a partnership in Scotland and, in relation to such a partnership, a reference to an officer of a body corporate is a reference to a partner.

Enforcement

29.—(1) This Order and the Commission Regulation is enforced by the local authority.

(2) But the Scottish Ministers may direct, in relation to cases of a particular description or to particular cases, that they will enforce this Order and the Commission Regulation.

Revocation

30. The Bluetongue (Scotland) Order 2003(a) is revoked.

St Andrew's House,
Edinburgh
16th January 2008

RICHARD LOCHHEAD
A member of the Scottish Executive

(a) S.S.I. 2003/91.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order continues to implement Council Directive 2000/75/EC (“the Directive”) laying down specific provisions for the control and eradication of bluetongue. It revokes and remakes the Bluetongue (Scotland) Order 2003 in order also to enforce Commission Regulation (EC) No. 1266/2007.

The Order provides that references to the Commission Regulation are references to it as amended from time to time.

The principal difference from the 2003 Order is that movement licences in zones controlled or restricted for the purposes of bluetongue control must be in accordance with the Commission Regulation rather than Commission Decision 2005/393/EC (O.J. L 130, 24.5.2005, p.22 as last amended by Decision 2007/357/EC (O.J. L 133, 25.5.2007, p.44)), which it replaces.

Part 2 of the Order provides for notification of and other procedural requirements on suspicion of bluetongue. Part 3 provides for the establishment of various zones on confirmation of bluetongue. Unlike in the previous Order, these zones can now be of a size appropriate for the control of bluetongue. It controls the movement of animals from those zones. It also provides for the separation of a restricted zone into a protection zone and a surveillance zone, and controls movement between these zones. In that regard, while article 13 of the Order provides that no animal movements may take place in a control zone, Article 6(2) of the Directive does allow for provisions applicable to such movements being adopted in accordance with the comitology procedure set out in Article 20 of the Directive. It may therefore be possible in such circumstances for a licence authorising movement to be issued. In relation to movements from a place where bluetongue control measures are operating to a bluetongue free area there is a requirement (article 19) that Scottish Ministers be immediately informed of such movements.

Part 4 of the Order covers a range of matters. It provides for surveillance for bluetongue (article 22) and prohibits vaccination against bluetongue without authorisation by the Scottish Ministers (article 23). It also makes provision for enforcement, which is the responsibility of the local authority, or the Scottish Ministers where they direct to that effect.

Failure to comply with this Order is an offence under section 73 of the Animal Health Act 1981.

A Regulatory Impact Assessment has not been prepared for this Order.

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190

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