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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 164**

**ANIMALS**

**ANIMAL HEALTH**

**The Tuberculosis (Miscellaneous  
Amendments) (Scotland) Order 2018**

<i>Made</i>	- - - -	<i>17th May 2018</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>21st May 2018</i>
<i>Coming into force</i>	- -	<i>10th July 2018</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1), 28, 32(2) and (3), 34(7) and 83(2) of the Animal Health Act 1981<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 and comes into force on 10th July 2018.

**Amendment of the Tuberculosis (Scotland) Order 2007**

2.—(1) The Tuberculosis (Scotland) Order 2007<sup>(2)</sup> is amended as follows.

(2) In article 2(1) (interpretation), for the definition of ‘high incidence area’ substitute—

“‘high incidence area’ means an area in Great Britain where bovine animals are required to be subject to routine tuberculin testing at intervals of no more than two years in accordance with the requirements of Council [Directive 64/432/EEC](#) on animal health problems affecting intra-Community trade in bovine animals and swine<sup>(3)</sup>”.

(3) For article 9 (post movement testing) substitute—

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(1) [1981 c.22](#). The functions of the Secretary of State in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 ([c.46](#)). See section 86 of the Animal Health Act 1981 for the exercise of functions in relation to tuberculosis. The requirement to obtain Treasury consent in section 32(3) of the Animal Health Act 1981 was removed by section 55 of the Scotland Act 1998.

(2) [S.S.I. 2007/147](#) as amended by [S.S.I. 2009/445](#), [S.S.I. 2013/173](#) and [S.S.I. 2014/71](#).

(3) OJ L 121, 29.7.1964, p.1, as last amended by Commission Implementing Decision (EU) 2015/819 (OJ L 129, 27.5.2015, p.28). The instrument is repealed subject to savings by Regulation (EU) 2016/429 (OJ L 84, 31.3.2016, p.1).

### **“Post movement testing**

**9.**—(1) Where a bovine animal has been moved to premises in Scotland (in this article “the receiving premises”) from premises in a high incidence area, the keeper of the bovine animal must ensure that a diagnostic test for tuberculosis is applied to it no fewer than 60 days and no more than 120 days after the date on which it first arrives at the receiving premises.

(2) Unless paragraph (3) applies, the keeper of a bovine animal must not allow the animal to be moved from the receiving premises unless a diagnostic test has been applied to it in accordance with paragraph (1) and the results of the test of the animal as read by an inspector or an approved veterinary surgeon are negative for tuberculosis.

(3) This paragraph applies where the bovine animal is moved—

- (a) directly to slaughter within 120 days of the animal’s first arrival at the receiving premises;
- (b) solely for the purpose of veterinary treatment, provided that after the treatment the animal is returned directly to the receiving premises or is killed or goes directly to slaughter; or
- (c) under the authority of a movement licence issued by a veterinary inspector.”.

(4) In article 10(1) (application of test), for “article 9” substitute “article 9(1)”.

(5) In article 12 (reporting test results), for “tested a bovine animal with tuberculin” substitute “diagnostically tested a bovine animal for tuberculosis”.

(6) For article 18 (compensation) substitute—

### **“Compensation – general provision**

**18.** Subject to articles 19A, 19B and 19C, the Scottish Ministers must pay compensation reflecting the market value of the animal as ascertained in accordance with article 19 where—

- (a) they cause a bovine animal to be slaughtered under section 32 of the Act in its application to tuberculosis; and
- (b) the animal is identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007(4).”.

(7) After article 19 (ascertainment of market value) insert—

### **“Compensation for reactor animals**

**19A.** Subject to article 19B or 19C, where a bovine animal which has been caused to be slaughtered under section 32 of the Act is a reactor, the maximum amount of compensation payable for the slaughtered animal is £5,000 irrespective of the market value of the animal as ascertained in accordance with article 19.

### **Compensation for animals subject to movement restrictions etc.**

**19B.**—(1) Paragraph (3) applies where—

- (a) a bovine animal is moved on to premises in breach of a relevant movement restriction or prohibition;
- (b) a diagnostic test for tuberculosis has been applied to the animal and the test results reveal that the animal is a reactor;

- (c) the keeper is informed of the test results by a person who has received consent to test under article 26(a); and
- (d) the Scottish Ministers have caused the animal to be slaughtered under section 32 of the Act.

(2) Paragraph (3) also applies where the Scottish Ministers have caused to be slaughtered a bovine animal which is not identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007.

(3) Where this paragraph applies, the maximum amount of compensation payable for a slaughtered animal as mentioned in paragraph (1) or, as the case may be, paragraph (2) is £1.

(4) Where paragraph (3) applies, the Scottish Ministers must notify the keeper of any decision to pay compensation of £1—

- (a) giving the reasons for the decision; and
- (b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.

(5) In paragraph (1)(a), “a relevant movement restriction or prohibition” means a movement restriction or prohibition applicable in respect of premises by virtue of—

- (a) article 6(2)(c);
- (b) article 11A(2)(a);
- (c) article 22(1)(b);
- (d) article 24.

### **Reduced compensation for testing delays**

**19C.**—(1) Paragraph (2) applies where—

- (a) the keeper of an animal has been served with a test notice under article 21(1);
- (b) the keeper has failed to carry out a test by the latest date specified in the notice (“the specified date”);
- (c) a diagnostic test for tuberculosis has been applied to the animal and the test results reveal that the animal is a reactor;
- (d) the keeper is informed of the test results by a person who has received consent to test under article 26(a);
- (e) the Scottish Ministers have caused the animal to be slaughtered under section 32 of the Act; and
- (f) the market value of the animal has been ascertained in accordance with article 19.

(2) Where this paragraph applies, the compensation payable to the keeper for a slaughtered animal as mentioned in paragraph (1) is—

- (a) where the interval between the specified date and the date of the test is more than 60 days but not more than 90 days, 50% of the market value of the animal as ascertained in accordance with article 19; or
- (b) where the interval between the specified date and the date of the test is more than 90 days, 5% of the market value of the animal as ascertained in accordance with article 19.

(3) Where paragraph (2) applies, the Scottish Ministers must notify the keeper of any decision to reduce compensation—

- (a) giving the reasons for the decision; and

- (b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.

**Review of decision to pay reduced compensation etc.**

**19D.**—(1) Within a period of 21 days beginning with the date of receipt of a notification under article 19B(4) or 19C(3), the keeper may make written representations to a person appointed by the Scottish Ministers for the purpose of having the decision to reduce the compensation payable to the keeper reviewed by that person (“the appointed person”).

(2) The appointed person must consider those representations together with any written representations made by the Scottish Ministers.

(3) Having considered representations in accordance with paragraph (2), the appointed person must then report in writing to the Scottish Ministers who must then make their final determination in relation to the amount of compensation payable in respect of the animal which has been caused to be slaughtered under section 32 of the Act.

(4) The Scottish Ministers must notify the keeper of their final determination under paragraph (3) and the reasons for it.”.

- (8) For article 21 (facilitating examination etc) substitute—

**“Tuberculosis testing and facilitating examinations etc.**

**21.**—(1) The Scottish Ministers may serve on the keeper of any bovine animal a notice (“a test notice”) requiring the keeper to have applied to the animal a diagnostic test for tuberculosis before a date specified in the notice.

(2) The keeper of any bovine animal must comply with all reasonable requirements of an inspector or an approved veterinary surgeon with a view to facilitating—

- (a) the examination of that animal by a veterinary inspector or an approved veterinary surgeon;
- (b) the application to the animal of a diagnostic test for tuberculosis (following the service of a notice under paragraph (1)); and
- (c) the valuation or slaughter of the animal when the Scottish Ministers intend to cause it to be slaughtered under section 32 of the Act in its application to tuberculosis.

(3) For the purposes of facilitating any examination, testing, valuation or slaughter as mentioned in paragraph (2), an inspector or an approved veterinary surgeon may require the keeper of the bovine animal to arrange—

- (a) for the collection, penning and securing of the animal; and
- (b) for the movement of the animal to and from any premises specified by the inspector or, as the case may be, the approved veterinary surgeon.”.

- (9) For article 22 (default) substitute—

**“Default**

**22.**—(1) If any person fails to comply with a test notice under article 21(1) or any requirement as mentioned in article 21(2) or (3), the Scottish Ministers—

- (a) may take or cause to be taken all such steps as may be necessary to facilitate the examination, testing, valuation or slaughter of the bovine animal including, subject to paragraph (3), the movement of the animal to other premises; and

(b) may by notice served on the keeper of the bovine animal prohibit the movement of any bovine animal on to or off the premises, except under the authority of a licence issued by an inspector.

(2) Paragraph (1) is without prejudice to any proceedings for an offence arising out of any failure to comply as mentioned in that paragraph.

(3) Where a bovine animal has been moved to other premises in accordance with subparagraph (1)(a), the Scottish Ministers must ensure the return of the animal to the premises from which it was moved within a reasonable time after the examination, testing or valuation has been carried out.

(4) Any expenses reasonably incurred by the Scottish Ministers for the purposes of making good any default are recoverable from the person in default.”.

(10) For article 26(a) (prohibition on testing, vaccination and therapeutic treatment), substitute—  
“(a) apply a diagnostic test for tuberculosis to a bovine animal;”.

### **Amendment of the Tuberculosis in Specified Animals (Scotland) Order 2015**

**3.** In article 2(1) of the Tuberculosis in Specified Animals (Scotland) Order 2015(5), omit the definition of “authorised veterinary inspector”.

St Andrew’s House, Edinburgh  
17th May 2018

*FERGUS EWING*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Tuberculosis (Scotland) Order 2007 (“the 2007 Order”) and the Tuberculosis in Specified Animals (Scotland) Order 2015 (“the 2015 Order”).

Article 2(2) amends the definition of ‘high incidence area’ in article 2(1) of the 2007 Order to reflect routine tuberculin testing carried out at intervals of no more than two years in such an area.

Article 2(3) substitutes a new article 9 in the 2007 Order. This provides that where a bovine animal has been moved to premises in Scotland from premises in a high incidence area, the keeper of the bovine animal must ensure a diagnostic test for tuberculosis is applied to the animal within a specified period of time and must not allow the animal to be moved from the premises before such a test is completed unless the move is authorised under applicable exceptions. Article 2(4) makes a consequential amendment to article 10(1) of the 2007 Order.

Article 2(5) amends article 12 of the 2007 Order to extend the obligation to report tests results to include any test for tuberculosis.

Article 2(6) substitutes a new article 18 in the 2007 Order which makes general provision for compensation by the Scottish Ministers reflecting the market value of a bovine animal, where they cause a bovine animal to be slaughtered under section 32 of the Animal Health Act 1981, provided the animal is identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007. This is subject to the exceptions under the new articles 19A to 19C of the 2007 Order.

Article 2(7) inserts new articles 19A, 19B, 19C and 19D in the 2007 Order.

Article 19A establishes the maximum compensation payable for any slaughtered animals which are reactors (under article 2(1) of the 2007 Order, those are animals which produce a reaction consistent with their being affected with tuberculosis when tested for that disease) which have been slaughtered as £5,000, irrespective of the market value of the animal as ascertained in accordance with article 19 of the 2007 Order.

Article 19B provides for compensation of £1 for slaughtered animals which are reactors, where those animals were (a) moved on to premises in breach of a relevant movement restriction or prohibition under the 2007 Order, or (b) not identified by means of eartags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007.

Article 19C provides for reduced compensation for slaughtered animals which are reactors where the keeper of those animals has failed to timeously comply with a notice to test under article 21(1) of the 2007 Order. The amount of any compensation payable as a proportion of the market value of the animals depends on the length of any delay in testing.

Article 19D provides a right of review to a person appointed by the Scottish Ministers in relation to any decision by the Scottish Ministers to pay £1 or reduced compensation under new articles 19B or 19C respectively.

Article 2(8) substitutes a new article 21 in the 2007 Order. This enables the Scottish Ministers to serve on the keeper a test notice requiring the keeper to apply a diagnostic test for tuberculosis on the bovine animal before a date specified in the notice. This article also requires a keeper to comply with all reasonable requirements of an inspector or approved veterinary surgeon for facilitating any examination, testing, valuation or slaughter of any bovine animals.

Article 2(9) substitutes a new article 22 in the 2007 Order. This provides that if the keeper fails to comply with a testing notice or any requirements under article 21 of the 2007 Order—

- (a) the Scottish Ministers may take steps or arrange for steps to be taken to facilitate the examination, valuation, movement or slaughter of the bovine animal; or
- (b) serve a notice on the keeper of the bovine animal prohibiting the movement of any bovine animal on to or off the premises.

The Scottish Ministers may recover any reasonable expenses from exercising powers under this provision.

Article 2(10) substitutes a new article 26(a) in the 2007 Order. The amended provision extends the prohibition on testing without the written consent of the Scottish Ministers to include the application of any diagnostic test for tuberculosis.

Article 3 revokes a redundant definition of ‘authorised veterinary inspector’ in article 2(1) of the 2015 Order.

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Animal Health and Welfare Division, Saughton House, Broomhouse Drive, Edinburgh EH11 3XG.