

# **ANIMAL HEALTH (AMENDMENT) ACT 2009**

## **Arrangement of Sections**

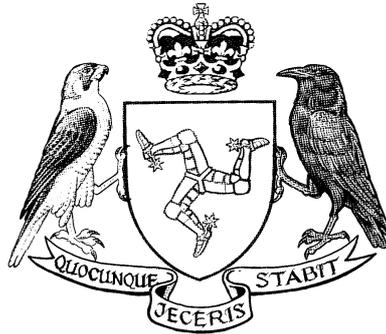
### Section

1. Biosecurity guidance
2. Preventing introduction or spread of disease
3. Deliberate infection of animals
4. Slaughter in case of epidemic disease
5. Genotypes susceptible to disease
6. Powers of entry
7. Short title and commencement

### SCHEDULES —

Schedule 1 — New Schedule 1B inserted in 1996 Act

Schedule 2 — New Schedule 1C inserted in 1996 Act



Isle of Man } Signed in Tynwald: 20th October 2009  
 to Wit } Received Royal Assent: 20th October 2009  
 Announced to Tynwald: 21st October 2009

## AN ACT

to amend the Animal Health Act  
 1996.

**B**E IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1. (1) After section 4 of the Animal Health Act 1996 insert — Biosecurity  
guidance

“Biosecurity  
guidance **4A.** (1) The Department may by order approve [c.22]  
 guidance issued (whether by the Department or another  
 person) on the appropriate measures (“biosecurity  
 measures”) to be taken to prevent the spread of causative  
 agents of —

- (a) foot-and-mouth disease;
- (b) any other disease specified in an order of the  
 Department.

(2) Before issuing or approving guidance on biosecurity measures the Department shall consult such persons and organisations as appear to it to be representative of those having an interest in such measures.

(3) The Department shall from time to time review guidance approved under subsection (1) and may, after such consultation as is mentioned in subsection (2), at any time by order —

- (a) approve any modification of the guidance, or

- (b) withdraw its approval;

and references in this section to guidance approved under subsection (1) shall be construed accordingly.

(4) If a person to whom this subsection applies fails to comply with guidance approved under subsection (1), he or she is not by reason only of that failure liable in any civil or criminal proceedings; but the guidance is admissible in evidence in such proceedings, and a court may take account of any failure to act in accordance with it in deciding any question in the proceedings.

- (5) Subsection (4) applies to —

- (a) any person having functions under this Act;
- (b) any person who is the owner or occupier of premises on which animals are kept;
- (c) any person who has charge of animals;
- (d) any person who is under the direction of a person mentioned in paragraphs (a) to (c)."

(2) In section 59 of that Act (interpretation), after the definition of "cattle" insert —

““causative agent”, in relation to any disease, includes any virus, any bacterium and any other organism or infectious substance which may cause or transmit that disease;”.

Preventing  
introduction  
or spread of  
disease

2. (1) After section 18 of the Animal Health Act 1996 insert —

“Preventing  
introduction  
or spread of  
disease

**18A.** (1) The Department may by order declare any area comprising the whole or any part of the Island to be a controlled area for purposes connected with preventing the introduction into, or the spread within, that area of disease or causative agents of disease.

(2) An order under subsection (1) may include provision for all or any of the following —

- (a) prohibiting or regulating the movement of animals and persons into, within or out of the controlled area;
- (b) prohibiting or regulating the use of any public right of way within the controlled area;

- (c) prescribing and regulating the isolation or separation of animals being in the controlled area;
- (d) prohibiting or regulating the removal of carcasses, fodder, litter, utensils, pens, hurdles, excrement, or other things into, within or out of the controlled area.”.

(2) In section 20(2) (exclusion of strangers) of that Act, after “18(c)” insert “or 18A(2)(b)”.

(3) In section 37 (powers of arrest) of that Act, after subsection (2)(c) insert “; or

- (d) the movement, in contravention of an order under section 18A, of any animal into, within or out of an area declared by the order to be a controlled area.”.

**3.** (1) After section 21 of the Animal Health Act 1996 insert —

“Deliberate infection

**21A.** (1) A person commits an offence against this Act if without lawful authority or excuse (proof of which shall lie on him or her) he or she knowingly does anything which causes or is intended to cause an animal to be infected with a disease specified in Schedule 1A.

Deliberate infection of animals

(2) A person guilty of an offence under subsection (1) is liable —

- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both;
- (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine or to both.

(3) The Department may by order amend Schedule 1A.

Deliberate infection: disqualification

**21B.** (1) If a person is convicted of an offence under section 21A the court may by order disqualify him or her, for such period as it thinks fit, from keeping or dealing in —

- (a) any animals, or

(b) any animals of a specified kind.

(2) The court may suspend the operation of the order —

(a) for such period as it thinks necessary to enable arrangements to be made for the keeping of any animals to which the disqualification relates; or

(b) pending an appeal.

(3) A person who is disqualified under subsection (1) may apply to the court which imposed the disqualification to remove it or vary it.

(4) On an application under subsection (3) the court may by order —

(a) refuse the application,

(b) remove the disqualification, or

(c) vary the disqualification to apply it only to such animals or kind of animals as it specifies.

(5) In considering an application under subsection (3) the court may have regard to —

(a) the nature of the offence in respect of which the disqualification was imposed;

(b) the character of the applicant; and

(c) his or her conduct since the disqualification was imposed.

(6) The first application under subsection (3) must not be made before the end of the period of one year starting with the date the disqualification starts; and a further application must not be made before the end of the period of one year starting with the date of the court's last order.

(7) For the purposes of this section keeping or dealing in an animal includes —

(a) having custody or control of an animal;

(b) being concerned in the management or control of a body (whether or not

incorporated) whose activities include keeping or dealing in animals.”.

- (2) After Schedule 1 to that Act insert (as Schedule 1A) —

“Section 21A(1). SCHEDULE 1A

DELIBERATE INFECTION — SPECIFIED DISEASES

African horse sickness

African swine fever

Bluetongue

Classical swine fever

Contagious bovine pleuropneumonia

Foot-and-mouth disease

Highly pathogenic avian influenza

Lumpy skin disease

Newcastle disease

*Peste des petits ruminants*

Rift Valley fever

Rinderpest

Sheep pox and goat pox

Swine vesicular disease

Vesicular stomatitis.”.

4. (1) After section 24 of the Animal Health Act 1996 insert —

“Slaughter  
in case of  
epidemic  
disease

**24A.** (1) The Department may, if it thinks fit, in any case cause to be slaughtered —

Slaughter  
in case of  
epidemic  
disease

- (a) any animals affected with an epidemic disease, or suspected of being so affected;
- (b) any animals which are or have been in the same field, shed or other place, or in the same herd or flock, as animals affected with an epidemic disease;

- (c) any animals which are or have been otherwise in contact with animals affected with an epidemic disease;
- (d) any animals which appear to the Department to have been in any way exposed to the infection of an epidemic disease; or
- (e) any animals which the Department thinks should be slaughtered with a view to preventing the spread of an epidemic disease.

(2) The Department may exercise the power under subsection (1)(e) whether or not animals —

- (a) are affected with the disease in question or suspected of being so affected;
- (b) are or have been in contact with animals so affected;
- (c) have been exposed to the infection of that disease; or
- (d) have been treated with vaccine against that disease.

(3) The Department shall pay for animals slaughtered under this section compensation of such amount as may be determined in accordance with scales prescribed by order of the Department.

(4) In this section “epidemic disease” means a disease which —

- (a) appears to the Department to be occurring at a higher than normal rate in an animal population, and
- (b) is specified in an order of the Department.”.

(2) In section 26 (seizure and disposal of carcasses etc.) of that Act, for subsection (3) substitute —

“(3) Subsection (1) applies to the following diseases (being those in the case of which powers of slaughter are exercisable under this Act) —

- (a) any disease within the meaning of section 24 to which that section for the time being applies; and

- (b) an epidemic disease within the meaning of section 24A.”.

5. (1) After section 27 of the Animal Health Act 1996 insert — Genotypes susceptible to disease  
*“Susceptibility to disease*

Genotypes susceptible to disease **27A.** Schedule 1B shall have effect for the purpose of eradicating genotypes which are particularly susceptible to infection by certain diseases.”.

- (2) After Schedule 1A to that Act insert (as Schedule 1B) the provisions set out in Schedule 1.

6. (1) After section 38 of the Animal Health Act 1996 insert — Powers of entry

“Slaughter, marking and movement: power of entry **38A.** An inspector may at any time enter any land, premises, building or other place for the purpose of —

- (a) ascertaining whether a power conferred by or under this Act, or by a relevant Community instrument, to cause an animal to be slaughtered should be exercised,
- (b) doing anything in pursuance of the exercise of that power, or
- (c) ascertaining whether any requirement of an order under section 6 has been or is being complied with.

Tests and samples: power of entry **38B.** (1) A veterinary inspector may at any time enter any land, premises, building or other place for the purpose of ascertaining —

- (a) whether disease anti-bodies exist in animals on the premises;
- (b) whether any animal on the premises or which was kept there at any time is, or was at that time, infected with disease; or
- (c) whether any causative agent of disease is present on the premises.

- (2) Where a veterinary inspector enters any premises by virtue of subsection (1) or a warrant under paragraph 3 of Schedule 1C, he or she may take such

samples (including samples from any animal on the premises) and carry out such tests as he or she thinks are necessary for the purpose mentioned in subsection (1).

(3) In this section —

“disease” means —

- (a) foot-and-mouth disease; and
- (b) any other disease specified in an order of the Department;

“premises” includes any land, building or other place.

Powers of  
entry:  
supplementary

**38C.** Schedule 1C shall have effect in relation to the exercise of certain powers of entry under this Act.”.

(2) After Schedule 1B to that Act insert (as Schedule 1C) the provisions set out in Schedule 2.

(3) In section 13 of that Act (treatment after exposure to infection) —

- (a) in subsection (2), omit the words from “and for the purpose” onwards; and
- (b) for subsection (3) substitute —

“(3) For the purpose of exercising the powers conferred by this section an inspector may enter any land, premises, building or other place.”.

(4) In section 59 of that Act (interpretation), after the definition of “livestock” insert —

““relevant Community instrument” means any Community instrument (within the meaning of section 1(1) of the European Communities (Isle of Man) Act 1973) which relates directly or indirectly to animal health and applies as part of the law of the Island under section 2(1) or 2A(1) of that Act;”.

Short title and  
commencement

**7.** (1) This Act may be cited as the Animal Health (Amendment) Act 2009.

(2) This Act shall come into operation on such day or days as the Department of Agriculture, Fisheries and Forestry may by order appoint.

Section 5(2).

## SCHEDULE 1

## NEW SCHEDULE 1B INSERTED IN 1996 ACT

“Section 27A.

## SCHEDULE 1B

## GENOTYPES SUSCEPTIBLE TO DISEASE

*Power to specify animal genotypes*

1. The Department may by order specify genotypes of any species of animal designated by the order (a “designated species”) which, in its opinion, are more susceptible than other genotypes of that species —

- (a) to infection by a disease specified in the order, or by a specified form of such a disease, or
- (b) to becoming carriers of that disease or form of disease.

*Identification of genetically susceptible animals*

2. (1) The Department may by regulations make provision requiring the keeper of an animal of a designated species —

- (a) to allow an inspector to take a sample from it, for the purpose of establishing its genotype;
- (b) to allow an inspector to administer or otherwise attach to it an electronic identification device; and
- (c) where the genotype of the animal has been established (whether or not as a result of the exercise of powers conferred by this Schedule) to keep a record of its genotype.

(2) The regulations may, in particular —

- (a) provide that only electronic identification devices of a prescribed kind may be administered or attached;
- (b) make provision as to the assistance which an inspector may require the keeper to give to him or her;
- (c) make provision with respect to the testing of samples;
- (d) require the issuing and keeping of certificates recording the genotypes of animals of a designated species.

*Restrictions on breeding from genetically susceptible animals*

3. (1) This paragraph applies where it appears to the Department that —

- (a) an animal of a designated species is of a genotype specified in an order under paragraph 1, and

(b) allowing the animal to be used for breeding would not be justified. SCH. 1

(2) The Department shall give notice to its keeper (“a restriction notice”) that the restrictions and requirements imposed by sub-paragraph (4) apply in relation to the animal.

(3) A restriction notice —

(a) may be made so as to apply to more than one animal, and

(b) may describe the animals to which it applies in such a way as the Department considers appropriate.

(4) A person to whom a restriction notice is given —

(a) must not —

(i) use an animal to which the notice applies, or its semen, eggs or embryos, for purposes of or connected with breeding, or

(ii) cause or permit such an animal or such semen, eggs or embryos to be used by another person for those purposes;

(b) must arrange for any semen, egg or embryo which has at any time been taken from an animal to which the notice applies, and which is in his or her possession or under his or her control, to be destroyed;

(c) must arrange for each animal to which the notice applies —

(i) to be castrated or (as appropriate) sterilised before the end of the period of one month beginning with the date on which the notice was given, or

(ii) to be slaughtered before the end of the period of 7 months beginning with that date.

#### *Appeals*

4. (1) A person to whom a restriction notice has been given may appeal against the notice to a person appointed by the Department for the purpose of dealing with appeals under this Part (“an assessor”).

(2) An appeal may not be brought after the end of the period of 21 days beginning with the date on which the notice concerned was given to the appellant, unless the Department, in the particular case, extends the period of 21 days on the ground that there are exceptional circumstances justifying the extension.

(3) If the restriction notice applies to more than one animal, the appeal may be limited to the animals specified by the appellant.

(4) If the assessor allows the appeal, in whole or in part, he or she may —

(a) revoke the notice,

(b) revoke the notice so far as it applies to one or more animals specified by him or her, or

SCH. 1

- (c) direct that a further test be carried out in relation to animals specified by him or her.
- (5) A direction under sub-paragraph (4)(c) may require —
  - (a) a further sample to be taken, or
  - (b) the further test to be carried out by a different testing laboratory.
- (6) The Department may make regulations supplementing the provisions of this paragraph.
- (7) The regulations may, in particular, make provision —
  - (a) as to the procedure to be followed on an appeal,
  - (b) extending the period mentioned in paragraph 3(4)(c)(i) where an appeal is brought against a restriction notice,
  - (c) requiring the appellant to meet the reasonable costs of, and in connection with, the taking of a further sample or the carrying out of a further test as a result of a notice under sub-paragraph (4)(c), and
  - (d) as to the recovery of any such costs.
- (8) The revocation of a restriction notice (in whole or in part) by an assessor does not prevent the issue of another restriction notice, following the testing of a further sample.

*Department's powers of enforcement*

5. (1) This paragraph applies if the Department is satisfied that a person to whom a restriction notice has been given has failed to comply with one or more of the restrictions or requirements imposed on him or her by paragraph 3(4).
- (2) But it does not apply in relation to any animal —
    - (a) which is the subject of an appeal under paragraph 4 which has not been disposed of, or
    - (b) which, as the result of a successful appeal, is no longer subject to the restriction notice.
  - (3) The Department may take such reasonable steps as it considers appropriate to secure that the failure is remedied.
  - (4) In particular, the Department may cause to be castrated (or as appropriate sterilised) or slaughtered any animal —
    - (a) which is the subject of the notice, but
    - (b) which has neither been castrated (or as appropriate sterilised) nor slaughtered within the period mentioned in paragraph 3(4)(c).
  - (5) The Department may make regulations supplementing the provisions of this paragraph.

*Offences*

SCH. 1

- 6.** (1) A person to whom a restriction notice is given commits an offence against this Act (whether or not the notice is the subject of an appeal) if —
- (a) he or she sells (or otherwise transfers to another person) an animal to which the notice applies, or any of its semen, eggs or embryos;
  - (b) he or she fails, without reasonable excuse (proof of which lies on him or her) to comply with any of the restrictions or requirements imposed by paragraph 3(4).
- (2) Any other person commits an offence against this Act if he or she uses any semen, egg or embryo which he or she knows, or has reasonable cause to believe, has been taken from an animal which is the subject of a restriction notice.
- (3) A person commits an offence against this Act if, without reasonable excuse (proof of which lies on him or her), he or she fails to comply with any provision of regulations made under paragraph 2.
- (4) A person commits an offence against this Act if he or she obstructs an inspector or any other person discharging, or attempting to discharge, functions conferred by or under this Schedule.

*Power of entry*

- 7.** An inspector or a constable may at all reasonable times enter any premises for the purpose of —
- (a) carrying out any function he or she has under or in pursuance of this Schedule, or
  - (b) ascertaining whether any such function should be exercised.

*Compensation*

- 8.** The Department shall as soon as is practicable make regulations providing for the payment by it of compensation in circumstances to be specified in the regulations in respect of loss suffered or costs incurred as a result of the exercise of a power conferred by or under this Schedule.

*Interpretation*

- 9.** In this Schedule —
- “designated species” means a species of animal designated by an order under paragraph 1;
  - “keeper”, in relation to an animal, includes an owner of the animal;
  - “premises” includes any land, building or other place;
  - “restriction notice” means a notice given under paragraph 3.”.

Section 6(2).

## SCHEDULE 2

## NEW SCHEDULE 1C INSERTED IN 1996 ACT

“Section 38C.

## SCHEDULE 1C

## POWERS OF ENTRY: SUPPLEMENTARY PROVISIONS

*Application*

1. (1) This Schedule applies in relation to a power of entry conferred by —

- (a) section 13 (treatment after exposure to infection);
- (b) section 38A (slaughter, marking and movement);
- (c) section 38B (tests and samples);
- (d) paragraph 7 of Schedule 1B (breeding from genetically susceptible species).

(2) In this Schedule —

“authorised person” means, in relation to entry under or for purposes of —

- (a) section 13 or 38A, an inspector;
- (b) section 38B, a veterinary inspector;
- (c) paragraph 7 of Schedule 1B, an inspector or a constable;

“premises” includes any land, building or other place;

“relevant purpose” means any purpose for which the power of entry in question may be exercised.

*Production of authority*

2. A person acting under a power referred to in paragraph 1(1) must, if required, show evidence of his or her authority to do so.

*Issue of warrant*

3. (1) If a justice is satisfied on sworn complaint in writing —

- (a) that there are reasonable grounds for an authorised person to enter premises for a relevant purpose specified in the complaint, and
- (b) that at least one of the conditions specified in sub-paragraph (3) is satisfied,

the justice may issue a warrant authorising an authorised person to enter premises, if necessary using reasonable force, for the relevant purpose.

- (2) The complaint must — SCH. 2
- (a) be in writing and substantiated on oath, and
  - (b) include —
    - (i) a statement as to whether any representations have been made by the occupier of the land or premises to an authorised person concerning the purpose for which the warrant is sought;
    - (ii) a summary of any such representations.
- (3) The conditions referred to in sub-paragraph (1)(b) are that —
- (a) the occupier of the premises —
    - (i) has been informed of the decision to seek entry to the premises and of the reasons for that decision;
    - (ii) has failed to allow entry to the premises on being requested to do so by an authorised person; and
    - (iii) has been informed of the decision to apply for the warrant;
  - (b) the premises are unoccupied or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the premises, or
  - (c) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises.

*Execution of warrant*

- 4.** (1) A warrant issued under paragraph 3 remains in force for one month starting with the date of its issue, which date shall be clearly visible on the warrant.
- (2) A warrant issued under paragraph 3 must be executed only at a reasonable hour unless the person authorised by the warrant to enter the premises thinks that the case is one of urgency.
- (3) If an authorised person enters any unoccupied premises he or she must leave them as effectively secured against entry as he or she found them.
- (4) If an authorised person enters any premises by virtue of a warrant issued under paragraph 3 he or she must at the time of entry —
- (a) serve a copy of the warrant on the occupier of the premises, or
  - (b) if the occupier is not on the premises, leave a copy of the warrant in a conspicuous place on the premises.
- (5) In relation to any premises to which entry is obtained by virtue of a warrant under paragraph 3 the Department must retain for a period of not less than 12 months beginning with the day after entry —

SCH. 2

- (a) a copy of the warrant;
- (b) a copy of any record of the steps taken to effect entry to the premises and the actions taken on the premises by the person authorised by the warrant to enter the premises and any other person entering the premises with him or her.

*Supplementary powers in relation to entry*

5. (1) This paragraph applies to an authorised person who enters premises —
- (a) by virtue of a power referred to in paragraph 1(1), or
  - (b) under a warrant issued under paragraph 3.
- (2) The authorised person may take with him or her —
- (a) such other persons as the authorised person thinks necessary to give him or her such assistance as he or she thinks necessary;
  - (b) such equipment as he or she thinks necessary.
- (3) An authorised person may require any person on the premises to whom this sub-paragraph applies to give him or her such assistance as he or she may reasonably require for the relevant purpose.
- (4) Sub-paragraph (3) applies to —
- (a) the occupier of the premises;
  - (b) a person appearing to the authorised person to have charge of animals on the premises;
  - (c) a person appearing to the authorised person to be under the direction or control of a person mentioned in paragraph (a) or (b).
- (5) An authorised person may —
- (a) inspect any records (in whatever form they are held) relating to the keeping, acquisition or disposal of animals;
  - (b) seize and detain any records which he or she reasonably thinks may be needed as evidence in any proceedings under or by virtue of this Act.

*Offences*

6. (1) A person commits an offence against this Act if without lawful authority or excuse (proof of which shall lie on him or her) he or she —
- (a) refuses admission to any premises to —
    - (i) an authorised person exercising a power referred to in paragraph 1(1), or

- (ii) a person referred to in paragraph 5(2)(a), or SCH. 2
- (b) obstructs or impedes an authorised person or person referred to in paragraph 5(2)(a) in acting for a relevant purpose, or
- (c) assists in any such obstruction or impeding.
- (2) A person commits an offence against this Act if he or she is required to give assistance under paragraph 5(3) and fails to give it.”.