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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 310**

**ANIMALS**

**ANIMAL HEALTH**

**The Bovine Viral Diarrhoea (Scotland) Order 2019**

*Made* - - - - *2nd October 2019*  
*Laid before the Scottish*  
*Parliament* - - - - *4th October 2019*  
*Coming into force* - - *1st December 2019*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1), 83(2) and 88(2) of the Animal Health Act 1981<sup>(1)</sup> and all other powers enabling them to do so.

**PART 1**

**Preliminary**

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Bovine Viral Diarrhoea (Scotland) Order 2019 and comes into force on 1 December 2019.

(2) This Order extends to Scotland only.

**Interpretation**

**2.**—(1) In this Order unless the context otherwise requires—

“2013 Order” means the Bovine Viral Diarrhoea (Scotland) Order 2013<sup>(2)</sup>,

“the Act” means the Animal Health Act 1981<sup>(3)</sup>,

“approved laboratory” means a laboratory approved by the Scottish Ministers in accordance with article 7,

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(1) 1981 c.22. Powers to make Orders under these sections were originally conferred on “the Ministers”, as defined in section 86(1) of the Animal Health Act 1981 (“the Act”). The functions of the Ministers were, in so far as within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) S.S.I. 2013/3. Amended by S.S.I. 2013/21, S.S.I. 2013/337, S.S.I. 2013/363 and S.S.I. 2015/186.

(3) 1981 c.22.

“approved veterinary surgeon” means a veterinary surgeon approved by the Scottish Ministers in accordance with article 6,

“bovine animal” means a domestic animal of the genus *Bos* or the species *Bubalus bubalus* or *Bison bison*,

“breeding bovine animal” means a bovine animal not forming part of a herd of bovine animals which, whether by natural, assisted or artificial means, is intended by its keeper to breed or no steps are taken to prevent or minimise the chances of its breeding,

“breeding herd” means a group of two or more bovine animals in which breeding, whether by natural, assisted or artificial means, is intended by its keeper to take place or no steps are taken to prevent or minimise the chances of such breeding,

“BVD” means bovine viral diarrhoea,

“BVDV” means BVD virus,

“calf” means a bovine animal aged 18 months or less,

“collective BVD status” means the BVD status of a breeding herd as determined in accordance with article 27,

“coming into force day” means the day on which this Order comes into force,

“CPH number” means the county parish holding number assigned to a holding or part of a holding by the Scottish Ministers,

“dairy breeding herd” means a breeding herd which is primarily maintained for the purpose of milk production and which is being managed according to a system which allows for the possibility of calving throughout the year,

“high risk animal” means a bovine animal which—

- (a) is a qualifying calf,
- (b) has been moved onto and kept on a holding for a period of more than 40 days and immediately prior to the movement was part of a breeding herd which had a collective BVD status of not negative, or
- (c) is an animal which has—
  - (i) spent any part of its life outside Scotland and been moved into Scotland, and
  - (ii) been kept in Scotland for a period of more than 40 days,

“holding” means a holding or part of a holding to which a CPH number has been assigned,

“individual BVD status” means the BVD status of an individual bovine animal as determined in accordance with article 26,

“inspector” has the same meaning as in section 89 of the Act,

“keeper” means, in relation to a bovine animal, the person who is in day-to-day charge of the animal and that person remains the keeper where the animal is placed temporarily in the control of another person (including where it is placed in the control of a transporter),

“management tag” means an ear tag, other than an official ear tag, which is suitable to be applied to a bovine animal for the purpose of taking a sample of tissue,

“official ear tag” means an ear tag applied under the Cattle Identification (Scotland) Regulations 2007(4),

“official ear tag number” means the number which is printed on an official ear tag,

“premises” means any land, building or vehicle, of any description,

“qualifying calf” means a calf of a bovine animal that is born otherwise than into a breeding herd or to a breeding bovine animal,

“separately managed group” means, within a breeding herd, any bovine animals that, for a period of two consecutive months or more, graze or are housed together—

- (a) separately from any other animals in the herd, and
- (b) in sufficient proximity to each other to allow BVDV to circulate amongst them,

“Shetland Islands” means the local government area of the Shetland Islands which comprises the area of Shetland Islands Council as set out in section 1(2) and schedule 1 of the Local Government etc. (Scotland) Act 1994<sup>(5)</sup>,

“veterinary inspector” has the same meaning as in section 89 of the Act, and

“working day” means a day which is not a Saturday, Sunday or a day specified as a bank holiday in paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971<sup>(6)</sup>.

(2) In this Order, any reference to a compliance deadline is a reference to a compliance deadline determined in accordance with article 11.

(3) In this Order, unless the context otherwise requires, any reference to an article or a schedule is a reference to an article in, or the schedule of, this Order.

### Notices and other instruments

**3.**—(1) Any notice, licence or approval given by the Scottish Ministers or an inspector under this Order—

- (a) may be subject to conditions, and
- (b) unless specified otherwise, may be amended, suspended or revoked by the same type of instrument at any time.

(2) Any licence or approval under this Order must be in writing.

(3) Where anything under this Order is to be done in writing that includes an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000<sup>(7)</sup>, which has been recorded and is consequently capable of being reproduced.

(4) Any person moving a bovine animal under the authority of a licence granted under this Order must—

- (a) keep upon that person the licence or a copy of it at all times during such movement,
- (b) on demand by a veterinary inspector, an inspector or an officer of the Scottish Ministers, produce the licence or a copy of it and allow a copy or extract to be taken, and
- (c) keep the licence or a copy of it for the period of 6 months after the movement is completed.

### Extension of the definition of “disease”

**4.** The definition of “disease” in section 88(1) of the Act continues to be extended to include BVD for all the purposes of the Act<sup>(8)</sup>.

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<sup>(5)</sup> 1994 c.39.

<sup>(6)</sup> 1971 c.80. Amended by St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

<sup>(7)</sup> 2000 c.7. Amended by the Communications Act 2003 (c.21).

<sup>(8)</sup> The definition was so extended by article 4 of the 2013 Order, which is revoked by article 44.

### **Compliance with this Order**

5.—(1) Any sampling by a previous keeper for the purposes of compliance with the obligations of a keeper under this Order may, if the current keeper so elects, be relied upon by the current keeper for the purposes of determining compliance by the current keeper with the obligations in this Order.

(2) Any obligation under this Order on a keeper to take a sample may, if the keeper so elects, be fulfilled by the keeper arranging for another person to take the sample on the keeper's behalf.

(3) Any obligation under this Order on a keeper to submit a sample may, if the keeper so elects, be fulfilled by the keeper arranging for another person to submit the sample on the keeper's behalf.

## **PART 2**

### **BVD Screening**

#### **Approval of veterinary surgeons**

6.—(1) The Scottish Ministers may approve, subject to any conditions that the Scottish Ministers consider necessary, any veterinary surgeon whom they consider to be suitable for the purposes of carrying out the functions conferred on an approved veterinary surgeon by Parts 2 and 3 of this Order.

(2) For the purpose of deciding whether to grant an approval under this article, the Scottish Ministers may require a veterinary surgeon to complete such training as they consider necessary.

(3) An approved veterinary surgeon must comply with any condition of the approval.

(4) The Scottish Ministers may by notice given to the veterinary surgeon suspend or revoke an approval granted under this article.

(5) Suspension of an approval under this article lasts for such period, or until such steps are taken, as the Scottish Ministers specify in the notice.

(6) An approved veterinary surgeon may by notice given to the Scottish Ministers indicate that the veterinary surgeon no longer wishes approval, in which case the approval ceases to have effect on the date on which the Scottish Ministers receive that notice.

#### **Approval of laboratories**

7.—(1) The Scottish Ministers may approve, subject to any conditions that the Scottish Ministers consider necessary, any laboratory that they consider to be suitable for the purpose of testing samples submitted under this Part.

(2) For the purpose of deciding whether to grant an approval under this article, the Scottish Ministers may require the operator of a laboratory to arrange or permit such inspections and quality assurance testing as the Scottish Ministers consider necessary.

(3) The operator of an approved laboratory must comply with any condition of the approval.

#### **Suspension and revocation of approval of laboratories**

8.—(1) The Scottish Ministers may by notice given to the operator of an approved laboratory suspend or revoke an approval granted under article 7 if—

(a) they consider that the approved laboratory is no longer suitable for the purpose of carrying out testing of samples submitted to it under this Part, or

(b) they have reason to believe that any conditions of its approval have not been, or are not being, complied with.

(2) For the purpose of deciding whether to suspend or revoke an approval under this article, the Scottish Ministers may require the operator of the laboratory to arrange or permit such inspections and quality assurance testing as the Scottish Ministers consider necessary.

(3) Suspension of an approval under this article lasts for such period, or until such a state of affairs exists, as the Scottish Ministers specify when suspending the approval.

(4) The operator of an approved laboratory may by notice given to the Scottish Ministers indicate that the operator no longer wishes approval of the laboratory, in which case the approval ceases to have effect on the date on which the Scottish Ministers receive that notice.

### **Sampling of breeding herds in accordance with compliance deadlines**

**9.—**(1) For the purposes of this article, a breeding herd does not include any bovine animal which has an individual BVD status of negative.

(2) The keeper of a breeding herd which is not kept in the Shetland Islands and is not a dairy breeding herd must, by each compliance deadline, take samples as described in any one of the sub-paragraphs of paragraph (3).

(3) The samples described in this paragraph are—

(a) from each of the bovine animals in the herd either—

- (i) an ear tag sample of tissue taken in accordance with article 14, or
- (ii) a sample of blood,

(b) a sample of blood from—

- (i) each of 5 calves between the age of 9 and 18 months in the relevant group,
- (ii) each of 10 calves between the age of 6 and 18 months in the relevant group, or
- (iii) where there are no calves between the ages of 6 and 18 months in the relevant group, each of 5 bovine animals in the relevant group which are over the age of 18 months and have not left the holding of their birth,

(c) subject to paragraph (8), from each of the calves in the herd born in the immediately preceding 12 month period—

- (i) an ear tag sample of tissue taken in accordance with article 14, or
- (ii) a sample of blood.

(4) The keeper of a breeding herd kept in any area within the Shetland Islands, must, by each compliance deadline, take a sample of blood from each of 5 calves between the age of 6 and 18 months in the relevant group.

(5) The keeper of a dairy breeding herd, must, by each compliance deadline, take a sample of blood from each of 10 calves between the age of 9 and 18 months in the relevant group.

(6) For the purposes of this article “relevant group” means—

- (a) in the case of a breeding herd which does not contain any separately managed groups, the herd, and
- (b) in the case of a breeding herd which contains two or more separately managed groups, each separately managed group.

(7) Where—

- (a) any sub-paragraph of paragraph (3) requires the keeper to take samples from a specified number of bovine animals of any description (“the described animals”), and
- (b) the relevant group contains a number of described animals that is fewer than the specified number,

the specified number in the relevant sub-paragraph is to be read as the total number of the described animals in the relevant group.

(8) Paragraph (3)(c) applies only where no calves have been removed from the herd in the immediately preceding 12 month period.

#### **Sampling of breeding bovine animals in accordance with compliance deadlines**

**10.**—(1) The keeper of a breeding bovine animal must, by each compliance deadline, take from the animal—

- (a) an ear tag sample of tissue taken in accordance with article 14, or
- (b) a sample of blood.

(2) Paragraph (1) does not apply in the case of a breeding bovine animal which has an individual BVD status of negative.

#### **Determining compliance deadlines**

**11.**—(1) The first compliance deadline falls on the expiry of the period of 30 consecutive days that the herd or animal has been kept in Scotland as a breeding herd or as a breeding bovine animal.

(2) Subject to paragraph (3), each subsequent compliance deadline falls on the final day of the period—

- (a) of 7 months (in the case of a dairy breeding herd), or
- (b) of 13 months (in all other cases),

after the results of the tests of the samples taken under article 9 or 10 are notified to the Scottish Ministers under article 22.

(3) Where a herd or animal is kept in Scotland as a breeding herd or a breeding bovine animal for a total of less than 30 days between two compliance deadlines—

- (a) a compliance deadline will not fall on the later of those compliance deadlines, and
- (b) the herd or animal will be treated as not having been kept in Scotland as a breeding herd or breeding bovine animal on that date.

#### **Additional sampling of not negative breeding herds**

**12.**—(1) This article applies to a breeding herd where—

- (a) the collective BVD status of the breeding herd is not negative in accordance with article 27(2), and
- (b) there has been no change to the collective BVD status of the herd for a period of 15 consecutive months.

(2) This article ceases to apply on the earlier of—

- (a) the date that every animal in the herd has an individual BVD status of negative, or
- (b) the date that an approved veterinary surgeon has notified the Scottish Ministers of a change of the collective BVD status of the breeding herd from not negative to negative under article 30.

(3) Where this article applies, the keeper must, within the period of 13 months starting on the date on which this article first applies, take from each bovine animal in the herd which has no individual BVD status—

- (a) an ear tag sample of tissue taken in accordance with article 14, or
- (b) a sample of blood.

### **Follow-on sampling of long term not negative herds**

**13.**—(1) This article applies to a breeding herd on the date that article 12 ceases to apply to the herd in accordance with article 12(2)(a).

(2) This article ceases to apply on the date falling 12 months after this article first applies.

(3) Where this article applies, the keeper must take—

- (a) an ear tag sample of tissue taken in accordance with article 14, or
- (b) a sample of blood,

from each calf born in the herd.

### **Ear tag samples of tissue**

**14.**—(1) Subject to paragraphs (3) and (4), an ear tag sample of tissue is taken in accordance with this article if it is extracted from the animal from an official ear tag or a management tag and the vessel used to collect the sample complies with the conditions in paragraph (2).

(2) The conditions in this paragraph are—

- (a) the vessel used to collect the sample must have a pre-printed identification number which is identical to the official ear tag number or the number on the management tag (as the case may be), and
- (b) the identification number—
  - (i) is notified along with the animal's ear tag number when the sample is submitted, and
  - (ii) in the case of a sample taken from a bovine animal in a breeding herd, is used only once within the herd.

(3) The keeper must not take (or arrange to have taken) an ear tag sample of tissue from any bovine animal from which a sample has previously been collected from a management tag for the purpose of submitting for sampling under this Order.

(4) Where a sample of tissue is taken from a calf under 20 days of age, the sample must be taken from an official ear tag unless—

- (a) a sample of tissue has previously been taken from the calf from an official ear tag in which case the sample must be taken from a management tag, or
- (b) the calf has died before the sample is taken in which case the sample may be taken from an official ear tag or a management tag.

(5) For the purposes of this article, “collected” includes any attempt to collect a sample.

### **Removal of management tags**

**15.**—(1) The keeper must remove a management tag which has been applied to a bovine animal where the information on the tag has become illegible.

(2) The keeper must not remove a management tag for any other purpose except—

- (a) with the approval of the Scottish Ministers, or
- (b) where the removal is necessary to safeguard the welfare of the animal.

### **Replacement of management tags**

**16.**—(1) This article applies where a management tag—

- (a) has been removed in accordance with article 15, or
- (b) has become otherwise detached from the animal.

(2) Where this article applies, the keeper must apply to the animal a tag that complies with the conditions provided in paragraph (3).

(3) The conditions of this paragraph are that the replacement tag—

- (a) must bear the same identification number as the management tag, and
- (b) must not be a management tag.

(4) The replacement of the tag under paragraph (2) must be within 28 days (or such longer period as the Scottish Ministers approve in the particular circumstances) of the keeper becoming aware—

- (a) that the tag is required to be removed under article 15(1) or (2)(b),
- (b) that the Scottish Ministers have approved the removal of the tag in accordance with article 15(2)(a), or
- (c) that the tag has been otherwise detached from the animal.

(5) This article applies in the same way to the removal and replacement of any replacement tag applied in accordance with this article.

#### **Sampling restricted to veterinary surgeons**

17.—(1) A keeper may not take (or arrange to have taken) a sample referred to in paragraph (2) unless the sample is taken by, or under the supervision of, a veterinary surgeon.

(2) The samples referred to in this paragraph are—

- (a) a sample of blood from any bovine animal, or
- (b) any sample from a bovine animal which has an individual BVD status of positive.

#### **Submission of samples for testing**

18.—(1) The keeper must, in accordance with paragraph (2), submit any sample taken under articles 9, 10, 12(3) or 13(3) to an approved laboratory with whose operator arrangements have been made for testing in relation to BVDV.

(2) A sample must be—

- (a) submitted in accordance with such requirements as to storage, handling and timing as are indicated to be necessary for the effective testing of the sample by the operator of the laboratory to which the sample is to be submitted or, as the case may be, the instructions accompanying the equipment used to take the sample, and
- (b) accompanied by a notice containing the following information—
  - (i) the keeper's name and address,
  - (ii) by reference to the relevant provision of articles 9, 10, 12(3) or 13(3), a description of the sample,
  - (iii) the date the sample was taken,
  - (iv) the CPH number for the holding on which the herd or animal was kept at the time the sample was taken,
  - (v) where applied, the official ear tag number from the official ear tag,
  - (vi) any other information reasonably requested by the operator of the laboratory.

#### **Sampling of qualifying calves**

19.—(1) The keeper of a qualifying calf must—

- (a) before the calf is 40 days old take—



- (i) an ear tag sample of tissue taken in accordance with article 14, or
    - (ii) a sample of blood, and
  - (b) in accordance with paragraph (2), submit the sample to an approved laboratory with whose operator arrangements have been made for testing in relation to BVDV.
- (2) A sample is submitted in accordance with this paragraph if—
- (a) it is submitted in accordance with such requirements as to storage, handling and timing as are indicated to be necessary for the effective testing of the sample by the operator of the laboratory to which the sample is to be submitted or, as the case may be, the instructions accompanying the equipment used to take the sample, and
  - (b) it is accompanied by a notice containing the following information—
    - (i) the keeper's name and address,
    - (ii) the date the sample was taken,
    - (iii) the CPH number for the holding on which the calf was kept at the time the sample was taken,
    - (iv) where applied, the official ear tag number from the official ear tag, and
    - (v) any other information reasonably requested by the operator of the laboratory.

#### **Testing for exposure to BVDV**

- 20.**—(1) This article applies where—
- (a) the keeper of a breeding herd has taken (or arranged to have taken) samples described in article 9(3)(b), (4) or (5),
  - (b) the keeper has arranged for the testing of the samples by an approved laboratory in accordance with article 18, and
  - (c) the samples have been submitted to an approved laboratory.
- (2) Where this article applies, the operator of the approved laboratory must—
- (a) test each of the samples for evidence of exposure to BVDV, and
  - (b) determine whether or not any of the samples show evidence of exposure to BVDV.

#### **Testing for the presence of BVDV**

- 21.**—(1) This article applies where—
- (a) a keeper of a breeding herd or breeding bovine animal has taken (or arranged to have taken) any sample for the purposes of this Order not described in the paragraphs referred to in article 20(1)(a),
  - (b) the keeper has arranged for the testing of a sample by an approved laboratory in accordance with article 18, and
  - (c) the sample has been submitted to the laboratory.
- (2) Where this article applies, the operator of the laboratory must—
- (a) test the sample for the presence of BVDV, and
  - (b) determine whether or not BVDV is present in the sample.

#### **Notification of test result**

- 22.**—(1) Following the completion of a test under article 20 the operator of an approved laboratory must by notice inform the keeper and the Scottish Ministers of each test result and—

- (a) where none of the samples show evidence of exposure to BVDV, that the herd has a collective BVD status of negative, or
  - (b) where any of the samples show evidence of exposure to BVDV, that the herd has a collective BVD status of not negative.
- (2) Following the completion of a test under article 21 the operator must by notice inform the keeper and the Scottish Ministers of the test result and—
- (a) where BVDV is not present in the sample, that the animal has an individual BVD status of negative, or
  - (b) where BVDV is present in the sample—
    - (i) that the animal has an individual BVD status of positive, and
    - (ii) that the breeding herd, where relevant, has a collective BVD status of not negative.
- (3) Notification to the keeper and the Scottish Ministers in accordance with paragraphs (1) or (2) must be within 5 working days of the date of the test and include details of—
- (a) the keeper's name and address,
  - (b) by reference to the relevant provision of articles 9, 10, 12 or 13 the description of the sample,
  - (c) the date the sample was taken,
  - (d) the date the sample was tested,
  - (e) the CPH number for the holding on which the herd or animal was kept at the time the sample was or the samples were taken,
  - (f) where applied, the official ear tag number from the official ear tag.

### **Testing of qualifying calves**

- 23.**—(1) This article applies where—
- (a) the keeper of a qualifying calf has in accordance with article 19 arranged for the testing of a sample by an approved laboratory, and
  - (b) the sample has been submitted to the laboratory.
- (2) The operator of the laboratory must—
- (a) test the sample for the presence of BVDV,
  - (b) determine whether or not BVDV is present in the sample.
- (3) Following the completion of a test under sub-paragraph (2)(a), the operator must by notice inform the keeper and the Scottish Ministers of the result of the test and—
- (a) where BVDV is present in the sample, that the qualifying calf has an individual BVD status of positive, or
  - (b) where BVDV is not present in the sample, that the qualifying calf has an individual BVD status of negative.
- (4) A notice to the Scottish Ministers in accordance with paragraph (3) must be within 5 working days of testing the sample under paragraph (2)(a), and include details of—
- (a) the keeper's name and address,
  - (b) the date the sample was taken,
  - (c) the date the sample was tested, and
  - (d) the CPH number for the holding on which the calf was kept at the time the sample was taken, and

- (e) where applied, the official ear tag number from the official ear tag.

### **Record keeping and disclosure**

**24.**—(1) The operator of an approved laboratory must maintain a record of any test carried out under this Part for 3 years from the date of such a test.

(2) The operator of the approved laboratory must, if requested by notice by the Scottish Ministers to do so, provide the Scottish Ministers with a copy of such records.

### **Reporting of tests for presence of BVDV other than under this Order**

**25.**—(1) This article applies where, other than for the purposes of this Order, a laboratory (including an approved laboratory) tests for evidence of exposure to BVDV or for the presence of BVDV in a sample (of any description) taken from a bovine animal.

(2) The operator of the laboratory must by notice inform the Scottish Ministers and the keeper, within 5 working days of testing the sample, of—

- (a) a description of the sample,
- (b) the date the sample was tested,
- (c) the result of the test, clearly indicating—
  - (i) whether or not the sample shows evidence of exposure to BVDV, or,
  - (ii) whether or not BVDV is present in the sample, and
- (d) in so far as known by the operator—
  - (i) the official ear tag number,
  - (ii) the keeper's name and address,
  - (iii) the CPH number for the holding on which the animal was kept at the time the sample was taken, and
  - (iv) the date the sample was taken.

## **PART 3**

### **BVD Control**

#### **Individual BVD status**

**26.**—(1) For the purposes of this Order, a bovine animal referred to in paragraph (2), either—

- (a) has an individual BVD status of positive,
  - (b) has an individual BVD status of negative, or
  - (c) has no individual BVD status.
- (2) The bovine animals referred to in this paragraph are—
- (a) each breeding bovine animal,
  - (b) each bovine animal in a breeding herd, and
  - (c) each qualifying calf.
- (3) Subject to article 28, a bovine animal has an individual BVD status of positive if—

- (a) the operator of an approved laboratory has by notice informed the Scottish Ministers that the animal has an individual BVD status of positive in accordance with article 22(2)(b)(i) or, in the case of a qualifying calf, article 23(3)(a), or
  - (b) except in a case where paragraph (4)(a) applies, it is the calf of a female animal which has an individual BVD status of positive.
- (4) A bovine animal has an individual BVD status of negative if—
- (a) the operator of an approved laboratory has by notice informed the Scottish Ministers that the animal has an individual BVD status of negative in accordance with article 22(2)(a) or, in the case of a qualifying calf, article 23(3)(b), or
  - (b) the animal is the dam of a calf which has an individual BVD status of negative.
- (5) The bovine animal has no individual BVD status in all other cases.

### **Collective BVD status of breeding herds**

- 27.—(1) For the purposes of this Order, a breeding herd either—
- (a) has a collective BVD status of not negative, or
  - (b) has a collective BVD status of negative.
- (2) Subject to article 29, a breeding herd has collective BVD status of not negative—
- (a) at any time that paragraph (4) applies to the herd, or
  - (b) where the operator of an approved laboratory has by notice under article 22(1)(b) or 22(2)(b)(ii) informed the Scottish Ministers that the herd has a collective BVD status of not negative.
- (3) A breeding herd has a collective BVD status of negative—
- (a) at any time paragraph (4) does not apply to the herd, and
  - (b) where the operator of an approved laboratory has by notice informed the Scottish Ministers that the herd has a collective BVD status of negative under article 22(1)(a).
- (4) This article applies where—
- (a) the herd contains a bovine animal which has an individual BVD status of positive,
  - (b) the herd is kept on the same holding as any bovine animal which is a high risk animal and has no individual BVD status, or
  - (c) the keeper of the herd has not complied with any obligations applicable to the herd in article 9.
- (5) In this article, any reference to a “notice” means the most recent notice submitted by the operator of an approved laboratory to the Scottish Ministers under article 22 and supersedes any previous notice.

### **Change of individual BVD status by an approved veterinary surgeon**

28. An approved veterinary surgeon may change the individual BVD status of a bovine animal from positive to negative where that surgeon reasonably considers that further action or investigation has been carried out which confirms that BVDV is not or is no longer present in that animal.

### **Change of collective BVD status by an approved veterinary surgeon**

29. An approved veterinary surgeon may change the collective BVD status of a breeding herd from not negative to negative where that surgeon reasonably considers that—

- (a) further action or investigation has been carried out to confirm the presence of BVDV in any animal forming part of the herd, and
- (b) as a result of such action or investigation, either the presence of BVDV has not been confirmed in any such animal or, in the case where the presence of BVDV has been confirmed in any such animal, that animal has been removed from the herd and, prior to its removal, the animal was isolated or other appropriate steps were taken so as to minimise the risk of spread of BVDV to any other animal in the herd.

#### **Notification of a change of status by an approved veterinary surgeon**

**30.**—(1) The approved veterinary surgeon must by notice inform the keeper and the Scottish Ministers of any change of BVD status under articles 28 or 29.

(2) A notice under paragraph (1) must be given within 5 days of the approved veterinary surgeon's determination of the change of BVD status and must include the official ear tag number of the animal or animals in respect of which the further action or investigation or, as the case may be, further testing, has been carried out.

#### **Restrictions on the movement of animals where sampling obligations are missed**

**31.**—(1) This article applies to the keeper of a breeding herd or breeding bovine animal if, by the date of the most recent compliance deadline (set in accordance with article 11), the keeper has failed to comply with any obligations, so far as applicable to that keeper, in article 9, 10, 12 or 13 (in this article “the applicable obligations”).

(2) The keeper must not, during the relevant period, move (or arrange to move) any animal forming part of the breeding herd or the breeding bovine animal from the holding on which it is kept unless—

- (a) the animal is being moved to slaughter,
  - (b) the movement is under a licence granted by a veterinary inspector or the Scottish Ministers, or
  - (c) an approved veterinary surgeon reasonably considers that further action or investigation has been carried out which confirms that BVDV is not or is no longer present in the animal and has by notice under article 30 informed the keeper and the Scottish Ministers of that fact.
- (3) In paragraph (2), “the relevant period” is the period—
- (a) beginning with the later of—
    - (i) the coming into force day, or
    - (ii) the date of the most recent compliance deadline, and
  - (b) ending on the date on which—
    - (i) the keeper has complied with all of the applicable obligations, and
    - (ii) has received a notification under article 22 in respect of the samples tested in accordance with those obligations.

#### **Restrictions on the movement of bovine animals with an individual BVD status of positive**

**32.**—(1) Subject to paragraph (2), a keeper must not move a bovine animal off of a holding if the animal has an individual BVD status of positive.

- (2) Paragraph (1) does not apply if—
- (a) the animal is being moved to slaughter, or

- (b) the movement is under a licence granted by a veterinary inspector or the Scottish Ministers.

**Restrictions on the movement of animals off a holding with a not negative herd or a BVD positive animal**

- 33.**—(1) Subject to paragraph (2), the keeper must not move a bovine animal off of a holding if—
- (a) the animal is part of a herd which has a collective BVD status of not negative, or
  - (b) there is an animal with an individual BVD status of positive present on the holding.
- (2) Paragraph (1) does not apply if—
- (a) the animal has an individual BVD status of negative,
  - (b) the animal is being moved to slaughter, or
  - (c) the movement is under a licence granted by a veterinary inspector or the Scottish Ministers.

**Restrictions on the movement of bovine animals onto a holding with a not negative herd**

- 34.**—(1) Subject to paragraph (2), the keeper must not move (or arrange to move) any bovine animal onto a holding when there is a bovine animal with an individual BVD status of positive present on that holding.
- (2) Paragraph (1) shall not apply where—
- (a) the keeper does not know (and could not reasonably be expected to know) that there is bovine animal with an individual BVD status of positive on the holding, or
  - (b) the movement is under a licence granted by a veterinary inspector or the Scottish Ministers.

**Restriction on the movement of high risk animals**

- 35.**—(1) This article applies to the keeper of a breeding herd which contains any bovine animal which—
- (a) is a high risk animal, and
  - (b) has an individual BVD status of positive or no individual BVD status.
- (2) The keeper must not move (or arrange to move) the animal off the holding unless—
- (a) the animal is being moved to slaughter,
  - (b) the movement is under a licence granted by a veterinary inspector or the Scottish Ministers, or
  - (c) an approved veterinary surgeon reasonably considers that further action or investigation has been carried out which confirms that BVDV is not present in the animal and has by notice informed the keeper and the Scottish Ministers of that fact.

**Notification of BVD on a holding**

- 36.**—(1) This article applies where—
- (a) there is a bovine animal with an individual BVD status of positive present on a holding, and
  - (b) there is a bovine animal belonging to another keeper (in this article “the other keeper”) kept on the holding.
- (2) The keeper must give notice to the other keeper that there is a bovine animal with an individual BVD status of positive on the holding.
- (3) A notice under paragraph (2) must be given within 7 days of the later of—

(a) the date that the keeper knows (or ought reasonably to know) that the animal has an individual BVD status of positive, or

(b) the other keeper moving a bovine animal onto the holding.

(4) Where the individual BVD status of the bovine animal is changed, the keeper must, within 7 days of receiving notice from an approved laboratory of the change of individual BVD status (or otherwise becoming aware of the change), give the other keeper notice of the change.

#### **Notification of BVD status prior to movement**

**37.**—(1) This article applies where a keeper intends to move a bovine animal in a breeding herd or a breeding bovine animal off the holding on which it is kept (except where the animal is being moved to slaughter).

(2) The keeper must, before moving the animal off of the holding, give notice to the persons mentioned in paragraph (3) of—

(a) the individual BVD status of each bovine animal, and

(b) in the case of a breeding herd, the collective BVD status of the herd.

(3) The persons mentioned in this paragraph are—

(a) the operator of a market to which the animal is to be moved,

(b) the prospective keeper of the animal,

(c) any person with whom the animal is to be temporarily placed.

(4) This article does not apply if the relevant person mentioned in paragraph (3) is aware of the individual BVD status of—

(a) the animal being moved, and

(b) every other bovine animal that is being moved with the animal.

#### **Meaning of “moved to slaughter”**

**38.**—(1) In this Part, where any bovine animal is “moved to slaughter” this means that the animal is being moved under the conditions specified in paragraph (2).

(2) The conditions specified in this paragraph are that the animal is being moved—

(a) directly to slaughter, and

(b) under arrangements which do not give rise to any appreciable risk of infection with BVDV to any other bovine animal (except a bovine animal which is also being moved to slaughter).

## **PART 4**

### **Final provisions**

#### **Maintenance, publication and provision of information**

**39.**—(1) The Scottish Ministers must maintain a record of information notified or provided in accordance with articles 3(4)(b), 6(6), 7(2), 8(2), 22(1), 22(2), 23(3), 25(2), and 30.

(2) The Scottish Ministers must provide information so far as held by them to a relevant person about—

(a) the collective BVD status of a breeding herd or the individual BVD status of a bovine animal, and

- (b) the result of a laboratory test for the presence of, or exposure to, BVDV in relation to a sample taken from a bovine animal.
- (3) In paragraph (2), “a relevant person” means—
  - (a) the keeper of the herd or bovine animal, or
  - (b) the operator of a market to which the herd or animal is moved or is to be moved.
- (4) Where they consider it appropriate to do so, the Scottish Ministers may—
  - (a) provide information held by them, as described in paragraph (2), to any other person who requests that information,
  - (b) publish such information (or any part of such information) as they deem appropriate.

### **Enforcement**

- 40.**—(1) Subject to paragraph (2), this Order is enforced by the local authority.
- (2) The Scottish Ministers may, in relation to such particular cases or such cases of a particular description, as they may specify, enforce this Order in place of the local authority.

### **Powers of entry**

- 41.**—(1) An inspector may, on producing a duly authenticated authorisation if requested, enter any premises (except premises used wholly as a private dwelling house) at any reasonable hour for the purpose of enforcing this Order.
- (2) A justice of the peace, summary sheriff or sheriff may, by signed warrant, permit an inspector to enter any premises as mentioned in paragraph (1), if necessary by reasonable force, if satisfied, on sworn information in writing, that—
  - (a) there are reasonable grounds to enter those premises for the purpose of enforcing this Order, and
  - (b) any of the conditions in paragraph (3) are met.
- (3) The conditions referred to in paragraph (2)(b) are—
  - (a) entry to the premises has been, or is likely to be, refused, and notice of intention to apply for a warrant has been given to the occupier,
  - (b) asking for admission to the premises, or giving such notice, would defeat the object of entry,
  - (c) entry is required urgently, or
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (4) A warrant may be granted for a period of up to 3 months.

### **Powers of inspectors**

- 42.**—(1) An inspector entering any premises may for the purpose of enforcing this Order—
  - (a) inspect any animal or article there,
  - (b) take samples,
  - (c) carry out any inquiries, examinations or tests,
  - (d) have access to, inspect and copy any relevant documents or records (in whatever form they are held), and remove them to enable them to be copied,
  - (e) inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with the records.



(2) Where an inspector has entered premises and it is not reasonably practicable to determine whether documents or records on those premises are relevant, the inspector may seize them to ascertain whether or not they are relevant.

(3) The inspector may—

- (a) take any necessary equipment or vehicle on to the premises,
- (b) be accompanied by such other persons as the inspector considers necessary.

### **Offences by bodies corporate**

**43.**—(1) Where—

- (a) an offence against the Act in relation to this Order is committed by a body corporate or a Scottish partnership or other unincorporated association,
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a Scottish partnership, a partner,
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### **Revocation and transitional provisions**

**44.**—(1) The 2013 Order is revoked.

(2) The schedule contains transitional provisions.

St Andrew’s House, Edinburgh  
2nd October 2019

*MAIRI GOUGEON*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

Article 44(2)

### TRANSITIONAL PROVISIONS

#### **Testing and sampling requirements – compliance deadlines**

1.—(1) This paragraph applies where, immediately before the coming into force day, the keeper of a breeding herd or a breeding bovine animal is subject to a compliance deadline under article 10 of the 2013 Order.

(2) Sub-paragraph (4) applies where the keeper is subject to a first compliance deadline under the 2013 Order.

(3) Sub-paragraph (5) applies where the keeper is subject to a second or subsequent compliance deadline under the 2013 Order.

(4) Article 11 is to be read as if for paragraph (1) there is substituted—

“(1) The first compliance deadline falls at the expiry of the period of 30 days after the coming into force day.”.

(5) Article 11 is to be read as if for paragraph (1) there is substituted—

“(1) The first compliance deadline falls on the final day of the period of—

(a) 7 months, in the case of a dairy breeding herd, or

(b) 13 months, in all other cases,

after the results of the test under article 17 of the 2013 Order was notified to the Scottish Ministers.”.

#### **Qualifying calves**

2.—(1) This paragraph applies where—

(a) a qualifying calf is less than 40 days old on the coming into force day, and

(b) the keeper of the calf has not taken a sample in accordance with article 15(1)(a) of the 2013 Order.

(2) The period for taking a sample from the calf provided for by article 19(1)(a) runs from the date that the calf is born.

#### **Approvals of laboratories**

3. Any approval of a laboratory granted by the Scottish Ministers under article 6 of the 2013 Order, which is in force immediately before the coming into force day, continues to have effect for the purposes of this Order as if it had been granted under article 7.

#### **Approvals of veterinary surgeons**

4. Any approval of a veterinary surgeon granted by the Scottish Ministers under article 5 of the 2013 Order, which is in force immediately before the coming into force day, continues to have effect for the purposes of this Order as if it had been granted under article 6.

#### **Operators of approved laboratories**

5.—(1) This paragraph applies where—

(a) before the coming into force day a sample or samples have been taken in accordance with articles 11 or 15 of the 2013 Order and submitted for testing to an approved laboratory, and

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- (b) as at the coming into force day the operator of the laboratory has not fulfilled the duties imposed by articles 17 or 18 of the 2013 Order in relation to the sample or samples.
- (2) Where this paragraph applies, the operator of the approved laboratory must comply with—
  - (a) article 20, in relation to a sample or samples taken from a breeding herd or a breeding bovine animal in accordance with article 11(2)(a), (b) or (c) of the 2013 Order, and,
  - (b) article 21, in relation to a sample taken from—
    - (i) a breeding herd under 11(2)(d) or (e) of the 2013 Order,
    - (ii) a breeding bovine animal under 11(6) of the 2013 Order or
    - (iii) a qualifying calf under article 15 of the 2013 Order.

**Approved laboratories – record keeping and disclosure**

6. Article 24 applies to any operator of an approved laboratory (within the meaning of the 2013 Order) in relation to a record of any test carried out under that Order before the coming into force day.

**Collective BVD status on the coming into force day**

- 7. A breeding herd which, immediately before the coming into force day—
  - (a) had a BVD status of negative for the purposes of the 2013 Order has a collective BVD status of negative, and
  - (b) had a BVD status of not negative for the purposes of the 2013 Order has a collective BVD status of not negative.

**Individual BVD status on the coming into force day**

8. A bovine animal which, immediately before the coming into force day, is of the description specified in an entry in column one has the individual BVD status provided in the corresponding entry in column 2—

| <i>Column 1</i>  | <i>Column 2</i>                                  |
|--|--|
| <i>BVD status under the 2013 Order</i>   | <i>BVD status for the purposes of this Order</i> |
| A breeding bovine animal with a BVD status of negative   | Individual BVD status of negative                |
| A breeding bovine animal with a BVD status of not negative for the presence of BVDV.   | Individual BVD status of positive                |
| A bovine animal which— <ul style="list-style-type: none"> <li>(a) has never been tested for the presence of BVDV,</li> <li>(b) is not the offspring of an animal for which the most recent test was positive for the presence of BVDV, and</li> <li>(c) forms part of a breeding herd that has a collective BVD status of negative (ascertained in accordance with paragraph 7)</li> </ul> | Individual BVD status of negative                |
| A bovine animal which— <ul style="list-style-type: none"> <li>(a) has never been tested for the presence of BVDV,</li> </ul>   | No individual BVD status                         |

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| <i>Column 1</i>   | <i>Column 2</i>                                  |
|---|--|
| <i>BVD status under the 2013 Order</i>  | <i>BVD status for the purposes of this Order</i> |
| (b) is not the offspring of an animal for which the most recent test is positive for the presence of BVDV, and<br>(c) forms part of a breeding herd that has a collective BVD status of not negative (ascertained in accordance with paragraph 7) |  |
| A bovine animal which—<br>(a) forms part of a breeding herd, and<br>(b) has been tested one or more times for the presence of BVDV and the finding of the most recent test is negative for the presence of BVDV                                   | Individual BVD status of negative                |
| A bovine animal which—<br>(a) forms part of a breeding herd, and<br>(b) has been tested one or more times for the presence of BVDV and the finding of the most recent test is positive for the presence of BVDV                                   | Individual BVD status of positive                |
| A qualifying calf which has not been tested for the presence of BVDV  | No individual BVD status                         |

**Change of BVD finding by approved veterinary surgeon**

- 9.—(1) Where before the coming into force day—
- (a) an approved veterinary surgeon (within the meaning of the 2013 Order) has, in accordance with article 21(6) of the 2013 Order, considered a change in BVD finding to “negative” (within the meaning of that Order) in relation to a breeding herd or a breeding bovine animal, but
  - (b) no notice of a change to “negative” has been given in relation to the herd or animal in accordance with article 21(7) of the 2013 Order.
- (2) Where this paragraph applies, the veterinary surgeon may—
- (a) in the case of a breeding herd, give notice under article 30 that the herd has a collective BVD status of negative, or
  - (b) in the case of a breeding bovine animal, give notice under article 30 that the animal has an individual BVD status of negative.

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## EXPLANATORY NOTE

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

This Order provides for the control and eradication of Bovine Viral Diarrhoea (“BVD”) in Scotland. The Order revokes and replaces the existing BVD scheme under the Bovine Viral Diarrhoea (Scotland) Order 2013 (S.S.I. 2013/3), as amended (“the 2013 Order”).

Part 1 of this Order contains general provisions. Article 4 extends the definition of disease under section 88(1) of the Animal Health Act 1981 (c.22) (“the Act”) to BVD.

Part 2 provides the conditions for, and requirements of, sampling and testing of bovine animals for BVD. The Scottish Ministers may approve veterinary surgeons (article 6) and laboratories (articles 7 and 8) to carry out functions under the Order. The keeper of a breeding herd or a breeding bovine animal must annually sample the herd or animal for BVD in accordance with annual compliance deadlines (articles 9, 10, and 11). The keeper of a breeding herd which has collective BVD status of not negative for a period of 15 months is subject to additional testing requirements (articles 12 and 13). The keeper of a qualifying calf (which is a calf born into a herd, or to a bovine animal, not intended for breeding) must arrange for a sample from the calf to be tested for BVD before the calf is 40 days old (article 19).

Article 14 provides conditions applicable where a keeper takes an ear tag sample of tissue from an animal. Articles 15 and 16 apply where the keeper applies a management tag to an animal. The types of samples listed in article 17 may only be taken by, or under the supervision of, an approved veterinary surgeon. Samples must be submitted for testing under the conditions of article 18.

Articles 20 and 21 specify when approved laboratories are to test samples for the presence of BVD and when they are to test samples for exposure to BVD. Approved laboratories must notify test results to the Scottish Ministers and the keeper under article 22. They must also keep records as provided in article 24. Article 23 provides for the testing of samples from qualifying calves. Article 25 provides for testing of samples for BVD which were collected otherwise than under this Order (for example, by a veterinary surgeon in the course of a regular health check).

Part 3 provides for BVD control. The individual BVD status of each breeding bovine animal, each animal in a breeding herd and each qualifying calf is ascertained in accordance with article 26. The collective BVD status of breeding herds is ascertained in accordance with article 27. A veterinary inspector may change the individual BVD status of a bovine animal (article 28) or the collective status of a breeding herd (article 29) and must notify such a change to the keeper and the Scottish Ministers (article 30).

Articles 31 to 35 provide for movement restrictions of animals. Restrictions on the movement of animals off a holding applies to (i) a keeper who is in breach of the obligations set out in articles 9, 10, 12 or 13 (article 31), (ii) a keeper of a bovine animal with an individual BVD status of positive (article 32), (iii) the keeper of a bovine animal which is part of a herd with a collective BVD status of not negative or kept on a holding that also holds an animal with an individual BVD status of positive (article 33), and (iv) the keeper of a high risk animal unless that animal has an individual BVD status of negative (article 35). Each of these movement restrictions provides an exception where the animal is being moved to slaughter. Articles 31 and 35 provide a further exception where an approved veterinary surgeon has confirmed to the Scottish Ministers that sufficient further action has been undertaken which confirms that BVD is not present in the animal. A restriction on the movement of animals onto a holding applies to any keeper where an animal with an individual BVD status of positive is kept on the holding (article 34). Articles 36 and 37 require keepers to notify others of the individual BVD status of their animals.

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Part 4 contains final provisions. Article 39 provides for the Scottish Ministers to keep and disclose information. Articles 40, 41 and 42 provides for enforcement, powers of entry and powers of inspectors. Article 43 provides for offences by bodies corporate against the Act in relation to the Order. Article 44 revokes the 2013 Order subject to transitional provisions in the schedule.

The schedule contains transitional provisions.

The principal provisions of this Order which are different to the 2013 Order are as follows:

The date of a subsequent compliance deadline is calculated from the date that the test results of samples are notified to the keeper and the Scottish Ministers (article 11). Previously, it was calculated from the date that the samples were taken.

There are additional sampling and testing requirements in relation to herds which have a collective BVD status of not negative for a period of 15 months or more (articles 12 and 13).

There are additional controls on the application of ear tags (article 14).

There are additional controls about the taking of samples, in particular, samples which can only be taken by a veterinary surgeon.

There are new statuses which are applicable to breeding herds (collective BVD status) and bovine animals (individual BVD status).

There is a new restriction on the movement of animals onto a holding which contains a bovine animal with an individual BVD status of positive (article 34).

There is a new restriction of the movement of high risk animals which cannot be moved off a holding until they have an individual BVD status of negative (article 35).