

Scottish Statutory Instruments

2007 No. 506

BEE DISEASES

The Bee Diseases and Pests Control (Scotland) Order 2007

Made

8th November 2007

Laid before the Scottish Parliament

9th November 2007

Coming into force

1st December 2007

The Scottish Ministers make the following Order in exercise of the powers conferred by section 1 of the Bees Act 1980 and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) This Order may be cited as the Bee Diseases and Pests Control (Scotland) Order 2007 and comes into force on 1st December 2007.

(2) This Order extends to Scotland only.

Interpretation

2.—(1) In this Order—

“the Act” means the Bees Act 1980;

“appliances” means containers or any other equipment used in connection with keeping or transporting bees;

“bee pest” means any beetle, mite or similar organism in any stage of its life cycle that may be injurious to bees;

“field test kit” means a portable test kit that can confirm the presence of a disease;

“hive” means any receptacle that contains or has at any time contained a colony of bees;

“notifiable disease” means American foul brood or European foul brood;

“notifiable pest” means the small hive beetle (*Aethina tumida*) or any species of the Tropilaelaps mite;

“premises” includes any land or building; and

“vehicle” includes any vessel, boat, hovercraft or aircraft.

(2) Any notice or licence issued under this Order—

(a) must be in writing;

(b) may be subject to conditions; and

(c) may be suspended, amended or revoked by a notice at any time.

(3) Paragraph (2)(b) does not apply to a notice issued under article 10.

(4) A licence issued under this Order may be general or specific.

(5) The Scottish Ministers must bring a general licence issued under this Order to the attention of persons likely to be affected by it by publishing it in such manner as they consider necessary.

(6) Any reference in this Order to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000, which has been recorded and is consequently capable of being reproduced.

Notification of suspicion of a disease or pest

3.—(1) Any owner or person in charge of a hive who knows or suspects that—

(a) any bees from the hive are infected with a notifiable disease; or

(b) a notifiable pest is present in the hive; or

(c) a notifiable pest is present on or in the same premises or vehicle as the hive,

must immediately notify that fact to the Scottish Ministers.

(2) Any other person who—

(a) has possession or charge of; or

(b) discovers in the course of that person’s occupation,

a bee pest that that person knows or suspects is a notifiable pest must immediately notify that fact to the Scottish Ministers.

(3) Paragraph (2) does not apply to any person who has possession or charge of a bee pest, or who discovers a bee pest, in the course of that person's occupation at a laboratory to which samples have been sent for testing for the purposes of this Order.

Prohibition on removal

4.—(1) Where notification has been given under article 3(1), the owner or person in charge of the hive must not remove, or permit to be removed, from the premises or vehicle on or in which the hive is situated—

(a) any hive, bees, combs, bee products, bee pests, hive debris or appliances; or

(b) any other thing liable to spread the notifiable disease or the notifiable pest,

except for the purpose of submitting a sample under paragraph (2).

(2) The owner or person in charge of a hive may submit to the Scottish Ministers for laboratory tests samples of—

(a) any parts of the hive, bees, combs, bee products or hive debris, to establish whether they are infected with a notifiable disease or a notifiable pest;

(b) any bee pest to establish if it is a notifiable pest; or

(c) soil from the area surrounding the hive to establish if it is infected with a notifiable pest.

(3) If a notice is served under article 6(1) or (2), the prohibition on removal in that notice applies in place of the prohibition on removal in paragraph (1).

(4) In the absence of a notice served under article 6(1) or (2), the prohibition on removal in paragraph (1) applies until—

(a) an authorised person has served a notice confirming that that authorised person is satisfied that the bees are not infected with the notifiable disease or that the notifiable pest is not present in the hive or on or in the same premises or vehicle as the hive; or

(b) the owner or person in charge of the hive has been informed that the test results on samples submitted to the Scottish Ministers under paragraph (2) confirm that the material sampled is not infected by a notifiable disease or a notifiable pest or is not a notifiable pest.

(5) Any person who gives notification under article 3(2) must not remove, or permit the removal of, any bee pest or any other thing by which the notifiable pest is liable to be spread from the premises or vehicle on or in which it is situated, except for the purpose of submitting a sample under paragraph (6).

(6) Any person who gives notification under article 3(2) may submit to the Scottish Ministers for laboratory tests samples of—

(a) any bee pest to establish if it is a notifiable pest; or

(b) any other thing, including soil, to establish if it is infected with a notifiable pest.

(7) If a notice is served under article 6(1) or (2), the prohibition on removal in that notice applies in place of the prohibition on removal in paragraph (5).

(8) In the absence of a notice served under article 6(1) or (2), the prohibition on removal in paragraph (5) applies until—

(a) an authorised person has served a notice confirming that that authorised person is satisfied that the notifiable pest is not present; or

(b) the person who gave notification has been informed that the test results on samples submitted to the Scottish Ministers under paragraph (6) confirm that the material sampled is not a notifiable pest or is not infected with a notifiable pest.

(9) Any sample submitted under paragraph (2) or (6) must be packed in a way which prevents as far as possible the risk of the spread of infection during transit.

Marking of hives and appliances

5.—(1) An authorised person may mark any hive or appliance for identification purposes.

(2) No person shall without reasonable excuse interfere with any identifying mark made under paragraph (1) or permit such a mark to be interfered with.

Notices prohibiting removal

6.—(1) Where an authorised person has reasonable grounds to suspect that a notifiable disease or a notifiable pest is present on or in any premises or vehicle, that authorised person shall serve on the owner or person in charge of—

(a) any hive, bees, combs, bee products, bee pests, hive debris or appliances situated on or in the premises or vehicle; or

(b) any other thing situated on or in the premises or vehicle that is liable to spread the notifiable disease or the notifiable pest,

a notice prohibiting their removal and the removal of any bee pests contained in or affecting them from the premises or vehicle, except under the authority of a licence issued by the Scottish Ministers.

(2) Where an authorised person is obstructed in the exercise of the power of entry under section 2 of the Act, that authorised person may serve on the person appearing to that

authorised person to be the owner or occupier of the premises or the owner or person in charge of the vehicle a notice prohibiting the removal from the premises or vehicle of—

(a) any hive, bees, combs, bee products, bee pests, hive debris or appliances; or

(b) any other thing liable to spread a notifiable disease or a notifiable pest.

(3) An authorised person shall serve a notice revoking a notice served under paragraph (2) if the power of entry under section 2 of the Act is subsequently exercised without obstruction.

Disease control measures

7.—(1) The presence of a notifiable disease may be confirmed by an authorised person on the basis of a laboratory test result or a field test kit result.

(2) Where the presence of American foul brood has been confirmed in a hive, an authorised person—

(a) shall serve on the owner or person in charge of the hive a notice requiring the destruction in accordance with the notice of any bees, combs or bee products from the hive;

(b) may serve on the owner or person in charge of the hive a notice requiring the destruction or treatment in accordance with the notice of the hive, debris from the hive and any appliances or other things liable to spread the disease;

(c) may serve on any other person who is the owner or person in charge of any appliances or other things liable to spread the disease a notice requiring their destruction or treatment in accordance with the notice.

(3) Where the presence of European foul brood has been confirmed in a hive, an authorised person—

(a) shall serve on the owner or person in charge of the hive a notice requiring the destruction or treatment in accordance with the notice of any bees, combs or bee products from the hive;

(b) may serve on the owner or person in charge of the hive a notice requiring the destruction or treatment in accordance with the notice of the hive, debris from the hive and any appliances or other things liable to spread the disease;

(c) may serve on any other person who is the owner or person in charge of any appliances or other things liable to spread the disease a notice requiring their destruction or treatment in accordance with the notice.

(4) If, once any treatment required by a notice served under this article has been carried out, an authorised person confirms on the basis of a laboratory test result or a field test kit result that the notifiable disease remains, an authorised person may serve further notices under this article.

Pest control measures

8.—(1) The presence of a notifiable pest may be confirmed by an authorised person on the basis of a laboratory test result or a physical examination.

(2) Where the presence of a notifiable pest has been confirmed in a hive or on or in the same premises or vehicle as a hive, an authorised person—

(a) shall serve on the owner or person in charge of the hive a notice requiring the destruction or treatment in accordance with the notice of the hive, any bees, combs, bee products, bee pests or debris from the hive, and any appliances or other things by which the notifiable pest is liable to be spread;

(b) may serve on the owner or occupier of the premises on which the hive is situated a notice requiring the treatment in accordance with the notice of the soil surrounding the hive;

(c) may serve on any other person who is the owner or person in charge of any appliances or other things by which the notifiable pest is liable to be spread a notice requiring their destruction or treatment in accordance with the notice.

(3) Where the presence of a notifiable pest is confirmed on or in any other premises or vehicle, an authorised person may serve a notice requiring the destruction or treatment in accordance with the notice of any bee pests and of any other things by which the notifiable pest is liable to be spread on—

(a) any person who has possession or charge of a bee pest;

(b) the owner or occupier of the premises, or the owner or person in charge of the vehicle.

Notices served under article 7 or 8

9. A notice served under article 7 or 8 shall specify—

(a) the method of destruction or treatment, which may, in the case of treatment, include the use of a particular substance or any other action intended to control the disease or pest; and

(b) the date by which destruction or treatment must take place, or the period during which treatment must take place,

and may specify that the destruction or treatment is to be carried out by an authorised person, in the presence of an authorised person or under the supervision of an authorised person.

Declaration of infected area

10.—(1) The Scottish Ministers may by notice declare an area in which they are satisfied that a notifiable pest is present to be an infected area.

(2) The notice may provide that all or any of the provisions specified in the Schedule to this Order apply in all or part of the infected area, as the Scottish Ministers consider necessary to prevent the spread of the notifiable pest.

(3) The Scottish Ministers must bring any notice issued under paragraph (1) and any notice amending or revoking such a notice to the attention of persons likely to be affected by it by publishing it in such manner as they consider necessary.

Imported bees

11.—(1) This article applies where bees are imported into Scotland in accordance with Articles 1(1) and 2 of Commission Decision 2003/881/EC concerning the animal health and certification conditions for imports of bees (*Apis mellifera* and *Bombus* spp.) from certain third countries and repealing Decision 2000/462/EC.

(2) When bees imported in accordance with said Article 1(1) arrive at the apiary of destination (as indicated on the health certificate accompanying the bees), the consignee (as indicated on the health certificate accompanying the bees) must—

(a) transfer the queen bees to new cages before they are introduced to any local colonies of bees; and

(b) send the cages in which the bees were transported from the country of origin, the attendant bees and other material that accompanied the queen bees from their country of origin to the Scottish Ministers for laboratory examination for the presence of a notifiable pest.

(3) Following the laboratory examination referred to in paragraph (2)(b), the Scottish Ministers shall arrange for the cages, attendant bees and other material referred to in that paragraph to be destroyed as soon as reasonably practicable.

(4) When bees of the species *Bombus* spp. are imported in accordance with said Article 2, the owner or person in charge of the bees must ensure that the container in which they are transported from the country of origin and all material that accompanies the bees from the country of origin are destroyed either during or immediately at the end of the lifespan of the imported colony.

Provision of facilities and other obligations

12. The owner or person in charge of any hive, bees, combs, bee products or appliances, the owner or occupier of any premises and the owner or person in charge of any vehicle on or in which there is suspected to be a notifiable disease or a notifiable pest must—

(a) make available such facilities; and

(b) give such information (including information concerning the number, location and movement of hives, bees, combs, bee products or appliances that are or have been in that person's possession or charge and information concerning the location of any bee pests in or on the premises or vehicle),

to an authorised person as that authorised person shall reasonably require for the purposes of this Order.

Prohibition on treatment

13. No person may treat bees with a substance which may have the effect of disguising the presence of, or rendering difficult the detection of, a notifiable disease unless that person is carrying out the treatment of bees—

- (a) in accordance with a notice served under article 7; or
- (b) under the authority of a licence issued by the Scottish Ministers.

Compliance with notices

14. Any person who has been served with a notice under this Order or who is subject to a notice declaring an area to be an infected area issued under article 10 shall comply with the provisions of that notice.

Action in default

15. If any person fails to take any action required to be taken under this Order or under a notice served under this Order, an authorised person may, without prejudice to any proceedings arising out of such default, take such action or cause such action to be taken and the amount of any expenses reasonably incurred by the authorised person in doing so is recoverable by the Scottish Ministers from the person in default.

Service of notices

16.—(1) Any notice served under this Order is properly served on any person if it is—

- (a) delivered to that person personally;
- (b) left at or posted to that person's home or place of business last known to the Scottish Ministers; or
- (c) where the conditions in paragraph (2) are fulfilled, sent to that person by electronic communication.

(2) A notice served on any person by electronic communication is only properly served if that person—

- (a) has indicated in writing to the Scottish Ministers (and has not withdrawn the indication) a willingness to accept service of notices under this Order by electronic communication; and
- (b) has provided in writing to the Scottish Ministers an e-mail address for that purpose.

(3) This article does not apply to a notice issued under article 10.

Offences by bodies corporate

17.—(1) Where a body corporate is guilty of an offence under the Act by virtue of this Order and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this regulation, “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate and “body corporate” includes a partnership in Scotland, and, in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

Authorised persons

18. An authorised person incurs no civil or criminal liability for anything which the authorised person does in purported exercise of any functions conferred on the authorised person by this Order where the authorised person acts on reasonable grounds and in good faith.

Exemptions

19. The Scottish Ministers may by licence exempt any person who is involved in research into, or in any course of training relating to, pests or diseases affecting bees from any of the provisions of this Order, except the provisions of article 11.

Revocations

20. The Bee Diseases Control Order 1982 and the Importation of Bees Order 1997 are revoked in so far as they apply to Scotland.

RICHARD LOCHHEAD

A member of the Scottish Executive

St Andrew’s House,

Edinburgh

8th November 2007

(1)

1980 c. 12. The functions conferred upon the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales under section 1 were, in so far as exercisable within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act

(2)

amended by paragraph 158 of Schedule 17 to the Communications Act

(3)

O.J. No. L 328, 17.12.2003, p.26 as amended by Commission Decision 2005/60/EC (O.J. No. L 25, 28.1.2005, p.64).

(4)

S.I. 1982/107

(5)

S.I. 1997/310.

SCHEDULE Provisions that may apply in an infected area

1. An authorised person may serve on the owner or person in charge of any hive, bees, combs, bee products, hive debris or appliances found to have been exposed to infection with the notifiable pest a notice complying with article 9 requiring their destruction or treatment in accordance with the notice.
2. An authorised person may serve on the owner or occupier of any premises on which a hive found to have been exposed to infection is situated a notice complying with article 9 requiring the treatment in accordance with the notice of the soil surrounding the hive.
3. No person shall move, or permit to be moved, any hive, bees, bee pests, combs, bee products, hive debris, appliances or other things by which the notifiable pest is liable to be spread into or out of the infected area, except under the authority of a licence granted by the Scottish Ministers.
4. No person shall remove, or permit to be removed, any hive, bees, bee pests, combs, bee products, hive debris, appliances or other things by which the notifiable pest is liable to be spread from the premises or vehicle on or in which they are situated, except under the authority of a licence granted by the Scottish Ministers.
5. The owner or person in charge of any hive, bees, combs, bee products or appliances must notify the Scottish Ministers as soon as is reasonably practicable of that person's name and

address and the location of any hive, bees, combs, bee products or appliances in that person's possession or charge.

Explanatory Note

(This note is not part of the Order)

This Order revokes and replaces the Bee Diseases Control Order 1982 (S.I. 1982/107) and revokes the Importation of Bees Order 1997 (S.I. 1997/310) in so far as those instruments relate to Scotland.

Article 3 provides for notification of the presence or suspected presence of a notifiable disease or a notifiable pest to the Scottish Ministers.

Article 4 prohibits the movement of hives and other things liable to spread a notifiable disease or notifiable pest and article 5 provides that hives and appliances may be marked for identification purposes.

Article 6(1) provides for the service of a notice prohibiting the movement of certain items if an authorised person has reasonable grounds for suspecting the presence of a notifiable disease or a notifiable pest or if an authorised person is obstructed in the exercise of a power of entry.

Articles 7 and 8 contain measures that apply if the presence of a notifiable disease or a notifiable pest is confirmed.

Article 9 relates to the specific provisions of notices served under articles 7 or 8.

Article 10 gives the Scottish Ministers a power to issue a notice declaring an area to be an infected area if they are satisfied that a notifiable pest is present in that area. The notice may specify that all or any of the provisions in the Schedule apply in all or part of the infected area.

Article 11 implements the provisions of Commission Decision 2003/881/EC applying to bees after they have been imported into Scotland from a third country. The conditions of import in Commission Decision 2003/881/EC are implemented in the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007 (S.S.I.

2007/194).

Article 12 relates to the provision of facilities and information to authorised persons.

Article 13 prohibits treatment which would impede detection of a notifiable disease.

Article 14 requires compliance with all notices issued under this Order.

Article 15 provides that where a notice is not complied with, an authorised person may take the action required under the notice and the costs incurred are recoverable from the person in default.

Article 16 describes the method of serving notices.

Article 17 relates to offences by corporate bodies.

Article 18 clarifies the position regarding the civil and criminal liability of authorised persons.

Article 19 allows for exemption from the provisions of the Order for research purposes.

In accordance with section 1(7) of the Bees Act 1980, breach of any provision of the Order or of any condition imposed by any licence issued under the Order is an offence. A person in breach of any such provision shall be liable to the penalty set out in that section.

A regulatory impact assessment has not been produced for this instrument because it has no impact on the costs of business.