

## **Explanatory Memorandum to the Tuberculosis (Wales) (Amendment) Order 2015.**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tuberculosis (Wales) (Amendment) Order 2015. I am satisfied that the benefits outweigh any costs.

Rebecca Evans AM  
Deputy Minister for Farming and Food

6 October 2015

## **1. Description**

This Statutory Instrument will amend the Tuberculosis (Wales) Order 2010 to give the Welsh Ministers the power to publish information on bovine herds affected with Tuberculosis (TB) for the purpose of helping other persons to protect against further spread of TB.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

The power introduced to publish information regarding bovine herds affected with TB does not override the requirement for any proposed use of the power to be compatible with the Data Protection Act 1998 and the European Convention on Human Rights.

## **3. Legislative background**

This amendment Order is being made under Section 1 of the Animal Health Act 1981 which provides for Ministers to make Orders for the purpose of preventing the spread of disease. These powers are exercisable by the Welsh Ministers in Wales through the National Assembly for Wales (Transfer of Functions) Order 1999, the National Assembly for Wales (Transfer of Functions) Order 2004 and the Government of Wales Act 2006.

## **4. Purpose & intended effect of the legislation**

Last year in Wales 838 farms experienced a new TB incident. Overall, 7% of Welsh herds incurred a new TB incident in 2014 and 5% of herds were under movement restrictions in mid-December due to any TB incident occurring at any time before this date. There are significant socio-economic costs associated with TB in Wales which can impact on farm businesses. There is also a cost to the taxpayer, mainly in compensation to cattle keepers, for each incidence of TB. The information outlined below summarises some of the key costs as described in the Strategic Framework for Bovine TB Eradication, but is not an exhaustive list:

1. In the last ten years<sup>1</sup>, the Welsh Government has spent in excess of £148m on compensation.
2. The estimated average cost of per TB breakdown<sup>2</sup> is £30,000 with the average cost per confirmed herd breakdown in the Intensive Action Area (IAA) calculated as £53,759. Around two thirds of this cost falls to the Welsh Government, mainly in compensation for animals compulsorily slaughtered and the costs of testing, with around a third of the cost to farmers from losses of animals, farm costs of testing and disruption to

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<sup>1</sup> Financial years 2005/06 to 2014/15.

<sup>2</sup> Detection of bovine tuberculosis or a test positive animal in a herd previously considered to be free from TB

business through movement restrictions.

3. Lower income and longer hours for TB affected farms resulting in farms with a TB breakdown performing less well than those without.
4. Research suggests that dairy and beef farmers affected by TB can suffer high levels of stress.
5. Other knock-on affects such as hindering genetic improvement together with potential human health risks.

There is evidence that suggests that, despite the controls currently in place, undetected infected cattle are a major cause of TB incidence by spreading disease from TB infected herds to other cattle either locally, through contact with neighbouring cattle, or through cattle movements. In particular the final report<sup>3</sup> of the Independent Scientific Group on Cattle TB found that a number of undiagnosed TB-infected cattle remain following tuberculin testing, leading to the re-infection within herds and the spread of disease to neighbouring herds and outwards to the rest of the country.

The objective of the power introduced by this Statutory Instrument is to provide farmers with the location of herds affected by TB so that they are more aware of the potential disease risk of those herds. Through publishing the information, farmers will be more likely to take precautions to protect their herds from the spread of disease and, therefore, reduce the socio-economic impacts. In order to meet the objective, any proposed use of the power will, therefore, have the following aims:

- to provide farmers with information on bovine herds affected with TB in order to encourage them to take precautions to protect their herds from the local spread of disease; and
- to provide farmers with information on bovine herds affected with TB in order to encourage them to take precautions to protect their herds from purchasing animals with undisclosed hidden infection.

## **5. Consultation**

The details of consultation undertaken are included in the Regulatory Impact Assessment.

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<sup>3</sup> Bourne, J. 2007. Final Report of the Independent Scientific Group on Cattle TB.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

The options available that could achieve the policy aims and objective, as set out in section 4 of the Explanatory Memorandum, are:

1. do nothing
2. a voluntary system that does not involve legislation
3. amend the TB (Wales) Order 2010.

Option 1 is to continue to publish the current information, which is at such a high level it is impossible to properly identify individual farms, and encourage farmers to share information with their neighbours and the wider industry.

Option 2 is to undertake a voluntary scheme whereby farmers are asked to give their permission for their TB status to be disclosed to their neighbours. That information would be sent to the neighbours by the Animal and Plant Health Agency (APHA) when a contiguous test letter is issued.

Option 3 is to amend the TB (Wales) Order 2010 to give the Welsh Ministers the power to publish information on bovine herds affected with TB for the purpose of helping other persons to protect against further spread of TB.

### **Costs & benefits**

#### Option 1: Do nothing

At present we encourage farmers to share TB information with their neighbours so that they are more aware of the potential risk of TB spreading and therefore take precautions to protect their herd. However, anecdotal evidence suggests that this rarely takes place and those farmers, who are experiencing or have recently experienced a TB breakdown, are reluctant to share this information because of the perceived stigma attached to having a diseased herd.

We disclose information on the TB status of individual herds through various reports but primarily the annual surveillance report<sup>4</sup>, which describes the disease situation in Wales and is published each year. The maps in the surveillance report are at such a high level it is impossible to properly identify individual farms. The information is not significantly detailed to inform farmers of the potential herd level TB risks and therefore take informed management decisions or take precautionary action to help protect their herd from TB.

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[www.gov.wales/topics/environmentcountryside/ahw/disease/bovinetuberculosis/bovinetberadication/annual-surveillance-report](http://www.gov.wales/topics/environmentcountryside/ahw/disease/bovinetuberculosis/bovinetberadication/annual-surveillance-report)

### Cost to farmers

There are no direct costs to farmers. However, the indirect costs described under section 4 of the Explanatory Memorandum would remain. As well as this, because the current published information relates mainly to the disease situation in each county; farmers in counties where there is a lot of disease could be seen as a higher risk based on their location. Although the disease situation in the local area is a risk factor it is not the only risk factor and many herds remain TB free even in high disease areas. TB-free herds in high disease counties, but that have no history of TB, can therefore be incorrectly stigmatised as a high risk herd. This could potentially have the following impacts:

- businesses receiving a lower price for cattle that are sold
- businesses receiving a lower price for agricultural property, situation in an area or next to an area of high TB incidents, which is sold or rented
- businesses receiving a lower price for agricultural land, situation in an area or next to an area of high TB incidents, which is sold or rented.

### Cost to the Welsh Government

There are no direct costs to the Welsh Government. The indirect costs described under section 4 of the Explanatory Memorandum would largely remain.

### Benefits

- no additional direct costs to the farmer of the Welsh Government
- does not require a change to legislation

### Option 2: Voluntary system that does not involve legislation

As an alternative, a voluntary system which does not involve legislation could be used. This was piloted in south Wales in 2013. Following a new TB incident, the Animal and Plant Health Agency (APHA) field staff routinely visit the farm and complete a Disease Report Form (DRF). During the pilot, when undertaking the DRF visit, farmers in south Wales were asked if they would give permission for their TB status to be disclosed to their neighbours.

When a breakdown herd is designated Officially TB Free Withdrawn (OTFW) and therefore contiguous testing is required, all holdings with cattle contiguous to the premises are sent a 'contiguous testing' letter. At present this letter only informs the herd owner that a breakdown has occurred in their area and a contiguous test needs to be carried out. It does not provide any information on which of their neighbouring herds triggered the contiguous test. During the pilot, if authorisation had been received, the name and address of the herd that triggered the test was also included in the contiguous testing letter.

The pilot took place for six months during which 326 DRF visits were undertaken by APHA. Of these, 88 (27%) agreed to disclose the information to

their neighbours. The most common reasons for not disclosing the information are below (the proportion which gave each reason was not recorded):

- I already disclose the information to my neighbours
- I want to disclose information myself and do not see the need for APHA to do this
- I would rather have a list of new breakdowns published on a website rather than have a letter sent out
- I only want to disclose the information to selected neighbours
- I do not want anyone to know about my breakdown.

The following limitations were identified during the pilot:

- This system only applies to herds that are designated OTFW as contiguous testing does not take place for Officially TB Free Suspended (OTFS) herds<sup>5</sup>. Information on OTFS herds, which also pose a risk, therefore remains unavailable to their neighbours.
- APHA relies on the farmer's knowledge to help determine which farms graze land that is contiguous. There is potential that not all of the contiguous grazers are identified and therefore a proportion would not be notified.
- In circumstances when APHA assess neighbouring herds as not being at risk there will be no requirement for contiguous testing and therefore the neighbours would not be notified.
- If/when the herd's status reverts to Officially TB Free (OTF), and the herd is therefore free to trade animals, the onus is on the farmer to inform his neighbours of the herd's new status. If the farmer fails to do this, the neighbours will not have up-to-date and accurate information.
- With not all farmers agreeing to disclose information, there is a danger that a farmer might take action when not fully aware of the disease situation surrounding the farm.
- At best, information is only disclosed to those farms neighbouring an OTFW herd. By not disclosing this information further afield it is extremely difficult for farms to become aware of the risk of buying undetected infected cattle.
- There is potential that the letter will be lost in the post or after delivery.

### Cost to farmers

There are no direct costs to farmers. Because of the limitations, and because of the low percentage of farmers that agreed to share their information, we do not believe that this system adequately meets either of the aims of the proposal. The indirect costs described under section 4 of the Explanatory Memorandum would therefore largely remain.

### Cost to the Welsh Government

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<sup>5</sup> OTFS status currently tends to be used more when disease is suspected on a farm or where there is not enough evidence to confirm infection (although this does not mean that the disease is not present).

There would be a direct cost to the Welsh Government as a result of the time it would take to include the extra information in the letters sent to the contiguous premises. This has been estimated by as £27,115 (one Full Time Equivalent of an Administrative Officer).

#### Benefits:

- does not require a change to legislation.
- no additional direct cost to the farmer.

#### Option 3: Amend the TB (Wales) Order 2010.

Despite the fact that a low percentage of farmers agreed to share their information, we do not believe that this is sufficient reason not to disclose the location of TB breakdown herds on the basis that:

- As outlined in the responses to the consultation, there is significant demand from farmers to receive this information.
- Many of the reasons given were because farmers either already share the information or would prefer it to be shared via a different means. In particular, a website was suggested as a better means of sharing this information.
- We believe that, on balance, there is a significant disease control benefit to the entire industry of sharing the information.

#### Cost to farmers

There are no direct costs to farmers to comply with the proposal. However, there could be some indirect financial impacts as a result of the proposal for businesses who, through the publication of the information, could be identified as being infected or recently been infected with TB. Potential impacts include:

- businesses receiving a lower price for cattle that are sold
- businesses receiving a lower price for agricultural property, situation in an area or next to an area of high TB incidents, which is sold or rented
- businesses receiving a lower price for agricultural land, situation in an area or next to an area of high TB incidents, which is sold or rented
- tourist attractions where cattle are located receiving lower visitor numbers and resulting in a negative financial impact
- farm shops receiving lower visitor numbers and resulting in a negative financial impact.

In order to move or trade cattle, herds need to be free from infection and classified as OTF. Therefore, in terms of the sale of cattle, any negative financial impact will be limited to those herds that have recently come off restrictions. We believe that any negative impact on price is a reflection of the potential disease risk of those cattle because buying from a herd that has just come off restrictions is more of a risk than buying from a herd that has never had TB because of the risk of buying undiagnosed TB-infected. We currently

publish information to encourage buyers that, if they think that cattle are a potential risk, there are precautions they can take to protect their cattle such as isolation and additional testing rather than not buying cattle.

Some of the respondents to the consultation believe that there will be a negative impact on the value of agricultural land and property. No evidence was provided to confirm this claim or that a negative impact is not already occurring in high disease areas of the country. We believe that any negative impact is a reflection of the potential disease risk rather than as a direct result of the proposal. We currently publish information to encourage farmers that, if they think that land is situated in a risky area, there are precautions they can take to protect their cattle such as erecting additional boundaries.

There is potential for a negative impact on businesses such as tourist attractions where cattle are located and farm shops. Whilst we agree that the information is of most relevance to farmers we are concerned that, by restricting the information to farmers in order to prevent the potential negative impact on businesses, could result in it only being available to a limited number of farmers. We therefore believe that, on balance, the greater disease control benefit outweighs the potential negative impact on businesses. We will monitor this risk through our stakeholder groups to determine if any further action is required.

### Cost to Government

The power to publish information in itself will not result in a direct cost to the Welsh Government but there is likely to be a different financial cost implication for each proposed use of the power. For example we estimate that a web based system to publish TB information, which is already in place in England, will cost the Welsh Government around £15,000 to develop with an estimated ongoing cost to the Welsh Government of £2,500.

### Benefits

Raising standards of animal health and welfare is key to a profitable farm business. We believe that releasing of accurate information will encourage farmers to take additional precautions to protect their herds from TB. Of the respondents to the consultation who agreed with the proposal, almost all felt that the proposals would allow farmers to take informed decisions on the way they manage their herds grazing to help prevent TB. Although these precautions would incur an additional cost to the farmer to implement they could, in turn, have a potential cost benefit resulting from a reduction in the number, duration and frequency of TB breakdowns. Minimising disease and welfare impacts of TB through good husbandry will minimise the impacts described under section 4 of the Explanatory Memorandum. It is not possible to estimate the scale of the reduction in the number of TB breakdowns that could be expected, especially as this intervention is in conjunction with multiple other measures taken to mitigate the risk of disease spread, however, based on the costs outlined under section 4 of the Explanatory Memorandum and the expected costs of option 2, the benefits would justify the costs even if only one



breakdown were prevented in the first 6 years (to include the set-up costs) or every 12 years thereafter (a fall of well below 1%).

- no direct cost to the farmer
- there is a disease control benefit to individuals farms which should result in a reduction to the socio-economic impact of TB
- there is a disease control benefit to the entire industry which should result in a reduction to the socio-economic impact of TB.

## **Summary**

Because of the limitations identified in the pilot and the low percentage of farmers that agreed to share their information, we do not believe that a voluntary system adequately meets either of the aims of the proposal.

We believe by publishing the location of TB breakdown herds, awareness of the risk will improve and encourage farmers to take additional precautions to protect their herds from TB. We have carried out a Privacy Impact Assessment (PIA) which found that a website best meets the aims of the proposal as it will provide farmers with sufficient information for them to identify the location of all neighbouring herds infected with TB and allow them to better understand the potential risk from bought-in undetected cattle by identifying when each herd last came off restrictions. Providing information through the contiguous test letter was also considered as a potentially less intrusive alternative which the PIA found did not adequately provide all farmers with sufficient information to meet the aims of the proposal.

We also believe an additional benefit of publishing more accurate information is that it transfers any potential stigma attached to all herds in a high diseases area, many of which will never have experienced a TB breakdown, to those herds that pose a disease risk. This could provide an economic benefit to Tb-free herds in high disease areas as well as better incentivise farmers to take precautions to protect their herd from TB.

In conclusion we are satisfied that providing farmers with the location of TB breakdowns, so that they can better protect their herds from TB, can reduce the socio-economic impacts described in the Explanatory Memorandum. Although we cannot estimate the extent to which this additional information would reduce breakdowns, the benefits are expected to outweigh the costs as it would only be necessary to prevent one breakdown every 12 years (or one in the first 6 years to include initial costs) to cover the costs of the intervention<sup>i</sup>.

## **Consultation**

We undertook a consultation to seek views the proposed change to the TB Order. Because of our previous engagement with stakeholders, and as we were only proposing one amendment to the Order, the Deputy Minister agreed to us undertaking a shorter consultation period of six weeks to consult on the specific proposal. The consultation was available on our website between 8 December 2014 and 30 January 2015 and was publicised through two press

notices. Prior to the launch we contacted NFU Cymru and the Farmers' Union of Wales directly to inform them that the consultation was taking place.

Respondents were asked to consider four specific questions and were given the opportunity to make any related comments which may not have been specifically addressed in the consultation document. In total, there were 33 responses to the consultation from industry representatives, stakeholder groups, wildlife organisations and individuals directly involved in the cattle industry in Wales. The majority (28/33) of the respondents agreed with the proposal to change the legislation to provide the Welsh Ministers with the power to publish information on the location of TB infected herds. The consultation also provided valuable evidence for the usefulness of publishing the information:

- of the respondents who agreed with the proposal, almost all felt that it would allow farmers to take informed decisions on the way they manage their herd's grazing to help prevent TB
- the most popular suggestion was that farmers would use this information to ensure cattle grazed in fields away from any infected neighbouring farm
- the majority of the respondents agreed that, if possible, it would be useful to publish information on herds that have recently come off movement restrictions.

The primary suggestions for publishing TB breakdown information were:

- through a map published on a Government website
- by contacting farmers contiguous to the TB breakdown.

Following the consultation and engagement with the industry it is our conclusion that farmers are more likely to implement biosecurity measures if they are provided with information on the location of farms that are affected by TB. The summary of the responses is available at annex 1.

Following the consultation a Privacy Impact Assessment was carried out to address the considerations of the Data Protection Act 1998 in relation to the proposed use of the power. An assessment on the compliance with the European Convention on Human Rights was also carried out in conjunction with the Welsh Government's Information Rights Unit. These assessments took in to account the issues raised by the respondents to help inform any changes and mitigation measures

### **Competition Assessment**

Because no competition effects are anticipated for any of the proposals there is no risk of a significant detrimental effect on competition and there are no anticipated significant benefits for competition.

## **Post implementation review**

A Privacy Impact Assessment will be carried out for each proposed use of the power to address the considerations of the Data Protection Act 1998. An assessment on the compliance with the European Convention on Human Rights will also be carried out for each proposed use of the power.

We will regularly meet with farmers, stakeholders and industry representatives to monitoring for:

- Any misuse of the information and re-consider introducing proposed mitigation measures if harassment or intimidation of the individuals identified does take place.
- Potential negative impact on businesses as a result of the proposal. We will monitor this risk and determine if any further action is required.

A disclosure of TB information project board will also be established and it will monitor the privacy impacts of the proposed use of the power. The project board will continually review:

- if the privacy impacts of the proposal match those that were anticipated by the PIA
- if the risk mitigation actions are working as intended
- if any further action is required.

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<sup>i</sup> Based on an average cost per breakdown of £30,000, initial cost of the website at £15,000 and ongoing annual costs of £2,500.