

# **Bovine TB – Proposal to introduce changes to compensation arrangements in Scotland and update the Tuberculosis (Scotland) Order 2007 on other disease control measures**

**Animal Health and Welfare Division**

**7 September 2017**



**Scottish Government**  
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## **PART 1 – ABOUT THIS CONSULTATION**

### **Topic of this consultation**

This consultation sets out a number of proposals to update the Tuberculosis (Scotland) Order 2007 and also seeks views on a specific proposal to introduce changes to the requirements for post movement testing and the way we pay compensation for those cattle keepers who have broken the rules. It further proposes the introduction of a cap on all individual compensation payments.

### **Scope of this consultation**

This consultation covers the payment of reduced or no compensation in circumstances where it is considered both appropriate and proportionate to do so. This will include situations where the provisions of the Tuberculosis (Scotland) Order 2007 have been breached resulting in either illegal cattle moves or overdue testing.

It also proposes a change to the requirements for post movement testing and the introduction of a cap on compensation payments similar to that already in place elsewhere in the UK.

### **Geographical extent**

Animal Health & Welfare is a devolved matter and this consultation and the proposals contained therein apply to Scotland only. Bovine TB is legislated upon separately in other parts of the UK and the appropriate administration should be approached if further information is required on TB Controls in that country.

### **Business and regulatory impact assessment**

If legislative powers are introduced which would allow us to reduce compensation in certain situations for cattle statutorily slaughtered under TB controls, there may be financial implications for affected keepers. This consultation seeks views on this particular point to help inform development of the regulatory impact assessment should any change to the legislation be made.

### **Audience**

Anyone may reply to this consultation. The Scottish Government would particularly like to hear from: cattle/livestock keepers; cattle/livestock associations; veterinary surgeons/associations; agricultural markets and valuers; and anyone else with an interest in bovine TB eradication and control in Scotland.

### **Body responsible for this consultation**

The Scottish Government's Animal Health & Welfare Division, Disease Control Team is responsible for this consultation.

## Duration

This consultation runs from 7 September 2017 to 30 November 2017, a period of 12 weeks.

## How to make an enquiry

If you have any queries about this consultation please contact the Scottish Government Animal Health & Welfare Disease Control Team (Telephone 0300-244-9874) or email: [Animal.health@gov.scot](mailto:Animal.health@gov.scot)

## The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government policy making process. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <https://consult.scotland.gov.uk/> .

The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Responding to this consultation paper**

We are inviting responses to this consultation paper by **Thursday 30 November 2017**.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/animal-health-and-welfare/bovine-tb>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 30 November.

Alternatively, you may use the Consultation Questionnaire Word document supplied to provide your response electronically by sending it, **along with your completed Respondent Information Form** (see "Handling your Response" below) to: [BovineTBConsultation2017@gov.scot](mailto:BovineTBConsultation2017@gov.scot)

Handwritten responses will be accepted, although the aforementioned methods are preferable. Again, you should use the Consultation Questionnaire provided as this will aid our analysis of the responses received. Please send your response, **along with your completed Respondent Information Form**, to:

Bovine TB Consultation  
Scottish Government  
Animal Health & Welfare, Disease Control Team  
P Spur  
Saughton House  
Broomhouse Drive  
EH11 3XD

Please note that responses not using either the online Citizenspace survey or the Consultation Questionnaire Word document provided might not be considered in the analysis of this consultation.

### **Handling your response**

If you respond using Citizen Space (<https://consult.scotland.gov.uk/animal-health-and-welfare/bovine-tb>), you will be directed to the **Respondent Information Form**. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** included in this document. If you ask for your

response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public (see the attached Respondent Information Form). We will make these available to the public on the Scottish Government consultation web pages (<http://consult.scotland.gov.uk>) as soon as possible.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on whether to make changes for bovine TB. We aim to issue a report on this consultation process and, if appropriate, to lay amending legislation before the Scottish Parliament during 2018.

### **Comments and complaints**

An opportunity to provide comments on your experience of the consultation is provided as part of the consultation questions. Alternatively you may also send any comments that you may have about how this consultation exercise has been conducted to the contact details in the 'Responding to this consultation' section.

## **PART 2 - BACKGROUND INFORMATION**

### **Introduction**

In 2009 Scotland achieved Officially Tuberculosis Free (OTF) status in recognition of the low and stable incidence of TB found in Scottish herds and the Scottish Government is committed to a comprehensive practical and proportionate programme of actions in order to maintain our current low levels of TB and to safeguard our OTF status.

Defra has already introduced provisions to reduce compensation for those keepers who have failed to carry out TB testing on time and are now consulting on further proposed changes to payment of compensation. Wales have gone even further and recently introduced an enhanced TB Eradication Programme which links compensation to good biosecurity, husbandry practices and adherence with the rules, and allows them to reduce compensation across a number of different non-compliance issues.

The action already taken by both Defra and the Welsh Government highlights the need to review our own TB Order and compensation system to ensure it continues to incentivise compliance and best practice while being financially sustainable in the future. We also want to ensure we are not seen by some as a more favourable option in terms of moving high risk cattle to Scotland or indirectly to other low risk areas in England.

We have therefore considered whether there is scope to implement further measures to encourage farmers to follow good farming practices and keep disease out of their herds, and it seems only fair and reasonable that where a keeper has broken the rules they should not then be able to recover the full market value for animals that become diseased and are slaughtered as a result of poor farming practices or non-compliance.

We know that the vast majority of farmers abide by the rules and continue to work with us to maintain the current low levels of TB in Scotland. Accordingly for the vast majority the impact of the proposed changes will be minimal.

This document sets out our proposals for change and we would be grateful for your views on any or all of them.

## **PART 3 - PROPOSALS FOR CONSULTATION**

### **1. Reduced or Non-payment of Compensation for Illegal Moves onto Restricted Herds**

We understand that for a number of reasons there is sometimes a need for cattle to be moved onto a restricted farm. In these situations APHA may provide the keeper with a licence allowing them to bring animals into the herd.

However, herds which are under TB movement restrictions must not be restocked until all cattle over six weeks of age have had at least one clear TB test. This is because the true extent of the disease outbreak will not be known until the completion of the first short interval test and so the risk for incoming cattle cannot be fully assessed until the test results are available.

Any licence requests approved by APHA are subject to veterinary risk assessment and won't be provided until the first short interval TB test has been completed.

The Scottish Ministers currently pay compensation at full market value to the owner of any animal we slaughter because of TB and this currently includes those animals that have moved on to a restricted herd and that go on to become TB reactors. The Tuberculosis (Scotland) Order 2007 as it stands does not allow for compensation to be reduced or withheld where the owner/keeper has acted both irresponsibly and illegally and moved cattle onto an infected premises without a licence permitting him to do so.

The Scottish Government intend therefore to amend the provisions of the Tuberculosis (Scotland) Order 2007 to provide the Scottish Ministers with the powers needed to either reduce or withhold compensation completely for those owners who have broken the rules in this way. An appeals mechanism to allow the decision to be reviewed where the owner feels there are valid reasons for doing so will also be introduced.

## **2. Reduced Compensation for Overdue Testing**

Active surveillance for bovine TB is achieved through a routine herd testing programme and this is carried out using agreed testing protocols and frequencies.

In January 2012 the Scottish Government introduced a risk based TB testing policy in Scotland whereby "low risk" herds became exempt from the default routine herd testing interval of 48 months. So with 57% of the national herd now exempt from testing it is more important than ever that the required testing of the remaining herds is completed within the allotted time period advised by APHA to avoid the unnecessary spread of any undisclosed infection.

The Scottish Ministers currently pay compensation at full market value to the keeper of any animals which are disclosed as TB reactors during routine herd testing and this includes animals from herds where testing is overdue.

Ensuring compliance with testing requirements is essential for the success of our TB surveillance programme and it again seems fair and reasonable that where a keeper has failed to meet the statutory testing obligations allowing disease to spread undetected within the herd, they should not then be able to recover the full market value for any of these animals that are subsequently disclosed as reactors.

We intend therefore to amend the provisions of the Tuberculosis (Scotland) Order 2007 to provide the Scottish Ministers with the powers needed to either reduce or withhold compensation completely for those keepers who have broken the rules in this way. It is anticipated that this will be on a sliding scale, i.e. the longer the delay



in testing, the bigger the reduction in compensation. An appeals mechanism to allow the decision to be reviewed where the keeper feels there are valid reasons for doing so will also be introduced.

### **3. Proposed change to Post Movement Testing Rules**

Post movement testing rules in Scotland currently require that when a bovine animal is moved from a high incidence TB area to premises in Scotland, that animal must be post movement tested. The post movement test must be carried out between 60-120 days of arriving on Scottish premises.

Apart from the required 13 day standstill period these animals are under no restriction and can be moved off to another Scottish holding before the post movement test is done. In such circumstances the new owner is required to carry out the post movement test within the original 60-120 day testing window. It is only the original cross border movement that triggers a post movement testing letter from APHA, and so the purchaser is reliant on the seller to notify them about the requirement for this test.

We are aware that this flexibility provides an opportunity for high risk cattle to be moved to Scotland for a short period of time before being sold on either privately or at a market without being post movement tested. If the seller then either inadvertently or deliberately fails to notify the purchaser that an animal needs tested, we potentially have an untested animal from a high risk area circulating in a low risk herd for an undetermined period.

In April 2016 Defra introduced a requirement for post movement testing in the English low risk area, which is also required within a 60-120 day testing window. This test must be completed before the animal can move from the original destination holding, unless the animal meets any of the specified exemption criteria. This means that this “short cut” is now only possible in Scotland.

In order to maintain our current low levels of TB and to safeguard our OTF status Scottish Ministers propose to tighten up this provision to ensure it is both clear and enforceable.

The proposed options to address this issue, on which we are seeking the views of stakeholders, are;

- To introduce a statutory obligation on the seller to inform both the purchaser and APHA where the post movement test has not been done prior to the sale and on the purchaser to complete the test within the original 60-120 day testing window, or
- To amend the existing provisions of Article 9 of the TB Order to require that the post movement test is completed on the original destination holding with negative results before the animal is permitted to move again, unless going for slaughter.

#### 4. Introduction of a Cap on Compensation Levels for Individual Animals

In Scotland we currently pay compensation at full market value to the keeper of any animals which are disclosed as TB reactors with no fixed upper limit. This is not the case in other areas of GB where valuation and compensation arrangements differ significantly.

In Wales, as well as the provision to reduce compensation for non-compliance, there is also a statutory cap on compensation for individual animals set at £15,000. The Welsh Government has just announced that this cap will be reduced to £5,000 from 1 October 2017.

In England reactor cattle values are determined by published compensation table valuations which are calculated each month from actual sale price data and relevant compensation amounts can be reduced where TB testing is overdue. Defra are also in the process of consulting on the proposal to extend provisions for reduced compensation and on the introduction of a £5,000 cap for individual animals which would make their policy consistent with that in Wales in this respect.

In order to protect our OTF status, we would want to ensure that compensation values in Scotland are relatively consistent with those in the rest of the UK and not seen by some as a more favourable option in terms of moving high risk cattle to Scotland or as an alternative to responsible sourcing. We are therefore considering the introduction of a £5,000 cap to ensure consistency with the rest of GB.

As a result of the low and stable incidence of TB found in Scottish herds, the figures set out in the table below, show that there have been relatively few high value TB reactor cattle in recent years, compared to England and Wales. Accordingly, the impact on Scottish cattle keepers from implementing such a cap is likely to be minimal.

Year	Number Animals Culled	Total Compensation Paid (£)	Average compensation paid per animal (£)	Number of Cattle Valued over £5k	Compensation Saved from animals valued over £5k
2014	221	635,642	2,876.21	8	23,050
2015	128	248,471	1,941.00	8	46,600
2016	150	331,498	2,209.00	5	19,000
<b>2014-16</b>	<b>499</b>	<b>1,215,611</b>	<b>2,436.00</b>	<b>21 (4%)</b>	<b>69,669</b>

However, it is important to ensure in the current economic climate that the compensation system in Scotland is financially sustainable, fair to both the taxpayer and the farmer and safeguarded from the potentially significant compensation costs associated with high value animals. The owners of high value animals would therefore be encouraged to explore insurance options to cover any value which is in excess of £5,000 if this cap is introduced.

## **5. Automatic Valuation Justification (AVS)**

AVS is not something that we currently implement in Scotland, but it is applied elsewhere in GB. Wales, for example, has a £3,000 threshold above which valuers have to justify their valuations for pedigree cattle, thereby allowing greater numbers of higher valuations to be scrutinised.

Current policy in Scotland is for APHA to undertake administrative checks where unexpectedly high valuations are received, and if it appears that valuations are out of line with market prices those valuations are referred to Scottish Government and followed up by APHA.

As shown in the table at section 4 above, figures for Scotland show there have been low numbers of high value TB reactor cattle in recent years, compared to England and Wales and so excessive valuations are not known to be an issue, with current arrangements appearing to work well.

Scottish Government would therefore seek views on whether this is something that should be introduced in Scotland allowing us to scrutinise valuations more rigorously than we currently do.

## **PART 4 - Other Changes Being Made**

As part of the general update of the Tuberculosis (Scotland) Order 2007 we propose to tighten up some of the existing rules to avoid confusion and to ensure that they are applied properly. Scottish Government is not consulting on these changes (6-9 which are included in this document for awareness only.

### **6. Cost recovery where removal of a reactor animal is refused**

Historically, refusal by the owner to allow removal of a TB reactor animal is something that rarely happens in Scotland. We intend however to make a small change to the Tuberculosis (Scotland) Order 2007 in order to make it clear that we would look to recover costs from the owner should such a situation arise.

### **7. Non-payment of compensation for NOR animals**

The Tuberculosis (Scotland) Order 2007 currently specifies that where animals are slaughtered under section 32 of the Animal Health Act 1981, compensation should be paid at market value.

However, cattle that have had a Notice of Registration (NOR) instead of a cattle passport issued by BCMS can't ever be sold on the open market and are therefore deemed to have no commercial value for the purposes of slaughter valuation.

On that basis these animals are therefore not eligible for compensation should they become diseased and subsequently slaughtered under the TB Order.

Scottish Government therefore intend to change the Tuberculosis (Scotland) Order 2007 in order to make it clear that in order for cattle to be paid compensation they must be identified with an eartag and have a cattle passport issued in accordance with the Cattle Identification (Scotland) Regulations 2007.

## **8. State Aid Rules - Non-payment of compensation where infection is caused deliberately or by owner negligence.**

In June 2014 the European Commission introduced new legislation on the provision of State Aid. One new requirement of that legislation was that no compensation should be paid by Member States where it can be established that animal disease was caused either deliberately or by the negligence of the beneficiary (owner) (EU No 702/2014 – Article 26(12)).

This is not currently reflected on the face of the Tuberculosis (Scotland) Order 2007, but to pay compensation in such circumstances would be contrary to EU law and considered illegal state aid.

We realise that relying on the TB Order while also taking account of EU No 702/2014 – Article 26(12) is neither clear nor transparent for cattle keepers and so the Scottish Government is considering whether it would be appropriate to adjust Scottish legislation to reflect this requirement.

## **9. Prohibition on testing**

The Tuberculosis (Scotland) Order 2007 (Article 13) currently specifies that no person shall test a bovine animal with tuberculin without the written consent of the Scottish Ministers.

The Scottish Government intends to extend this prohibition so that no person is permitted to perform any test for tuberculosis without the written consent of Scottish Ministers and that anyone given such consent, must report the result of that test to Scottish Ministers as soon as it is known.

This proposal is intended to capture newly developed serological tests, which at present may be used without permission or condition

## **PART 5 – CONSULTATION QUESTIONS**

Respondents should take into consideration the information provided in this consultation document alongside any other knowledge or personal experiences that could be relevant. All relevant comments are welcome.

We ask that you try to answer all the questions, however, if you are unable to answer any question then please feel free to move on to the next.

In order for us to deal with your response appropriately please ensure you complete a Respondent Information Form. This will ensure that if you ask for your response not to be published that we regard it as confidential and will treat it accordingly.

## Sector and Origin

It would be helpful for our analysis if you could indicate which of the sectors you most align yourself/your organisation with for the purpose of this consultation (*please tick ONE which is MOST APPLICABLE to you*):

- Cattle/ livestock keeper
- Cattle / livestock Association
- Veterinary Surgeon
- Agricultural Livestock Markets
- Agricultural livestock Valuer
- Animal Health Organisation

Other (please specify)

To allow us to monitor the geographical area of responses, using the list below, please advise where you currently reside.

- Scotland
- England
- Wales
- Northern Ireland
- Republic of Ireland
- Other

## The proposed changes

**Question 1: Do you think that the amount of compensation paid to the owner of an animal illegally moved onto a restricted herd and which subsequently goes on to become a TB reactor, should be either reduced or withheld completely ?**

Yes  No  Don't Know

Please explain why

**Question 2: If you answered YES to Question 1 do you think that compensation should be reduced or withheld completely?**

Reduced

Withheld

Please explain why

**Question 3: Do you think that where an owner/keeper has failed to meet the statutory testing obligations, the amount of compensation paid for animals subsequently disclosed as TB reactors should be either reduced or withheld?**

	Yes	No	Don't Know
Reduced by a fixed amount regardless of the length of time the test was overdue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reduced on a sliding scale (the longer the test was delayed, the bigger the reduction in compensation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Withheld completely if testing was overdue regardless of the length of the delay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain why

**Question 4: Do you think that in order to maintain our current low levels of TB and to safeguard our Officially TB Free status we need to tighten up the rules on post movement testing?**

Yes

No

Don't Know

Please explain why

**Question 5: If you answered YES to Question 4 which of the two options below do you think would be most appropriate and effective?**

<b>1</b>	<b>Introduce a statutory obligation on the seller to inform both the purchaser and APHA where the post movement test has not been done prior to the sale and on the purchaser to complete the test within the original 60-120 day testing window</b>	<input type="checkbox"/>
<b>2</b>	<b>Require that the post movement test is completed on the original destination holding with negative results before the animal is permitted to move again, unless going for slaughter.</b>	<input type="checkbox"/>

Please explain why

**Question 6: Do you think that we should introduce a compensation cap of £5,000 in Scotland to ensure consistency with the rest of the UK ?**

Yes

No

Don't Know

Please explain why

**Question 7: Do you think that we should introduce an automatic justification threshold for cattle valuations in Scotland similar to that in Wales (£3,000)?**

Yes

No

Don't Know

Please explain why

## **Business Impact**

**Question 8: What financial effects, if any, do think that payment of either reduced or no compensation in such circumstances would have on your business?**

Please explain why

**Question 9: What financial effects, if any, do you think that the introduction of a £5,000 statutory cap on compensation payments would have on your business?**

Please explain why

**Question 10: Are you content for the Scottish Government to contact you for further clarification of the financial effects that you have estimated if a Business Regulatory Impact Assessment is required?**

Yes

No



## About the consultation

We have done our best to explain the proposed changes, but there may be something that you feel we have not explained well or have not covered at all. The following questions in this consultation paper are to provide you with the opportunity to raise such points, and to provide us with feedback on the consultation itself.

**Question 11 – Do you think there are any other controls that the Scottish Government should consider to help meet the aims set out in this document?**

Yes  No  Don't Know

Please explain what they are:

**Question 12 – Do you consider that that consultation explained the key issues sufficiently to properly consider your responses?**

Yes  No  Don't Know

**Question 13 – Do you consider that you had sufficient time to respond to the consultation?**

Yes  No

**Question 14 – Do you have any other comments on the way this consultation has been conducted?**

Comments:



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