

EXPLANATORY MEMORANDUM TO

Tuberculosis (Examination and Testing) Scheme (Amendment) Order (NI) 2015

S.R. 2015 No. 322

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture and Rural Development ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by the Diseases of Animals (Northern Ireland) Order 1981 (as amended) ("the 1981 Order") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Order, which amends the Tuberculosis (Examination and Testing) Scheme 1999 ("the principal Order"), provides for a new definition of approved veterinary surgeon who may carry out official tests for tuberculosis on animals.
- 2.2. The Order also provides for new definitions of "authorised officer" and "official test". It also provides conditions for the approval of such approved veterinary surgeons, prohibits movement of animals during testing and confirms when an official test can be considered to have ended.
- 2.3. The Order will come into operation on 4th September 2015.

3. Background

- 3.1. HM Revenue and Customs (HMRC) has conducted a review of the payments to Private Veterinary Practitioners (PVPs) carrying out TB testing on behalf of the Department. Under the current system, PVPs carrying out such TB testing are appointed as Veterinary Inspectors (VIs) under the 1981 Order and the Department has traditionally made payments to PVPs for TB testing as fees and VAT has been applied.
- 3.2. However, HMRC has advised that the way in which we appoint PVPs as VIs means that they are, in fact, office holders and should be treated as such for tax and national insurance contributions (NICs) purposes. The consequence of PVPs being considered as having office holder status is that payments for their work are considered as remuneration rather than fees by HMRC. As such, PVPs then attract the NICs arrangements for office holders.
- 3.3. The Department did not intend that PVPs carrying out TB testing should be regarded as office holders of the Department, but rather that they would be self-employed or privately employed vets who are contracted to provide a specific service for the Department.
- 3.4. Following consideration of HMRC's advice, we have reviewed the current system of appointments. It is clear that PVPs conducting TB testing on behalf of the Department do not need to be appointed as VIs in order to

carry out that function. VIs are granted a variety of legal powers under the 1981 Order that are not currently used by PVPs who carry out TB testing and it is not necessary for them to be able to do so. Therefore, by appointing a PVP as an approved veterinary surgeon, rather than a VI, we will be able to maintain our existing arrangements with such PVPs for delivering our TB testing service. HMRC is satisfied that the new status of approved veterinary surgeon will not lead to those individuals being categorised as office holders.

4. Consultation

- 4.1. A three-week public consultation ran from 1 July 2015 to 24 July 2015. The consultation was accompanied by a draft Regulatory Assessment (RIA) which set out an assessment of the costs and benefits of the proposed changes.
- 4.2. The Department received 3 responses to the consultation. The Ulster Farmers' Union had no concerns to voice in relation to the proposals, whilst the British Veterinary Association/NI Branch and the Association of Veterinary Surgeons Practising in Northern Ireland supported them. A summary of the consultation responses has been placed on the Department's website (www.dardni.gov.uk/consultations).

5. Equality Impact

- 5.1. In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of this Order have been assessed and deemed not to have any disproportionate impact on any of the Section 75 groups. An Equality Impact Assessment has not been carried out as the policy has been screened out. An Equality and Human Rights Screening document formed part of the consultation documentation and a copy can be obtained from the Department's website (www.dardni.gov.uk/consultations).

6. Regulatory Impact

- 6.1. A draft Regulatory Impact Assessment (RIA) was carried out and published as part of the public consultation. A copy of the RIA is available from the Department's website (www.dardni.gov.uk/consultations).
- 6.2. In terms of the key monetised costs for PVPs, the chosen option will essentially re-instate the intended position whereby PVPs are contracted to carry out a TB testing service for DARD and are paid fees and VAT.

7. Financial Implications

- 7.1. The current legislation gives rise to financial liabilities through payment of NICs. This liability will cease once the amending legislation comes into operation.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This Order is deemed to comply with the requirements of Section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. DEFRA and the devolved administrations in Scotland and Wales, on receipt of similar advice from HMRC, have already amended their legislation to change the way in which they appoint PVPs to conduct TB testing.
- 10.2. The proposed legislation is irrelevant to the south of Ireland.

11. Additional Information

- 11.1. Not applicable.