

# Business and Regulatory Impact Assessment

March 2023

# Final Business and Regulatory Impact Assessment

## Title of Proposal

The Tuberculosis (Scotland) Order 2023

## Purpose and intended effect

### • Background

Bovine Tuberculosis (bTB) is a serious infectious disease of cattle, caused by the bacterium *Mycobacterium bovis* (*M. bovis*) and is a major challenge currently faced by large parts of the UK cattle farming industry. The disease is characterised by the development of “tuberculosis” lesions in any organ of the body. It mainly affects cattle but can be passed between most mammals. It is also a zoonotic disease which means it can be passed from infected animals to people, causing an illness similar to human TB. The risk of people contracting TB from cattle in Great Britain (GB) is however considered to be very low.

Scotland achieved Officially Tuberculosis Free Status (OTF) in September 2009, in recognition of the relatively low and stable incidence of TB found in Scottish herds, and this pattern is consistent with sporadic introductions of disease which are eradicated through testing and removal of infected cattle.

The current Tuberculosis (Scotland) Order (<https://www.legislation.gov.uk/ssi/2007/147/contents>) came into force in 2007 and has been amended a number of times since. Most recently an amendment was made in November 2022 to make a minor change to the Order. This most recent proposal is to consolidate all of the bovine tuberculosis legislation in one updated TB Order, as well as making a number of amendments to the legislation. This will ensure that legislation is accessible and up to date.

### • Objective

The objective of this proposal is to ensure that TB controls in Scotland continue to be effective, fit for purpose, incentivise compliance with the rules and encourage farmers to follow best practice when purchasing and moving cattle throughout Scotland and the rest of the UK.

To achieve this the following policies will be put in place:

- Ending the practice of accepting a clear final short interval test (SIT) at the end of all TB breakdowns as a valid pre-movement test;
- Shortening the period during which a pre-movement test with negative results remains valid, from the current 60 days to 30 days after tuberculin injection;
- Reducing compensation for unclean cattle presented for slaughter for TB control purposes by 50%;
- Including requirements for ‘isolation’ in legislation to ensure that proper

- isolation of reactors and inconclusive reactors (IRs) is undertaken; and
- Reducing compensation for reactors or IRs which are not properly isolated.

The policies on ending the clear short SIT as a valid pre-movement test and shortening the pre-movement test validity period both act to reduce the risk of disease entering the country. Reducing compensation for unclean cattle slaughtered reduces risk of food hygiene contamination at the slaughterhouse. The two policies on isolation will strengthen the protection of a main herd against onward spread of infection from any reactors or suspect reactors.

The aim of these legislative changes is to support the maintenance of Scotland's OTF status in Scotland and the eradication of bTB across Great Britain. These changes are intended to further safeguard OTF status and to ensure Scottish TB policy is aligned with WOAHA recommendations and new EU Animal Health Law requirements, where appropriate, to facilitate continued trade with EU member states. Losing OTF status would have a negative effect on the cattle industry.

These changes will ensure that TB controls in Scotland continue to be effective and fit for purpose. The legislative changes being introduced through this consolidation aim to support the maintenance of the low and stable levels of TB in Scotland. These changes are intended to further safeguard OTF status and to facilitate continued trade with EU Member States.

Scottish Government are of the view that these amendments and consolidation of this legislation are necessary to deliver effective TB disease control policy in Scotland.

- **Controls in GB**

With many of these measures there are similar controls in place in England and Wales and it was considered appropriate to adapt similar policies to align with the devolved administrations.

- End the practice of accepting a clear final short interval test (SIT) at the end of all TB breakdowns as a valid pre-movement test

A similar policy for persistent breakdowns (breakdowns of 18 months and over) has been in place in Wales since 2017. In November 2021, the Welsh Government launched a consultation document to seek views on whether this should be extended to all breakdowns. Whilst they have not announced next steps yet, in their consultation summary the following response was provided to this proposal:

*'Although the split between those who agreed and disagreed with the proposal was very close, the majority were still in support acknowledging that there may be undisclosed infection present in the herd even after the clearing test.'*

The Department for Environment, Food and Rural Affairs (Defra) also asked for opinions in their 2021 Call for Views on a proposal that would require cattle moved out of a herd which has come out of a long-term TB breakdown (lasting 18 months or longer) to have a further test before being moved i.e. not allow the herd's clearing short interval test to be used as a pre-movement test.

- Shorten the period during which a pre-movement test with negative results remains valid, from the current 60 days to 30 days after tuberculin injection.

Defra included this as a proposal in their Call for Views in 2021 but this has not been taken forward. Northern Ireland already has this proposal in place as it is a requirement as part of the Animal Health Regulation.

- Reduce compensation for unclean cattle at slaughter by 50%.

Defra introduced legislation in November 2018 which reduced compensation by 50% for animals which were unclean when brought to the slaughterhouse.

- Include requirements for 'isolation' in legislation to ensure that proper isolation of reactors and inconclusive reactors is undertaken.

In Wales, isolation is defined as 'kept on land or in accommodation, where no air space, drainage, or manure storage is shared with other cattle', which is included in the notice provided to farmers when a breakdown occurs.

As the Scottish Government is bringing in an amendment to give powers to reduce compensation for cattle which have not been sufficiently isolated, it is important to have clear and accessible guidance on isolation available to farmers so that they are aware of the isolation requirements. By putting the definition of isolation into legislation this ensures the requirements are clear and readily available to farmers.

No similar policy is in place currently in England.

- Reduce compensation for reactors or IRs which are not properly isolated.

No relevant policy is in place or under consideration in Great Britain currently.

- **Rationale for Government intervention**

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. This status is currently a unique position within Great Britain and recognises the low and stable incidence of TB and the high standards of animal welfare achieved in Scottish herds. Maintaining that OTF status and Scotland's reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry. Losing OTF status would impact on Scotland's international reputation as having healthy cattle which are free from infection, which may affect trade. It would also mean that more TB testing would have to be undertaken, at the cost of the taxpayer, as currently with OTF status you can exempt herds from testing if they are low risk and consequently 60.4% of Scottish herds do not need to be routinely tested for TB. Returning to this routine testing would be time consuming for farmers and may require extra resource associated with herd testing (such as staffing costs to help present the animals in the crush) which would come at

a cost to the farmer. This would also draw upon more government resources, such as veterinary time, and time to report results.

The Scottish Government (SG) is committed to a comprehensive, practical and proportionate programme of measures to maintain the current low levels of TB in cattle and other species and to safeguard OTF status. This includes minimising the risks from all potential sources of infection and reducing the risk of disease spread as far as possible.

The vast majority of farmers abide by the rules and continue to work with the Scottish Government and its delivery partner, the Animal and Plant Health Agency (APHA), to maintain Scotland's OTF status, which is considered by most to be too valuable and important to put at risk.

- **National Performance Framework**

The policy change meets the following outcome from the National Performance Framework:

- value, enjoy, protect and enhance their environment

Reducing endemic disease can have significant advantages for reducing the carbon footprint associated with livestock production, as healthier animals tend to grow faster and require fewer inputs, all of which will reduce the emissions intensity per kg of meat or litre that they produce. This will also improve the welfare of animals and protect public health by reducing the number of cattle which become affected by TB (and then are compulsorily slaughtered as a result) by putting in stricter legislation that protects Scottish livestock.

Introducing these changes will allow for Scotland's low levels of TB to continue to be safeguarded and will contribute to Scotland's National Performance Framework by maintaining Scotland's reputation for high quality produce and helping to increase Scotland's economic growth by increasing exports of healthy cattle and beef.

## **Consultation**

- **Within Government**

The Scottish Government have consulted with APHA as the Scottish Government's lead operational delivery partner for implementing TB control policy and the proposed changes consulted on in 2022.

The Scottish Government also consulted with colleagues in Defra and the Welsh Government at an early stage to review both current provisions and recent disease control amendments for bovine TB within their jurisdictions and to identify what other changes are being considered for the future. Colleagues in the devolved administrations have been kept up to date through groups such as the TB Liaison

Group, the Cattle Vaccination group and the Badger Vaccination group.

Defra consulted and launched a Call for Views in 2021 and the Welsh Government consulted in early 2022 on changes to TB legislation and the outcomes of these consultations have been considered as part of these proposals.

- **Public Consultation**

The consultation on proposed amendments to the Tuberculosis (Scotland) Order 2007, as amended, was live on Citizens Space from 9 May 2022 until 1 August 2022 - a total period of 12 weeks. This consultation set out proposals to introduce changes to disease control measures and compensation arrangements for bovine TB in Scotland.

There were 19 responses to the consultation, and this included 7 key stakeholder organisations, such as National Farmers Union Scotland (NFUS), the Scottish Beef Association (SBA), the British Veterinary Association (BVA) and British Cattle Veterinary Association (BCVA). Disease control for Bovine TB is quite a specialised subject, and so a limited number of responses is not entirely unexpected.

The consultation helped to gauge attitudes towards these proposals and supported decision making on whether proposals would be taken forward or not. It also helped to identify any unanticipated impacts that these changes would have on the farming industry.

The responses provided useful feedback which has been used to inform how Scotland's TB policy will be developed. It was clear that there was support among the various respondent groups for the changes proposed. SG has therefore decided to take forward six out of the eight changes consulted on.

**Change implemented in The Tuberculosis (Scotland) Amendment Order 2022**  
(<https://www.legislation.gov.uk/ssi/2022/334/contents/made>)

- Amend the provisions for the application of diagnostic tests, to include a requirement for the prior written permission of Scottish Ministers where non-statutory and private samples are taken with the intention of applying a diagnostic test for TB.

**Changes being implemented in 2023 Consolidation**

- End the practice of accepting a clear final short interval test (SIT) at the end of all TB breakdowns as a valid pre-movement test. – *The majority of respondents (78.95%) agreed with this proposal, with several respondents expressing that they supported it on the grounds that they believed it would reduce the risks to Scotland's OTF status.*
- Shorten the period during which a pre-movement test with negative results remains valid, from the current 60 days to 30 days after tuberculin injection. – *The majority of respondents (84.21%) agreed with this proposal, with several respondents commenting that this would reduce the risk of disease entering Scotland and further protect Scotland's OTF status.*
- Reduce compensation for unclean cattle at slaughter by 50%. – *A slight*

majority agreed (63.16%), commenting that public money shouldn't be spent when there is bad husbandry, and penalties will keep incidents low, encourage best hygiene practices and promote good cattle biosecurity.

- Include requirements for 'isolation' in legislation to ensure that proper isolation of reactors and inconclusive reactors is undertaken. – *Everyone who responded to this proposal agreed with it, and only one respondent did not answer. Many agreed that this would be useful in conjunction with clear advice from APHA or their private vet.*
- Reduce compensation for reactors or inconclusive reactors which are not properly isolated. – *A small majority agreed with this proposal (52.63%) with respondents stating that this should be common sense and would be a failure in biosecurity, for which a reduction in compensation would be appropriate.*

### **Changes not being implemented**

- Strengthen the TB isolation requirements by specifying a location for isolation to take place – *Although a small majority (52.63%) agreed with this proposal, it would require a significant amount of resource to action, and the benefit was not considered to be great enough to change this from the status quo. Feedback from APHA highlighted that it is often difficult to know the location where an animal will be isolated when TB infection is initially disclosed, and this would be difficult to implement given the farmer may need to change this location. A more appropriate route was considered to be providing clear guidance on the isolation requirements, in tandem with the requirements which will be provided through a change in legislation.*
- Include a reduction in compensation where subsequent reactors in the herd are found as a result of a failure to properly isolate a reactor or inconclusive reactor (IR) - *The majority of respondents disagreed with this proposal (52.63%) with many noting that this would be very difficult to prove and infection could occur for a number of reasons other than insufficient isolation of a reactor or IR. Following internal discussion on the consultation result, it was agreed that proving the source would be difficult and as a result the proposal is not being taken forward.*

A full analysis of the consultation results is available on the Scottish Government website (<https://www.gov.scot/publications/bovine-tuberculosis-summary-consultation-responses/documents/>).

### **Business**

As well as being made publicly available on the Scottish Government website, the consultation was issued directly to a wide range of stakeholder groups, including livestock businesses and associations, enforcement agencies and animal health organisations with a potential interest.

The proposals outlined in the consultation were discussed with a range of stakeholder groups at the SG Animal Health and Welfare General Stakeholder Meetings, with regular reminders of where members could respond to the consultation. This group contains members with an active interest in this consultation

from a range of organisations, such as the British Cattle Veterinary Association (BCVA), the British Veterinary Association (BVA), and Scotland's Rural College (SRUC). This was followed up with written correspondence to encourage these stakeholders to provide their views to the consultation.

## **Communications**

The consultation was advertised through the SG website and through regular posts on the SG social media channels. In addition, the audience of these posts was boosted by organising retweets from the Chief Veterinary Officer Scotland and APHA.

## **Options**

### **- Option 1 - Do Nothing (Status Quo) – No legislative changes**

Under this option further regulation would not be introduced and current arrangements in relation to bovine TB controls provided by the Tuberculosis (Scotland) Order 2007, as amended, would continue as they are now.

Scotland already has legislation that allows for the control of TB, but from experience over a number of years, lessons have been identified from previous breakdowns in how changes could be implemented to further protect Scotland's industry from breakdowns. If these changes are not introduced, we would not be implementing the lessons that would help to reduce the level of risk and the associated costs.

The early identification and removal of test positive cattle under the existing disease control policy has kept Scotland Officially TB free since 2009.

OTF status is in recognition of the relatively low and stable incidence of TB found in Scottish herds. This does not mean that Scotland has no cases of bovine tuberculosis, but recognises there are relatively few cases, below the threshold for that designation. Scotland does have a small number of new confirmed breakdowns each year.

To do nothing could therefore potentially put Scotland's OTF status, and the future of the Scottish cattle industry, at risk. This would result in strong criticism from the cattle industry for not taking strong enough action to incentivise compliance and best practice to keep disease out of Scotland.

### **- Option 2 – Introduce changes to TB controls - amend and consolidate the Tuberculosis (Scotland) Order 2007**

The second option is to make legislative changes to pre-movement testing, compensation for unclean cattle at slaughter, and isolation requirements.

This option would provide the opportunity to enact the following policies:

- End the practice of accepting a clear final short interval test (SIT) at the end of



all TB breakdowns as a valid pre-movement test.

- Shorten the period during which a pre-movement test with negative results remains valid from the current 60 days to 30 days after tuberculin injection.
- Reduce compensation for unclean reactor cattle at slaughter by 50%.
- Include requirements for 'isolation' in legislation to ensure that proper isolation of reactors and IRs is undertaken.
- Reduce compensation for reactors or IRs which are not properly isolated.

This would also include a consolidation of the existing legislation in one updated TB Order given that this has been amended several times since the creation of the Tuberculosis (Scotland) Order 2007. This will ensure that legislation remains accessible and up to date.

Scotland's OTF status is unique within the United Kingdom, and it is necessary to minimise incursions of TB from neighbouring countries. OTF status delivers significant economic benefits for farmers in Scotland and for the Scottish Government, including allowing the exemption of herds which can meet low risk criteria from routine herd testing. Currently, 60.4% of herds are exempt from testing which saves taxpayer money, and government time and resource.

Any number of reactors in Scotland is a threat to OTF status, as the number of infected cattle is very low, and we need to protect the national herd against infection to remain under the appropriate threshold for OTF status. Additionally, as TB is a zoonotic disease, a higher number of cases increases the risk to both public health and animal health and welfare.

As a result, the changes brought in under this legislation have been assessed as necessary and justifiable in order to minimise spread of disease and to protect Scotland's OTF status.

### **Sectors and groups affected**

The main group affected would be those who own or keep bovine animals on a premises in Scotland, as their cattle may at some point become affected or suspected of being affected by bovine TB, however the policy changes will only affect those who keep bovine animals which have, or are suspected of having, TB infection. Farmers who are selling cattle to Scotland from a TB High Incidence Area (HIA), or those who keep animals in a Low Incidence Area (LIA) where the animal has lived a period of their life in a HIA, will be affected by the changes to pre-movement testing.

Veterinary representative organisations expressed in the consultation that vets may be affected by these proposals as it will bring changes to the period in which a TB pre-movement test is valid, meaning they have a shorter window to undertake the test prior to the animal's movement. The Scottish Government believes the benefits of this proposal outweigh the impact of the reduced testing window for private vets to carry out the pre-movement test. Further testing would be required to move cattle at the end of a breakdown, however this will predominantly affect vets in a HIA, as the cattle in these areas will be the ones which will mainly be affected by changes to pre-

movement testing requirements.

## **Benefits**

### **Option 1: Do Nothing (Status Quo)**

The current system generally works well, and livestock keepers are familiar with the existing requirements for TB testing and control.

However, doing nothing would not be in the best interest of the cattle industry as a whole and it is not considered that there would be any real financial or disease control benefits for either Government or industry by taking no action.

There is also the risk that this leaves gaps in policy around the matter of isolation, as there have been recent cases where farmers have been non-compliant with isolation requirements for infected cattle but there has been no legislative basis to tackle this non-compliance. Despite this, the vast majority of farmers comply with the legislation and work cooperatively with the Scottish Government to protect Scotland's low levels of TB infection.

### **Option 2: Introduce changes to TB controls - amend the Tuberculosis (Scotland) Order 2007**

Under this option there will be the opportunity to strengthen existing TB controls that will help to maintain current low levels of TB in cattle and safeguard Scotland's valuable OTF status.

Other benefits include:

- Tighter controls on testing of bovine animals moving from a HIA in order to maintain current low levels of TB and to safeguard OTF status
- TB policy will be more consistent with the rest of GB
- Alignment with new EU Animal Health Law requirements to facilitate continued trade with EU member states
- Alignment with WOAHP recommendations for importation of bovids, in order to remain in line with the international standard

The vast majority of farmers abide by the rules and continue to work with Government to maintain the current low levels of TB in Scotland. For the vast majority the impact of the proposed changes will be minimal.

## **Costs**

### **Option 1: Do Nothing (Status Quo)**

No additional costs or savings are anticipated with this option. However,

compensation would continue to be paid at full market value for cattle presented unclean at slaughter and also where there has been non-compliance in isolating infected cattle, potentially causing further infection throughout the herd and resulting in higher compensation costs. Additionally, no changes would be made to tighten the pre-movement testing requirements around cattle entering Scotland from a HIA, and consequently full compensation would have to be paid for any breakdowns caused as a result of these movements, whereas tighter measures should result in less breakdowns, saving taxpayer money on compensation costs.

**Option 2:** Introduce changes to TB controls - amend the Tuberculosis (Scotland) Order 2007

- End the practice of accepting a clear final short interval test (SIT) at the end of all TB breakdowns as a valid pre-movement test

A pre-movement test acts as an assurance that cattle moving into a new herd are not infected with TB, and this is used for any moves of cattle from a High Incidence Area (HIA) (currently all HIAs are in parts of England and Wales) or for cattle that have lived any of their life in a HIA.

As such, this change would result in an extra cost of the pre-movement test to farmers in the HIA where their farm has had a breakdown and they are selling cattle to Scotland. Currently farmers can use a government-funded test which releases their herd from movement restrictions following a breakdown as a valid pre-movement test. There will be occasions where there is undisclosed infection in the cattle which are moving. This can happen, especially in a HIA, where recurrence of tuberculosis is a feature. The risk is that undetected infected cattle may move from a herd and infect the new recipient herd, in this case bringing disease into Scotland and putting Scotland's OTF status at risk.

Annual Statistics on Post-Movement Testing in Scotland

Year	Post-movement tests carried out	Reactors slaughtered following disclosure by post-movement test	Inconclusive reactors found by post-movement test
2018	1,223	1	3
2019	1,859	0	1
2020	1,544	8	6
2021	2,602	0	3

The figures in this table demonstrate infected cattle are still moving into Scotland and in some cases infection is not being found prior to moving these cattle to a new premises. There are typically very low numbers of reactors in Scotland and so any number of reactors is significant for OTF status.

By introducing a further, bespoke pre-movement test in incidents where there is known to have been recent TB infection due to a breakdown, this would create an additional measure that would lessen the risk of undisclosed infection moving into Scotland, thus further protecting Scotland's OTF status.

- Shorten the period during which a pre-movement test with negative results remains valid, from the current 60 days to 30 days after tuberculin injection

As with the above policy, pre-movement testing is in place for any moves of cattle into Scotland from a HIA (currently all HIAs are in parts of England and Wales) or that have lived any of their life in a HIA.

This policy will not result in an increased cost for cattle keepers undertaking pre-movement testing, however this will shorten the period in which they have to move these cattle where the test remains valid. Shortening the period that the pre-movement test remains valid, from the current 60 days to 30 days, would reduce the risk of a negative testing beast becoming infected in the period between the test and the movement to the new destination. This would lower the risk of TB being spread to the post-movement destination and reduce the risk of cattle moving to Scotland bringing TB with them, which could impact on Scotland's OTF status.

The figures below represent how many reactors and inconclusive reactors (which are then found to be a reactor) are found annually in England and Wales through pre-movement testing.

#### England pre-movement TB tests annually, 2018 to 2021

Measure	2018	2019	2020	2021
Pre-movement animal tests	484,428	475,724	486,173	483,819
Total reactors: PRMT and IR to R	490	480	578	320

#### Wales pre-movement TB tests annually, 2018 to 2021

Measure	2018	2019	2020	2021
Pre-movement animal tests	134,983	129,855	136,138	142,500
Total reactors: PRMT and IR to R	136	128	83	97

Shortening the period in which these tests can be undertaken before the move would reduce the risk of further spread of infection within the herd prior to the move to a herd in Scotland. This would protect Scotland's OTF status and ensure that rates of TB remain low and stable.

Additionally, this change also aligns with the requirements of the EU Animal Health Law. The EU Animal Health Law came in place on 21 April 2021 and the accompanying Commission Delegated Regulation (EU) 2020/6882 Article 10 (1)(d)(ii) requires that the traded animals have been subjected to a test for infection with *Mycobacterium tuberculosis complex* with negative results, during the last 30 days prior to departure. This would bring the requirements for cattle moving between domestic countries in line with export requirements. WOAHA recommendations for importation of bovids states that they should 'originate from a herd free from infection with *M. tuberculosis complex* and have been tested for infection with *M. tuberculosis complex* with negative results within 30 days prior to shipment' and thus changing this period would mean Scotland remains in line with the international standard. Not meeting these requirements would affect international trade relationships.

- Reduce compensation for unclean cattle at slaughter

The following options were considered:

- Reduce compensation by more than 50%
- Reduce compensation by 50%
- Reduce compensation by less than 50%
- No reduction to compensation (status quo)

This policy is being introduced to incentivise the presentation of clean animals at the slaughterhouse and to encourage the farmer to take better care of their animals. Where Scottish Ministers require the slaughter of cattle for TB purposes, the carcass belongs to the Scottish Government who will organise the disposal of the carcass through a slaughterhouse. Where the meat would be safe for human consumption, the Scottish Government may receive money from the slaughterhouse, known as 'salvage'. Any income received by the Scottish Government will be less than the compensation which Scottish Ministers pay to the owner of the cattle. The farmer is paid full compensation and any salvage money reduces the cost to the taxpayer by contributing to the invoice for compensation. In the instance that the animal is unclean at the slaughterhouse, the abattoir is required to take measures to make the animal acceptable for slaughter for human consumption. These measures incur a subsequent penalty for the salvage on the carcass and this would come at a cost to the taxpayer. This policy would only apply where the animal has a long term build up of dirt, as opposed to instances where the animal has become unclean in transit which can easily be washed off.

This proposal would reduce this compensation by 50% which would save the taxpayer money in the instance that salvage is lost due to cattle being presented unclean by the farmer, ensuring that the cost to the taxpayer is not higher than

necessary. A reduction of 50% would bring Scottish Government policy in line with policy in England. The savings from this policy are likely to be minimal however, as there have been no known cases where animals have been rejected for slaughter due to being unclean in the abattoirs which serve Scotland, but it is considered necessary to have a statutory provision which protects against the potential loss of salvage.

- Include requirements for 'isolation' in legislation to ensure that proper isolation of reactors and inconclusive reactors is undertaken

Where test positive cattle are not properly isolated, this puts other cattle which are free from infection at risk and may result in further disease circulation within the herd. The more cattle which are infected, the higher the compensation that the Scottish Government pays for the compulsory slaughter of these animals.

Including statutory requirements for 'isolation' within the TB Order would make the specific legal obligation clearer when cattle keepers are required by a notice to isolate their cattle. As a reduction to compensation for cattle not properly isolated is a further amendment to this Order, it is important that there is a clear and accessible definition for isolation to support farmers in meeting these requirements.

It is not anticipated that there are any costs related to this proposal, however this may reduce the number of cattle which become infected due to improper isolation, and thus reduce the further spread of infection and the compensation costs associated with this.

- Reduce compensation for reactors or IRs which are not properly isolated

The following options were considered:

- The penalty should be more than 95%
- I agree with a 95% reduction in compensation
- The penalty should be less than 95%
- No reduction to compensation (status quo)

As with the above proposal, where test positive cattle are not properly isolated, this puts other cattle which are free from infection at risk and may result in further disease circulation within the herd. The more cattle which are infected, the higher the compensation that the Scottish Government have to pay for the compulsory slaughter of these animals, at the expense of the taxpayer.

Given the extra risk that improper isolation brings to the remaining herd, reducing compensation by 95% for instances of clear non-compliance is a justified proposal. This would encourage good isolation practices and reduce the risk of onward infection on farm and the associated higher costs of compensation.

This proposal will ensure that where there has been a failure to properly isolate

affected, or suspected of being affected animals, the compensation cost is not met by the taxpayer. This encourages compliance with legislation to ensure that herds are protected from further spread of infection and protects the taxpayer from meeting the cost of increased compensation from a failure to isolate animals carrying (or suspected of carrying) infection.

The intention of this policy is to deter keepers from disregarding the requirement to isolate at the risk of infecting further cattle with TB. A 95% reduction was deemed to be justifiable, as the cost of a consequent onward spread of disease as a result of a failure to isolate would come at a significantly higher cost to the taxpayer.

- Additional amendments not consulted on

In 2018, an amendment was made to introduce a compensation cap for reactors slaughtered for tuberculosis. The legislation has been amended, and now puts in place a compensation cap for all bovine animals caused to be slaughtered for reasons of tuberculosis.

### **Scottish Firms Impact Test**

These legislative changes could potentially have an impact on international trade if they are not taken forward, however they are unlikely to have an impact on international investment.

The policy which is likely to have an effect on international trade is the measure to change the period that a pre-movement test remains valid, from the current 60 days to 30 days. This proposal is a result of changes brought in through the Animal Health Regulation which came in place on 21 April 2021. The accompanying Commission Delegated Regulation (EU) 2020/6882 Article 10 (1)(d)(ii) requires that the traded animals have been subjected to a test for infection with *Mycobacterium tuberculosis complex* with negative results, during the last 30 days prior to departure, and would bring the requirements for cattle moving between domestic countries in line with export requirements.

WOAH recommends that for importation of bovids, they should 'originate from a herd free from infection with *M. tuberculosis complex* and have been tested for infection with *M. tuberculosis complex* with negative results within 30 days prior to shipment' and thus changing this period would align Scottish legislation with the international standard.

To remain with the status quo for this proposal would mean that Scotland would not align with the EU requirements or the international standard that is recommended by WOAH and this would have an impact on potential international trade for the cattle industry.

The majority of Scotland's trade is with other parts of the United Kingdom, and although England and Wales have not taken this policy forward at present. Northern Ireland has taken this policy forward already as part of the Animal Health Regulation changes. Officially TB free status is unique to Scotland within the United Kingdom, and as such it is necessary to take steps which will keep disease out from neighbouring countries and also protect Scotland's international reputation as a TB free country.

### **Competition Assessment**

The amendments to the Tuberculosis Order will not impact negatively on competition within the sector.

<b>Question</b>	<b>Answer</b>
Will the measures directly or indirectly limit the number or range of suppliers?	No
Will the measures limit the ability of suppliers to compete?	No
Will the measures limit suppliers' incentives to compete vigorously?	No
Will the measure limit the choices and information available to consumers?	No

### **Consumer Assessment**

These amendments will have limited impact on consumers.

The legislative change to pre-movement testing will come at a higher cost to keepers selling cattle to Scotland from a HIA (or from a LIA where cattle have lived a period of their life in a HIA) where the farm has had a breakdown. These farmers will have to undertake an additional test after the final SIT. Previously these animals could use the final short interval test (at the government's expense) as a valid pre-movement test when moving an animal to holding in Scotland. However, these keepers will now be required to pay for an additional test for the animal after TB movement restrictions have been lifted as an extra precaution against disease, and the final SIT will no longer be valid as a pre-movement test. For movements where there had been no breakdown, the farmer would already pay for a pre-movement test and so this would not result in an extra cost and there will only be an additional cost in instances where there has been a breakdown.

Also affected will be those that have had a TB breakdown in Scotland, through the changes to bring in a reduction in compensation for unclean cattle and a reduction in compensation for a failure to isolate. The majority of farmers in Scotland are already compliant with TB requirements, and as such we would expect these changes to



have a minimal impact. The legislative change introducing a reduction in compensation for unclean cattle reduces risk of food hygiene contamination at the slaughterhouse and incentivises keepers to maintain high animal welfare standards. This policy will only affect a small number of keepers who have a TB breakdown and do not present their animals at an acceptable level of cleanliness for slaughter, and therefore the impact on consumers is assessed as limited to a very small group of individuals.

The measure introducing a 95% reduction in compensation for a failure to properly isolate cattle identified for slaughter is necessary in order to minimise further spread of infection and to protect Scotland's TB free status. Any number of reactors in Scotland is a threat to OTF status, as the number of infected cattle is very low, and we need to protect the national herd against infection to remain under the appropriate threshold for TB freedom. The intention of this policy is to encourage keepers to isolate to an appropriate standard to prevent further cattle from becoming infected with TB. A definition of isolation has been added to the Order to ensure that the guidance for isolation is clear and accessible to cattle keepers. A 95% reduction was deemed to be justifiable, as the cost of a consequent onward spread of disease would be costly to the taxpayer. This policy will only affect a small number of keepers who have a TB breakdown and do not comply with an instruction from a veterinary inspector to isolate an animal or animals, and therefore the impact on consumers is assessed as limited to a very small group of individuals.

Both the requirement to present cattle as clean at the slaughterhouse, and the requirement to properly isolate cattle infected or suspected of being infected with TB, are not new policies and should already be happening in practice. These legislative changes will strengthen the legal basis to allow us to take action in cases where farmers are non-compliant.

There is also a resource benefit for enforcement bodies from the consolidation of this legislation, as we are consolidating five pieces of legislation to make this more accessible and this reduces the administrative burden. This also makes the legislation more transparent for keepers affected by the legislative controls imposed by this Order.

### **Test run of business forms**

No new business forms are required to be completed by herd owners affected by these legislative amendments. Some amendments will be made to existing forms to reflect the changes and these will be actioned by the APHA as required.

### **Digital Impact Test**

It is not anticipated that there will be any digital impact with these legislative changes. There are only legislative and administrative changes.

There will be a temporary internal impact wherein APHA will need to complete changes to forms, restriction notices, licences, operational instructions and relevant websites to reflect the legislative changes. The Scottish Government are working with APHA to make those changes and to ensure that timeframes are suitable for these updates to be made for the coming into force date.

### **Legal Aid Impact Test**

It is not anticipated that these changes will give rise to any additional need for legal aid.

### **Enforcement, sanctions and monitoring**

APHA, as the Scottish Government's operational delivery partner, are responsible for all aspects of disease control for bovine TB for reported or suspected cases of disease (inspections, test notifications, testing, reactor removal, valuation and payment of compensation) including any follow up in relation to non-compliance and all activity associated with the judicial process.

Local authorities are responsible for enforcement of the Tuberculosis (Scotland) Order under the Animal Health Act 1981 due to the potential health risk to both humans and animals as a result of non-compliance with the rules.

Scottish Ministers are required to pay compensation for any bovine animals slaughtered in relation to bovine TB under section 32 of the Animal Health Act. Where a keeper has acted illegally or failed to comply with the statutory testing requirements for their herd, and powers would be available to either withhold (£1 nominal payment) or reduce the amount of compensation paid, depending on the circumstances. It is considered only fair and reasonable that where a keeper has knowingly 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 their poor farming practices or non-compliance.

This TB Order is made under the Animal Health Act and so inspector powers of entry, testing, seizure and slaughter are all contained in that Act. Obstruction of inspectors in exercise of their duties and non-compliance with any requirements of the Order will be prosecuted under the Animal Health Act. A person guilty of an offence under the Animal Health Act is liable on summary conviction to a term not exceeding 6 months imprisonment or to a fine not exceeding level 5 on the standard scale or to both.

### **Implementation and delivery plan**

#### Implementation

The legislation required to introduce these changes to TB policy in Scotland will come into force on 18 May 2023.

### Delivery Plan

TB controls in Scotland are already well established and delivered by APHA as SG's operational delivery partner. APHA have carried out the required Request for Policy Driven Change and Response form for these proposed changes, which are now in the process of being adopted into "business as usual" by the APHA project delivery team.

For communications, a letter went out to general stakeholders, and those who responded to the consultation to make them aware of the changes being made and to make them aware of the publication of the consultation analysis. An SG news release will also be published which summarises the policy changes and this will be promoted on social media.

An Official Veterinarian (OV) briefing note will also be provided by APHA to update on these changes, and Scottish Government will work with APHA colleagues to approve a draft of this. An OV briefing has already been circulated for the legislative change made in 2022. A letter to Scottish Government stakeholders and a Scottish Government news release will also be issued when the legislative changes are made.

- **Post-implementation review**

Disease Control measures for bovine TB are subject to continuous monitoring and review.

### **Summary and recommendation**

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. This status is a unique position within Great Britain and recognises the low and stable incidence of TB and the high standards of animal welfare achieved in Scottish herds.

Defra and the Welsh Government have both recently introduced substantial changes to their respective TB Programmes. Reviewing and updating TB legislation will ensure that policy continues to be fit for purpose, incentivise compliance and best practice, and ensure these policies are financially sustainable in the future.

Maintaining Scotland's OTF status and reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry. For this reason, the recommended option is:

- **Option 2 – Introduce changes to TB controls - amend the Tuberculosis (Scotland) Order 2007**

Responses to the consultation provided useful feedback on the proposals and gave a clear indication that there is support among the various respondent groups for the changes proposed and the importance attached to maintaining the OTF status by the Scottish cattle industry. That is why a consolidation is being undertaken in May 2023, as well as the following changes:

- Ending the practice of accepting a clear final short interval test at the end of all TB breakdowns as a valid pre-movement test.
- Shortening the period during which a pre-movement test with negative results remains valid, from the current 60 days to 30 days after tuberculin injection.
- Reducing compensation for unclean reactor cattle at slaughter by 50%.
- Including requirements for 'isolation' in legislation to ensure that proper isolation of reactors and inconclusive reactors is undertaken.
- Reducing compensation for reactors or IRs which are not properly isolated.

### Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
<p><b>Option 1</b></p> <p>Do Nothing (Status Quo)</p>	<p>The current system generally works well, and livestock keepers are familiar with the existing requirements for TB testing and control.</p> <p>To do nothing would not be in the best interest of the cattle industry as that could potentially put Scotland's OTF status at risk.</p>	<p>No additional costs or savings are anticipated with this option.</p> <p>Compensation would continue to be paid at full market value, at the expense of the taxpayer, for all cattle that become diseased even as a result of poor farming practices, and for non-compliance to policies, such as presenting unclean cattle at slaughter or a failure to isolate reactors or animals suspected of being infected.</p>
<p><b>Option 2</b></p> <p>Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007</p>	<p>This option provides the opportunity to:</p> <ul style="list-style-type: none"> <li>• End the practice of accepting a clear final short interval test at the end of all TB breakdowns as a valid pre-movement test.</li> <li>• Shorten the period during which a pre-movement test with negative results remains valid, from the current 60 days to 30 days after tuberculin injection.</li> </ul>	<p>These changes will not result in any additional costs to SG. It is difficult to accurately assess what the total savings would be.</p> <p>The possible additional costs associated with the change to additional pre-movement testing after a clear SIT at the end of a breakdown would be met by farmers predominantly in TB High Incidence Areas. It should be noted that the SIT costs are met by government, and so farmers have been able to avoid this cost</p>

- Reduce compensation for unclean cattle at slaughter by 50%.
- include requirements for 'isolation' in legislation to ensure that proper isolation of reactors and inconclusive reactors is undertaken.
- Reduce compensation for reactors or IRs which are not properly isolated by 95%.

by using this government funded test as a pre-movement test, where they would normally have to meet the cost. It has not been possible to quantify the numbers of cattle likely to be affected by this change or the associated costs, as the associated figures are variable depending on rates of infection and the number of movements from a HIA.

The majority of farmers abide by the rules and continue to work with Government to maintain low levels of TB in Scotland. The proposed reduction in compensation relating to unclean cattle will save SG money in instances where salvage would be reduced but full compensation would still need to be paid to the farmer. However, savings are likely to be minimal, but delivering measures to challenge non-compliance is sensible.

For the reduction in compensation in relation to reactors or IRs which are not properly isolated, it is also difficult to anticipate costs, as this would depend on farmer non-compliance, which is typically quite low. However, this policy is to mitigate further spread of infection in a herd caused by improper isolation, where costs of compensation would be much higher despite the further infection being preventable. Putting in place these measures to challenge non-compliance is necessary to discourage this behaviour and the associated costs that would arise from it.

## **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Mairi McAllan**

**Date: 21st March 2023**

**Minister's name** – Mairi McAllan

**Minister's title** – Minister for Environment, Biodiversity and Land Reform

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