

EXPLANATORY MEMORANDUM TO
THE CATTLE COMPENSATION (ENGLAND) ORDER 2006

2006 No. 168

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This Order, which revokes and replaces the Cattle Compensation (England) Order 2005 (S.I. 2005/3433) and amends the Individual Ascertainment of Value (England) Order 2005, (S.I. 2005/3434), will, like the Cattle Compensation Order 2005, introduce from 1 February 2006 a new compensation system for cattle slaughtered for the following diseases: Bovine TB, Brucellosis and Enzootic Bovine Leukosis. BSE will be covered under a separate instrument, which will come into force on 1 March 2006. Previously, Government operated different compensation systems for the different diseases.

2.2 Under this system compensation will generally be determined using table valuations, based on average contemporaneous sale prices for 47 pre-determined cattle categories. Where no data is received for a particular category, the Department will either use the most recently ascertained average or determine compensation through individual valuations (covered under the Individual Ascertainment of Value (England) Order 2005).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The 21 day rule is not being observed. This Order revokes and replaces The Cattle Compensation (England) Order 2005, which was due to come into force on 1 February 2006. This action has proved necessary to facilitate a smoother transition from the previous bovine TB compensation arrangements to the new ones. The effect of the 2005 Order was to apply the new compensation system to those animals that were identified as TB reactors before 1 February 2005 but for which compensation (through individual valuation) had not by that time been calculated. It has recently become clear that the existing 'transitional' arrangements would cause significant delivery problems. The need to arrange a valuation and also a slaughterhouse 'spot', for all TB reactors, adds delay to the process and means that a large number of reactors (up to 1000) would fall subject to the new compensation arrangements despite having been identified as an affected or suspected animal possibly well before the coming into force date. It is also the case that some parts of the country (i.e. those where available slaughterhouse capacity is tight) would be affected more than others.

3.2. We have therefore revised the S.I. so that existing compensation arrangements (i.e. compensation determined through individual valuations) will be used for animals

identified as being affected or suspected through the use of a skin test or other relevant test before 1 February and also those animals in relation to which a notice requiring slaughter has been served before the 1st February (to cover any direct contacts that may not have been tested). These changes are needed to ensure smooth transitional delivery arrangements from 1 February, and to ensure that valuation arrangements for reactors identified before 1 February will be consistent in all parts of the country.

3.3 Unfortunately, we will need to breach the 21 day rule in order to meet the Government's announced commitment to introduce the new compensation arrangements on 1st February. There is much evidence that 'over-compensation' for bovine TB is a significant and widespread problem and it is therefore important – not least to protect taxpayer interests – that the current compensation arrangements are replaced as soon as practically possible. The changes made to the 2005 Order do not represent a shift in the policy behind the key aspects of the new regime.

4. Legislative Background

4.1 The new instrument will revoke and replace the Cattle Compensation (England) Order 2005, so as to include the new savings provision as outlined above, and amends the reference to the 2005 Order in the Individual Ascertainment of Value (England) Order 2005, (S.I. 2005/3434).

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The notes below are a reiteration of the policy background provided previously with the 2005 Order, but have been included again for ease of reference.

7.2 The important policy change constitutes the first stage in government's objective of rationalising compensation systems for all notifiable animal diseases.

7.3 There are four main reasons why government is changing compensation policy for the diseases (Bovine TB, Brucellosis, and Enzootic Bovine Leukosis) covered under this instrument:

- 1) There is significant evidence of overcompensation, particularly for bovine TB, which places an unfair burden on taxpayers and may provide a disincentive for some cattle owners to implement robust bio-security controls. Based on 2005 data, we expect that compensation based on table values for all cattle culled to control bovine TB will be in the region of 70% of that paid under the previous system.
- 2) To ensure owners of all animals affected by Brucellosis are not under-compensated.
- 3) Simplification of the compensation regime through a table valuation system will reduce bureaucracy and increase transparency.
- 4) To facilitate the speedier removal of diseased animals.

7.4 The Department consulted on the need to rationalise the current, fragmentary system of animal disease compensation in October 2003 and on specific cattle compensation proposals in December 2004 (*Cattle Compensation: Bovine TB, Brucellosis, BSE and Enzootic Bovine Leukosis*). The consultation paper specifically invited comments on:

- the way it is proposed to introduce a table valuation system;
- if an advisory group on livestock valuations could play a useful role in helping Defra to maintain and develop practical, robust and fair valuation systems.

7.5 An analysis of stakeholder responses is included in the Regulatory Impact Assessment (RIA), which was previously submitted with the 2005 Order (a website link is shown below), but in summary, a number of stakeholders did accept that there was a need to replace the different compensation schemes (for the four diseases, including BSE) with a common system. However, there was a good deal of opposition to the introduction of a system based on table valuations.

7.6 More specifically, a number of stakeholders commented that some of the proposed categories (particularly for younger animals) were inadequate and would result in under-compensation of high-value animals and over-compensation of poor quality animals. Some expressed the view that reducing compensation paid for pedigree and elite stock would impose punitive and unfair costs on those farmers most concerned with developing a sustainable agriculture built upon quality.

7.7 Defra's objective is to introduce as fair a system as possible for cattle owners and taxpayers. After considering stakeholder comments, and completing further data analyses, government has increased the number of categories from 29 to 47, with separate tables for commercial and pedigree cattle. The increase in the number of categories addressed some stakeholder concerns in relation to categories (originally proposed) for younger animals – a number of stakeholders believed that the consultation categories were too wide i.e. there would be wide differences in the value of animals covered by the same category. Defra acknowledges that table valuation systems have limitations, and cannot incorporate certain qualitative data, which could result in under-compensation of high-value animals and over-compensation of poor quality animals in comparison with market prices for *healthy* animals. However, the majority of animals for which compensation is paid are diseased, and the remainder affected by disease, making their true worth salvage value only. Also, 'table valuations' are not a new concept, and have often been used for animal compensation systems (e.g. bovine TB until 1999 and BSE offspring).

7.8 There was strong support for the creation of an advisory group, whose expertise could be used to help implement and audit the table valuation system and offer guidance on future proposals to rationalise animal disease compensation. Defra is now taking this work forward.

<http://defraweb/corporate/consult/cattle-compensate/responses.pdf>

8. Impact

8.1 The Regulatory Impact Assessment, which was previously submitted with the 2005 Order, is unchanged.

9. Contact

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