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# The Legislative Reform (Local Government)(Animal Health Functions) Order 2009: explanatory document

**3 March 2009**

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## **Chapter 1: Introduction**

This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Local Government)(Animal Health Functions) Order 2009 (“the draft Order”) which the Minister proposes to make under section 1 of that Act.

The purpose of the draft Order is to repeal Section 101(7) of the Local Government Act 1972 (“the LGA”), to allow local authorities to arrange for animal health functions to be carried out by other local authorities in the same way that they currently do for other functions.

## Chapter 2: Background to the Order

In England, county councils, unitary authorities and metropolitan borough councils are responsible for the enforcement of animal health and welfare legislation relating to farmed animals. Such legislation covers the movement and identification of livestock, animal by-products, biosecurity, disease prevention and contingency, controls at animal gatherings and animal welfare. Many of these functions derive from the Animal Health Act 1981. Local authorities carry out a range of activities to fulfil this role, including providing proactive business advice, farm visits, presence at livestock markets and other animal gatherings, visits to slaughterhouses, visits to ports and checks during transportation. Activities are risk based and are carried out in consideration of national priorities, local circumstances and intelligence. Animal health was described as a national enforcement priority for local authority regulatory services in the Rogers Review<sup>1</sup>.

Under the provisions of the LGA local authorities in England are prevented from arranging for other local authorities to carry out their animal health functions under the Animal Health Act 1981. This means that local authorities with low demand for animal health work have to maintain resources for dealing with matters when they arise, rather than being able to seek assistance from other local authorities with more experience and/or specific resources. For some authorities this is not only an administrative inconvenience, but a clear obstacle to efficient delivery.

In June 2006, Defra published the Eves review<sup>2</sup> of the roles, responsibilities and relationships of the bodies that deliver and enforce animal health and welfare policies in England. The independent review assessed how effective the delivery landscape was and made recommendations on where improvements could be made. One of Eves' recommendations was that legal obstacles to cross border working between local authorities should be removed.

Defra's response to the review was published for public consultation from 14 July to 12 October 2007, in which we agreed with this recommendation. All of the replies we received on this agreed with our seeking to pass the necessary legislation to remove such legal obstacles. The summary of the consultation is available on the Defra website<sup>3</sup>.

### Removal of a burden resulting from legislation

Section 101(1)(b) of the LGA provides that local authorities in England may arrange for the discharge of any of their functions by any other local authority. However, subsection (7) states that this does not apply to any of their functions under the Diseases of Animals Act 1950. (The Diseases of Animals Act 1950 was consolidated and repealed in its entirety by the Animal Health Act 1981.)

We regard the prohibition contained in section 101(7) of the LGA as a burden within the meaning of section 1(3) of the 2006 Act. The proposed provision to remove that burden therefore falls within the scope of section 1(1) of the 2006 Act.

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<sup>1</sup> [http://www.cabinetoffice.gov.uk/regulation/documents/rogers\\_review/review2007.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/rogers_review/review2007.pdf)

<sup>2</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

<sup>3</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/responses-summary.pdf>

## **Overview of Proposals**

As explained above, we propose to use the draft Order to repeal section 101(7) of the LGA, so as to apply section 101(1)(b) to animal health functions, bringing them into line with other functions. This will remove the legal problem and thus the burden for local authorities. The draft Order will not introduce any additional burdens as arranging for work to be carried out or to carry work out for other local authorities will be voluntary. The draft Order will not require local authorities to discharge activities for which they do not already have responsibility, nor require them to pass them to other authorities unless they choose to do so.

We also propose to repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101. Section 101(7A) was introduced into the LGA by the Local Government (Wales) Act 1994. This is a purely consequential amendment since, following the repeal of the prohibition contained in section 101(7), section 101(7A) will no longer serve any purpose. This change will therefore have no practical effect. The Welsh Assembly Government has been consulted and is content for this change to be made.

The proposals will not change regulatory requirements nor will they increase burdens on local authorities. They will not therefore affect those regulated or the general public. Allowing local authorities to arrange for other local authorities to carry out their functions of enforcing animal health controls will provide them with a more efficient way of working, allowing them to focus their resources on the needs of their local communities. We therefore feel the balance is firmly in favour of the public interest.

## **Chapter 3: Ministerial duties under the 2006 Act**

Section 13 of the 2006 Act places duties on Ministers regarding public consultation on proposals they intend to make under that Act. The Secretary of State has fulfilled his obligation to undertake full and extensive consultation on these proposals, as described below. He is satisfied that the draft Order serves the purpose set out in section 1(2) of the 2006 Act and meets the conditions laid out in section 3(2) of that Act. He has considered the responses to the consultation and is content to proceed with the Order, as originally proposed.

### **Overview of consultation**

As stated earlier, Defra previously consulted on removing the legal barrier to cross authority boundary work as part of the response to the Eves Review.

Defra then consulted on the principle of using a Legislative Reform Order (LRO) to achieve the policy objective. The consultation ran from 25 July 2008 to 17 October 2008, and was split into two sections: questions on the use of an LRO; and economic questions to help finalise the Impact Assessment. The consultation is available on the Defra website<sup>4</sup>.

### **Overview of responses**

Defra received ten substantive responses to the consultation (nine responses from local authorities or their representative bodies, and one from a veterinary society), and four noting our intentions without comment.

The substantive responses all agreed with Defra's proposal to use an LRO to remove the legal barrier to cross authority boundary work on animal health activities. There was agreement that there is no satisfactory non-legislative solution, and that using an LRO would be proportionate, fair, not constitutionally significant, and would not remove any rights or freedoms. Those who replied on the question of Parliamentary procedure all agreed that the proposed approach of using negative resolution should apply.

The full consultation summary is available at annex C.

### **Devolved administrations**

The Northern Ireland Department of Agriculture and Rural Development have agreed that this issue does not affect Northern Ireland, as animal health activities are delivered there by the Veterinary Service. It also does not apply in Scotland, as Section 58 of the Local Government etc. (Scotland) Act 1994 allows delegation of functions between local authorities without excluding animal health activities.

The Welsh Assembly Government have also confirmed that this issue no longer applies in Wales, the Local Government (Wales) Act 1994 having inserted section 101(7A) to the LGA, disapplying section 101(7) from local authorities in Wales. As stated before, the Welsh Assembly Government has been consulted on the proposed

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<sup>4</sup> <http://www.defra.gov.uk/corporate/consult/localauth-lga-ah/index.htm>

consequential change comprising the repeal of section 101(7A) and is content for this change to be made.

### **Preconditions for making an LRO**

The Minister has considered whether:

**i. the policy objective could be satisfactorily achieved by non-legislative means**

There are no satisfactory non-legislative solutions as the problem results from a statutory prohibition in primary legislation which cannot be removed without legislative change.

**ii. the effect of the provisions is proportionate to the policy objective**

'Delivering and enforcing animal health and welfare standards effectively' is a key theme of the Animal Health and Welfare Strategy for GB<sup>5</sup>. Repealing s101(7) of the LGA should increase the efficiency of delivery and enforcement, as local authorities with more experience and/or specific resources will be able to assist less experienced/smaller local authorities. The effect of the repeal - which will not affect the nature of animal health functions nor a local authority's obligation to exercise them - is considered to be proportionate to the policy objective.

Respondents to the consultation all agreed the proposals are proportionate to the policy objective. The proposal was described by consultees as a minimal legal change that will benefit local authority animal health services across England, without having a consequential negative impact on another party.

**iii. the provisions of the proposed order will strike a fair balance between the public interest and the interest of any person adversely affected by them**

The provisions are intended to increase the efficiency of enforcement of animal health controls, so people who comply with animal health legislation will not be adversely affected. The regulatory requirement on them will not change. The public will continue to receive the same animal health services from local authorities (and may experience in some cases a higher standard where more experienced local authorities step in to carry out certain functions on behalf of those with less experience). We therefore feel the balance is firmly in favour of the public interest. Consultation responses agreed with this assessment that the provisions strike a fair balance. No replies identified any persons who would be adversely affected by the proposals.

**iv. the provisions of the proposed order will remove any necessary protections**

We do not feel that any necessary protections will be removed as the only change will be that certain local authorities will be exercising activities on behalf of another.

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<sup>5</sup> <http://www.defra.gov.uk/animalh/ahws/strategy/ahws.pdf>



Local authorities currently exercise other activities on behalf of one another without any consequent loss of necessary protections.

All consultees who replied on this point agreed the LRO would not remove any protection currently provided to the public, farming industry or animals. Each county council/unitary authority would still be obliged to fulfil their statutory duties in relation to animal health. The change brought by the legal amendment would increase the options available for local service delivery, rather than direct authorities down a specified route.

**v. the provisions of the proposed order would prevent a person from exercising any right or freedom which they might reasonably expect to continue to exercise**

It is not considered that the changes we propose would affect the exercise of any right or freedom by any person. All consultation replies stated that these proposals would not prevent anyone from exercising rights and freedoms.

**vi. the provisions of the proposed order are constitutionally significant**

The provisions will not alter local authorities' animal health functions but will merely bring these functions into line with their other statutory functions (and with the position in Wales and in Scotland) by allowing them to be exercised by other local authorities. We do not therefore consider the provisions to be constitutionally significant. All replies on this point agreed the provisions would not be constitutionally significant.

**Parliamentary Procedure**

It is the Secretary of State's view that the negative resolution procedure should apply to this LRO. This is because the LRO will deliver a minor and straightforward regulatory reform which already has support from an independent review as well as stakeholders and is very unlikely to be controversial. In allowing local authorities to arrange for other local authorities to exercise their animal health functions, the proposed provisions will bring the legal position for these functions into line with that for all other functions in England, and also in line with the situation in Wales and Scotland. It does not change the nature of animal health activities nor the obligation of local authorities to carry them out. Its aim is merely to improve the efficiency of the exercise of those functions. Their impact and scope is therefore considered to be limited.

All replies on this issue to the consultation agreed.

**Compatibility with the Convention on Human Rights**

The Minister is satisfied that the draft Order is compatible with the European Convention on Human Rights. There are no human rights issues concerned with the draft Order.

**Compatibility with obligations arising from membership of the European Union**

The draft Order is compatible with obligations arising from membership of the European Union.

[www.defra.gov.uk](http://www.defra.gov.uk)

# Consultation on changes to the Local Government Act 1972

**Amending the Local Government Act 1972 to allow local authorities in England to work together on animal health**

**25 July 2008**

Department for Environment, Food and Rural Affairs  
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## Summary of Proposals

Local authorities (LAs) cannot currently delegate work on animal health activities to other LAs, which is a clear obstacle to efficient and effective delivery. This problem is a result of legislation which prevents the delegation of animal health activities from one local authority to another. This differs from other work areas, where LAs are permitted to arrange for another LA to carry out work on their behalf.

We propose to bring the law on animal health activities into line with the rest of policy areas across government. This will allow those LAs who wish to invite other LAs to carry out animal health activities on their behalf to do so. We expect this to reduce the overall cost of providing such activities through economies of scale. It may increase effectiveness as LAs with less animal health work could benefit from others' greater expertise and experience.

In a recent consultation<sup>6</sup>, respondents on this point unanimously supported removing legal barriers to cross LA boundary work on animal health. This change will allow LAs to make a choice on how they deliver animal health services to meet the needs of the local community. We therefore propose to remove the legal obstacle.

We intend that the proposed changes to legislation are made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. Subject to the outcome of consultation, we propose that the changes are implemented in 2008.

[The response form for this consultation is split into two sections. The first examines whether an LRO is the best way to achieve the objective of removing the legal barrier to local authorities working together across boundaries on animal health. The second section asks specific questions of local authorities to help us finalise our impact assessment.](#)

This consultation is being made in accordance with the requirements of the Legislative Regulatory Reform Act 2006 and the terms of the Government's Code of Practice on Written Consultations<sup>7</sup>.

All responses should be received by **17 October 2008**.

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<sup>6</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

<sup>7</sup> <http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html>

## **Chapter 1: Introduction**

This consultation paper sets out the Government's proposals for reforming the legislation governing the ability of local authorities to arrange for another local authority to discharge their obligations regarding animal health.

Local authorities cannot delegate work on animal health activities to other local authorities as a result of a prohibition in the Local Government Act 1972 preventing the delegation of animal health related functions from one local authority to another. This is a clear obstacle to efficient and effective delivery. Government intervention is necessary to amend the legislation to allow LAs to arrange for the discharge of their animal health functions by other (and in some cases, better equipped) local authorities.

In all other policy areas apart from animal health, local authorities are permitted to arrange for another local authority to carry out work on their behalf. The policy objective is therefore to ensure the law allows the delegation of animal health activities just as it allows the delegation of functions in other policy areas across government. The effect will be to allow those local authorities who wish to invite other local authorities to carry out animal health activities on their behalf to do so. This change will allow local authorities to make a choice on how they deliver animal health activities to meet the needs of the local community.

We propose to introduce the reform by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRRRA). This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in the response form attached to the document.

### **Legislative Reform Order-Making Powers**

#### **What can be delivered by Legislative Reform Order?**

##### **Section 1**

Under section 1 of the LRRRA a Minister can make an LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

Section 1(3) of the LRRRA defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity

##### **Section 2**

Under section 2 of the LRRRA a Minister can make an LRO for the purpose of securing that regulatory activities are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

'Regulatory functions' is defined in section 32 as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

## **Preconditions**

Each proposal for a LRO must satisfy the preconditions set out in section 3 of the LRRRA. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions.

For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

- **Non-Legislative Solutions** - An LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- **Proportionality** - The effect of a provision made by an LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- **Fair Balance** - Before making a LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make an LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- **Necessary protection** - A Minister may not make an LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the



protection of civil liberties, the environment and national heritage.

- **Rights and freedoms** - An LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using an LRO.
- **Constitutional Significance** - A Minister may not make an LRO if he considers that the provision made by the LRO is of constitutional significance.

It should be noted that even where the preconditions of section 3 of the LRA are met, an LRO cannot:

- Deliver 'highly controversial proposals';
- Remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- Amend or repeal any provision of Part 1 of the LRA;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

## **Devolution**

The LRA imposes certain restrictions regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make an LRO under Part 1 of the LRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.

## Consultation

The LRRRA requires Departments to consult widely on all LRO proposals. The list of consultees, including the devolved administrations, to whom this document has been sent, is at [Annex A](#). The consultation is also available on the Internet at:

<http://www.defra.gov.uk/corporate/consult/localauth-lga-ah/>;

Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at [Annex B](#). The form is split into two sections. The first examines whether an LRO is the best way to achieve the objective of removing the legal barrier to local authorities working together across boundaries on animal health. The second section is for local authorities, and asks specific questions to help us finalise our impact assessment.

A note explaining the Parliamentary process for LROs to be made under the LRRRA can be found at Annex C. This will help consultees understand when and to whom they are able to put their views should they wish to do so.

This consultation document follows the format recommended by the BRE for such proposals. The criteria applicable to all UK public consultations under the BRE [Code of Practice on Consultation](#)<sup>8</sup> are set out in [Annex D](#).

## Disclosure

Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the LRRRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

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<sup>8</sup> <http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html>

- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form of Annex B.

### **Confidentiality and Freedom Of Information**

It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. **An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.**

### **RESPONDING TO THE CONSULTATION DOCUMENT**

Any comments on the proposals in this consultation document should be sent by 17 October at the latest to: [LRO.consultation@defra.gsi.gov.uk](mailto:LRO.consultation@defra.gsi.gov.uk)

You may prefer to reply via post to:

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Fax: 0207 238 3177

from whom further copies of this document may also be obtained.

This consultation has been prepared in line with the Government's code of practice

(<http://www.cabinetoffice.gov.uk/regulation/consultation/code/criteria.asp>)

Complaints or comments relating to the consultation process should be sent to:

Marjorie Addo

Consultation Co-ordinator

Defra

Area 7C Nobel House

17 Smith Square

London SW1P 3JR

or can be emailed to [consultation.coordinator@defra.gsi.gov.uk](mailto:consultation.coordinator@defra.gsi.gov.uk).

## Chapter 2: Background to the policy and legislation at issue

In England, county councils, unitary authorities and metropolitan borough councils are responsible for the enforcement of animal health and welfare legislation relating to farmed animals. Such legislation covers the movement and identification of livestock, animal by-products, bio security, disease prevention and contingency, controls at animal gatherings and animal welfare. Local authorities carry out a range of activities to fulfil this role, including providing proactive business advice, farms visits, presence at livestock markets and other animal gatherings, visits to slaughterhouses, visits to ports and checks during transportation. Activities are risk based and are carried out in consideration of national priorities, local circumstances and intelligence.

Animal health activities carried out by local authorities are funded primarily through the Revenue Support Grant. In addition to this, since 2001 there has been direct funding available from Defra to local authorities to supplement the resources available to them for work on animal health and welfare. In 2007/08 the budget for this was £8.5m.

Animal health was described as a national enforcement priority for local authority regulatory services in the Rogers Review<sup>9</sup>. Whereas local authorities (LAs) in England can arrange for nearly all of their functions to be delegated to other local authorities, they are currently prevented from arranging for another local authority to carry out their animal health activities. LAs with low demand for animal health work have to maintain resources for dealing with matters when they arise, rather than being able to seek assistance from LAs with more experience and/or specific resources. For some local authorities this is not only an administrative inconvenience, but a clear obstacle to efficient and effective delivery. It can also pose a financial burden. We now seek to remove it.

Section 101 of the Local Government Act 1972 (LGA) provided that local authorities in England could arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. However, sub-section 7 states that this does not apply to any of their functions under the Diseases of Animals Act 1950. The Diseases of Animals Act 1950, Section 67 stated that as a general rule local authorities should only carry out enforcement for their own area “unless otherwise expressed”. Section 68 set out circumstances in which local authorities could delegate the performance of activities to the neighbouring local authority. The 1950 Act was repealed in its entirety by the Animal Health Act 1981 (AHA) which further consolidated animal health legislation. However, whereas Section 67 was replicated in the LGA, Section 68 was not replicated in the LGA or the AHA. This has resulted in LAs not being able to delegate animal health activities due to there being no exemptions to the prohibition against delegation in the LGA.

We believe this to have been the result of a legislative oversight rather than a positive decision to exclude animal health activities. In any event we think it

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<sup>9</sup> [http://www.cabinetoffice.gov.uk/regulation/documents/rogers\\_review/review2007.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/rogers_review/review2007.pdf)

appropriate to permit a local authority to arrange for the discharge of its animal health activities by another local authority in the same manner as it can for any other function.

In June 2006, Defra published the Eves review<sup>10</sup> of the roles, responsibilities and relationships of the bodies that deliver and enforce animal health and welfare policies. The independent review assessed how effective the delivery landscape was and made recommendations on where improvements could be made. One of Eves' recommendations was that legal obstacles to cross border working between LAs should be removed.

Defra's response to the review was published for public consultation from 14 July to 12 October 2007, in which we agreed with this recommendation. All of the replies we received on this agreed with our seeking to pass the necessary legislation to remove such legal obstacles<sup>11</sup>.

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<sup>10</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

<sup>11</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/responses-summary.pdf>

## **Chapter 3: The proposal**

The burden described above is a result of a provision in primary legislation. The Legislative and Regulatory Reform Act 2006 (LRRRA) includes order-making powers which a Minister may use to amend primary legislation in certain circumstances. The LRRRA allows a Minister to make a Legislative Reform Order (LRO) for the purpose of removing or reducing burdens.

We propose to use an LRO to repeal Section 101(7) of the LGA, to ensure that local authorities can delegate animal health activities in the same way that they delegate other activities to each other. This will remove the legal obstacle and thus the burden.

We also propose to repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101. Section 101(7) was introduced into the LGA by the Local Government (Wales) Act 1994, but will need to be repealed along with Section 101 to ensure legislative clarity. This will not have any effect on Wales, as principal councils are currently allowed to delegate animal health functions to each other, and will continue to be able to delegate those functions to each other once the prohibition in Section 101(7) is repealed.

The LRO will not introduce any additional burdens as local authorities will only carry out animal health activities for other local authorities on a voluntary basis. The order will not require local authorities to discharge activities for which they do not already have responsibility, nor require them to pass those activities to other local authorities unless they choose to do so.

As this is an enforcement matter, people who comply with animal health legislation should not be adversely affected since the regulatory requirement on them will not change. The public interest will be served by ensuring that local authorities that specialise in, or are best equipped for, carrying out certain animal health functions are able to deliver cross local authority boundary animal health services, rather than having to rely on a local authority that may be ill equipped. This should provide a more efficient and effective way of working, allowing local authorities to focus their resources on the needs of their local communities. It is also likely to make costs savings for certain local authorities. We therefore feel the balance is firmly in favour of the public interest.

### **Extent**

The LRO is required to effect policy change in England although it will repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101(7). This change, while it amends legislation which applies to England and Wales, will not affect the practical position in Wales. The Welsh Assembly Government has been consulted and is content for this change to be made.

### **Related Controversial Issues**

There are no controversial issues.

### **Binding the Crown**

The proposal will not bind the Crown.

### **Possible Parliamentary Procedure**

The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution procedure is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

**Negative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.

**Affirmative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.

**Super-Affirmative Resolution Procedure** – This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister.

This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.

If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary



Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

The Department for Environment, Food and Rural Affairs believes that the negative resolution procedure should apply to this LRO. This is because the LRO will deliver a small regulatory reform which already has support from an independent review as well as stakeholders and is very unlikely to be controversial. It does not change the nature of animal health activities nor the obligation of local authorities to carry them out. It merely makes the exercise of those functions easier.

## **Chapter 4: Legal analysis against requirements of the Legislative and Regulatory Reform Act 2006**

### **1. Non-Legislative Solutions**

There are no non-legislative solutions as the problem results from a statutory prohibition in primary legislation. Lawyers advise that the prohibition cannot be removed without legislative change.

### **2. Proportionality**

'Delivering and enforcing animal health and welfare standards effectively' is a key theme of the Animal Health and Welfare Strategy for GB<sup>12</sup>. Repealing s101(7) of the LGA should increase the efficiency and effectiveness of delivery and enforcement, as local authorities with more experience and/or specific resources will be able to assist less experienced/smaller local authorities. As there is no other means by which this can be achieved, the effect of the repeal - which will not affect the nature of animal health functions nor a local authority's obligation to exercise them - is proportionate to the policy objective.

### **3. Fair Balance**

As this is an enforcement matter, people who comply with animal health legislation should not be adversely affected since the regulatory requirement on them will not change; the public will continue to receive the same animal health services from local authorities (and may experience in some cases a higher standard where more experienced local authorities step in to carry out certain functions on behalf of those with less experience). We therefore feel the balance is firmly in favour of the public interest.

### **4. Necessary protection**

We do not feel that any necessary protections will be removed as the only change will be that certain local authorities will be exercising activities on behalf of another. Local authorities currently delegate other activities without any consequent loss of necessary protections.

### **5. Rights and Freedoms**

As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom.

### **6. Constitutional Significance**

The provisions are not constitutionally significant.

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<sup>12</sup> <http://www.defra.gov.uk/animalh/ahws/strategy/ahws.pdf>

- Agriculture and Horticulture Development Board
- Animal Defenders International
- Askham Bryan College
- Association of Independent Meat Suppliers
- Association of Port Health Authority
- Association of the British Pharmaceutical Industry
- Assured British Meat
- Assured Food Standards
- Board of Deputies of British Jews
- Born Free Foundation
- British and Irish Association of Zoos and Aquariums
- British Association for Shooting and Conservation
- British Cattle Veterinary Association
- British Egg Industry
- British Equine Veterinary Association
- British Goat Society
- British Horse Society
- British Pig Association
- British Pig Executive
- British Poultry Council
- British Union for the Abolition of Vivisection
- British Veterinary Association
- Central Association of Agricultural Valuers
- Chartered Institute of Environmental Health
- Country Land and Business Association
- Dairy Industry Federation
- Dairy UK
- Department of Clinical Veterinary Science, University of Bristol
- Derby College
- England's Farming and Food Partnerships
- English Beef and Lamb Executive
- European Coalition to End Animal Experiments
- Family Farmers Association
- Farm Animal Welfare Council
- Farm Business Survey Consortium
- Farm Crisis Network
- Farm Management Association
- Farm Retail Association
- Farmers for Action
- Farmers' Union of Wales
- Family Farmers' Association
- Food and Veterinary Office

- Foodaware
- Goat Veterinary Society
- Greenpeace
- Halal Food Authority
- Halal Monitoring Committee
- Humane Slaughter Association
- Hybu Cig Cymru
- Institute of Trading Standards
- International League for the Protection of Horses
- International Zoo Veterinary Group
- Law Commission
- Law Society
- Legal Services Commission
- Local Authorities Coordinators of Regulatory Services
- Licensed Animal Slaughterers & Salvage Association
- Linking Environment And Farming
- Livestock Auctioneers Association
- London School of Economics and Political Science
- Milk Development Council
- National Animal Health and Welfare Panel
- National Animal Welfare Trust
- National Anti-Vivisection Society
- National Association of Agricultural Contractors
- National Beef Association
- National Consumer Federation
- National Council of Shechita Boards
- National Fallen Stock Company
- National Farmers Union
- National Pig Association
- National Pony Society
- National Sheep Association
- National Trust
- National Wildlife Crime Intelligence Unit
- Network of Sikh Organisations
- NFU Cymru
- People for the Ethical Treatment of Animals
- Pig Veterinary Society
- Poultry Club of Great Britain
- Poultry Research Centre
- Rare Breeds International
- Red Meat Industry Forum
- Royal Agricultural College
- Royal Agricultural Society of England
- Royal Association of British Dairy Farmers

- Royal College of Veterinary Surgeons
- Royal Institute of Chartered Surveyors
- Royal Society for the Prevention of Cruelty to Animals
- Royal Society for the Protection of Birds
- Royal Veterinary College
- Shechita UK
- Sheep Trust
- Sheep Veterinary Services
- Sheep Veterinary Society
- Small Business Service
- Society of Chief Trading Standards Officers
- Staffordshire Rural Support Network
- Tenant Farmers Association
- University of Newcastle-upon-Tyne
- Wales Animal Health and Welfare Panel
- Welsh Local Government Association
- Women's Food and Farming Union
- Writtle College

**RESPONSE FORM FOR THE CONSULTATION PAPER ON CHANGES TO THE LOCAL GOVERNMENT ACT 1972**

<b>Respondent Details</b>
Name:
Organisation:
Address:
Town/City:
County/Postcode:
Telephone:
Fax:
E-mail:

<b>Please return by 17/10/08 to:</b>
LRO.consultation@defra.gsi.gov.uk
Rhys Jackson Agency Relationship Team Department for Environment, Food and Rural Affairs Area 5E, 9 Millbank c/o 17 Smith Square London SW1P 3JR Tel: 0207 238 6802 Fax: 0207 238 3177

Are you requesting non-disclosure of your response?

**Section A: is an LRO appropriate in this case?**

<b>a) Do you think the proposals will remove or reduce burdens as explained in Chapter 3?</b>
<b>Comments:</b>

**b) Do you have views regarding the expected benefits of the proposals as identified in Chapter 3 of this consultation document and addressed in the partial Impact Assessment attached at Annex E?**

**Comments:**

**c) If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here.**

**Comments:**

**d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?**

**Comments:**

**e) Are the proposals put forward in this consultation document proportionate to the policy objective?**

**Comments:**

**f) Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?**

**Comments:**

**g) Do the proposals put forward in this consultation document remove any necessary protection?**

**Comments:**



**h) Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in Chapter 4? If so, please provide details.**

**Comments:**

**i) Do you consider the provisions of the proposal to be constitutionally significant?**

**Comments:**

**j) Do you agree that the proposed Parliamentary resolution procedure (as outlined in Chapter 3) should apply to the scrutiny of this proposal?**

**Comments:**

**Section B: Questions for Local Authorities**

**a) Would your authority be interested in performing animal health activities for another authority? If so, what type of activities do you expect to perform and what proportion of the other authorities animal health workload do you expect this would represent?**

**Comments:**

**b) Would your authority be interested in arranging for another local authority to carry out animal health activities on your behalf? If so, what type of activities do you expect would these be and what proportion of your animal health workload do you expect this would represent?**

**Comments:**

**c) If you answered yes to question b, what is the current cost of performing those animal health activities that you would consider contracting out?**

**Comments:**

**d) If you answered yes to question a, could you estimate an approximate charge for performing animal health activities on behalf of another authority?**

**Comments:**

**e) Please give details of any perceived benefit in performance through consolidating the expertise and experience in animal health activities.**

**Comments:**

### **Introduction**

1. These reform proposals in relation to local authority animal health work will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to local authority animal health work as measures that might be carried forward by a LRO.

### **Legislative Reform Proposals**

2. This consultation document on local authority animal health work has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

- i) Explain under which power or powers in the LRRRA the provisions contained in the order are being made;
- ii) Introduce and give reasons for the provisions in the Order;
- iii) Explain why the Minister considers that:
  - There is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
  - The effect of the provisions are proportionate to the policy objective;
  - The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - The provisions do not remove any necessary protection;

- The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- The provisions in the proposal are not constitutionally significant; and
- Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE's website at:

<http://bre.berr.gov.uk/regulation/reform/bill/>

### **Parliamentary Scrutiny**

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- (a) appear to make an inappropriate use of delegated legislation;
- (b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

- (c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secure a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) have an effect which is proportionate to the policy objective;
- (f) strike a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) do not remove any necessary protection;
- (h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) are not of constitutional significance;
- (j) make the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) have been the subject of, and takes appropriate account of, adequate consultation;
- (l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;
- (m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at

- [Regulatory Reform Committee](#) in the Commons; and
- [Delegated Powers and Regulatory Reform Committee](#) in the Lords.

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

### **How to Make Your Views Known**

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document (in this case, Rhys Jackson, Defra). When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and  
Regulatory Reform Committee  
House of Lords  
London  
SW1A 0PW  
Tel: 0207 219 3103  
Fax: 0207 219 2571  
<mailto:dpr@parliament.uk>

Regulatory Reform Committee  
House of Commons  
7 Millbank  
London  
SW1P 3JA  
Tel: 020 7219 2830/2833/2837  
Fax: 020 7219 2509  
<mailto:regrefcom@parliament.uk>

## **Non-disclosure of responses**

17. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

## **Information about Third Parties**

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

**Better Regulation Executive**  
**Department for Business, Enterprise and Regulatory Reform**



The criteria in the "[Code of Practice on Written Consultation](#)" published by the BRE apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) they should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents with an explanation of any departure, and confirmation that they have otherwise been followed.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and reasons for decisions finally taken.

Designating a consultation co-ordinator who will ensure the lessons are disseminated.

# Consultation Document : Annex E: Partial Impact Assessment

<b>Department /Agency:</b> <b>Defra</b>	<b>Title:</b> <b>Impact Assessment of amending the Local Government Act 1972 on animal health functions</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1.0	<b>Date:</b> 2 June 2008
<b>Related Publications:</b> Summary of responses to the consultation on the Eves Review of the Animal Health & Welfare Delivery Landscape		

**Available to view or download at:**

<http://www.defra.gov.uk/animalh/ahws/deliver/responses-summary.pdf>

**Contact for enquiries:** Rhys Jackson

**Telephone:** 0207 238 6802

**What is the problem under consideration? Why is government intervention necessary?**

Primary legislation currently prevents local authorities (LAs) contracting work on animal health functions to other local authorities. This is the only area of LA work where such a prohibition applies and intervention to change the law will remove an obstacle to efficient and effective delivery.

**What are the policy objectives and the intended effects?**

In all policy areas apart from animal health, LAs are permitted to arrange for another LA to carry out work on their behalf. The policy objective is therefore to bring the law on animal health functions into line with the rest of policy areas across government. We expect this to reduce the cost of providing such functions through economies of scale. It may increase effectiveness as LAs with less animal health work could benefit from others' greater expertise and experience.

**What policy options have been considered? Please justify any preferred option.**

The options are either to make the change, or to do nothing. Doing nothing would perpetuate the barrier to more efficient and effective delivery.

In a recent consultation, respondents on this point unanimously supported removing legal barriers to cross LA boundary work on animal health. This change will allow LAs to make a choice on how they deliver animal health activities to meet the needs of the local community.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** We aim to review in the financial year 2011-2012 in line with the local authority National Performance Indicator for animal health.

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' We will ask for details on this during our consultation.		
	<b>One-off</b> (Transition) <b>Yrs</b>			
	£ N/A			
	<b>Average Annual Cost</b> (excluding one-off)			
	£	<b>Total Cost (PV)</b>	£ N/A	
Other <b>key non-monetised costs</b> by 'main affected groups' Costs should be reduced as LAs are able to contract out their animal health functions to other LAs meaning they can benefit from economies of scale. Currently LAs have to maintain the ability to comply with legislative commitments themselves even if demand for such services is low, for example in urban boroughs.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' We will ask for details on this during our consultation.		
	<b>One-off</b> <b>Yrs</b>			
	£ N/A			
	<b>Average Annual Benefit</b> (excluding one-off)			
	£	<b>Total Benefit (PV)</b>	£ N/A	
Other <b>key non-monetised benefits</b> by 'main affected groups' LAs will be able to contract out work on animal health to other, more expert or experienced LAs. This could provide a more efficient and effective way of working, allowing LAs to focus their resources on the needs of their local communities.				

Key Assumptions/Sensitivities/Risks
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Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £ N/A
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	ASAP			
Which organisation(s) will enforce the policy?	N/A			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	N/A			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of	£ N/A	Decrease of	£ N/A
<b>Net Impact</b>			£ N/A

## Evidence Base (for summary sheets)

### Background

In England, county councils, unitary authorities and metropolitan borough councils are responsible for the enforcement of animal health and welfare legislation relating to farmed animals. Such legislation covers the movement and identification of livestock, animal by-products, biosecurity, disease prevention and contingency, controls at animal gatherings and animal welfare. Local authorities carry out a range of activities to fulfil this role, including providing proactive business advice, farms visits, presence at livestock markets and other animal gatherings, visits to slaughterhouses, visits to ports and checks during transportation. Activities are risk based and are carried out in consideration of national priorities, local circumstances and intelligence.

Animal health activities carried out by local authorities are funded primarily through the Revenue Support Grant. In addition to this, since 2001 there has been direct funding available from Defra to local authorities to supplement the resources available to them for work on animal health and welfare. In 2007/08 the budget for this was £8.5m.

Animal health was described as a national enforcement priority for local authority regulatory services in the Rogers Review<sup>13</sup>. Whereas local authorities in England can arrange for nearly all of their activities to be delegated to other local authorities, they are currently prevented from arranging for another local authority to carry out their animal health activities. Under the Animal Health Act 1981, local authorities with low demand for animal health work have to maintain resources for dealing with matters when they arise, rather than being able to seek assistance from other local authorities with more experience and/or specific resources. For some authorities this is not only an administrative inconvenience, but a clear obstacle to efficient and effective delivery. We seek to remove it.

### Legal position

Section 101 of the Local Government Act 1972 (LGA) provided that local authorities in England could arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. However, sub-section 7 states that this does not apply to any of their functions under the Diseases of Animals Act 1950. The Diseases of Animals Act 1950, Section 67 stated that as a general rule local authorities should only carry out enforcement for their own area “unless otherwise expressed”. Section 68 set out circumstances in which local authorities could delegate the performance of functions to the neighbouring local authority. The 1950 Act was repealed in its entirety by the Animal Health Act 1981 which further consolidated animal health legislation. However, whereas Section 67 was replicated in the LGA, Section 68 was not. This has resulted in local authorities not being able to delegate animal health activities.

We believe this to have been the result of a legislative oversight rather than a positive decision to exclude animal health activities. In any event we think it appropriate to permit a local authority to arrange for the discharge of its animal health activities by another local authority in the same manner as it can for any other function.

In June 2006, Defra published the Eves review<sup>14</sup> of the roles, responsibilities and relationships of the bodies that deliver and enforce animal health and welfare policies in England. The independent review assessed how effective the delivery landscape was and made recommendations on where improvements could be made. One of Eves’ recommendations was that legal obstacles to cross border working between local authorities should be removed.

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<sup>13</sup> [http://www.cabinetoffice.gov.uk/regulation/documents/rogers\\_review/review2007.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/rogers_review/review2007.pdf)

<sup>14</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

Defra's response to the review was published for public consultation<sup>15</sup> from 14 July to 12 October 2007, in which we agreed with this recommendation. All of the replies we received on this agreed with our seeking to pass the necessary legislation to remove such legal obstacles.

## **Proposal**

The burden described above is a result of a provision in primary legislation. The Legislative and Regulatory Reform Act 2006 (LRRRA) includes order-making powers which a Minister may use to amend primary legislation. The LRRRA allows a Minister to make a Legislative Reform Order (LRO) for the purpose of removing or reducing burdens.

We propose to use an LRO to repeal Section 101(7) of the LGA through amendments to that act, bringing the legal approach to animal health into line with that for other functions. This will remove the legal problem and thus the burden. The LRO will not introduce any additional burdens as arranging for work to be carried out or to carry work out for other local authorities will be voluntary. The order will not require local authorities to discharge activities for which they do not already have responsibility, nor require them to pass them to other authorities unless they choose to do so.

We also propose to repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101. Section 101(7) was introduced into the LGA by the Local Government (Wales) Act 1994, but will need to be repealed along with Section 101 to ensure legislative clarity. This will not have any effect on Wales, as principal councils are currently allowed to delegate animal health functions to each other, and will continue to be able to delegate those functions to each other once the prohibition in Section 101(7) is repealed. The Welsh Assembly Government has been consulted and is content for this change to be made.

As this is an enforcement matter, people who comply with animal health legislation should not be adversely affected since the regulatory requirement on them will not change; nor should the general public, since the burdens on local authorities will not change. This should provide a more efficient and effective way of working, allowing local authorities to focus their resources on the needs of their local communities. We therefore feel the balance is firmly in favour of the public interest.

## **Costs and Benefits**

Amending the Local Government Act 1972 should reduce the costs to local authorities of complying with animal health commitments. We expect this to be achieved by allowing local authorities to contract out animal health activities to other local authorities and thus benefit from economies of scale.

By consolidating animal health activities with fewer local authorities we would expect costs to be reduced in areas such as overheads and staffing as there will be reduced duplication of resources. This is due to the restrictions imposed by the act where under utilised and spare resources cannot be shared across local authorities.

For example, it may be the case that an urban authority is maintaining, as required by law, the resources to deal with animal health issues but that these are infrequently used. They may be able to contract this out to a more rural authority who are able to extend the provision of their service for a minimal additional cost. This allows the urban authority to save resources that were originally diverted to animal health activities as there is now less duplication of roles across the two local authorities.

By consolidating animal health activities and having fewer but larger and more utilised resources, the remaining teams might be more effective and efficient in carrying out their animal health activities. This could be due to the greater expertise and experience of teams which would be dealing with animal health issues on a more regular basis, and also benefiting from such things as knowledge spill-over, which is a key benefit of agglomeration. We seek to better understand and value these benefits through the consultation exercise

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<sup>15</sup> <http://www.defra.gov.uk/corporate/consult/eves/index.htm>

## **Consultation**

As stated earlier, we have previously consulted on removing the legal barrier to cross authority boundary work. We are now consulting on whether an LRO is the best method of doing so. During the consultation we seek to better understand the likely take up of this option by local authorities and how this might impact on the cost of performing these activities and other potential benefits of contracting out. We seek to gather views on the following points:

- Number of local authorities we expect to contract out work
- Current cost of performing the animal health activities in local authorities that are likely to seek to contract out.
- The expected charge for local authorities taking over the animal health activities of other authorities
- Any perceived benefit in performance by consolidating the expertise and experience in animal health activities.

## **Specific Impact Test Outcomes**

### Competition Assessment

At present there is no competition as local authorities must perform their own animal health activities. The proposal may bring in an element of competition as local authorities would be free to choose other authorities to do this work on their behalf.

### Small Firms Impact Test

The proposal applies to local authorities only and will not have a negative impact on small firms. There may be a positive impact as firms benefit from the increased expertise and efficiency, and therefore improved service delivery.

### Legal Aid

The proposal does not create new criminal sanctions or civil penalties, so will have no effect on Legal Aid.

### Sustainable Development

As the overall number of activities carried out by local authorities will not change, the proposal has no implications for sustainable development.

### Carbon Impact Assessment

The proposal will have no significant effect on carbon emissions, as the total amount of work carried out by local authorities will not change. There may be additional vehicle miles travelled in order for some local authorities to perform animal health activities for others. However, the emissions resulting from this would not exceed the level which Defra terms significant and therefore the change in emissions has not been quantified in this impact assessment.

### Other Environmental Issues

As the overall level of activity carried out by local authorities will not change, the proposal has no implications for other environmental issues such as climate change, waste management, landscapes, water and floods, habitats and wildlife, or noise pollution.

### Health Impact Assessment

The proposal will not directly impact on health or well being and will not result in health inequalities.

### Race /Disability/Gender

There are no limitations on meeting the requirements of the proposal on the grounds of race, disability or gender. The proposal does not impose any restriction or involve any requirement which a person of a particular racial background, disability or gender would find difficult to comply with.

#### Human Rights

The proposal is consistent with the Human Rights Act 1998.

#### Rural Proofing

The proposal applies to all local authorities, whether urban or rural. The policy is unlikely to have any significant differential impacts between rural and urban areas. Any contracting out which occurs is more likely to be towards rural local authorities who may be better placed to perform the activities. Therefore, if there is any differential impact, it is more likely to be positive in rural areas.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## Annex B – Final Impact Assessment

<b>Department /Agency:</b> <b>Defra</b>	<b>Title:</b> <b>Impact Assessment of amending the Local Government Act 1972 on animal health functions</b>	
<b>Stage:</b> Final	<b>Version:</b> 0.1	<b>Date:</b> 26 January 2009
<b>Related Publications:</b> Summary of responses to the consultation on the Eves Review of the Animal Health & Welfare Delivery Landscape		

Available to view or download at:

<http://www.defra.gov.uk/animalh/ahws/deliver/responses-summary.pdf>

Contact for enquiries: Delyth Dyne

Telephone: 0207 238 1224

**What is the problem under consideration? Why is government intervention necessary?**

Primary legislation currently prevents local authorities (LAs) contracting work on animal health functions to other local authorities. This is the only area of LA work where such a prohibition applies and intervention to change the law will remove an obstacle to efficient and effective delivery.

**What are the policy objectives and the intended effects?**

In all policy areas apart from animal health, LAs are permitted to arrange for another LA to carry out work on their behalf. The policy objective is therefore to bring the law on animal health functions into line with the rest of policy areas across government. We expect this to reduce the cost of providing such functions through economies of scale. It may increase effectiveness as LAs with less animal health work could benefit from others' greater expertise and experience.

**What policy options have been considered? Please justify any preferred option.**

The options are either to make the change, or to do nothing. Doing nothing would perpetuate the barrier to more efficient and effective delivery.

In a recent consultation, respondents on this point unanimously supported removing legal barriers to cross LA boundary work on animal health. This change will allow LAs to make a choice on how they deliver animal health activities to meet the needs of the local community.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** We aim to review in the financial year 2011-2012 in line with the local authority National Performance Indicator for animal health.

**Ministerial Sign-off** For Final Impact Assessment:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Hilary Benn

.....Date: 30th May 2009

## Annex B – Final Impact Assessment

<b>Policy Option: 1</b>	<b>Description: Amendment of the Act 1972 on animal health functions</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' As LAs will only contract out their animal health functions if financially beneficial, no costs to LAs are assumed. The amendment is assumed to have no effect on the provision of the animal health function; hence there are no costs to other parties.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 0		
			<b>Total Cost (PV)</b> £ N/A
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The range of benefits is based on an estimate of the aggregate cost of AH service provision and the potential effect on these costs due to efficiency gains and economies of scale. The range covers zero benefit, based on there being no cost savings, to a 5% reduction in the costs of AH service provision for LAs. A 1% saving is assumed as the best estimate
	<b>One-off</b>	<b>Yrs</b>	
	£ 0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 0 – 277k	2	
			<b>Total Benefit (PV)</b> £ 0 – 545k
Other <b>key non-monetised benefits</b> by 'main affected groups' A saving in costs as a result of the change will allow LAs to focus their resources on the needs of their local communities.			

**Key Assumptions/Sensitivities/Risks** Costs and Benefits are assessed over a 2 year time period, to match the review period.

Price Base Year 2009	Time Period Years 2	<b>Net Benefit Range (NPV)</b> £ 0 – 545k	<b>NET BENEFIT (NPV Best estimate)</b> £ 109k
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		ASAP		
Which organisation(s) will enforce the policy?		N/A		
What is the total annual cost of enforcement for these organisations?		£ N/A		
Does enforcement comply with Hampton principles?		N/A		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ negligible		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)		
Increase of	£ N/A	Decrease of	£ N/A	<b>Net Impact</b> £ N/A



## Evidence Base (for summary sheets)

### Background

In England, county councils, unitary authorities and metropolitan borough councils are responsible for the enforcement of animal health and welfare legislation relating to farmed animals. Such legislation covers the movement and identification of livestock, animal by-products, biosecurity, disease prevention and contingency, controls at animal gatherings and animal welfare. Local authorities carry out a range of activities to fulfil this role, including providing proactive business advice, farms visits, presence at livestock markets and other animal gatherings, visits to slaughterhouses, visits to ports and checks during transportation. Activities are risk based and are carried out in consideration of national priorities, local circumstances and intelligence.

Animal health activities carried out by local authorities are funded primarily through the Revenue Support Grant. In addition to this, since 2001 there has been direct funding available from Defra to local authorities to supplement the resources available to them for work on animal health and welfare. In 2007/08 the budget for this was £8.5m.

Animal health was described as a national enforcement priority for local authority regulatory services in the Rogers Review<sup>16</sup>. Whereas local authorities in England can arrange for nearly all of their functions to be discharged by other local authorities, they are currently prevented from arranging for another local authority to carry out their animal health activities. Local authorities with low demand for animal health work have to maintain resources for dealing with matters when they arise, rather than being able to seek assistance from other local authorities with more experience and/or specific resources. For some authorities this is not only an administrative inconvenience, but a clear obstacle to efficient and effective delivery. We seek to remove it.

### Legal position

Section 101 of the Local Government Act 1972 (LGA) provided that local authorities in England could arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. However, sub-section 7 states that this does not apply to any of their functions under the Diseases of Animals Act 1950. (The 1950 Act was repealed in its entirety by the Animal Health Act 1981 which further consolidated animal health legislation).

In June 2006, Defra published the Eves review<sup>17</sup> of the roles, responsibilities and relationships of the bodies that deliver and enforce animal health and welfare policies in England. The independent review assessed how effective the delivery landscape was and made recommendations on where improvements could be made. One of Eves' recommendations was that legal obstacles to cross border working between local authorities should be removed.

Defra's response to the review was published for public consultation<sup>18</sup> from 14 July to 12 October 2007, in which we agreed with this recommendation. All of the replies we received on this agreed with our seeking to pass the necessary legislation to remove such legal obstacles.

### Proposal

The burden described above is a result of a provision in primary legislation. The Legislative and Regulatory Reform Act 2006 (LRRRA) includes order-making powers which a Minister may use to amend primary legislation. The LRRRA allows a Minister to make a Legislative Reform Order (LRO) for the purpose of removing or reducing burdens.

We propose to use an LRO to repeal Section 101(7) of the LGA through amendments to that act, bringing the legal approach to animal health into line with that for other functions. This will remove the legal problem and thus the burden. The LRO will not introduce any additional

<sup>16</sup> [http://www.cabinetoffice.gov.uk/regulation/documents/rogers\\_review/review2007.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/rogers_review/review2007.pdf)

<sup>17</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

<sup>18</sup> <http://www.defra.gov.uk/corporate/consult/eves/index.htm>

burdens as arranging for work to be carried out or to carry work out for other local authorities will be voluntary. The order will not require local authorities to discharge functions for which they do not already have responsibility, nor require them to pass them to other authorities unless they choose to do so.

We also propose to repeal Section 101(7A) of the LGA which exempts Welsh principal councils from the prohibition in Section 101. Section 101(7) was introduced into the LGA by the Local Government (Wales) Act 1994, but will need to be repealed along with Section 101 to ensure legislative clarity. This will not have any effect on Wales, as principal councils are currently allowed to carry out animal health functions for each other, and will continue to be able to do so once the prohibition in Section 101(7) is repealed. The Welsh Assembly Government has been consulted and is content for this change to be made.

As this is an enforcement matter, people who comply with animal health legislation should not be adversely affected since the regulatory requirement on them will not change; nor should the general public, since the burdens on local authorities will not change. This should provide a more efficient and effective way of working, allowing local authorities to focus their resources on the needs of their local communities. We therefore feel the balance is firmly in favour of the public interest.

### **Costs and Benefits**

Amending the Local Government Act 1972 should reduce the costs to local authorities of complying with animal health commitments. We expect this to be achieved by allowing local authorities to contract out animal health activities to other local authorities and thus benefit from economies of scale.

By consolidating animal health functions with fewer local authorities we would expect costs to be reduced in areas such as overheads and staffing as there will be reduced duplication of resources. This is due to the restrictions imposed by the act where under-utilised and spare resources cannot be shared across local authorities.

For example, it may be the case that an urban authority is maintaining, as required by law, the resources to deal with animal health issues but that these are infrequently used. They may be able to contract this out to a more rural authority who are able to extend the provision of their service for a minimal additional cost. This allows the urban authority to save resources that were originally diverted to animal health activities as there is now less duplication of roles across the two local authorities.

By consolidating animal health activities and having fewer but larger and more utilised resources, the remaining teams might be more effective and efficient in carrying out their animal health activities. This could be due to the greater expertise and experience of teams which would be dealing with animal health issues on a more regular basis, and also benefiting from such things as knowledge spill-over, which is a key benefit of agglomeration. We sought to better understand and value these benefits through the consultation exercise.

It has been very difficult to accurately assess the monetary value of the proposed change to the LGA. Although the consultation has been instructive regarding the more general points concerning the use of the LRO (see below), specifics regarding the likely proportion of LAs offering to provide or contract in AH functions has been limited, as has detailed information regarding current costs of providing various AH functions.

On the costs side, there are no additional costs expected as a result of the change. Although there may be administrative costs to LAs choosing to contract out or provide services, these will be factored into the decision of whether to continue to provide or provide additional AH functions.

In terms of the applicable benefits, it has been necessary to take a “top-down” approach to estimating the values, with a range of benefits based on expected efficiency gains overall. This is due to both the uncertainty regarding the level and type of LA co-operation on AH and the large expected variation between LAs in terms of AH provision requirements.

There are a variety of AH functions that are carried out by LAs. Three of the key functions relate to inspection and monitoring visits to animal keepers, the vast majority of which are farms, visits to livestock markets and visits to ports of entry by Enforcement Officers. Based on these three functions, overall AH support provided by LAs is estimated to cost approximately £5.54 m annually. This estimate is based on the following assumptions derived from the consultation process, through direct communication with LAs and through information contained within the Eves Review:

- Each visit to a port of entry and farm is assumed to cost an LA approximately £85, including Enforcement Officer wages, administration costs and travel expenses; a visit to a market will cost approximately £180 based on two Enforcement Officers attending, travel and administration costs.
- It is assumed that there are approximately 150 markets, 119,000 livestock holding farms and 16 ports of entry that are inspected.
- Markets are assumed to be visited each week by two officers
- Farms tend to be visited on a risk basis and so not every farm will be visited annually. AMES<sup>19</sup> data analysed in the Eves review shows that there were 13,288 inspections in the first quarter of 2006 for England and Wales, translating to 53,152 inspections annually. Assuming the same proportion of holdings are visited each year in England and Wales, and that there are approximately 18,000 livestock farms in Wales, translating the AMES figure to England only suggests around 49,000 visits are carried out annually.
- Each port of entry is assumed to be visited once a year.

Although savings are likely, it has not been possible to accurately provide a point estimate of the benefits of this proposed change due to the uncertainties discussed above. On the one hand, if LAs choose not to purchase functions from or sell functions to other LAs, the benefit of the proposal will be zero. On the other hand, if high levels of co-operation between LAs on AH occur, there could be large savings for LAs translating to significant benefits overall. For illustrative purposes, if we assume that the three functions above provide an approximate estimate for the cost of AH support by LAs, a 5% cost saving would translate to a benefit of around £277,000. Note that this figure is likely to underestimate the level of benefit from this size of saving, due to the additional AH functions not accounted for e.g. farm advice, processing licenses, roadside livestock vehicle checks, visits to slaughterhouses etc. Taking a conservative estimate that the amendment of the act will result in a 1% saving in total costs, around £55,000 is expected to be saved on an annual basis for LAs together in England.

	<b>Markets</b>	<b>Farms</b>	<b>Ports</b>	<b>Total</b>
<b>Number of annual visits</b>	7800	48,631	16	56446.6
<b>Cost per visit</b>	180	85	85	350
<b>Total cost</b>	£1,404,000	£4,133,601	£1,360	£5,538,961
<b>Benefit: 0% cost saving</b>				£0
<b>Benefit: 1% cost saving</b>				£55,390
<b>Benefit: 5% cost saving</b>				£276,948

## Consultation

<sup>19</sup> AMES is the Animal Health and Welfare Management & Enforcement System, a computer database operated by DEFRA. The database used by LAs to record work related to Animal Health and Welfare. See <http://www.defra.gov.uk/animalh/ahws/deliver/index.htm>



As stated earlier, we previously consulted on removing the legal barrier to cross authority boundary work. We then consulted on whether an LRO is the best method of doing so.

The substantive responses to the consultation all agreed with Defra's proposal to use an LRO to remove the legal barrier to cross authority boundary work on animal health activities. There was agreement that there is no satisfactory non-legislative solution, and that using an LRO would be proportionate, fair, not constitutionally significant, and would not remove any rights or freedoms. Those who replied on the question of Parliamentary procedure all agreed that the proposed approach of using negative resolution should apply. There were expressions of interest in offering animal health services to other local authorities, although information on what this would cost was limited.

## **Specific Impact Test Outcomes**

### Competition Assessment

At present there is no competition as local authorities must perform their own animal health activities. The proposal may bring in an element of competition as local authorities would be free to choose other authorities to do this work on their behalf.

### Small Firms Impact Test

The proposal applies to local authorities only and will not have a negative impact on small firms. There may be a positive impact as firms benefit from the increased expertise and efficiency, and therefore improved service delivery.

### Legal Aid

The proposal does not create new criminal sanctions or civil penalties, so will have no effect on Legal Aid.

### Sustainable Development

As the overall number of activities carried out by local authorities will not change, the proposal has no implications for sustainable development.

### Carbon Impact Assessment

The proposal will have no significant effect on carbon emissions, as the total amount of work carried out by local authorities will not change. There may be additional vehicle miles travelled in order for some local authorities to perform animal health activities for others. However, the emissions resulting from this would not exceed the level which Defra terms significant and therefore the change in emissions has not been quantified in this impact assessment.

### Other Environmental Issues

As the overall level of activity carried out by local authorities will not change, the proposal has no implications for other environmental issues such as climate change, waste management, landscapes, water and floods, habitats and wildlife, or noise pollution.

### Health Impact Assessment

The proposal will not directly impact on health or well being and will not result in health inequalities.

### Race /Disability/Gender

There are no limitations on meeting the requirements of the proposal on the grounds of race, disability or gender. The proposal does not impose any restriction or involve any requirement which a person of a particular racial background, disability or gender would find difficult to comply with.

### Human Rights

The proposal is consistent with the Human Rights Act 1998.

### Rural Proofing

The proposal applies to all local authorities, whether urban or rural. The policy is unlikely to have any significant differential impacts between rural and urban areas. Any contracting out which occurs is more likely to be towards rural local authorities who may be better placed to perform the activities. Therefore, if there is any differential impact, it is more likely to be positive in rural areas.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No



## **Annex C – Consultation summary**

### **Consultation on changes to the Local Government Act 1972 to allow local authorities in England to work together on animal health**

#### **Summary of responses received to the consultation**

##### **Background**

In June 2006, Defra published the Eves review<sup>20</sup> of the roles, responsibilities and relationships of the bodies that deliver and enforce animal health and welfare policies in England. The independent review assessed how effective the delivery landscape was and made recommendations on where improvements could be made. One of Eves' recommendations was that legal obstacles to cross border working between local authorities should be removed.

Defra's response to the review was published for public consultation from 14 July to 12 October 2007, in which we agreed with this recommendation. All of the replies we received on this agreed with our seeking to pass the necessary legislation to remove such legal obstacles. The summary of the consultation is available on the Defra website<sup>21</sup>.

##### **The consultation on changes to the Local Government Act 1972**

This consultation was on the principle of using a Legislative Reform Order (LRO) to achieve the policy objective of removing the above legal obstacle. The consultation ran from 25 July 2008 to 17 October 2008, and was split into two sections: questions on the use of an LRO; and economic questions to help finalise the Impact Assessment. The consultation is available on the Defra website<sup>22</sup>.

##### **Replies**

Defra received ten substantive responses to the consultation (nine responses from local authorities or their representative bodies, and one from a veterinary society), and four noting our intentions without comment.

Due to the low number of respondents, we have not presented the data in percentage terms.

##### **Conclusion**

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<sup>20</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/review.htm>

<sup>21</sup> <http://www.defra.gov.uk/animalh/ahws/deliver/responses-summary.pdf>

<sup>22</sup> <http://www.defra.gov.uk/corporate/consult/localauth-lga-ah/index.htm>

The substantive responses all agreed with Defra's proposal to use an LRO to remove the legal barrier to cross authority boundary work on animal health activities. There was agreement that there is no satisfactory non-legislative solution, and that using an LRO would be proportionate, fair, not constitutionally significant, and would not remove any rights or freedoms. Those who replied on the question of Parliamentary procedure all agreed that the proposed approach of using negative resolution should apply. There were expressions of interest in offering animal health services to other local authorities, although information on what this would cost was limited.

## **Summary of responses**

### **Section A: is an LRO appropriate in this case?**

#### **a) Do you think the proposals will remove or reduce burdens as explained in Chapter 3?**

Respondents agreed that the LRO would remove or reduce burdens. It should allow for more efficient and effective enforcement linked to shared resources. It was felt that smaller local authorities may find the burden of training staff and maintaining cover for the very specialist role of animal health enforcement too onerous, so resulting service in this area may be lower than would be preferred. The opportunity to easily "buy in" the service from another authority with the established resource and expertise in the area should improve the level of service delivered and reduce the burden on authorities.

#### **b) Do you have views regarding the expected benefits for the proposals as identified in Chapter 3 of this consultation document and addressed in the partial Impact Assessment attached at Annex C?**

Views expressed suggested there will be an advantage from specialist units in authorities to take on the animal health function for other authorities who do not have the expertise, thus expanding the range of options available to local authorities when delivering animal health services, which will further help ensure that the best service possible is provided for each community.

The LRO should encourage more joint working through official agreements between local authorities and should result in a more effective service delivered by a specialist animal health team within the authority that the service has been contracted to. Such a team would be in a stronger position to allocate resources to keep up to date with developments within animal health, and thus raise the reputation of animal health enforcement and achieve an improved consistency of approach nationwide. There will be some savings made in administration and training costs for authorities.

**c) If there is any empirical evidence that you are aware of that supports that the need for these reforms, please provide details**

Respondents identified that there is evidence of the need for these reforms which could improve the delivery of animal health services across England.

Complaints have been received from Goat Veterinary Society members that Trading Standards officers in some areas are not entirely clear on the legislation. Concentrating more of the duties on those with greatest expertise will be an advantage, in particular, in establishing mutual confidence in practice.

There have been partial agreements reached by authorities in the past, which demonstrates that there is a demand for this practice. Authorities have generally found this approach to be beneficial and several of these arrangements have been successfully in place for some years. However, the legislation does not allow these to be formalised, and there are questions over their legality.

The Eves report identified that the legal issue preventing contracting of animal health work between authorities left some authorities underperforming. The proposals will allow already strong partnering arrangements between Trading Standards departments to be further strengthened by enabling a joined up approach.

**d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?**

The majority of respondents agreed that there were no non-legislative means to remove the legal barrier to cross authority boundary work on animal health. Comments in this area included that improvements in animal health delivery could possibly be brought about through intensive training (although potentially at poor value for money), or through mentoring arrangements. However, these would not solve the legal issue, and could result in legal challenge to animal health contracts.

It was noted that some authorities already have varying forms of contract arrangements for animal health services, many of which were put in place before legal opinion suggested that the legislation may not permit this. It is essential for these authorities that the situation is rectified as soon as possible.

**e) Are the proposals put forward in this consultation document proportionate to the policy objective?**

Respondents all agreed the proposals are proportionate to the policy objective. The proposal was described as a minimal legal change that will benefit local authority animal health services across England, without having a consequential negative impact on another party.

- f) Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?**

The respondents agreed that it is fair. No replies identified any persons who would be adversely affected by the proposals.

- g) Do the proposals put forward in this consultation document remove any necessary protection?**

All who replied on this point agreed the LRO would not remove any protection currently provided to the public, farming industry or animals. Each county council/unitary authority would still be obliged to fulfil their statutory duties in relation to animal health. The change brought by the legal amendment would increase the options available for local service delivery and therefore increase protection, rather than direct authorities down a specified route.

- h) Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in Chapter 4? If so, please provide details.**

All replies stated that these proposals would not prevent anyone from exercising rights and freedoms.

- i) Do you consider the provisions of the proposal to be constitutionally significant?**

All replies on this point agreed the provisions would not be constitutionally significant. The proposed legislative amendment is technical and in no way introduces a legal or constitutional precedent. The proposed amendment will simply ensure that a historical legal oversight is rectified.

- j) Do you agree that the proposed Parliamentary resolution procedure (as outlined in Chapter 3) should apply to the scrutiny of this proposal?**

Defra proposed the use of the negative resolution procedure as the proposed change is simply a small technical amendment. All respondents on this issue agreed.

## **Section B: Questions for Local Authorities**

- a. Would your authority be interested in performing animal health activities for another authority? If so, what type of activities do you**



**expect to perform and what proportion of the other authorities' animal health workload do you expect this would represent?**

Several authorities expressed an interest in carrying out animal health work for other authorities. This could include inspections, audits, port work, investigation of complaints, licensing functions, data input, or a call out service. This would need to be set at a realistic cost to cover the work and responsibility involved.

**b. Would your authority be interested in arranging for another local authority to carry out animal health activities on your behalf? If so, what type of activities do you expect would these be and what proportion of your animal health workload do you expect this would represent?**

Responses on this point were generally that they would not ask other authorities for this service. One reply suggested that given unforeseen events, it would be useful to have the security of knowing they could ask others for assistance.

**c. If you answered yes to question b, what is the current cost of performing those animal health activities that you could consider contracting out?**

Not applicable (no respondents answered yes to question b).

**d. If you answered yes to question a, could you estimate an approximate charge for performing animal health activities on behalf of another authority?**

Authorities could not supply a definitive response. It would depend on a number of factors such as the size of the authority; the number of premises involved; the risk spread on those premises; or the proximity of the LA to the one carrying out the work. One authority provided approximate costs per hour for different grades of animal health officer, while another estimated the provision of a full service to an authority with 150 farms and one high risk premises might be approximately £9000.

**e. Please give details of any perceived benefit in performance through consolidating the expertise and experience in animal health activities.**

Perceived benefits included:

- building resilience in this area;
- being able to draw on additional resources when needed (a larger authority with a greater pool of officers and expertise can juggle resources more easily);

- being able to share knowledge/experience/best practice;
- being able to enable better training of new staff/students and trained animal health officers including out of hours cover;
- better liaison with neighbouring authorities leading to better intelligence gathering and partnership working;
- bringing animal health activities in line with other work areas of local authorities;
- better standards of work by having more experienced officers dealing with tasks;
- Animal Health need only deal with one authority which speeds up delivery and helps with liaison;
- the authority providing the service receives financial reward which can be used to improve service delivery throughout the areas covered, and;
- improved compliance will result in improved prevention and control of disease outbreaks.

## List of respondents

- British Association for Shooting and Conservation
- Devon County Council
- East of England Trading Standards Association
- East Riding of Yorkshire Council
- Enterprise Directorate, Department for Business, Enterprise & Regulatory Reform (formerly Small Business Service)
- Goat Veterinary Society
- Hybu Cig Cymru
- Local Authorities Coordinators of Regulatory Services
- Lancashire County Council
- National Wildlife Crime Unit
- Surrey County Council
- Trading Standards Institute
- Warwickshire County Council
- Wiltshire County Council

## **Annex D - List of Statutes and relevant extracts**

### **Local Government Act 1972**

#### PART VI DISCHARGE OF FUNCTIONS

**101.** Arrangements for discharge of functions by local authorities.

(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions

—

(a) by a committee, a sub-committee or an officer of the authority; or

(b) by any other local authority.

(7) A local authority shall not make arrangements under this section for the discharge of any of their functions under the Diseases of Animals Act 1950 by any other local authority.

### **The Animal Health Act 1981**

#### SCHEDULE 6

#### REPEALS

14 Geo. 6. c. 36.	Diseases of Animals Act 1950.	The whole Act.
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### **The Local Government (Wales) Act 1994**

#### SCHEDULE 15[Section 66(5).]

#### MINOR AND CONSEQUENTIAL AMENDMENTS OF THE 1972 ACT

1 The 1972 Act is amended as follows.

26 (1) Section 101 (arrangements for discharge of functions) is amended as follows.

(2) After subsection (7) insert—

“(7A) Subsection (7) above does not apply to arrangements as between principal councils in Wales.”

