

**EXPLANATORY MEMORANDUM TO
THE BRUCELLOSIS (ENGLAND) ORDER 2015**

2015 No. 364

1. 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs.

2. Purpose of the instrument

2.1 The Brucellosis (England) Order 2015 (“the 2015 Order”) revokes and substantially re-enacts the Brucellosis (England) Order 2000 and the Brucellosis (England)(Amendment) Order 2008. Its main purpose is to make deregulatory changes to the bulk milk tank sampling requirements for brucellosis testing under England’s national surveillance programme, in response to a Government review and consultation. Firstly, to implement consultation proposals the Order transfers responsibility for collecting and submitting these samples from Government to producer retailers. Second, to enforce existing administrative arrangements, the Order reduces the frequency at which the whole industry (milk purchasers and producer retailers) are required to submit samples, from monthly to quarterly.

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

3.1 None

4. Legislative Context

4.1 The Brucellosis (England) Order 2000 (“the 2000 Order”) was originally made under the Animal Health Act 1981 to help keep Great Britain “Officially Brucellosis Free” (“OBF”) under EU rules. The 2000 Order implemented the provisions of two EU Directives: Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine, and Council Directive 77/391/EEC introducing community measures for the eradication of brucellosis, tuberculosis and leucosis in cattle. These Directives require the operation of a monitoring and testing programme to maintain the OBF status of Great Britain under Council Directive 64/432/EEC and the 2000 Order therefore established a national surveillance programme for England. The 2000 Order was amended in 2008 to make minor drafting improvements and to align the circumstances under which a notice could be served by enforcement bodies.

4.2 Following Government review and consultation, the 2015 Order will revoke, substantially re-enact and replace the 2000 Order (as amended) to deregulate the bulk milk tank sampling arrangements for producer retailers and milk purchasers under England’s surveillance programme. Firstly, the 2015 Order will introduce a new

provision to make producer-retailers responsible for submitting, at their own expense, bulk milk tank samples to an approved laboratory (currently, the Animal and Plant Health Agency (“APHA”)) three times a year for brucellosis testing. As inadequate surveillance could lead to GB losing its OBF status, with negative socio-economic consequences, non-compliance with this new requirement will be an offence, as it is already for milk purchasers. Second, the 2015 Order will reduce the frequency for submitting samples from monthly to quarterly for the whole industry to reflect the administrative arrangement in place since April 2011.

4.3 The 2015 Order will also consolidate the 2000 Order with its 2008 amending Order as part of streamlining legislation under the Red Tape Challenge, as well as making some minor drafting improvements and changes, for example to reflect the fact that the Secretary of State may approve certain veterinary surgeons (who will become “Approved Veterinary Surgeons”) who will then carry out the functions previously performed by Veterinary Inspectors under the 2000 Order.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

5.2 The Scottish Government has already made the changes described above to equivalent legislation for Scotland: the Brucellosis (Scotland) Order 2009 was amended in 2011 to require quarterly instead of monthly testing for milk purchasers, and again in 2014 to extend quarterly sampling to producer retailers. The Welsh Government also intends to bring in a similar requirement for Wales in due course, using the equivalent Brucellosis (Wales) Order 2006. Northern Ireland has separate surveillance arrangements for brucellosis.

6. European Convention on Human Rights

6.1 As the instrument is not laid before Parliament and does not amend primary legislation, no statement is required.

7. Policy background

7.1 *Brucella abortus* is a notifiable zoonotic disease that causes abortion or premature calving in cattle and the “flu” like disease “undulant fever” in humans. Great Britain has had OBF status under EU rules since the 1980s and Defra (along with the Scottish and Welsh Governments) has a national surveillance programme in place to detect brucellosis in the national dairy herd and take the necessary action to maintain disease-free status. This includes testing samples from the bulk milk tanks of the whole dairy industry for brucellosis. Currently, milk purchasers are required to submit bulk milk tank samples themselves to the Animal and Plant Health Agency (APHA) for testing whereas producer-retailers are visited by APHA who collect the samples. Milk purchasers (usually major dairy companies) are those who buy (for resale) milk from another’s dairy herd whereas producer-retailers sell milk or milk products direct from the farm to the public or retailers.

7.2 However, a review of this programme concluded that some costs to industry and government associated with monthly bulk milk tank sampling could be reduced without jeopardising GB's disease-free status. It considered that quarterly testing would still enable effective and sufficiently early controls to be put in place to prevent wide scale spread of infection in the event of disease incursion. Supporting this, a substantial decline of brucellosis in Northern Ireland (NI) and the granting of OBF status to the Republic of Ireland (ROI) in 2009 significantly reduced the risk of importing disease, as NI and ROI are the origin of the vast majority of cattle imported into GB.

7.3 The review also flagged up the disproportionately high cost and resource associated with the APHA visiting farms to collect bulk milk tank samples from producer retailers. This was also inconsistent with the arrangements for milk purchasers who were already meeting the costs of submitting samples. Consequently, Defra consulted the dairy industry in 2014 with proposals to require producer retailers to submit at their own expense three bulk milk tank samples a year to APHA for testing, instead of APHA visiting the farms free of charge to collect the samples.

7.4 Industry accepted Defra's consultation proposals and so The Brucellosis (England) Order 2015 now enshrines them in legislation as well as reflecting the change from monthly to quarterly testing across the whole industry. These changes support a more cost-effective, fair and proportionate surveillance programme that is robust enough to detect any disease at an early stage.

7.5 The changes are not politically or legally important.

7.6 This exercise will consolidate amendments made to the 2000 Order.

8. Consultation outcome

8.1 Defra conducted a seven week consultation exercise from 31 July to 18 September 2014, in respect of England only. The consultation package, comprising a consultation letter, questionnaire and Impact Assessment, was published online at: <https://consult.defra.gov.uk/animal-health-and-welfare/brucellosis-milk-sampling-producer-retailers>.

8.2 The consultation was sent to all 100 producer retailers in England and to main dairy industry stakeholders (including Dairy UK and the NFU). They were encouraged to submit completed questionnaires using Citizen Space, the Government's online tool, but could also reply by post.

8.3 Just one response to the consultation questionnaire was received. However, this commented more generally about the APHA and the Food Standards Agency (FSA) joining up visits to farms where possible. Defra passed this response to the FSA for consideration. However, the FSA confirmed that joining up visits would not be viable in

most cases as brucellosis sampling was required on a quarterly basis whilst FSA dairy hygiene inspections were now made every 10 years for the vast majority of dairy farmers in England. The summary of consultation responses can be seen at <https://www.gov.uk/government/consultations/brucellosis-surveillance-changing-how-we-sample-bulk-milk-tanks>

8.4 The Consultation Impact Assessment was not challenged during consultation.

8.5 When preparing the Impact Assessment, Defra consulted Dairy UK and the NFU who accepted our proposals and we interpret the lack of any further response to indicate wider acceptance from producer retailers. Industry now expects our proposals to be implemented as proposed.

9. Guidance

9.1 APHA will update its Operations Manual for staff to explain the new arrangements and write to all 100 producer retailers to inform them of their new responsibilities. To help producer retailers settle into the new routine APHA officials plan to visit farms to collect the first quarterly sample for the year starting 1 April 2015 so that producer retailers have an opportunity to ask questions before collecting samples themselves for the rest of the year. APHA will subsequently issue regular reminder letters, with free sample pots, when samples are due. This will mirror arrangements that are already in place for milk purchasers.

10. Impact

10.1 No significant impact on business, charities or voluntary bodies is expected.

10.2 No significant impact on the public sector is expected.

10.3 A Validation Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Virtually all dairy farms and producer retailers are micro businesses. However, the overall effect of the new legislation is deregulatory overall with a small net benefit as it also provides for a reduction in frequency from monthly to quarterly for the whole industry. Producer retailers will newly have to submit (by post) three samples per year at their own expense. However, this will only cost around £5.50 per submission, offset by an estimated saved cost of £4.70 from no longer having to arrange the visit by APHA. (APHA will continue to collect the fourth annual sample for audit purposes.)

12. Monitoring & review

12.1 APHA will be responsible for reminding producer retailers to submit bulk milk tank samples when they are due under the 2015 Order. They will inform Defra of any significant non-cooperation from farmers but this is unlikely to occur in practise as it is in farmers' interests to comply with surveillance requirements to maintain national OBF status.

13. Contact

13.1 Siobhan Taylor at the Department for Environment, Food and Rural Affairs (Defra) Tel: 020 7238 3128 or email: siobhan.taylor@defra.gsi.gov.uk can answer any queries regarding the instrument.