

Rural Affairs and Islands Committee

15th Meeting, 2023 (Session 6), Wednesday, 17 May

Subordinate legislation cover note

Title of Instrument:	The Tuberculosis (Scotland) Order 2023
Type of Instrument:	Negative (see paras 20-21)
Laid date:	23 March 2023
Reporting deadline:	15 May 2023
Coming into force:	18 May 2023
Instrument drawn to Parliament's attention by DPLRC:	Yes
Instrument made using powers conferred by:	Animal Health Act 1981
Supporting documentation:	<ul style="list-style-type: none"> • policy note attached Annexe A

1. The Committee initially considered the Tuberculosis (Scotland) Order 2023 on 10 May 2023. The Committee agreed to defer consideration in order to take evidence from the Scottish Government before concluding its consideration.

Purpose of the instrument

2. Tuberculosis (TB) is a serious infectious disease that affects cattle and can be transmitted to other mammals and humans, although the risk of people contracting TB from animals in Great Britain is very low. Scotland has been recognised as officially TB-free by the European Commission since 2009.
3. The objective of this order is to consolidate and make several amendments to bovine tuberculosis (TB) legislation. These amendments include:
 - a. changes to pre-movement TB testing requirements;
 - b. reducing compensation for unclean cattle at slaughter; and
 - c. strengthening policy around isolation requirements.
4. According to the policy note, this would ensure that legislation is up-to-date and accessible.

5. This order would revoke the following instruments:
 - The Tuberculosis (Scotland) Order 2007;
 - The Tuberculosis (Scotland) Amendment Order 2009;
 - The Tuberculosis (Scotland) Amendment Order 2014; and
 - The Tuberculosis (Scotland) Amendment Order 2022
6. **Pre-movement TB testing requirements:** The order would change the requirements for pre-movement testing of cattle by reducing the validity period of a negative test from 60 to 30 days. It would also end the practice of accepting a clear 'short interval test' at the end of a TB breakdown¹ as a valid pre-movement test. The aim is to reduce the risk of disease entering the country and align with EU policy.
7. **Compensation for unclean cattle:** The policy note states that reducing compensation for unclean cattle slaughtered for TB control purposes would promote better animal health and hygiene. Regulation (EC) No 853/2004 prescribes slaughter hygiene rules, which require that animals must be clean when presented for slaughter. Under this proposed order, the official veterinarian may assess that the animal is not in a clean condition, which would result in a 50% reduction in compensation for that animal.
8. **Strengthen policy around isolation:** A reactor animal is one that has shown a significant response to the tuberculin skin test. The order would also introduce a definition for isolation, and a new policy to reduce compensation for animals that are reactors or inconclusive reactors that have not been isolated in accordance with the rules to prevent the spread of infection. Compensation for these animals would be reduced by 95%.
9. These changes aim to support the maintenance of Scotland's low TB infection rates and officially tuberculosis free (OTF) status.
10. Between 9th May and 1st August 2022, a public consultation was held to gather feedback on proposed changes to legislation on TB in Scotland. 19 responses were received, including 7 from key stakeholder organisations. Although the number of responses was limited due to the specialised nature of the subject, the feedback provided was useful in informing the development of the legislation. The Animal and Plant Health Agency (APHA) were also consulted. The Scottish Ministers have assessed the available evidence and provided other administrations in Great Britain with information on the threat posed to bovine animals in Scotland and the effectiveness of the proposed measures. Overall, there was support for the proposed changes among the various respondent groups.
11. The policy note also discusses recent changes to compensation policies in Scotland for cattle affected by tuberculosis. The changes include reducing compensation by 50% for unclean cattle at slaughter and by 95% for animals identified for slaughter that have not been isolated to prevent the spread of disease.

¹ A TB breakdown is when a herd loses its officially TB free (OTF) status due to bovine TB being suspected or confirmed.

These changes aim to minimise the risk of further infection and protect Scotland's TB free status. The reduced compensation for unclean cattle aims to encourage high animal welfare standards and prevent food hygiene contamination. The legislation has also been amended to introduce a compensation cap for all bovine animals slaughtered due to tuberculosis. These changes were consulted on and received significant support.

The order

12. The order consists of six parts, including:

- Introductory provisions;
- Notification;
- Testing of bovine animals;
- Prevention of spread of infection;
- Slaughter and compensation; and
- Administration and enforcement.

Introductory provisions

13. This section defines terms related to bovine tuberculosis in Scotland, including "bovine animal," "reactor," "inconclusive reactor," and "suspected animal." It also establishes criteria for "isolation" of affected or suspected animals and provides a definition for "market value." The Scottish Ministers are authorised to approve veterinary surgeons to conduct diagnostic tests for tuberculosis and may require additional training. The legislation extends the definition of "disease" to include tuberculosis and authorises the slaughter of affected animals under section 32 of the Animal Health Act 1981.

Notification

14. This section requires immediate notification to an authorised veterinary inspector of any bovine animal that is affected or suspected of being affected or any carcass that is affected with or suspected of being affected with tuberculosis. If an inspector believes that there is an affected animal or carcass on a premise, they must take steps to establish whether the animal or carcass is affected or suspected of being affected with tuberculosis. If an animal is confirmed to be affected or suspected of being affected with tuberculosis, the keeper must detain the animal on the premises, keep it in isolation, and take precautions with respect to milk produced by the animal. A notice served under this legislation remains in force until withdrawn by a veterinary inspector.

Testing of bovine animals

15. This section pertains to the movement and testing of bovine animals in Scotland. Premises such as agricultural shows, markets, and slaughterhouses are excluded from the definition of "premises" for the purposes of the legislation. Keepers and occupiers of premises in high incidence areas are not allowed to move any bovine animal without first conducting a diagnostic test for tuberculosis no more than 30 days prior to its movement from the premises. Bovine animals from low incidence areas require a similar test. However, bovine animals born and kept on premises in low incidence areas, and those moved from low incidence areas to agricultural shows or markets in high incidence areas are exempt from the testing

requirements. Keepers must also conduct a diagnostic test for tuberculosis no fewer than 60 days and no more than 120 days after the bovine animal arrives at the receiving premises. The legislation does not apply to the movement of animals within premises partly situated in Scotland and partly in England, from one part to another.

Prevention of spread of infection

16. The section outlines precautions that must be taken to prevent the spread of tuberculosis infection in bovine animals in Scotland. If a veterinary inspector believes that an animal is infected or at risk of infection, they can issue a notice requiring the animal's keeper to take steps to prevent the infection from spreading. These steps may include isolating the animal, cleaning and disinfecting the premises, and properly disposing of animal waste. If the keeper fails to comply with the notice, the Scottish Ministers may carry out the requirements at the keeper's expense. The section also outlines procedures for suspected infected animals at shows and exhibitions, as well as measures to control infection from other animals on the premises.

Slaughter and compensation

17. This section concerns the slaughter of bovine animals in the event of tuberculosis. If a veterinary inspector intends to cause a bovine animal to be slaughtered, they must serve notice to the animal's keeper, informing them of the intended slaughter and requiring them to keep the animal in isolation until it is slaughtered, except under a license issued by a veterinary inspector. If an animal is slaughtered, the Scottish Ministers must pay compensation, which is determined by the market value of the animal. If the animal is not identified by ear tags and a cattle passport, the compensation payable is £1. If the market value of the animal ascertained in accordance with the regulations exceeds a certain amount, the compensation payable is (a) £5,000 in the case of a bovine animal other than a pedigree bovine animal, or (b) £7,500 in the case of a pedigree bovine animal. The legislation also outlines the procedures for determining the market value of a bovine animal.

Administration and enforcement

18. This section requires any notice, license, consent or approval issued to be in writing and subject to conditions, with the ability to amend, suspend or revoke them in writing at any time. It also outlines the requirements for testing, facilitating examinations, and movement of bovine animals, as well as the marking of these animals. The section prohibits the movement of bovine animals without authorisation and prohibits the removal of manure or animal waste without a license. Additionally, the section requires the notification of the presence of *M. bovis* (bovine tuberculosis) in a laboratory and provides for enforcement by the local authority.

Consideration by the Delegated Powers and Law Reform Committee

19. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [18 April 2023](#). The committee identified an error in article 26(2)(a) of the order, in that the reference to article 2 of the order should

instead be to article 22. The DPLRC, therefore, agreed to draw the instrument to the attention of the Parliament on the general reporting ground for this cross-referencing error. The Committee also noted that the Scottish Government intends to correct the error by correction slip.

Parliamentary procedure – negative instruments

20. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
21. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

22. **The Committee is invited to note the instrument set out above.**

Rural Affairs and Islands Committee clerks

Policy Note

The Tuberculosis (Scotland) Order 2023

The above instrument was made in exercise of the powers conferred by Sections 1, 7(1), 8(1), 15(4), 25, 28, 32(2) and (3), 34(7), 83(2), 83A(6), 87(2) and 88(2) of the Animal Health Act 1981. The instrument is subject to negative procedure.

Summary Box

The objective of this Order is to consolidate Bovine Tuberculosis (TB) legislation and make several amendments to this legislation. These amendments will include changes to pre-movement TB testing requirements, reducing compensation for unclean cattle at slaughter, and strengthening policy around isolation requirements.

Policy Background

TB is a serious infectious disease of cattle, caused by the bacterium *Mycobacterium bovis* (*M.bovis*), which mainly affects cattle, but can also be passed between most mammals and from infected animals to people. The risk of people contracting TB from animals in Great Britain is considered very low.

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. Maintaining OTF status is crucial to the continuing success of the Scottish cattle industry which is regulated in terms of controls for TB by the Tuberculosis (Scotland) Order.

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

Policy Objectives

This instrument will consolidate bovine TB legislation to ensure that legislation is up to date and accessible. This Order will revoke the following instruments:

- The Tuberculosis (Scotland) Order 2007
- The Tuberculosis (Scotland) Amendment Order 2009
- The Tuberculosis (Scotland) Amendment Order 2014
- The Tuberculosis (Scotland) Amendment Order 2022

The Order will amend requirements for pre-movement testing cattle. These amendments will change the period a pre-movement test is valid from 60 to 30 days, and also end the use of a clear short interval test at the end of a breakdown as a valid pre-movement test. Both policies will act to reduce the risk of disease entering the country by adding extra precautions for animals coming from higher areas of infection. The reduction in the validity period of a negative pre-movement test from 60 to 30 days aligns with EU policy in this area, in adopting the WOA-recognised international standard. The aim of these policies is to prevent or reduce the movement of the disease from parts of Great Britain where the disease is present, or significantly more prevalent, and which would pose a serious threat to the health of cattle.

Reducing compensation for unclean cattle slaughtered for TB control purposes reduces risk of food hygiene contamination at the slaughterhouse. This will incentivise farmers to keep their animals clean and promote better animal health and welfare.

The Order will introduce a definition for isolation to the TB Order and a new policy which will reduce compensation for reactors or inconclusive reactors which are not properly isolated. This will strengthen the protection of the main herd against onward spread of infection from any reactors or suspect reactors.

These legislative changes are being made to support the maintenance of Scotland's low TB infection rates and OTF status by preventing the spread of disease.

Consultation

A public consultation took place on Citizens Space between 9th May – 1st August 2022, a total period of 12 weeks. There were 19 responses to the consultation which included 7 key stakeholder organisations. Disease control for bovine TB is quite a specialised subject, and so a limited number of responses was not unexpected.

The consultation helped to gauge attitudes towards these suggestions and helped the decision making process on whether these proposals should be taken forward or not. This also helped to account for any unanticipated impacts that these changes could have on those they will affect. The responses provided useful feedback which has been used to inform how legislation on TB in Scotland should be developed. It was also clear that there is support among the various respondent groups for the changes being made under this amendment.

Animal and Plant Health Agency (APHA) were also consulted as the Scottish Government's operational delivery partners on all aspects of delivery and implementation.

In relation to the change in requirements for the pre-movement testing of cattle, the Scottish Ministers have provided the other administrations in Great Britain with an assessment of the available evidence in relation to the threat posed to bovine animals in Scotland, and the likely effectiveness of these measures in addressing the threat.

Compensation Amendments

There have been a number of amendments to compensation policy as part of these legislative changes. This includes introducing a reduction in compensation of 50% for unclean cattle at slaughter and a reduction in compensation of 95% for animals identified for slaughter which have not been isolated. These changes were both consulted on and both received significant support from respondents to the consultation.

The measure on isolation is necessary in order to minimise further spread of infection and to protect Scotland's TB free status. Any number of reactors in Scotland is a threat to OTF status, as the number of infected cattle is very low and the national herd must be protected against infection to remain under the appropriate threshold for TB freedom. The intention of this policy is to ensure that keepers take the necessary steps to stop onward infection as a result of a failure to isolate infected, or suspected of being infected, cattle. A definition of isolation has been added to the Order to ensure that the guidance for isolation is clear and accessible to cattle keepers. A 95% reduction was deemed to be justifiable, as the cost of a consequent onward spread of disease would be costly to the taxpayer.

The change which reduces compensation for unclean cattle slaughtered reduces risk of food hygiene contamination at the slaughterhouse and incentivises keepers to maintain high animal welfare standards. This also ensures that the cost to the taxpayer is not higher than necessary as a result of lost salvage from cattle which are presented unclean at the slaughterhouse. A reduction of 50% would bring Scottish Government policy in line with legislation in England.

Providing compensation to keepers comes at a cost to the taxpayer and in instances where basic disease control and hygiene requirements have not been met, it is considered necessary, proportionate and to strike a fair balance that the compensation payable to the keeper be reduced.

The compensation cap that was introduced in 2018 was only applicable to reactor cattle. The legislation has been amended, and now provides for a compensation cap for all bovine animals caused to be slaughtered for reasons of tuberculosis.

Impact Assessments

A Business Regulatory Impact Assessment (BRIA) has been undertaken. No significant impact on the private, voluntary or public sector is foreseen with this amendment.

Financial Effects

No financial effects are expected from this change in policy.