

2016 No. 328 (W. 104)

ANIMALS, WALES

ANIMAL HEALTH

**The Tuberculosis (Wales)
(Amendment) Order 2016**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Tuberculosis (Wales) Order 2010 (S.I. 2010/1379 (W. 122)) (“the 2010 Order”).

The amendments are contained in the Schedule to this Order.

Paragraph 1 introduces definitions of “pre-movement test”, “restricted herd” and “salvage value”, and amends the definitions of “skin test” and “suspected animal”.

Paragraph 2 makes additional provision for the storage of a carcase that is affected with or suspected of being affected with tuberculosis.

Paragraph 3 makes additional provision with respect to veterinary inspectors establishing the existence of disease and taking precautions against the spread of disease.

Paragraph 4 replaces veterinary improvement notices with veterinary requirements notices in the 2010 Order.

Paragraph 5 introduces article 11A to the 2010 Order making provision for biosecurity improvement notices.

Paragraph 6 amends the 2010 Order to make additional provision for testing an animal for tuberculosis.

Paragraph 7 makes additional provision with respect to pre-movement testing.

Paragraph 8 provides for the Welsh Ministers to approve finishing units to take bovine animals that have been moved without testing or that come from a restricted herd.

Paragraphs 9 to 14 make further amendments to Part 2 of the 2010 Order in respect of the testing and control of movement of bovine animals.

Paragraph 15 amends article 26 of the 2010 Order to make additional provision with respect to compensation for bovine animals slaughtered for tuberculosis.

Paragraph 16 introduces a new Schedule to the 2010 Order, replacing the previous Schedule, making new provision for the calculation of the value of a bovine animal slaughtered for tuberculosis.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.

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**The Tuberculosis (Wales)
(Amendment) Order 2016**

Made 8 March 2016

Laid before the National Assembly for Wales
11 March 2016

Coming into force 1 April 2016

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 1, 7(1), 8(1), 15(4), 25, 32(2), 34(7), 83(2) and 88(2) of the Animal Health Act 1981⁽¹⁾.

Title, application and commencement

1.—(1) The title of this Order is the Tuberculosis (Wales) (Amendment) Order 2016.

(2) This Order applies in relation to Wales.

(3) This Order comes into force on 1 April 2016.

Amendment of the Tuberculosis (Wales) Order 2010

2. The Tuberculosis (Wales) Order 2010⁽²⁾ is amended in accordance with the Schedule.

Savings and transition

3. Any notice or licence issued, or approval or consent granted, under the Tuberculosis (Wales) Order

(1) 1981 c. 22. Functions under the Act are exercisable by the Welsh Ministers (in relation to Wales) by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044); and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(2) S.I. 2010/1379 (W. 122).

2010 and which has effect at the coming into force of this Order remains in force.

Rebecca Evans

Deputy Minister for Farming and Food, under the authority of the Minister for Natural Resources, one of the Welsh Ministers

8 March 2016

Amendment of the Tuberculosis (Wales) Order 2010

1. In article 2—

(a) in the appropriate places insert—

““pre-movement test” (*“prawf cyn symud”*) means a skin test carried out in accordance with article 13;”;

““restricted herd” (*“buches dan gyfyngiadau”*) means a herd that is under a movement restriction imposed under this Order;”;

““salvage value” (*“gwerth achub”*) means the price paid to the Welsh Ministers for the carcase of a bovine animal that is affected with or suspected of being affected with tuberculosis;”;

(b) in the definition of “skin test” (*“prawf croen”*) after “tuberculosis” insert “using bovine and avian tuberculin”; and

(c) in the definition of “suspected animal” (*“anifail a amheuir”*) for “an animal that has been in close contact with such an animal” substitute “a reactor”.

2. In article 9(2) (notification of disease in carcasses), after “then is” insert “and must isolate it as far as practicable from bovine animals or other farmed or pet mammals”.

3. In article 10 (veterinary inquiry as to the existence of disease)—

(a) in paragraph (2) after “diagnosis” insert “and paint, stamp, clip, tag or otherwise mark any bovine animal or carcase of a bovine animal”; and

(b) in paragraph (3)(b) after “other milk” insert “and is not fed untreated to calves or to other mammals”.

4. In article 11 (veterinary improvement notice)—

(a) in the heading and in paragraph (2) for “improvement” substitute “requirements”;

(b) in paragraph (1) for “(a “veterinary improvement notice”) (*“hysbysiad gwella milfeddygol”*)” substitute “(a “veterinary requirements notice”) (*“hysbysiad gofynion milfeddygol”*)”;

(c) at the end of paragraph (2)(d), for “.” substitute “,”;

- (d) after paragraph (2)(d) insert—
 - “(e) any other requirement that a veterinary inspector reasonably believes necessary for the purpose of preventing the spread of disease.”; and
- (e) after paragraph (2) insert—
 - “(3) A veterinary inspector may specify that the requirements that may be imposed by means of a veterinary requirements notice be imposed on any bovine animal as specified in the notice, whether or not the herd that includes that animal has tuberculosis-free status.
 - (4) Any requirement imposed by a veterinary requirements notice may be revoked or amended by a veterinary inspector serving—
 - (a) a veterinary requirements notice on the keeper of a bovine animal specifying those requirements that are revoked or amended; or
 - (b) a notice (a “veterinary requirements revocation notice”) (“*hysbysiad dirymu gofynion milfeddygol*”) revoking a veterinary requirements notice before the date specified in that veterinary requirements notice.”

5. After article 11, insert—

“Biosecurity improvement notice

11A.—(1) A keeper of a bovine animal must take such steps as are reasonable in all the circumstances to ensure that biosecurity measures in relation to those premises where the animal is kept are in place to the extent required by good practice.

(2) A veterinary inspector may serve a notice (a “biosecurity improvement notice”) (“*hysbysiad gwella bioddiogelwch*”) on the keeper of a bovine animal which—

- (a) states that the veterinary inspector is of the opinion that biosecurity measures in relation to those premises where the animal is kept are failing to comply with good practice;
- (b) specifies the respects in which the veterinary inspector considers the keeper is failing to comply with good practice;
- (c) specifies the steps the veterinary inspector considers need to be taken in order to comply with good practice; and

(d) specifies a period for the taking of those steps.

(3) The Welsh Ministers may issue guidance on good practice in biosecurity to assist keepers of bovine animals.”

6. In article 12 (tuberculosis testing)—

(a) in paragraph (5)—

(i) after “this Order,” insert “or any administrative penalty imposed on EU direct payment entitlements under Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy(1),”; and

(ii) after “test notice,” insert “or failed to comply with a reasonable requirement of an inspector or an approved veterinary surgeon in paragraph (2),”; and

(b) for paragraphs (6) and (7) substitute—

“(6) The Welsh Ministers may consider a bovine animal to be a suspected animal where the keeper has failed to have the animal tested as required by a notice served under paragraph (1).

(7) The Welsh Ministers may consider a bovine animal (other than bison or buffalo) to be a suspected animal where for reasons of practicability the person allocated to carry out the test does not consider it safe to test the animal due to—

(a) the animal’s wild or aggressive propensity, or

(b) the lack of adequate testing facilities.”

7. In article 13 (pre-movement testing), after paragraph (3) insert—

“(4) The pre-movement test must be arranged with an approved veterinary surgeon at the expense of the keeper of the bovine animal unless a test for tuberculosis has been instructed by the Welsh Ministers in accordance with article 12(1) to take place within the period mentioned in paragraph (1)(a).”

8. After article 14 insert—

(1) OJ L No 347, 20.12.2013, p. 549, as last amended by Regulation (EU) No 1310/2013 of the European Parliament and of the Council (OJ No 347, 20.12.2013, p. 865).

“Exempt finishing units and approved finishing units

14A.—(1) The Welsh Ministers may approve—

- (a) a finishing unit to take bovine animals that have been moved without a pre-movement test in accordance with article 13 (“an exempt finishing unit”) (“*uned besgi eithriedig*”); or
- (b) a finishing unit to take bovine animals that come from a restricted herd (“an approved finishing unit”) (“*uned besgi gymeradwy*”).

(2) The approval referred to in paragraph (1) must specify—

- (a) the operator;
- (b) the premises or the part of the premises on which the exempt finishing unit or approved finishing unit may be situated; and
- (c) the conditions with which the operator of that finishing unit must comply.

(3) The operator of an exempt finishing unit or an approved finishing unit must separate animals in or entering the finishing unit from other bovine animals present on other parts of the premises where that finishing unit is located.

(4) A person must not purport to operate an exempt finishing unit or an approved finishing unit unless it is approved under paragraph (1).

(5) A person must not move a bovine animal from an exempt finishing unit or an approved finishing unit except—

- (a) direct to slaughter; or
- (b) under the authority of a licence issued by a veterinary inspector.

(6) A person must not move a bovine animal that is not separated from animals in or entering an exempt finishing unit or an approved finishing unit as required by paragraph (3) except—

- (a) direct to slaughter; or
- (b) under the authority of a licence issued by a veterinary inspector.

(7) A finishing unit in England or Scotland that is approved by the Secretary of State or the Scottish Ministers respectively for the same purpose as a finishing unit may be approved under paragraph (1)(a) is also an exempt finishing unit for the purposes of this Order.

(8) A finishing unit in England or Scotland that is approved by the Secretary of State or the Scottish Ministers respectively for the same purpose as a finishing unit may be approved under paragraph (1)(b) is also an approved finishing unit for the purposes of this Order.”

9.—(1) In article 15(3) (prohibitions), after “bovine animal” insert “or on any sample taken from any such animal”.

(2) After article 15(4) insert—

“(5) No person may interfere with or obstruct an epidemiological investigation.”

10. In article 16 (isolation and prohibition on movement of animals)—

- (a) after “keeper of bovine animals” omit “kept on such premises as are specified in the notice”; and
- (b) in paragraph (b), after “specified in the notice,” omit “on to or off such premises.”

11.—(1) In article 18(1) (precautions against spread of infection)—

- (a) after “suspected animal,” insert “or where tuberculosis has been identified on any premises.”;
- (b) after “require the keeper” insert “or the person in occupation of the premises (as appropriate)”;
- (c) after sub-paragraph (h), omit “and”;
- (d) at the end of sub-paragraph (i), for “.” substitute “; and”;
- (e) after sub-paragraph (i) insert—
 - “(j) to adopt precautions with respect to the risk of spreading tuberculosis through—
 - (i) the feeding of unpasteurised milk from a restricted herd to any calves or other mammal;
 - (ii) keeping milk from herds that are subject to restrictions under this Order separate from milk from cows not so restricted.”

(2) After article 18(2) insert—

“(3) Where the keeper fails to comply with the requirements of the notice, the Welsh Ministers may delay the lifting of movement restrictions (imposed under article 16) until the notice requirements have been completed to the satisfaction of a veterinary inspector.”

12. In article 20(2) (control of infection from other animals), for “mammal except a bovine animal or

man” substitute “farmed mammal except a bovine animal, deer, camelid or goat”.

13. In article 21(2) (marking of bovine animals)—

- (a) after “may” insert “paint, stamp, clip, tag or otherwise”; and
- (b) after “animals” insert “for the purpose of identification of tested animals”.

14. In article 23(3) (general provisions as to notices, licences and approvals), after “Any” insert “notice or”.

15. In article 26 (compensation for bovine animals slaughtered for tuberculosis)—

- (a) in paragraph (3) for ““B” by one of paragraphs 3 to 6 of the Schedule” substitute ““M” by one of paragraphs 3 to 9 of the Schedule”; and
- (b) after paragraph (3) insert—

“(4) Where the Welsh Ministers consider it reasonable—

 - (a) payment of compensation may be delayed, in whole or part, to the extent necessary for determining any question as to the amount of compensation payable; and
 - (b) any amounts owed to the Welsh Ministers by the keeper of the bovine animal slaughtered may be offset against the compensation payable.”

16. For the Schedule substitute—

“

SCHEDULE Article 26

Calculation of the value of a bovine animal slaughtered for tuberculosis

Calculation

1.—(1) The value of a bovine animal slaughtered for tuberculosis is to be calculated using the following formula—

If $SV < (M \times MV)$ then $C = (M \times MV)$,
otherwise $C = SV$

Where—

SV is the salvage value of the animal;

M is the figure provided by paragraphs 3 to 9;

MV is the market value of the animal established in accordance with paragraph 2; and

C is the value of the animal for the purposes of article 26 and cannot be more than £15,000 and cannot be less than £1.

(2) Paragraphs 3 to 9 will apply where the Welsh Ministers are satisfied on a balance of probabilities that there has been a breach of this Order.

Market value

2.—(1) Notwithstanding the provisions of article 3 of the Diseases of Animals (Ascertainment of Compensation) Order 1959⁽¹⁾, the market value of a bovine animal which the Welsh Ministers cause to be slaughtered must be determined—

- (a) by a valuer appointed by the Welsh Ministers; or
- (b) failing such appointment, by a valuer named on a list maintained by the Welsh Ministers, nominated by the President of the Royal Institution of Chartered Surveyors or the President of the Central Association of Agricultural Valuers as the Welsh Ministers may decide in any particular case or class of case.

(2) A valuer appointed or nominated under sub-paragraph (1)(a) or (1)(b) must be paid by the Welsh Ministers and must inform, in writing, the Welsh Ministers and the owner of the market value.

(3) In this paragraph a reference to a valuer is a reference to an individual and not to a company or firm or to two or more persons jointly.

(4) For the purposes of this paragraph, the market value of an animal is the price that might reasonably be expected would have been obtained for it from a purchaser in the open market at the time of valuation if the animal were not an affected animal or a suspected animal.

Failure to comply with a notice

3.—(1) This paragraph applies where—

⁽¹⁾ S.I. 1959/1335.

- (a) the keeper of a bovine animal has been served with any one or more of the following—
 - (i) a notice under article 10(3) (veterinary inquiry as to the existence of disease);
 - (ii) a veterinary requirements notice under article 11;
 - (iii) a biosecurity improvement notice under article 11A;
 - (iv) a notice under article 18 (precautions against spread of infection);
 - (b) the keeper fails to comply with one or more of the requirements or steps in the notice;
 - (c) the animal has been tested under article 12 (tuberculosis testing);
 - (d) the animal has been slaughtered following that test; and
 - (e) the test was applied to the herd that includes that animal (after the keeper was served with the notice).
- (2) Where the keeper fails to comply with one or more of the requirements or steps—
- (a) under article 10(3)(a), “M” is 0.5;
 - (b) under article 10(3)(b), “M” is 0.05;
 - (c) under article 10(3)(c), “M” is 0.05;
 - (d) in a veterinary requirements notice—
 - (i) for the first time, “M” is 0.5; or
 - (ii) subsequently, “M” is 0.05;
 - (e) in a biosecurity improvement notice—
 - (i) for the first time, “M” is 0.5; or
 - (ii) subsequently, “M” is 0.05;
 - (f) under article 18(1)(a) to (c), “M” is 0.75;
 - (g) under article 18(1)(d) to (h)—
 - (i) for the first time, “M” is 0.5; or
 - (ii) subsequently, “M” is 0.05;
 - (h) under article 18(1)(j), “M” is 0.05.

Failure to test animals in accordance with article 12(1)

4.—(1) Subject to sub-paragraph (4), this paragraph applies where—

- (a) the keeper of a bovine animal has been served with a notice under article 12(1) (tuberculosis testing);
- (b) the keeper has failed to carry out that test by the date specified in the notice (the “specified date”);
- (c) the test has been carried out at a later date; and
- (d) the animal has been slaughtered following the test.

(2) Where the test was carried out as required by a notice under article 12(1) at a date later than the specified date and the interval between the specified date and the test is—

- (a) more than 60 but not more than 90 days, “M” is 0.5;
- (b) more than 90 days, “M” is 0.05.

(3) Where the test was carried out under article 12(5), “M” is 0.05.

(4) Where the animal was slaughtered by virtue of the provisions of article 12(6) or 12(7), “M” is 0.05.

Exempt finishing units and approved finishing units

5.—(1) This paragraph applies where—

- (a) the operator of an exempt finishing unit or an approved finishing unit is also the keeper of a bovine animal at that unit; or
- (b) a person for the purposes of article 14A(4) to (6) is also the keeper of a bovine animal.

(2) Where—

- (a) the keeper fails to comply with one or more of the conditions or obligations under article 14A;
- (b) an animal has been tested under article 12 (tuberculosis testing);
- (c) the animal has been slaughtered following that test; and
- (d) the test was applied to the herd that includes that animal;

“M” is 0.05.

Slaughter following movement on to premises under licence

6.—(1) This paragraph applies where the keeper of a bovine animal has been served with a notice under article 16 (isolation and

prohibition on movement of animals) prohibiting the movement of bovine animals on to premises, except under the authority of a licence issued by an inspector.

(2) Where—

- (a) the keeper brings a bovine animal under licence on to the premises;
- (b) a relevant test has been applied to that animal; and
- (c) the animal has been slaughtered following the test or has been slaughtered under section 32 of the Act in its application to tuberculosis;

“M” is 0.5.

Delay in removal for slaughter

7.—(1) This paragraph applies where—

- (a) the keeper of a bovine animal has been served with a notice of intended slaughter under article 17 (notification of intended slaughter of animals);
- (b) the keeper delays the removal of the animal for slaughter beyond the date specified in the notice (the “specified date”); and
- (c) the animal has been slaughtered.

(2) Where the removal for slaughter of the animal was at a date later than the specified date and the interval between the specified date and removal is—

- (a) more than 0 but not more than 10 days, “M” is 0.75;
- (b) more than 10 but not more than 20 days, “M” is 0.5; and
- (c) more than 20 days, “M” is 0.25.

Breach of obligations

8.—(1) This paragraph applies where the keeper of a bovine animal has—

- (a) failed to comply with one or more reasonable requirements of an inspector or an approved veterinary surgeon under article 12(2) (tuberculosis testing);
- (b) breached one or more of the prohibitions in article 15 (prohibitions);
- (c) breached the requirement or prohibition or both in article 16 (isolation and prohibition on movement of animals);

(d) breached one or more of the requirements in article 19(2) (suspected animals in markets, shows, etc).

(2) Where—

(a) one or more of sub-paragraphs (1)(a) to (d) apply;

(b) the relevant test has been applied to an animal; and

(c) that animal has been slaughtered;

“M” is 0.05.

Other cases

9. Where paragraphs 3 to 8 do not apply, “M” is 1.”