EXPLANATORY MEMORANDUM TO

THE TUBERCULOSIS (ENGLAND) (AMENDMENT) ORDER 2012

2012 No. 1391

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

2. Purpose of the instrument

The Order amends the Tuberculosis (England) Order 2007 ("the 2007 Order") by removing and revising some of the exemptions from the requirements on cattle keepers to test their cattle for bovine tuberculosis (TB) before moving them from a bovine TB-endemic area without first testing them to ensure that they do not test positive for TB.

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

None.

4. Legislative Context

This Order amends the 2007 Order that is made under the Animal Health Act 1981. Testing of cattle is prescribed in EU legislation that is designed to help member states to eradicate TB from their national herds of cattle.

5. Territorial Extent and Application

This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

7.1 Bovine Tuberculosis is one of the most difficult and costly animal health problems facing England's cattle farmers. TB-related controls in England in 2010/11 cost government £108M, and in that period over 25,000 cattle were compulsorily slaughtered for TB control purposes. We need to reduce the risk of further spread of TB by having more cattle tested before they move off premises in order to: support high standards of animal health and welfare; promote sustainable beef and dairy sectors; meet EU legal and trade requirements; and reduce the cost and burden on farmers and taxpayers.

7.2 Cattle control measures remain central to the Government's comprehensive, risk-based approach to tackling TB and support the wider objective of TB eradication. These amendments to the 2007 Order strengthen the existing 'pre-movement testing' policy, which requires cattle from higher TB risk herds to be tested clear of the disease before being moved, by reducing the number and scope of movements exempted from that policy. For example, the '30 day residency exemption' (contained in article 9(2)(c) of the 2007 Order) that allows an animal to be moved on any number of occasions based on a single clear TB test, as long as that animal does not stay on one holding for more than 30 days is being removed. The removal of this exemption is necessary to ensure that TB infected animals cannot move from holding to holding undetected.

7.3 The current permitted movement (paragraph 3 of the 2007 Order Schedule) for animals moved within a 'single occupancy group' (otherwise known as a 'single occupancy authority' ('SOA')), a management arrangement approved for farm operators who control associated premises, allows cattle to move to associated SOA premises, including from high TB risk to low TB risk areas, without a pre-movement test. Through this legislative change the exemption to pre-movement test will be removed for farm operators with an approved SOA that comprises associated premises both within high and low TB risk areas. Without this amendment a cattle keeper could move untested cattle from high to low TB risk areas. This is no longer regarded as being acceptable practice.

7.4 Veterinary advice is that the existing exemption which allows movements of untested cattle to an agricultural show if they return to the home premises or go direct to slaughter (paragraph 5 of the 2007 Order) also increases the risk of spreading TB, particularly because cattle moving from TB-endemic areas could be mixing with animals from areas of low TB incidence. To reduce these risks the amendment Order will require cattle that are moved from high TB risk areas to agricultural shows where they will be housed and/or where they will stay more than 24 hours, to be pre-movement tested.

7.5 A non-regulatory approach for dealing with the identified risks has been carefully considered - for example, through a communication effort to make farmers with higher TB risk herds aware of the risks (based on best veterinary advice) of using the exemptions discussed in this document to move untested cattle from their herds. However, the Department's experience shows that a regulatory approach is necessary to provide the best protection for all cattle keepers.

7.6 This is only the second amendment to the 2007 Order and therefore the Department has decided not to re-make the Order at this point in time.

8. Consultation outcome

8.1 Ministers agreed to an informal consultation with key stakeholder groups. The Department invited comments from (and offered meetings to) the National Farmers Union, the Country Land and Business Association, the National Beef Association, the British Veterinary Association, the British Cattle Veterinary Association, the Central Association of Agricultural Valuers, the Livestock Auctioneers Association, the Association of Show & Agricultural Organisations (ASAO), the National Common Land

Stakeholder Group (NCLSG), and Local Government Regulation (formerly LACORS). Stakeholders were contacted in December 2010 to January 2011.

8.2 Most consultees agreed in principle with these changes; in particular, the veterinary organisations were keen that any possible avenues for TB spread should be closed. Some stakeholder groups would have liked to have seen hard statistical evidence showing the number of TB incidents caused by reliance on pre-movement testing exemptions. However, they accepted that it is next to impossible to produce this sort of evidence: it is very rarely possible to pinpoint the precise origin of TB infection for a herd. The Impact Assessment draws heavily on the advice of vets from Defra's delivery agent, Animal Health and Veterinary Laboratories Agency (AHVLA), which focused on the potential risks of TB spread and, therefore, impact on farmers if these particular pre-movement testing exemptions were not removed or revised.

A more detailed analysis of the consultation outcomes is available at www.defra.gov.uk.

9. Guidance

TB Information Notes ('TBINs') have been e-mailed to interested stakeholders. Details of the changes will be communicated through the Defra and AHVLA websites and via the farming press.

10. Impact

10.1 The main impact of this amendment Order will be that some farmers will need to pay for more pre-movement tests. However, farmers will still have the option to arrange cattle movements around their government-funded routine herd tests. Nevertheless, as the Impact Assessment explains, these relatively small extra costs for some individual farmers will be more than offset by the benefits to the cattle industry as a whole – both monetised and non-monetised – of a reduced number of TB outbreaks (or 'breakdowns').

10.2 The Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to farm businesses many of which are micro-businesses.

11.2 The basis for the final decision on what action to take to assist small business was taken in the light of our consultation with farming organisations, which represent the overwhelming majority of businesses affected by the proposed changes, with Government vets, Ministers and Defra's TB Eradication Group ('TBEG'). Although some farm businesses will bear the extra costs of increased pre-movement testing, the impact on the farming industry in England – and, indeed, elsewhere in GB where there are cross-border cattle movements - will ultimately be beneficial in terms of reduced disease risks.

12. Monitoring & review

12.1 The amendment Order inserts a review provision into the 2007 Order so that there will be a review of the main Order in 2017. Following the review the Secretary of State will consider whether the Order should continue to expiry in 2019 or be revoked early.

13. Contact

Helen Betnay at the Department for Environment, Food and Rural Affairs Tel: 020 3357 3646 or email: helen.betnay@defra.gsi.gov.uk can answer any queries regarding the Instrument.