EXPLANATORY MEMORANDUM TO

THE TUBERCULOSIS (ENGLAND) (AMENDMENT) ORDER 2016

2016 No. 347

1. Introduction

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

2. Purpose of the instrument

This instrument amends the Tuberculosis (England) Order 2014 (S.I. 2014/2383) ("the 2014 Order"). In particular, it introduces a new article requiring cattle keepers in the Low Tuberculosis Risk Area ("LRA") of England to arrange and pay for a post-movement Tuberculosis ("TB") skin test for bovine animals brought into their herds from other higher TB risk areas of England and Wales. The skin test must be carried out not fewer than 60 days, but no more than 120 days after the cattle have arrived into the LRA. A small number of cattle movements are exempted from the new requirement to post-movement test.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This instrument applies only to England and is subject to the negative resolution procedure. Consideration of whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument is made under enabling powers contained in the Animal Health Act 1981. The 2014 Order requires amendment to facilitate the introduction of enhanced cattle controls so as to minimise the risk of bovine TB gaining a foothold in the currently low disease risk area of England that has been designated as such by the Secretary of State since January 2013 due to its very low TB incidence rates and absence of a known reservoir of TB in the wildlife.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

6.1 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 TB is the most pressing and costly endemic animal health problem facing cattle farmers in England. As set out in Defra's "Strategy for Achieving Officially Bovine Tuberculosis-Free Status for England" ("the Strategy") published on 4 March 2014 cattle controls remain central to the Department's comprehensive and risk-based approach to tackling TB and achieving the EU's 'Officially Bovine Tuberculosis Free' (OTF) status for England by 2038. An important interim objective is to achieve OTF status for the LRA by 2019. This would bring financial and other benefits for industry and for government in that part of England.

7.2 By requiring this new post-movement TB skin testing of animals of cattle moved into the LRA from other higher TB risk areas of England or Wales, in addition to the existing pre-movement testing, this will minimise the risk of TB becoming established in the LRA.

7.3 This amending instrument strengthens existing controls by requiring the post-movement testing for TB of all cattle moved from herds in annually (or more frequent) tested areas of England and Wales

7.4 The changes made by this instrument are important to help achieve OTF status for the LRA, which, if the current trend continues, we are on track to do by 2019. Once OTF status has been secured for the LRA it would be possible to materially reduce the amount of TB surveillance testing by government in the area provided some continued risk-based TB surveillance testing (i.e. post-movement testing) remains in place.

7.5 The new measures introduced by this amending instrument should also reduce the severity and impact of herd breakdowns in the LRA by speeding up detection of TB infected cattle.

7.6 The instrument amends article 13 (prohibitions) to make it clear that a person must not move bovine animals undergoing a relevant test for tuberculosis before the result of such test has been completed with negative results. Other minor amendments are either consequential on the introduction of the new post-movement skin test requirement or reflect the different frequency of tuberculosis skin tests for bovine herds.

7.7 This is the second amendment to the 2014 Order and the Department considers that consolidation is not an efficient use of staff resource at this stage.

8. Consultation outcome

8.1 A public consultation on new mostly non-statutory cattle measures to tackle bovine TB ran between 28 August 2015 and 23 October 2015. Defra received 172 written or online responses to the consultation, of which 139 were from individuals, including farmers and vets, and 32 were from organisations. 80% of respondents supported the proposal for new statutory post-movement testing in the LRA. Key stakeholder organisations that responded included the National Farmers Union (NFU), the National Beef Association (NBA), the British Veterinary Association (BVA), the British Cattle Veterinary Association (BCVA), the Central Association of Agricultural Valuers (CAAV), and the Livestock Auctioneers Association (LAA).

8.2 The main veterinary bodies – the BVA and the BCVA - strongly supported the proposal. They expressed views that post-movement testing was a sensible and

proportionate measure to reduce the risk of disease spread within and between cattle herds, suggesting it may pave the way for parts of the country to be declared OTF. They added that it was also consistent with both joint industry/Defra risk-based trading initiatives as well as with TB herd health accreditation standards.

8.3 The NBA supported the proposal in principle, but with some concerns. They pointed out that while many NBA members in the LRA would agree the approach, which would improve biosecurity, some farmers in the higher TB risk areas would see it as a further hindrance to trade and would worry that any increased testing requirement for purchasers would make it harder to trade cattle into the LRA.

8.4 The LAA and the CAAV did not support the proposal and raised similar concerns as the NBA about its potential implications for trade. They expressed doubts that purchasers of an apparently healthy animal would generally choose to stand the additional cost of a post-movement test, with the result that the flow of cattle from annual or more frequent testing areas to the LRA would reduce.

8.5 The NFU accepted the proposal in principle, acknowledging that the greatest TB threat for cattle herds in the LRA is through the movement of infected cattle from higher risk areas. However, the NFU believed a blanket approach to post-movement testing to be a blunt tool, and offered their support to it being used in a more targeted way, for instance, to high TB risk animals and high risk trading activities. They also felt that risk models used could be further refined to introduce more exemptions based on risk rather than purely geographic placement. The NFU believed a targeted approach that makes better use of cattle tracing system (CTS) data would be useful.

8.6 NFU members in the LRA proposed that the testing clock should be adjusted to sixty days from the date of movement of an animal onto the new LRA premises, rather than from the date of the last TB test on the cattle, as originally proposed in the Consultation. This would align the system with measures in place for Scotland.

8.7 The Department carefully considered the various views expressed during the consultation exercise, and decided to proceed with the proposals subject to the adjustment proposed by the NFU.

9. Guidance

9.1 With input from key stakeholder groups we have developed and shared guidance material (including Q&A briefing) with industry and veterinary groups both directly (advice emailed) and indirectly (advice published on the Gov.UK website and also on an industry managed TB advice website).

10. Impact

10.1 The main impact on business, charities or voluntary bodies is from the cost of veterinary fees and time spent gathering and presenting animals for post-movement testing. However, this is partially offset by a reduction disease control costs from infected cattle found earlier through post-movement testing and prevented from moving into the LRA. The latter refers to the expectation that that some farmers may switch where they source cattle from i.e. away from the annually tested areas. Overall, we estimate that the measure is a net cost to business.

10.2 The main impact on the public sector is from the reduction in disease control costs, due to the reasons outlined in paragraph 10.1. In addition, the costs of post-movement testing to government are insignificant because keepers are responsible for

the veterinary fees. Overall, we estimate that the measure is a net benefit to the public sector.

10.3 In addition, achieving OTF status for the LRA in the quickest possible time will provide options to reduce the surveillance testing regime, thereby reducing costs to business and to the public sector.

10.4 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 In 2014/15, the average number of employees across the different sizes of lowland grazing livestock (cattle farming) units was 1.5, and just 5.2 for the largest farms. This means that the impact of this measure falls entirely on small businesses.

11.3 Whilst small businesses cannot be exempted as it would compromise the measure, such businesses also benefit from this and other measures that form part of Defra's TB Strategy. In addition, reforms in this area tend to yield benefits which materialise in the long-term rather than immediately.

11.4 As a way of mitigating the costs of the measure, farms could be encouraged to have Finishing Units licensed by the Animal and Plant Health Agency ("LFUs"), as cattle moved to LFUs would be exempt from post-movement testing. The introduction of post-movement testing may encourage and/or accelerate the establishment of more LFUs.

12. Monitoring & review

A commitment to complete a post-implementation review by October 2019 is included in the 2014 Order.

13. Contact

13.1 Dan Hackett at the Department for Environment Food and Rural Affairs Telephone: 0207 238 6375 or email: dan.hackett@defra.gsi.gov.uk can answer any queries regarding the instrument.