

Explanatory Memorandum to the Tuberculosis (Wales) Order 2010

This Explanatory Memorandum has been prepared by the Rural Affairs Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Tuberculosis (Wales) Order 2010. I am satisfied that the benefits outweigh the costs.

Elin Jones

Minister for Rural Affairs

30 April 2010

1.1 Description

1.1 The Tuberculosis (Wales) Order 2010 is intended to bring into effect a number of changes to the rules governing bovine TB in Wales. The two main areas affected by the Order are Pre-Movement Testing exemptions, and changes to the compensation regime in Wales. It also addresses changes to terminology within the existing legislation and rules governing the handling of cattle being tested for bovine TB.

2. Matters of special interest to the Constitutional Affairs Committee

2.1 None

3. Legislative background

3.1 This Order is made under the Animal Health Act 1981, which confers powers on the Welsh Ministers in respect of Wales. The Order revokes the Tuberculosis (Wales) Order 2006 and remakes it with modifications.

3.2 The Order follows the negative procedure.

4. Purpose & intended effect of the legislation

4.1 As part of the 'One Wales' Programme for Government, the Welsh Assembly Government has committed to 'vigorously pursue a programme of bovine TB eradication'. In April 2008, an additional £27.7m of funding was allocated to support this commitment over three years. Bovine TB in Wales is costly and unsustainable. It has a significant impact on farms, which in turn can have an effect on our food supplies and rural communities.

4.2 The Welsh Assembly Government is legally obliged to pay compensation for cattle removed because of bovine TB. The cost to the taxpayer in compensation to farmers has increased from £1.3m in 1999-2000, to just below £25m in 2008-2009.

4.3 The Welsh Assembly Government's comprehensive programme to eradicate bovine TB is based on available evidence of disease in cattle domesticated livestock and wildlife. The programme includes measures to address the disease in cattle including greater control and

surveillance. We are testing more cattle, more often, changing policies to match our goal of eradication, and strictly enforcing policies to get ahead of this disease.

4.4 The TB eradication programme is being developed through a progressive revision of policy to reflect changing disease incidence and priorities. The current legislation is prescriptive and as such restricts the ability to amend policy without investing significant time on legislative procedures. It is proposed that legislation is amended, so that the policy of Pre-Movement Testing exemptions is not fully prescribed in the legislation but via an administrative process. This would enable the Welsh Ministers, following consultation, to react swiftly to changing circumstances.

4.5 **Compensation** – the powers and duties for animals slaughtered due to bovine TB is currently provided for under Section 32 of the Animal Health Act 1981 and the Brucellosis and Tuberculosis (England and Wales) Compensation Order 1978, as amended. This stipulates that the level of compensation payable when an animal is slaughtered for bovine TB is its *market value*.

4.6 The new Order links the responsibilities of herd keepers and compensation and in particular this link should encourage positive action by herd keepers to protect their herds from bovine TB.

4.7 The consultation identified that the focus for associating behaviour and compensation would be for:

- Overdue Testing
- Illegal Activities
- Risk Management (Veterinary Improvement Notices)

5. Consultation

The details of consultation undertaken are included in the RIA below.

6. Regulatory Impact Assessment (RIA)

What is the problem under consideration ? Why is Government intervention necessary ?

There has been a significant increase in the prevalence of bovine Tuberculosis in Wales in recent years, with compensation payments increasing from just over £1 million in 2000 to approximately £24 million in 2008.

The primary reason for Government intervention is concern about the spread of bovine TB and the need to reduce the economic cost to both the taxpayer and the industry.

Bovine TB is a zoonoses and although the risks to the public are low continued control is necessary

What are the policy objectives and the intended effects ?

The policy options considered in this RIA are intended to reduce the risk of spreading bovine TB by tightening up the rules surrounding Pre-Movement Testing requirements and also to encourage cattle keepers to comply with herd testing and veterinary requirements.

What policy options have been considered ?

The introduction of a new compensation system which reduces the level of cattle compensation received in cases where a keeper is found to have committed an offence or to have failed to comply with a Veterinary Improvement Notice or the cattle testing requirements, and;

The removal of a number of exemptions relating to Pre-Movement Testing.

Summary: Analysis and Evidence Policy Option 1

Price Base Year 2010	PV Base Year 2010	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Best Estimate	-	£55,000	£250,000

Description and scale of key monetised costs by 'main affected groups'

The removal of PrMT exemptions is expected to impose costs on keepers whose cattle will, under the new policy, require a PrMT. The average cost to the keeper per PrMT is assumed to be £11. There is also a cost to the taxpayer of approximately £0.7 per test.

Other key non-monetised costs by 'main affected groups'

Any keeper found not to have complied with a Veterinary Improvement Notice (VIN) or testing requirements will face a reduction in their compensation payment in the event of a bovine TB breakdown. There will also be a cost to the keeper and taxpayer associated with the 'Penalties' appeals process.

Description and scale of key monetised benefits by 'main affected groups'

Uncertainty about the impact that these policies will have on the number of bovine TB breakdowns means that it has not been possible to monetise the benefits.

Other key non-monetised benefits by 'main affected groups'

Encouraging cattle keepers to comply with VINs and testing requirements and tightening up the PrMT regulations are expected to reduce the prevalence of bovine TB in Wales, thus delivering economic benefits in the form of reduced movement restrictions and testing, higher confidence and a lower compensation bill.

Key assumptions/sensitivities/risks

The key assumption used in the calculations is that the removal of Pre-Movement Testing exemptions will have no effect on farmer behaviour. In reality, we expect that the removal of these exemptions will result in some cattle movements being abandoned and some being brought-forward to coincide with routine testing.

Discount rate (%)

3.5

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Wales
From what date will the policy be implemented?	25/05/2010
Which organisation(s) will enforce the policy?	WAG, Animal Health
Does the proposal have an impact on competition?	No

What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0		Benefits: 0
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties	No	
Economic impacts		
Competition	No	
Small firms	Yes	
Environmental impacts		
Greenhouse gas assessment	No	
Wider environmental issues	No	
Social impacts		
Health and well-being	No	
Human rights	No	

Evidence Base (for summary sheets) – Notes

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Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	-	-	-	-	-					
Annual recurring cost	0.055	0.055	0.055	0.055	0.055					
Total annual costs	0.055	0.055	0.055	0.055	0.055					
Transition benefits	-	-	-	-	-					
Annual recurring benefits	-	-	-	-	-					
Total annual benefits	-	-	-	-	-					

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base

Background to proposals

1. There has been a significant increase in the prevalence of bovine Tuberculosis in Wales in recent years. In 1997, 700 cattle in Wales were slaughtered because of the disease; by 2008 this figure had increased to over 12,000. There has been a similar increase in the amount of compensation that the Welsh Assembly Government has paid to cattle keepers whose animals are slaughtered for bovine TB, from just over £1 million in 2000 to almost £24 million in 2008.
2. In response to the rising incidence of bovine TB and the increasing compensation bill, the Welsh Assembly Government has introduced a bovine TB Eradication Programme. This programme includes the following policies:
 - Increased surveillance - testing all cattle herds in Wales to find and deal with the disease quicker;
 - Speeding up the testing regime – moving infected cattle off farms more quickly;
 - Change the compensation regime - reforming the compensation regime to encourage herd owners to follow best practice;
 - Tackling sources of infection in wildlife - Establishment of an Intensive Action Pilot Area (IAPA) where a limited cull of badgers will be undertaken alongside stringent cattle control measures in one area of high bovine TB incidence in cattle.
 - Biosecurity – develop and promote improved husbandry and biosecurity practices to reduce the risk and manage bovine TB;
 - Vaccine - actively support the GB vaccination programme to develop and trial vaccines for cattle and badgers;

Rationale for Government intervention & the policy options being considered

3. The primary reason for Government intervention is concern about the spread of bovine TB and the need to reduce the economic cost to both the taxpayer and industry. There would be an economic benefit to the farming industry from fewer herd breakdowns through avoiding the short term costs of movement restrictions, testing and lost output. There is also the reduction in the loss of productivity, the risk of loss of consumer confidence in the Welsh farming products and the potential closure to some international markets. However, the cost of surveillance, control and compensation, as well as research, associated with bovine TB currently falls largely to the taxpayer.
4. This RIA considers those policy amendments being made in ‘The Tuberculosis (Wales) Order 2010’. There are two main policy changes in the Order which are considered here, these are:
 - The introduction of a new method of calculating the value of an animal which reduces the value of cattle in cases where a keeper is found to have failed to comply with a Veterinary Improvement Notice,

the cattle testing requirements or has breached an obligation imposed by the Order, and;

- The removal of a number of exemptions relating to Pre-Movement Testing (PrMT).
5. The policy options considered in this RIA are intended to tighten up the rules surrounding PrMT requirements and to encourage cattle keepers to comply with herd testing and veterinary requirements for disease prevention.

Costs & Benefits

6. The following sections consider the approximate **annual** cost of the new measures to the farming industry and Government. In each case, the cost of the new measure is compared to a 'Do Nothing' scenario. Due to the level of uncertainty surrounding some of the assumptions used, all costs have been rounded to the nearest £5,000.
7. The majority of farms in Wales would be classified as a small firms (defined as fewer than 50 employees), the calculation of the costs to industry should therefore be regarded as the impact of the policy on small firms.
8. It is not clear at this stage what impact the removal of the PrMT exemptions or the introduction of the valuation system will have on the number of herd breakdowns. It has not therefore been possible to estimate what benefit these measures will have.
9. For information, the current estimate of the cost per bovine TB breakdown is £24,500, this includes the compensation payments from the Government to the keeper, the cost of further herd testing and also movement restrictions etc. In other words, for every bovine TB herd breakdown avoided/prevented, the economic benefit is assumed to be approximately £24,500.

Calculation of the Value of a Slaughtered Animal

10. The Tuberculosis (Wales) Order 2010 will, in certain circumstances, enable Welsh Ministers to calculate the value of a slaughtered animal to reflect any bad practice or a breach of obligations that may have taken place, in the event of a TB breakdown.
11. The circumstances where such a calculation such as this might take place are summarised below:
- where the cattle holder has failed to comply with a veterinary improvement notice (VIN);
 - where the cattle holder has breached legal obligations.
 - where the cattle holder has failed to comply with the cattle testing requirements (i.e. the herd test is overdue).

12. The amount of the payment that a keeper would receive in each case will depend upon factors such as a) how many VINs have been ignored, b) the number of breaches of obligations have occurred and c) by how long the test is overdue. Precise details about the measure are included in the Order, however, the reduction in the compensation received would be calculated using a factor of 0.75, 0.5 or 0.05 depending on the circumstances of the case.
13. It is not clear at this stage exactly how many cases will require a recalculation of the value of the payment made. It is therefore not possible to calculate the impact of this power.
14. By way of an illustrative example, the average compensation payment for cattle slaughtered for bovine TB is approximately £1,800 per animal and on average a bovine TB breakdown (CNI) results in the slaughter of 6.5 animals. On this basis, the average level of compensation received by the keeper in the event of a bovine TB breakdown is £11,700.
15. Table 1 demonstrates what impact each of the proposed calculations of value would have on the average bovine TB compensation payment.

Table 1: Impact of these calculations on average compensation payment

Factor by which compensation payment to be calculated (percentage of total)	Reduction in compensation payment
0 (100%)	£0
0.75 (75%)	£2,925
0.5 (50%)	£5,850
0.05 (5%)	£11,115

16. It should be noted however that whilst any recalculation of value of the animal represents a 'cost' to that cattle keeper, it also represents a cost saving (benefit) for the UK taxpayer. The overall impact (on UK society) of the withholding of compensation would therefore be £0.
17. Under the terms of the Order, any keeper will have the right to appeal against a decision to use one of the factors described above in the calculation of the value of the animal, Regulation 3 of the Agricultural Subsidies and Grant Schemes (Appeals) (Wales) Regulations 2006 forms the basis of the appeals process.
18. The appeals process takes a two-stage approach with appeals first considered by the relevant Head of TB policy; there is no cost to the keeper for this stage. Where a keeper remains dissatisfied with the outcome of the first stage, they may request that an independent panel considers the case and make a recommendation to the Minister for Rural Affairs. The Minister makes the final decision. The applicant can request an oral hearing with the independent panel (at a cost to the keeper of £100) or for the case to be considered in writing (at a cost of £50). If the appeal is successful then the above fees will be repaid in

full. Advice from the Assembly Government's Rural Payments Division suggests that it is difficult to give a 'per appeal' cost estimate because cases vary considerably in complexity. However, it has been indicated that the cost of convening the appeals panel is approximately £1,500 per day and typically between 1 and 3 cases would be heard by the panel each day.

19. In addition to the cost to the keeper, the appeals process also imposes costs on Welsh Assembly Government in the form of administrative costs and the costs associated with forming an independent panel to consider the cases.

Removal of PrMT Exemptions

20. When the Tuberculosis (Wales) Order 2006 was introduced it contained a number of exemptions which meant cattle keepers were able to move cattle without the need for a Pre-Movement Test. The new Order allows for a change in policy relating to:

- Cattle moving off premises within 30 days of arrival;
- the movement of cattle to agricultural shows;

21. The cost of removing each of these exemptions is considered in turn below:

Cattle moving off premises within 30 days of arrival

22. Cattle moving off premises within 30 days of arrival are currently exempt from PrMT, furthermore, there is no limit to the number of times that this exemption can be used. Cattle can therefore move between numerous holdings and provided that the animal doesn't spend more than 30 days on any one of the holdings then it will not require PrMT.
23. There is a perceived risk that, if the 30 day exemption remained, diseased cattle could potentially move from farm to farm spreading bovine TB without detection until a routine test was due. The removal of the 30 days PrMT exemption is intended to reduce this risk.
24. The cost per Pre-Movement Test is estimated to be £11.70, with the farmer assumed to pay £11 per test (for veterinary time and their own handling costs) and the Government/taxpayer paying the remaining £0.70 (for tuberculin and administration costs).
25. Data provided by RADAR¹ for 2008-09 estimates that approximately 3,000 animals in Wales were moved between premises when their time of residency on the premises was recorded as less than or equal to 30 days. If the 30 day exemption was removed, the annual cost incurred for additional pre-movement tests would be approximately £35,000. This cost is assumed to fall almost entirely upon the farming industry.

¹ Rapid Analysis and Detection of Animal-related Risks

Table 2: Indicative annual cost of removing 30 day exemption

	Industry	Government	Total
COST	£35,000	-	£35,000

26. The cost to government of the additional PrMT (i.e. the supply of tuberculin for the tests) would be negligible (i.e. less than £5,000). The calculation above assumes that none of the 3,000 animals leaving premises within one month of arrival in 2008 are within 60-days of a clear TB test.
27. The removal of this exemption may also result in some cattle keepers either abandoning animal movements or altering the timing of the movement to coincide with a routine test. While such actions may reduce the cost of the additional PrMT, they may not be without their own costs.

Cattle moving directly to agricultural shows

28. Cattle moving directly to agricultural shows are currently exempt from PrMT provided that they either return to the holding of origin or are taken direct to slaughter after the show. There was a concern that diseased cattle are currently able to move to an agricultural show without the need for a PrMT and that consequently there was a risk of spreading bovine TB to other cattle at the show. Following the completion of Veterinary Risk Assessments it has been decided that animals moving to local, un-housed agricultural shows of less than 24 hours duration will continue to be exempt, while housed, multiday events will require their exhibitors to test their cattle. We encourage all exhibitors regardless of size of show to test on a voluntary basis.
29. Data has been provided by RADAR and the Veterinary Laboratories Agency (VLA) on moves from agricultural holdings to show grounds. Looking at both data sources, the average number of moves to show grounds recorded during 2008 was approximately 2,500. These moves are currently exempt from pre-movement testing. Under the new policy, these animals would now require a pre-movement test. The approximate cost of this additional testing is as follows:

Table 3: Indicative annual cost of removing showground visit exemption

	Industry	Government	Total
COST	£20,000	-	£20,000

30. Again, the majority of the cost falls on the farming industry; the cost to government for tuberculin for the extra testing would be less than £5,000. The figures presented above have been rounded to reflect the uncertainties involved.
31. Analysis of the VLA data on show moves (that covers the period of 2004 – 2008) shows that approximately 24% of cattle moves to show grounds occur within an animal’s 60-day clear TB test window. The figures presented above are based on this assumption. Given the magnitude of the figures involved, removing this assumption has little impact. For example, if it is assumed that all

2,500 annual show moves require a pre-movement test, the total cost to the farming industry rises by a little over £5,000.

Total annual cost of removing PrMT exemptions

32. Combining the above calculations, the estimated cost of removing the PrMT exemptions detailed above is approximately £60,000 per annum. Table 4 shows how this cost splits down between the farming industry and the Government:

Table 4: Indicative annual cost of removing the exemptions considered above

	Industry	Government	Total
COST	£50,000	£5,000	£55,000

33. Discounting these costs over a 5 year period (using HM Treasury’s central discount rate of 3.5%) suggests that the Net Present Value (NPV) of these costs is approximately £250,000.
34. As has been noted throughout this Impact Assessment, the estimated costs should only be considered as indicative and are based on the assumption that removing these PrMT exemptions has no impact on farmer behaviour. This is unlikely to be a realistic assumption. The changes in pre-movement testing policy are expected to cause farmers to change cattle movement behaviours to avoid the additional testing costs - some will abandon moves altogether, whilst others will postpone or bring forward planned movements to coincide with routine testing dates. Others may adopt a mixture of strategies. Unfortunately, it is difficult to estimate robustly how behaviour will change and what impact any changes to behaviour will have upon the costs of removing the PrMT exemptions discussed in this paper.

Conclusion

35. This RIA considers those policy amendments being made in ‘The Tuberculosis (Wales) Order 2010’. There are two main policy changes in the Order which are considered here, these are:
- The introduction of a new system for valuing animals which takes account of a keeper’s conduct. if he or she is found to have breached an obligation or to have failed to comply with a Veterinary Improvement Notice or the cattle testing requirements, and;
 - The removal of a number of exemptions relating to Pre-Movement Testing (PrMT).
36. It is estimated that the annual cost of removing the identified PrMT exemptions will be approximately £55,000, with the majority of this cost borne by the farming industry.
37. As was noted in paragraph 8, uncertainty surrounding the impact that these policy changes will have on reducing the number of bovine TB incidents in Wales means that it has not been possible to estimate the value of benefits from

the changes. The average cost of a bovine TB breakdown in Wales is estimated as £24,500. This suggests that the removal of the PrMT exemptions would need to prevent 3 herd breakdowns per annum if the policy is to generate a net benefit to UK society.

39. Given the uncertainty regarding the benefits, we intend that the policy changes be reviewed a couple of years after implementation to assess their cost effectiveness.
40. Uncertainty about the number of cases in which some proportion of the market value payment will be retained for failure to comply with a VIN etc. means that it has not been possible to estimate the impact of this policy change.

Consultation Responses

1. Introduction

- 1.1 This document is a summary of the responses received to a public consultation on proposals to revoke and remake with amendments the Tuberculosis (Wales) Order 2006.
- 1.2 The aim of this consultation was to seek the views of interested parties and members of the public on a draft Order to allow changes to the rules relating to cattle control, surveillance and compensation as part of the TB Eradication Programme in Wales.
- 1.3 The consultation document was released on 7 December 2009, it closed to responses on 1 February 2010.
- 1.4 The document can be seen on the consultation pages of the Welsh Assembly Government website at:
<http://wales.gov.uk/consultations/environmentandcountryside/contbbrucellosisorder2010/?jsessionid=ypNRL2gG5LVnJbpjFDXSmjhDJ1G4dT1tLJTpRpnmlwggTlfQk0hg!2138048893?lang=en&status=closed>
- 1.5 18 responses were received, from both individuals (3) and organisations (15).
- 1.6 A list of the organisations that responded can be found at Section 5.
- 1.7 A detailed breakdown of the responses along with some of the main points raised can be seen in Section 3.
- 1.8 Some responses did not answer all questions that were set out in the consultation document. In these circumstances every effort was made to link responses to specific questions where appropriate.

- 1.9 Along with responding to the consultation questions a number of respondents raised additional questions of their own. We have endeavoured to respond to these in Section 4.

2. Summary of Responses

- 2.1 The responses summarised in this section include the 18 received by the closing date of 1 February 2010.

3 The Consultation Questions

- 3.1 The questions are dealt with in the order they appeared in the consultation document. The responses are summarised in the same order for each question, beginning with those in agreement with the question and associated statement, moving onto those who disagreed. Lastly, a figure for the number who did not answer the question is provided.

Section A

- 3.2 **Question 1:** Do you agree with this approach with regard to Fixed Penalty Notices aimed as it is at correcting bad practice without the need for a court appearance and possible conviction.

- 3.2.1 Of those consultees who responded to this question 80% agreed with the above and 20% agreed with certain reservations. For instance NFU Cymru said: *“NFU Cymru feels strongly that WAG should avoid taking a “Parking Fine” mentality in issuing Fixed Penalty Notices. We feel that they should only be used as a last resort and only in the event of the obvious failure or refusal by a farmer to follow and adhere to clear advice and clear guidance given by the appropriate authorities such as Animal Health and Local Authorities”.*

- 3.3.1 The RWAS felt that although this kind of penalty was appropriate, could the Order not also require the keeper in question to *“undertake corrective training”.*

- 3.3 **Question 2:** Do you agree that, subject to appropriate agreement, policy for Pre-movement Testing exemptions and any rates reducing compensation (as set by Welsh Ministers) should be managed via an administrative route?

- 3.3.1 Of those consultees who responded to this question 57% agreed with the proposition.

3.3.2 36% agreed with caveats, for example Hybu Cig Cymru said: “HCC considers it essential that the situations that may result in these powers being exercised are subject to consultation and clearly stated, particularly in the case of reducing compensation payments.” The British Cattle Veterinary Association said: “It is important, however, that changes such as reducing rates of compensation are proportionate, transparent and fair. Compliance with such disease control programmes could be undermined if the compensation paid discriminates against certain types of herd and certain types of animal, as is currently the case in England.”

3.3.3 7% of respondents disagreed with the proposition.

3.4 Question 3: Is the Royal Institute of Chartered Surveyors the appropriate body to administer the valuation process on behalf of the Welsh Assembly Government?

3.4.1 Only 11 consultees responded to this question, of these 55% felt that responsibility for the administration should be widened to include such organisations as the Central Association of Agricultural Valuers. A further 36% felt that RICS remained the appropriate authority, and 7% (RICS themselves) felt that that RICS and CAAV should share the responsibility.

Section B

3.5 Question 1: Are the exemptions that we intend to manage administratively under Article 12 paragraph 2(c) of the draft Order appropriate?

3.5.1 Of the respondents to this question 59% agreed with the proposition, 12% disagreed, and 29% that the exemptions proposed were appropriate with some reservations.

3.5.2 Respondents of all types did however have concerns around 2 major areas firstly Single Occupancy Authorities and, secondly, movements to agricultural shows.

3.5.3 Bryncir Auction Centre felt that: “(The) proposal has been put forward that pre-movement testing should be mandatory when moving more than 16 kilometres within the same holding. The implementation of such a scheme would be a devastating blow both financially and logistically to Gwynedd and Anglesey farmers. There is a long tradition of “Hafod a Hendre” in this area whereby the upland farms take on the lowlands of Anglesey and Caernarfonshire”.

3.5.4 The Royal Welsh Agricultural Society stated that: “The Society’s main concern is the entire removal of the exemption

for cattle moving to agricultural shows without even an explanation. In the wider context of animal health generally, the Society recognises and is fully supportive of the need for greater control of cattle movements as part of an eradication programme. But in order to put this in its proper perspective, it would have been helpful if the level of risk associated with this exemption could have been assessed to aid objective decision making”.

- 3.5.5 The representatives of show societies that attended a recent ASOS/consultation event made the point that the removal of the shows exemption might well be problematic, particularly for many smaller, local shows (stating that it “might spell the end for many..”) and wondered if an exemption could be made for these based on a veterinary risk assessment.
- 3.6 Question 2:** Should other administrative exemptions be considered? If yes please state and give reasons why it should be included?
- 3.6.1 Of those responding to this question 77% felt no other exemptions should be added to those proposed to be managed administratively. However 2 groups, the Upland Forum (shows exemption), and the FUW (30 day exemption) felt that exemptions proposed for removal should be retained under the administrative route.
- 3.7 Question 3:** If Sole Occupation Authorities (SOAs) were to be retained, via the administrative process, then would a maximum effective distance of, for example, 16 km where a Pre-movement Test was not required, be an appropriate option?
- 3.7.1 40% of respondents were partially or wholly opposed to this proposal feeling that this would be a damaging restriction to the ability of farmers to trade effectively, NFU Cymru went as far as to suggest that this should not happen without a linked and widespread badger cull.
- 3.7.2 BRASS felt that: *“It seems unlikely that 16km will always represent the best movement limit for disease control purposes. Local factors may mean that there are times when 16km is appropriate, when the distance should be less than 16km, or times when it can be greater. No justification is given for the limit of 16km: this may appear arbitrary without a rational explanation. The limits to the 16km need defining: will contiguous fields that are part of the SOA that stretch beyond the 16km limit be acceptable?”*
- 3.7.3 Bryncir Auction Centre felt that any move to a 16km maximum would be particularly damaging to farmers in the traditionally “low incidence” areas of Gwynedd and Anglesey where a traditional “*Hafod a Hendre*” system continues to be used whereby there is seasonal movement between upland farms and holdings they have taken on in the lowlands.

- 3.7.4 Of those who were not against the proposal but where not necessarily for it either (33%) many felt that 16km seemed arbitrary or asked what the rationale was behind such a distance (Royal Welsh Agricultural Show), or that local veterinary discretion should be used (RICS), and that flexibility should be used when addressing the SOA issue (Farm Crisis Network).
- 3.7.5 27% of respondents were supportive of the measure but even here it was felt that changes needed to be carefully managed and that proper veterinary oversight be maintained.
- 3.7.6 The Central Association of Agricultural Valuers felt that: *“In brief, if SOAs are to be subdivided in this way, they need to be better understood. If the actual proposal is to be as suggested, there needs to be a clear rule on how the distance is to be measured. How is the main “holding” to be defined? From what point is the distance to be measured? To what point on the off-lying land? In hill districts with limited road networks, land can be within a given distance as the crow flies but be further by road, though a farmer may be able to use cross country routes in some cases.....At this stage, it may simply be that clarifying SOA rules may be of the greatest immediate benefit before imposing further rules subdividing them. The firm administration of universal 12 month testing gives the safeguard against which this can be done.”*
- 3.7.7 One individual veterinary respondent believed that the whole SOA system should be got rid of entirely.

Section C

- 3.8 **Question 1:** What are your views on the proposed policy and the schedule of reductions?
- 3.8.1 81% of respondents agreed that the policy and schedule of reductions were appropriate. It is noted that the schedule is only cited within the “overdue tests” section of the consultation and should perhaps be included separately to cover “Illegal Activities” and Risk Management” as well.
- 3.8.2 BRASS however felt that: *“(These) reductions send a contradictory messages about the importance of TB testing and TB eradication....TB compensation achieves a public good by incentivising farmers to test their animals in a manner that is consistent with the management of a zoonotic disease. Farmers currently receive a two month testing window within which to test their cattle. We would agree that a further period of up to 2 months where compensation is maintained at full value provides a fair and reasonable time for farmers to test their cattle (a total of 4 months). Beyond this time, we would argue that no TB*

compensation should be paid. To do so continues to send mixed messages: it legitimises overdue testing on herds that pose biosecurity risks when the policy direction is to eradicate TB. It also continues to suggest that compensation is a reward for the individual animals slaughtered, rather than acting as an incentive to test the whole herd.”

- 3.8.3 CAAV felt that the schedule of reductions needed to be published within the Order for the sake of clarity, and that offences needed to be linked directly to the disease risk.
- 3.9 Question 2:** Do agree that the appeals procedure outlined at Annex B is fair and allows herd keepers the opportunity to question decisions made?
- 3.9.1 86% of respondents felt that the appeals process proposed at Annex B was an appropriate and fair system.
- 3.9.2 NFU Cymru, however, argue: *“that the appeals procedure should be outlined in the Order itself.....Annex B outlines the initial appeals process and envisages that ‘any justification for a delay is provided to Animal Health at the time of the test and then considered by Animal Health and the Welsh Assembly Government at payment stage’. This needs further clarification and detailed consideration, for example how is the farmer to provide the justification to Animal Health at the time of testing? Can this be done verbally or will it have to be confirmed in writing?.... also question that there is no time framefor the consideration of the justification by Animal Health or the Welsh Assembly Government. We are concerned that this could lead to significant delays between the removal of TB reactors off farm and the processing of compensation payments to farmers.*
- 3.9.3 The British Cattle Veterinary Association states that: *“BCVA feel that it is imperative that the panel referred to under stage 2 of the appeals process should be truly independent of government.....Appointment of such a panel should be open and transparent.....Any decision made by the independent panel should be binding.”*
- 3.9.4 The Farm Crisis Network caution: *”We note the exclusion of delays due to lack of a vet, serious illness, or force majeure. However additionally our experience is that in cases of delayed testing, there is commonly a series of complicated personal circumstances which combine to make a person unable to manage their affairs normally, but which separately may not comprise force majeure or relate to serious illness. A person may therefore need an advocate (e.g. an FCN representative) to support their case, having understood the full picture.”*

4. Other Issues Arising

- 4.1 As well as responding to the consultation questions some respondents raised or addressed additional areas that they felt to be germane. We have endeavoured to characterise these below:
- 4.1.1 **Timing** – The representatives of the show societies who officials met with at the ASAO (Wales) spring meeting, amongst others, highlighted the importance of timing and effective communication in light of the forthcoming show season. For which some shows are already registering. The issue of timing was one raised by many respondents.
- 4.1.2 **Overdue Tests** – a number of respondents felt that the schedule of reductions set out in this section should have been included in such a way as it was clearly relevant to the other types of action that might result in a compensation reduction. CAAV felt that it should be included in the Order itself. As mentioned before BRASS have concerns with the legitimisation of overdue testing.
- 4.1.3 NFU Cymru summed up many concerns when they stated: *“Annex B outlines the initial appeals process and envisages that ‘any justification for a delay is provided to Animal Health at the time of the test and then considered by Animal Health and the Welsh Assembly Government at payment stage’. This needs further clarification and detailed consideration, for example how is the farmer to provide the justification to Animal Health at the time of testing? Can this be done verbally or will it have to be confirmed in writing?”*
- 4.1.4 **Veterinary Improvement Notices** – Although many respondents were positive about this proposal there was some concern expressed about how Veterinary Improvement Notices would be managed, for instance the NFU Cymru said: *“NFU Cymru notes the proposals to introduce Veterinary Improvement Notices, which are outlined in the consultation paper and within Clause 17 of the draft 2010 Order. We feel that these would be appropriate in some instances, however NFU Cymru feels strongly that any such Notices should be used as a last resort and only when there’s clear evidence that sensible and reasonable advice and guidance given by enforcing authorities, such as Animal Health, has been blatantly ignored or disregarded. NFU Cymru would also emphasise that any actions required to be taken by a farmer must be practical, reasonable, deliverable and manageable on farm”.*
- 4.1.5 The BCVA: *“recognises and fully supports the principle of linking compensation with the management of disease risk. The results of the biosecurity project in the Welsh ITA give credibility to such an approach. The project served to highlight not only the potential benefits of such an approach but also the importance of a close working relationship between the local OV practitioner and the farmer.....In the absence of a more detailed specified schedule of reductions, BCVA is unable to comment on this aspect as regards VIN’s other than to broadly support the principle.....However, consistency, subjectivity and the possible absence of proven benefit associated with any advice given in the application of biosecurity measures are potential obstacles in linking the management of disease risk to compensation for one*

specific disease.” They then go on to discuss what they believe is practicable to be included in Veterinary Improvement Notices.

- 4.1.6 RWAS felt it was essential that any Risk Management was particular and appropriate to the individual holding concerned.
- 4.1.7 **Illegal Activities** – Some respondents were cautious about how we linked illegal activities to compensation reductions, for instance CAAV made the point that: *“As regards penalties based on alleged illegal activities, it looks very prejudicial to make deductions where the illegality has not been proven. The penalties, again with some tariff set out, should be merited where something has been proven. If it is not to depend on criminal conviction, then the illegality should not be alleged but the penalty should rely on some other defined breach that can be proven.”*
- 4.1.8 RWAS commented that: *“As far as the policy associated with illegal activities is concerned the society is not entirely clear about how this would apply. The approach suggested seems to assume that the illegal activities would be directly associated with the payment of compensation and a penalty applied. Presumably WAG is satisfied that there are no situations where illegal activities will occur in cases where compensation is not payable or indeed after compensation has been paid, and therefore this provision can be automatically imposed without the need for retrospective action.”*
- 4.1.9 BCVA agree with the proposed policy to penalise farmers for illegal activities, however, they go on to say: *“consideration should be given to the very real practical difficulties in fully complying at all times with all requirements laid down in the specified legislation e.g. inconclusive reactors in dairy herds.”*

5. List of Respondents

- 5.1 A list of the organisations that responded to the consultation can be seen below..

Hybu Cig Cymru

British Cattle Veterinary Association

Country Land & Business Association Ltd

Welsh Agri-food Partnership Organic Strategy Group

Farm Crisis Network

Royal Institute of Chartered Surveyors (RICS)

The Upland Forum

Glamorgan Badger Group

Central Association of Agricultural Valuers

RSPCA

Bryncir Auction Centre

The Royal Welsh Agricultural Society Ltd

The Centre for Business Relationships Accountability, Sustainability & Society (BRASS)

FUW

NFU Cymru

Association of Shows and Agricultural Organisations (ASAO)