

Explanatory Memorandum to the Swine Vesicular Disease (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description

These Regulations will implement Commission Directive 2007/10/EC which amends Council Directive 92/119/EEC for the control of Swine Vesicular Disease (SVD) in domestic legislation for Wales. Similar Regulations are being made in England, Scotland and Northern Ireland.

(ii) Matters of Special Interest to the Subordinate Legislation Committee

The new SI includes a provision for the Welsh Ministers to spare from culling rare breeds and other categories of pigs on an infected premises provided that doing so would not jeopardise disease control. This is a standard provision of modern EU notifiable animal disease Directives but was not included in the original 1992 Directive controlling SVD. The text in the Regulations reflects the equivalent provisions of the Foot and Mouth Disease Directive.

(ii) Legislative Background

The Regulations are made under section 2(2) of the European Communities Act 1972. This power is exercisable by Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. The Regulations follow the negative resolution procedure.

(iii) Purpose and intended effect of the legislation

The Regulations will implement in Wales appropriate controls for Swine Vesicular Disease as contained in Council Directive 92/119/EEC (as amended). The Regulations revoke the Swine Vesicular Disease Order 1972, the Swine Vesicular Disease (Amendment) Order 1973 and the Swine Vesicular Disease (Compensation) Order 1972.

The existing disease control legislation for SVD is the Swine Vesicular Disease Order 1972 which applies the control measures appropriate for the control of foot and mouth disease to an outbreak of SVD. The most recent 2006 controls for foot and mouth disease are inappropriate for the control of SVD. The new Regulations will provide for appropriate, proportionate control measures for SVD.

The Regulations will transpose into Welsh legislation the fundamental principles of disease control as contained in Directive 92/119 EC, as

amended, and most other Directives dealing with exotic notifiable diseases. These include:

- Notification of suspect disease
- Investigation by the competent authority
- Stamping out disease on infected premises and restricting the premises until the virus has been removed and
- Imposition of movement controls to reduce the risk of spread of disease.

The Regulations provide for vaccination measures in Part 4 (Regulations 19-21). Provision for vaccination has been included even though there is no SVD vaccine available for use in Wales or UK and no knowledge of a vaccine being developed. The Directive provides for vaccination and to avoid criticism for under implementation provision has been included even though the provisions for the time being at least will not be used.

(iv) **Implementation**

It is intended that the Statutory Instrument will come into force on 30 June 2009. Similar legislation will be made on 30 June 2009 in England, on 22 May 2009 in Scotland and on 17 June 2009 in Northern Ireland. If the legislation is not implemented in Wales it would mean that infraction proceedings would be issued against the UK with Wales having to bear the brunt of any penalty imposed. Furthermore Wales would not have in place effective measures for the control of SVD.

(v) **Consultation**

A consultation exercise was undertaken on the proposals to make the new Regulations. Paragraph L in the RIA contains more details.

(vi) **Regulatory Impact Assessment**

Options

Two main options have been identified:

Option 1: Continue to rely on present controls

Relying on present controls would not would not fully implement Directive 92/119/EEC. This would expose the Assembly Government to the risk of infraction proceedings for non-implementation of the Directive. Furthermore, Directive 2007/10/EC which amends Annex 2 of Directive 92/119/EEC requires implementation.

The Swine Vesicular Disease Order 1972 states that Foot and Mouth Disease legislation would be used to control Swine Vesicular Disease. This would not be appropriate as the Foot and Mouth Disease (Wales) Order 2006

introduced stricter controls for Foot and Mouth Disease, which would not be suitable for Swine Vesicular Disease.

Costs

The current legislation imposes disproportionate measures incurring unnecessary costs on businesses.

Option 2: Transpose the Directive

Benefits

Controls will be in place proportionate to the disease. The effective control of disease will lead to restrictions being in place for shorter periods reducing stress to farmers and leading to the continued availability of animal products.

Costs

Businesses and consumers

Current legislation already imposes costs on businesses in the event of a suspected or confirmed case of disease and these would continue under the new legislation. However costs would be reduced for some businesses by removing unnecessary controls. Costs to consumers would remain largely unaffected as supermarkets are likely to counteract any supply shortages by increasing imports.

Public sector

There will be no costs to the public sector when there are no outbreaks of disease. Costs to the public sector in enforcing the legislation and administering certain measures will be virtually unaffected. Current compensation arrangements remain i.e. for healthy animals compulsorily slaughtered for disease control purposes. Compensation is not payable for consequential losses or indirect losses to business during an outbreak.

Costs would be incurred only in a suspected or confirmed outbreak as at present.

Environmental and social costs

There would be no additional costs in disposing of carcasses and other contaminated materials and treating waste waters as the new legislation makes no changes in this area.

Issues of equity and fairness including distributional issues

The new legislation is a significant improvement over the existing controls in terms that it can be seen as providing control measures which are a proportionate response to Swine Vesicular Disease.

Outcome of other Impact Tests

a. Legal Aid

The proposal does not create new criminal sanctions or civil penalties.

b. Carbon Impact Assessment

The proposal will have no effect on carbon / greenhouse gas emissions as the nature and scale of the livestock and related industries remain the same. There will be individual winners and losers in terms of increased or reduced trade opportunities when there is a disease outbreak. Accordingly there will be some change to the carbon footprint of individual businesses but the overall impact for the industry as a whole is unlikely to alter substantially.

c. Other Environmental Issues

The policy is not changing: only the way the disease control requirements are presented. The proposal has no implications in relation to climate change, waste management, landscapes, water and floods, habitat and wildlife or noise pollution.

d. Health Impact Assessment

The proposal will not impact directly on human health or well being and will not result in health inequalities. There will be indirect benefits as the effective control of disease will lead to restrictions being in place for a shorter period, reducing stress on farmers and leading to the continued availability of animal products.

e. Race /Disability/Gender

There are no limitations on meeting the requirements of the proposal on the grounds of race, disability or gender. The proposal does not impose any restriction or involve any requirement which a person of a particular racial background, disability or gender would find difficult to comply with. Conditions apply equally to all individuals and businesses involved in the activities covered by the proposal.

f. Human Rights

The proposal is consistent with the Human Rights Act 1998.

g. Rural Proofing

The majority of producers and many suppliers are based in rural areas and the proposal is designed to facilitate their activities. The policy does impact the rural community as there will be controls to prevent the spread of disease, but these are basically the same as current legislation.

h. Small Firms Impact Test

In the event of a suspected or confirmed outbreak of disease the proposal will affect small businesses but to no greater degree than at present. The degree of consultation with representative groups that was undertaken when the Directive was negotiated is unknown but a consultation exercise has been carried out on the draft regulations.

i Competition Assessment

The proposals are unlikely to have negative impacts on competition unless disease is confirmed (and even then it will have minimal impact on consumers). The revised legislation applies equally to all new and existing businesses and is similar to existing requirements for other serious diseases of livestock.

The legislation would be likely to have only a minor impact on competition in the markets directly affected by it. The major markets affected include the European markets for pig meat as well as markets for the trade in live pigs. Other farm types, such as poultry or sheep holdings, may incur indirect impacts from the legislation. Furthermore, whole sectors of the rest of the rural economy, such as the tourism industry, may be indirectly affected.

Of the markets directly affected by the legislation, all are characterised by low levels of concentration; no firm has 20% market share and no three have 50%. The legislation would affect some firms substantially more than others. The shocks to supply would not be due to competitive distortions.

The legislation would have a temporary impact on the market structure if a disease outbreak occurred, reducing the number of meat and animal suppliers. There would be no extra set-up or ongoing costs for new entrants to meet compared to existing firms. Firms' ability to choose the price, quality, range and location of their products would be affected. However, Welsh consumers are not expected to suffer as a result of this since substitution to imports or other non-affected meat, such as poultry, will be possible.

j. Enforcement and Sanctions

In the event of a disease outbreak Animal Health and Local Authorities would enforce the legislation as they do at present; there are no significant new burdens on these enforcement agencies.

During an outbreak, any additional burdens on the farming industry would, generally, be no greater than under existing legislation.

The EU Commission has responsibility for monitoring enforcement by member states in order to ensure uniform application of EU legislation.

The effectiveness of UK enforcement procedures is kept under ongoing review. Any evidence of failure to enforce by other Member States is drawn to the attention of the Commission.

k. Monitoring and review

Monitoring of the effectiveness of the legislation will arise from regular National Contingency Plan reviews and lessons learned following an outbreak of disease. The legislation will also be reviewed if any further Commission Directives or Decisions are made.

l. Consultation

A public consultation exercise was undertaken between 19 November 2008 and 14 January 2009 on the legislative plans for implementation of the Directive. This generated three responses, none of which was critical of the proposal.

m. Summary

Full transposition of Directive 92/119/EEC as amended is recommended. This includes all the essential measures for the control of Swine Vesicular Disease.