The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 7 and any future review of evidence for the South of Scotland Enterprise Bill in private.

2. **South of Scotland Enterprise Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Karen Jackson, South of Scotland Economic Development Team, Team Leader; Sandra Reid, Bill Team Leader; Felicity Cullen, Scottish Government Legal Directorate; and Fraser Gough, Parliamentary Counsel, Scottish Government.

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

   The Tuberculosis (Miscellaneous Amendments) (Scotland) (No. 2) Order 2018 (SSI 2018/333).

4. **Subordinate legislation:** The Committee will take evidence on the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft] from—

   Fergus Ewing, Cabinet Secretary for the Rural Economy; Jen Willoughby, Head of Agricultural Holdings Team; and Julia Burgham Pearson, Scottish Government Legal Directorate, Scottish Government.

5. **Subordinate legislation:** Fergus Ewing (Cabinet Secretary for the Rural Economy) to move—S5M-14752—That the Rural Economy and Connectivity Committee recommends that the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft] be approved.
6. **Public petitions:** The Committee will consider the following petition- PE01616 by John S Shaw, on Parking Legislation.

7. **South of Scotland Enterprise Bill:** The Committee will review the evidence it has heard on the South of Scotland Enterprise Bill at today's meeting.

Steve Farrell  
Clerk to the Rural Economy and Connectivity Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5211  
Email: steve.farrell@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 2**

Cover note  
PRIVATE PAPER  
REC/S5/18/31/1

**Agenda Item 3**

SSI cover note  
PRIVATE PAPER  
REC/S5/18/31/2 (P)

**Agenda Item 4**

SSI cover note  
REC/S5/18/31/3

**Agenda Item 5**

Note by the Clerk  
REC/S5/18/31/6
Rural Economy and Connectivity Committee
31st Meeting, 2018 (Session 5), Wednesday, 28 November 2018
South of Scotland Enterprise Bill

Background

1. The Bill was introduced to the Parliament by Fergus Ewing, Cabinet Secretary for the Rural Economy on 24 October 2018. The Rural Economy and Connectivity Committee was designated as lead committee at stage 1.

2. The establishment of an enterprise body for the South of Scotland was announced in October 2016 as part of the Scottish Government’s enterprise and skills review. Phase 2 of that review set out in more detail proposals for the new agency.

Purpose of the Bill

3. The Bill establishes a South of Scotland Enterprise (SSE) agency. Scotland has two existing enterprise agencies: Scottish Enterprise and Highlands and Islands Enterprise (both established by the Enterprise and New Towns (Scotland) Act 1990).

4. This Bill is a technical, enabling Bill which provides for:
   - The establishment of the agency,
   - its objectives and powers,
   - operational matters,
   - accountability and ministerial powers,
   - the transfer of property and liabilities, and
   - governance and staff

5. Further information on the Bill can be found on the Parliament’s website.

Committee scrutiny

6. The Committee will take evidence on 28 November from the Scottish Government Bill team. It also anticipates taking evidence at future meetings from economic development, business, local authority and community interests.

Clerking Team
Rural Economy and Connectivity Committee
November 2018
Title of Instrument:

- SSI 2018/333: The Tuberculosis (Miscellaneous Amendments) (Scotland) (No. 2) Order 2018

Type of Instrument: Negative

Coming into force: 12 December 2018

Laid Date: 1 November 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Purpose

2. This Order amends articles 2, 9, 10, 12, 18, 19, 21, 22 and 26 of the Tuberculosis (Scotland) Order 2007 (SSI 2007/147) to introduce changes to the requirements for post movement testing and to the way compensation is paid for bovine animals that are slaughtered under TB control measures. It also inserts an appeals provision where Scottish Ministers have notified a keeper of their intention to reduce compensation. It further extends the prohibition on testing to include any diagnostic test for tuberculosis.

3. This instrument replaces the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 which was revoked on 30 June 2018 by the Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018. This revocation was necessary because of a technical issue with the electronic receipt of two consultation responses, and to ensure that the consultation process was followed correctly. The Committee welcomed that decision to revoke the original Order, given that the Committee had corresponded with the Cabinet Secretary on the issues associated with it.

4. The Committee Convener requested advance information from the Scottish Government asking for clarity relating to the compensation paid for both BSE and bovine TB (which are currently both based on market value), and why bovine
TB compensation is being changed in this Order, meaning that compensation for the two schemes will then be different. The Scottish Government response outlines that ‘no uniform compensation formula is specified’ by the relevant primary legislation, ‘allowing different compensation schemes to be developed on a disease–by-disease basis, reflecting the particular circumstances of each as appropriate.’ The response is attached.

5. The Policy Note and instrument are attached and available online at the first link above. A Business and Regulatory Impact Assessment has been prepared and is also attached.

Consideration by the Delegated Powers and Law Reform Committee

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 13 November 2018 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Recommendation

The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Clerking Team
Rural Economy and Connectivity Committee
November 2018
POLICY NOTE

THE TUBERCULOSIS (MISCELLANEOUS AMENDMENTS) (SCOTLAND) (NO. 2) ORDER 2018

SSI 2018/333

1. The above instrument was made in exercise of the powers conferred by sections 1, 8(1), 28, 32(2) and (3), 34(7) and 83(2) of the Animal Health Act 1981 and is subject to Negative procedure. It amends articles 2, 9, 10, 12, 18, 19, 21, 22 and 26 of the Tuberculosis (Scotland) Order 2007 (SSI 2007/147) (2007 Order) to introduce changes to the requirements for post movement testing and to the way we pay compensation for bovine animals that are slaughtered under TB control measures. It also inserts an appeals provision where Scottish Ministers have notified a keeper of their intention to reduce compensation. It further extends the prohibition on testing to include any diagnostic test for tuberculosis.

2. The instrument also removes a redundant definition of “authorised veterinary inspector” in article 2(1) of the Tuberculosis in Specified Animals (Scotland) Order 2015.

3. This instrument replaces the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 which was revoked on 30 June 2018 by the Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018. This revocation was necessary because of a technical issue with the electronic receipt of two consultation responses, and to ensure that the consultation process was followed correctly.

Policy Background

4. TB is a serious infectious disease of cattle, caused by the bacterium Mycobacterium bovis (M.bovis), which mainly affects cattle, but can also be passed between most mammals and from infected animals to people. The risk of people contracting TB from animals in Great Britain is considered very low.

5. Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009, and maintaining that OTF status is crucial to the continuing success of the Scottish cattle industry which is already regulated in terms of controls for TB by the 2007 Order and EU Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine.

6. The Scottish Government is committed to a comprehensive, practical and proportionate programme of measures to maintain the current low levels of TB in cattle and other species and to safeguard our OTF status. This includes minimising the risks from all potential sources of infection and reducing the risk of disease spread as far as possible.

7. Defra and the Welsh Government have both recently introduced substantial changes to their respective TB Programmes, which highlighted the need to also review Scottish TB controls and compensation arrangements to ensure that they are
fit for purpose, incentivise compliance with the rules and best practice and are financially sustainable in the future.

Policy Objectives

8. The objective of this amending Order is to introduce changes to TB controls in relation to post movement testing and compensation. It also tightens up some of the existing provisions for clarity and to ensure they are properly applied.

9. The Order makes provision for circumstances where a bovine animal has been moved to premises in Scotland from other parts of GB and subsequently requires to be post movement tested. The keeper of such animals must ensure the relevant test is carried out within the specified time limit with negative results before the animal is permitted to be moved from those premises, unless the move can be authorised under applicable exceptions. This is to minimise the risk of potential disease incursion into Scotland at the point of movement.

10. The Order also makes several provisions for compensation which (a) introduce a £5,000 cap for non-pedigree bovine animals and a £7,500 cap for pedigree bovine animals on compensation payments for individual animals and (b) allow for compensation to be reduced on a sliding scale or paid at a nominal sum of £1 where livestock keepers have broken the rules and illegally moved bovine animals onto restricted premises or allowed their statutory herd testing to go overdue. Compensation is also restricted to a £1 nominal sum where animals are not correctly identified by means of eartags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007. An appeals provision is also provided where compensation has been reduced in such circumstances. The objective of this policy is to incentivise compliance and provide a more financially sustainable compensation system that is fair to all and protected from potentially significant compensation costs associated with high value animals.

11. The Order also inserts a revised definition of a high incidence area at article 2 (1) to reflect that TB testing is done at intervals of up to two years in such areas.

Consultation

12. A public consultation was held between 7 September and 30 November 2017. As part of the consultation process Scottish Government officials also engaged directly with both Defra and the Welsh Government to look at disease control and compensation arrangements already in place in other parts of GB.

13. We also consulted with the Animal and Plant Health Agency (APHA) as our operational delivery partners on all aspects of delivery and implementation and to obtain available data on cattle valuations, numbers of overdue tests and post movement tests.

14. As a result of the technical issue advised at section three above, further engagement with the affected stakeholder organisations was carried out. This was considered necessary, as concerns had been raised relating to the introduction of a £5,000 cap on compensation payments for all individual animals. A change was
made to this provision as a result of this further consultation and this is explained further in the paragraph below.

The Tuberculosis (Miscellaneous Amendments) (Scotland) (No. 2) Order 2018: updates and changes

15. The drafting of this instrument is based on the drafting of the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 as subsequently revoked. However, certain drafting changes have been made.

16. The primary change is to article 2 (8) where it amends article 19A of the 2007 Order. Article 19A has been redrafted to create a distinction between pedigree bovine animals and non-pedigree bovine animals. This is because following the additional consultation, it was decided that the cap which applies to the compensation payable in relation to a bovine animal will depend on whether or not it is a pedigree bovine animal. Article 19A now provides for a compensation cap of £5,000 in the case of non-pedigree bovine animals and £7,500 in the case of pedigree bovine animals.

17. Other drafting changes have been made to articles 18, 19, 19B, 19C, 19D. These changes have been made for clarity and there is no change in the effect of these provisions.

Financial Implications

18. It is not possible to predict the number of bovine animals that will be affected by any potential future TB incidents and more specifically these changes. Neither is it possible to estimate accurately the cost to livestock keepers associated with introducing this Order. The reductions in compensation are completely avoidable except those imposed by the £7,500/£5,000 compensation cap which will have some impact on those keepers with higher value animals, however statistics show that only eighteen TB reactor animals have breached this cap in the last five years and so numbers affected are expected to be limited.

19. APHA have carried out a Change Management Assessment and do not anticipate any significant implementation costs. There will be some saving to Government where compensation payments are reduced but it has not been possible to estimate accurately how much this might be, however we would expect any savings to be minimal.

20. A business and Regulatory Impact Assessment has been prepared and is attached.

Scottish Government
Agriculture and Rural Economy
Animal Health and Welfare Division

October 2018
The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1), 28, 32(2) and (3), 34(7) and 83(2) of the Animal Health Act 1981(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Tuberculosis (Miscellaneous Amendments) (Scotland) (No. 2) Order 2018 and comes into force on 12 December 2018.

Amendment of the Tuberculosis (Scotland) Order 2007

2.—(1) The Tuberculosis (Scotland) Order 2007(b) is amended as follows.
(2) In article 2(1) (interpretation) for the definition of ‘high incidence area’ substitute—

"“high incidence area" means an area in Great Britain where bovine animals are required to be subject to routine tuberculin testing at intervals of no more than two years in accordance with the requirements of Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine(c),”.”

(3) For article 9 (post movement testing) substitute—

“Post movement testing

9.—(1) Where a bovine animal has been moved to premises in Scotland (in this article “the receiving premises”) from premises in a high incidence area, the keeper of the bovine animal must ensure that a diagnostic test for tuberculosis is applied to it no fewer than 60

(a) 1981 c.22. The functions of the Secretary of State in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 86 of the Animal Health Act 1981 for the exercise of functions in relation to tuberculosis. The requirement to obtain Treasury consent in section 32(3) of the Animal Health Act 1981 was removed by section 55 of the Scotland Act 1998.
days and no more than 120 days after the date on which it first arrives at the receiving premises.

(2) Unless paragraph (3) applies, the keeper of a bovine animal must not allow the animal to be moved from the receiving premises unless a diagnostic test has been applied to it in accordance with paragraph (1) and the results of the test of the animal as read by an inspector or an approved veterinary surgeon are negative for tuberculosis.

(3) This paragraph applies where the bovine animal is moved—

(a) directly to slaughter within 120 days of the animal’s first arrival at the receiving premises,

(b) solely for the purpose of veterinary treatment, provided that after the treatment the animal is returned directly to the receiving premises or is killed or goes directly to slaughter, or

(c) under the authority of a movement licence issued by a veterinary inspector.”.

(4) In article 10(1) (application of test), for “article 9” substitute “article 9(1)”.

(5) In article 12 (reporting test results), for “tested a bovine animal with tuberculin” substitute “diagnostically tested a bovine animal for tuberculosis”.

(6) For article 18 (compensation) substitute—

“Compensation – general provision

18.—(1) Where the Scottish Ministers cause a bovine animal to be slaughtered under section 32 of the Act in its application to tuberculosis, they must pay compensation in accordance with this article and articles 19 to 19C.

(2) Subject to articles 19A to 19C, where the animal has been identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007(a), the compensation payable is the market value of the animal ascertained in accordance with article 19.

(3) Where the animal has not been identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007, the amount of compensation payable is £1.

(4) Where paragraph (3) applies, the Scottish Ministers must notify the keeper of the decision to pay compensation of £1—

(a) giving the reasons for the decision, and

(b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.”.

(7) In article 19(1) (ascertainment of market value)—

(a) for “Notwithstanding” substitute “Subject to articles 19A to 19C, and notwithstanding” and,

(b) for “this Order” substitute “article 18, 19A or 19C”.

(8) After article 19 insert—

“Compensation for reactor animals

19A.—(1) Subject to article 19C, this article applies where a bovine animal which has been caused to be slaughtered under section 32 of the Act is a reactor and the market value of that bovine animal ascertained in accordance with article 19 exceeds—

(a) £5,000 in the case of a bovine animal other than a pedigree bovine animal, or

(b) £7,500 in the case of a pedigree bovine animal.

(a) S.S.I. 2007/174 as amended by S.S.I. 2017/133.
(2) Where this article applies, the compensation payable is the sum mentioned in paragraph (1)(a) or (b), whichever is applicable.

(3) For the purposes of this article—


“breeding book” has the same meaning as point 12(a) of Article 2 of the 2016 Regulation and “main section of a breeding book” is to be construed in accordance with point 13 of Article 2 of that Regulation,

“breeders’ organisation or association” means a breeders’ organization or association granted recognition under and in accordance with the first sub-paragraph of Article 2 of Commission Decision 84/247/EEC laying down the criteria for recognition of breeder’s organizations and associations which maintain or establish herd-books for pure-bred breeding animals of the bovine species(b),

“breed society” means a breed society recognised under and in accordance with Article 4(3) of the 2016 Regulation,

“main section of a herd-book” is to be construed in accordance with Article 1 of Commission Decision 84/419/EEC laying down the criteria for entering cattle in herd-books(c),

“official certificate” means—

(a) a pedigree certificate issued under and in accordance with Article 1 of Commission Decision 2005/379/EC on pedigree certificates and particulars for pure-bred breeding animals of the bovine species, their semen, ova and embryos(d), or

(b) a zootechnical certificate issued under and in accordance with Article 30(1) of the 2016 Regulation,

“pedigree bovine animal” means a bovine animal—

(a) which, before the relevant date has been entered into—

(i) the main section of a herd-book by a breeders’ organisation or association, or

(ii) the main section of a breeding book by a breed society, and

(b) for which an official certificate has been—

(i) issued by that breeders’ organisation or association or by that breed society before the relevant date, and

(ii) presented to the Scottish Ministers, or to a valuer appointed by the Scottish Ministers, for the purposes of article 19, and

“relevant date” means, where a diagnostic test for tuberculosis applied to the animal under these Regulations reveals that the animals is a reactor, the date of that test.

Compensation for animals subject to movement restrictions

19B.—(1) This article applies where—

(a) a bovine animal is moved on to premises in breach of a relevant movement restriction or prohibition,
(b) a diagnostic test for tuberculosis has been applied to the animal and the test results reveal that the animal is a reactor,
(c) the keeper is informed of the test results by a person who has received consent to test under article 26(a), and
(d) the Scottish Ministers have caused the animal to be slaughtered under section 32 of the Act.

(2) Where this article applies, the amount of compensation payable for a slaughtered animal is £1.

(4) Where this article applies, the Scottish Ministers must notify the keeper of the decision to pay compensation of £1—
(a) giving the reasons for the decision, and
(b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.

(5) In paragraph (1)(a), “a relevant movement restriction or prohibition” means a movement restriction or prohibition applicable in respect of premises by virtue of—
(a) article 6(2)(c),
(b) article 11A(2)(a),
(c) article 22(1)(b),
(d) article 24.

Reduced compensation for testing delays

19C.—(1) This article applies where—
(a) the keeper of an animal has been served with a test notice under article 21(1),
(b) the keeper has failed to carry out a diagnostic test for tuberculosis by the latest date specified in the notice (“the specified date”),
(c) a diagnostic test for tuberculosis has been applied to the animal after the specified date and the test results reveal that the animal is a reactor,
(d) the keeper is informed of the test results by a person who has received consent to test under article 26(a),
(e) the Scottish Ministers have caused the animal to be slaughtered under section 32 of the Act, and
(f) the market value of the animal has been ascertained in accordance with article 19.

(2) Where this article applies, the compensation payable to the keeper for a slaughtered animal is—
(a) where the interval between the specified date and the date of the test is more than 60 days but not more than 90 days, 50% of the market value of the animal as ascertained in accordance with article 19, or
(b) where the interval between the specified date and the date of the test is more than 90 days, 5% of the market value of the animal as ascertained in accordance with article 19.

(3) Where this article applies, the Scottish Ministers must notify the keeper of the decision to reduce compensation—
(a) giving the reasons for the decision, and
(b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.
Review of decision to pay reduced compensation etc.

19D.—(1) Within a period of 21 days beginning with the date of receipt of a notification under article 18(4), 19B(4) or 19C(3), the keeper may make written representations to a person appointed by the Scottish Ministers for the purpose of having the decision to reduce the compensation payable to the keeper reviewed by that person (“the appointed person”).

(2) The appointed person must consider those representations together with any written representations made by the Scottish Ministers.

(3) Having considered representations in accordance with paragraph (2), the appointed person must then report in writing to the Scottish Ministers who must then make their final determination in relation to the amount of compensation payable in respect of the animal which has been caused to be slaughtered under section 32 of the Act.

(4) The Scottish Ministers must notify the keeper of their final determination under paragraph (3) and the reasons for it.”.

(9) For article 21 (facilitating examination etc) substitute—

“Tuberculosis testing and facilitating examinations etc.

21.—(1) The Scottish Ministers may serve on the keeper of any bovine animal a notice (“a test notice”) requiring the keeper to have applied to the animal a diagnostic test for tuberculosis before a date specified in the notice.

(2) The keeper of any bovine animal must comply with all reasonable requirements of an inspector or an approved veterinary surgeon with a view to facilitating—

(a) the examination of that animal by a veterinary inspector or an approved veterinary surgeon,

(b) the application to the animal of a diagnostic test for tuberculosis (following the service of a notice under paragraph (1)), and

(c) the valuation or slaughter of the animal when the Scottish Ministers intend to cause it to be slaughtered under section 32 of the Act in its application to tuberculosis.

(3) For the purposes of facilitating any examination, testing, valuation or slaughter as mentioned in paragraph (2), an inspector or an approved veterinary surgeon may require the keeper of the bovine animal to arrange—

(a) for the collection, penning and securing of the animal, and

(b) for the movement of the animal to and from any premises specified by the inspector or, as the case may be, the approved veterinary surgeon.”.

(10) For article 22 (default) substitute—

“Default

22.—(1) If any person fails to comply with a test notice under article 21(1) or any requirement as mentioned in article 21(2) or (3), the Scottish Ministers—

(a) may take or cause to be taken all such steps as may be necessary to facilitate the examination, testing, valuation or slaughter of the bovine animal including, subject to paragraph (3), the movement of the animal to other premises, and

(b) may by notice served on the keeper of the bovine animal prohibit the movement of any bovine animal on to or off the premises, except under the authority of a licence issued by an inspector.

(2) Paragraph (1) is without prejudice to any proceedings for an offence arising out of any failure to comply as mentioned in that paragraph.

(3) Where a bovine animal has been moved to other premises in accordance with subparagraph (1)(a), the Scottish Ministers must ensure the return of the animal to the premises
from which it was moved within a reasonable time after the examination, testing or valuation has been carried out.

(4) Any expenses reasonably incurred by the Scottish Ministers for the purposes of making good any default are recoverable from the person in default.”.

(11) For article 26(a) (prohibition on testing, vaccination and therapeutic treatment), substitute—

“(a) apply a diagnostic test for tuberculosis to a bovine animal,”.

Amendment of the Tuberculosis in Specified Animals (Scotland) Order 2015

3. In article 2(1) of the Tuberculosis in Specified Animals (Scotland) Order 2015(a), omit the definition of “authorised veterinary inspector”.

St Andrew’s House,
Edinburgh
30th October 2018

MAIRI GOUGEON
Authorised to sign by the Scottish Ministers
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Tuberculosis (Scotland) Order 2007 (“the 2007 Order”) and the Tuberculosis in Specified Animals (Scotland) Order 2015 (“the 2015 Order”).

Article 2(2) amends the definition of ‘high incidence area’ in article 2(1) of the 2007 Order to reflect routine tuberculin testing carried out at intervals of no more than two years in such an area.

Article 2(3) substitutes a new article 9 in the 2007 Order. This provides that where a bovine animal has been moved to premises in Scotland from premises in a high incidence area, the keeper of the bovine animal must ensure a diagnostic test for tuberculosis is applied to the animal within a specified period of time and must not allow the animal to be moved from the premises before such a test is completed unless the move is authorised under applicable exceptions.

Article 2(4) makes a consequential amendment to article 10(1) of the 2007 Order.

Article 2(5) amends article 12 of the 2007 Order to extend the obligation to report tests results to include any test for tuberculosis.

Article 2(6) substitutes a new article 18 in the 2007 Order which makes general provision for compensation by the Scottish Ministers reflecting the market value of a bovine animal, where they cause a bovine animal to be slaughtered under section 32 of the Animal Health Act 1981, provided the animal is identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007. This is subject to the exceptions under the new articles 19A to 19C of the 2007 Order.

Article 2(7) makes a consequential amendment to article 19(1) of the 2007 Order.

Article 2(8) inserts new articles 19A, 19B, 19C and 19D in the 2007 Order.

Article 19A establishes the maximum compensation payable for any slaughtered animals which are reactors (under article 2(1) of the 2007 Order, those are animals which produce a reaction consistent with their being affected with tuberculosis when tested for that disease) which have been slaughtered as £5,000 in the case of bovine animals other than pedigree bovine animals and £7,500 in the case of pedigree bovine animals, irrespective of the market value of the animal as ascertained in accordance with article 19 of the 2007 Order. Where the animal is not identified by means of eartags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007 the compensation payable is £1.

Article 19B provides for compensation of £1 for slaughtered animals which are reactors, where those animals were moved on to premises in breach of a relevant movement restriction or prohibition under the 2007 Order.

Article 19C provides for reduced compensation for slaughtered animals which are reactors where the keeper of those animals has failed to timeously comply with a notice to test under article 21(1) of the 2007 Order. The amount of any compensation payable as a proportion of the market value of the animals depends on the length of any delay in testing.

Article 19D provides a right of review to a person appointed by the Scottish Ministers in relation to any decision by the Scottish Ministers to pay £1 or reduced compensation under articles 18(4), 19B(4) and 19C(2) respectively.

Article 2(9) substitutes a new article 21 in the 2007 Order. This enables the Scottish Ministers to serve on the keeper a test notice requiring the keeper to apply a diagnostic test for tuberculosis on the bovine animal before a date specified in the notice. This article also requires a keeper to comply with all reasonable requirements of an inspector or approved veterinary surgeon for facilitating any examination, testing, valuation or slaughter of any bovine animals.
Article 2(10) substitutes a new article 22 in the 2007 Order. This provides that if the keeper fails to comply with a testing notice or any requirements under article 21 of the 2007 Order—

(a) the Scottish Ministers may take steps or arrange for steps to be taken to facilitate the examination, valuation, movement or slaughter of the bovine animal, or

(b) serve a notice on the keeper of the bovine animal prohibiting the movement of any bovine animal on to or off the premises.

The Scottish Ministers may recover any reasonable expenses from exercising powers under this provision.

Article 2(11) substitutes a new article 26(a) in the 2007 Order. The amended provision extends the prohibition on testing without the written consent of the Scottish Ministers to include the application of any diagnostic test for tuberculosis.

Article 3 revokes a redundant definition of ‘authorised veterinary inspector’ in article 2(1) of the 2015 Order.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Animal Health and Welfare Division, Saughton House, Broomhouse Drive, Edinburgh EH11 3XG and online at www.legislation.gov.uk.
Title of Proposal
The Tuberculosis (Miscellaneous Amendments) (Scotland) (No. 2) Order 2018

Purpose and intended effect

- **Background**

TB is a serious infectious disease of cattle, caused by the bacterium Mycobacterium bovis (M. bovis) and a major challenge currently facing large parts of the UK cattle farming industry. The disease is characterised by the development of “tuberculosis” lesions in any organ of the body. It mainly affects cattle but can be passed between most mammals. It is also a Zoonotic disease which means it can be passed from infected animals to people, causing an illness similar to human TB. The risk of people contracting TB from cattle in Great Britain (GB) is however considered to be very low.

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009 and maintaining that OTF status and Scotland’s reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry.

We are aware that in recent months both Defra and the Welsh Government have introduced substantial changes to their respective TB control programmes. This has highlighted the need for us to review Scottish TB controls and compensation arrangements, to ensure they continue to incentivise compliance and best practice while being financially sustainable in the future.

The Scottish cattle industry is already strictly regulated in terms of controls for TB by the Tuberculosis (Scotland) Order 2007 and EU Council Directive 64/432/EEC and we therefore sought to consider whether there is scope to implement the additional measures proposed in this BRIA, further encouraging farmers to follow good farming practices and keep disease out of their herds.

- **Objective**

The objective of this proposal is to ensure that TB controls in Scotland continue not only to be effective and fit for purpose but incentivise compliance with the rules and encourage farmers to follow best practice when purchasing and moving cattle throughout Scotland and the rest of the UK.
Position in the rest of GB

England – Despite implementing enhanced cattle controls in 2013, Defra has reported that in some areas of England the overall incidence of bovine TB is still increasing. In order to reverse this trend and halt the spread of disease a series of TB consultations aimed at strengthening existing controls were carried out in 2016/17. Following these consultations Defra introduced further enhanced TB controls in November 2017 and in January 2018. These aimed to simplify testing and reduce disease risk in the high risk area. Some of the proposals which were consulted on in 2017 are still under consideration and outcomes are to be advised in due course.

Approach already taken in England

- **Reduced compensation for overdue testing** – Defra introduced powers to reduce compensation where TB testing is overdue in July 2012 and have since reported that the number of overdue tests has fallen significantly as a result. Compensation is reduced on a sliding scale depending on the length of time the test is overdue.

- **Reduced or withheld compensation for illegal movements onto restricted premises** – Defra currently have no statutory provision to reduce compensation where cattle have illegally moved on to a restricted herd and are subsequently slaughtered as TB reactors.

- **Post Movement Testing** – In April 2016 Defra introduced a requirement for post movement testing in the English low risk area. This testing is required to be carried out within 60-120 days following arrival on farm and the test must be completed before the relevant animal can move from the original holding of destination in the low risk area. Exceptions to this are permitted for animals that are:
  - Slaughtered within 120 days of arrival
  - Moved solely for veterinary treatment
  - Moved to an agricultural show in the Low Risk Area or return to the low Risk area from an agricultural show outside the low Risk area that does not involve a stay of more than 24 hours or the housing of animals at the showground, and the animal goes either directly from the showground to slaughter or back to its premises of origin.
  - Moved to the following premises in the low risk area;
    - slaughter or exempt markets
    - an approved collecting centre
    - a licensed finishing unit
  - Under the authority of a licence

- **Compensation Cap for Individual Animals** – Defra consulted on the proposal to introduce a £5,000 compensation cap in July 2017. This is one of the measures consulted on that remains under consideration and a final decision is still to be advised.
Wales - Since the introduction of the Tuberculosis (Wales) Order 2010 the Welsh Government have continued to take a proactive approach to the control of bovine TB and in 2012 introduced a framework for TB eradication. Following a series of TB consultations carried out in 2015 /16 aimed at further strengthening existing TB controls, the Wales TB Eradication Programme was launched in October 2017 which introduced a new regionalised approach as well as putting in place a number of refreshed TB control measures.

Approach already taken in Wales

- **Reduced compensation for overdue testing** – Wales introduced powers to reduce compensation where TB testing is overdue in May 2010. Compensation is reduced on a sliding scale depending on the length of time the test is overdue. In 2016 the range of non-compliance provisions where compensation could be reduced was extended beyond just that for overdue testing.

- **Reduced or withheld compensation for illegal movements onto restricted premises** – In 2016 Wales introduced powers to specifically reduce compensation for failure to comply with a notice requiring that no animal is moved on or off restricted premises except under licence. In such situations the compensation will be restricted to 0.05% of the established market value of an animal unless the salvage value is greater in which compensation will be paid at salvage value.

- **Post Movement Testing** – In October 2017 the Welsh Government introduced post movement testing for all cattle moved into the Welsh Low TB area. The intention is that this policy will be extended to moves into the intermediate TB area from October 2018. Post movement testing must be completed on the receiving premises between 60 – 120 days of arrival. Exceptions to this are permitted for animals that move:
  - Directly to slaughter or a slaughter market within 120 days
  - Moved solely for veterinary treatment
  - To an exempt or approved or licenced finishing unit
  - Moved to an agricultural show in the Low TB Area or return to the low TB area from an agricultural show outside the low TB area that does not involve a stay of more than 24 hours or the housing of animals at the showground, and the animal goes either directly from the showground to slaughter or back to its premises of origin.
  - Any other movement approved by Welsh Ministers.

- **Compensation Cap** – The Tuberculosis (Wales) (Amendment) Order 2016 introduced a £15,000 cap on individual animals. Following consultation in 2016 this cap was reduced to £5,000 with effect from 1 October 2017, this was aimed at preventing overvaluation of the highest value cattle and making sure the compensation system was financially sustainable.
• **Rationale for Government intervention**

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. This status is currently a unique position within Great Britain and recognises the low and stable incidence of TB and the high standards of animal welfare achieved in Scottish herds. Maintaining that OTF status and Scotland’s reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry.

The Scottish Government (SG) is therefore committed to a comprehensive, practical and proportionate programme of measures to maintain the current low levels of TB in cattle and other species and to safeguard our OTF status. This includes minimising the risks from all potential sources of infection and reducing the risk of disease spread as far as possible.

Defra has already introduced provisions to reduce compensation for those keepers who have failed to carry out TB testing on time and have recently consulted on further proposed changes to payment of compensation. Wales have gone even further and recently introduced an enhanced TB Eradication Programme which links compensation to good biosecurity, husbandry practices and adherence with the rules, that allows them to reduce compensation across a number of different non-compliance issues.

This action already taken by both Defra and the Welsh Government has highlighted the need to review the Tuberculosis (Scotland) Order 2007 including the current arrangements for payment of compensation, to ensure they continue to incentivise compliance and best practice, while being financially sustainable in the future.

We know that the vast majority of farmers abide by the rules and continue to work with Government to maintain Scotland’s OTF status which is considered by most to be too valuable and important to put at risk.

In making these changes now we aim to continue to safeguard our low levels of TB and in doing so contribute to Scotland’s National Performance Framework by maintaining Scotland’s reputation for high quality produce and helping to increase Scotland’s economic growth by increasing exports of healthy cattle and beef.

We will also be contributing to the following national outcomes:

“We have strong resilient and supportive communities where people take responsibility for their own actions”

“We value and enjoy our built and natural environment and protect and enhance it for future generations”
Consultation

• Within Government
  SG have consulted with colleagues in both Defra and the Welsh Government to look at what disease control provisions and compensation arrangements for bovine TB are already in place in other parts of GB and to identify what other changes are being considered for the future.

  SG have also consulted with the Animal & Plant Health Agency (APHA) as our operational delivery partners for Animal Health to get their veterinary opinion on some aspects of delivery and implementation of the proposed changes.

• Public Consultation
  A 12 week public consultation ran from Thursday, 7 September until Thursday, 30 November 2017 on proposals to introduce changes to disease control measures and compensation arrangements for TB in Scotland.

  There were 17 written responses to the consultation. Disease control for Bovine TB is quite a specialised subject, and so a limited number of responses is not entirely unexpected. The low response rate may be indicative of the majority accepting the proposals as being sensible and proportionate.

  As a result of a technical issue with the consultation mailbox which affected two of the written responses received, further engagement with the affected stakeholder organisations was undertaken. This was considered necessary as concerns had been raised relating to the introduction of the £5,000 cap on compensation payments for all individual animals and the additional impact this would have on keepers of high value pedigree bovine animals. In response to these concerns the SG reviewed and amended its policy on the cap, the detail of which is set out in the last bullet point below under “changes being implemented”.

  The responses provided some useful feedback which has been used to inform our thinking on how we would want to see Scotland’s TB policy develop. It was also clear that there is support among the various respondent groups for the changes proposed. SG has therefore decided to take forward four out of the five changes consulted on.

Changes being implemented

• Compensation to be withheld (£1 nominal payment) for animals illegally moved onto TB restricted herds that subsequently become TB reactors.

• Where statutory TB testing obligations have not been met the compensation paid for any subsequent TB reactors will be reduced on a sliding scale depending on the length of time the test is overdue.

• A process of appeal for any decision to either reduce or withhold
compensation in the above circumstances will be introduced to ensure that this policy is administered fairly and allows for any mitigating circumstances to be considered.

- Post movement testing will have to be completed on the original holding of destination before animals are permitted to move again.
- Introduction of a two tiered cap on compensation for individual animals; £5,000 for all non-pedigree bovine animals and £7,500 for all pedigree bovine animals.

Changes not being implemented

It was decided as a result of the consultation feedback received not to introduce a £3,000 Automatic Justification Threshold. SG agreed with those respondees that were against the proposal (No 33% - Yes 27% - Not sure 40%) that the present valuation process is already satisfactory and fit for purpose and that the small number of reactor cattle likely to be affected by such a justification threshold did not warrant the additional resource required to implement this change.

- Business

As well as being made publically available on the Scottish Government website, the consultation was issued directly to a wide range of stakeholder groups including livestock businesses and associations, enforcement agencies and those animal health organisations with a potential interest.

The proposals outlined in the consultation were also discussed with a range of stakeholder groups at the regular SG Animal Health and Welfare General Stakeholder Meeting, with an update on the outcome of the consultation provided at the meeting held on 13 February 2018.

As a result of a technical issue with the consultation mailbox which affected two of the written responses received, further meetings were held with the affected stakeholder organisations to address the concerns raised regarding how introduction of a compensation cap might impact keepers of high value pedigree animals.

The consultation specifically included the following financial questions in order to help assess the business impact. A summary of the findings are provided below.

Business Impact Questions and answers

Q1 - What financial effects, if any, do you think that payment of either reduced or no compensation in the circumstances proposed would have on your business.

A – The majority of respondents (66%) either didn’t respond (33%) or indicated this was not applicable to them as Animal Health Organisations or Associations (33%). Three livestock keepers (20%) answered that reduced or no compensation would have little or no impact on their business and expressed the view that it was more important financially to remain TB free and that this measure would encourage responsible sourcing when buying in
stock.

Only the remaining two respondents (14%) felt this proposal could potentially have a major financial impact if stock of high genetic merit were lost or where a significant proportion of a herd was affected. However, it should be noted that payment of reduced or no compensation is completely avoidable and will only affect those that have broken the rules.

**Q2 - What financial effects, if any, do you think that the introduction of a £5,000 statutory cap on compensation payments would have on your business.**

A – The majority of respondents (53%) either didn’t respond (26.5%) or indicated this was not applicable to them as Animal Health Organisations or Associations (26.5%). Six respondents (40%) felt that the introduction of a £5,000 cap would have little or no impact on their business. Those that offered further comment advised that it was more important financially to remain TB free and also because they had very few animals that were valued over £5,000. Only one respondent (7%) felt that this proposal could potentially result in a major financial impact that could put them out of business.

Two responses to the consultation which were affected by a technical issue with the consultation mailbox and which were subsequently not included in the above analysis, raised concerns on how the introduction of a £5,000 cap for all bovine animals might impact unfairly on keepers of high value pedigree animals. This issue has now been addressed by the introduction of a two tier cap set at £5,000 for non-pedigree bovine animals and £7,500 for pedigree bovine animals.

**Options**

Two policy options have been considered:

**Option 1 - Do Nothing – (Status Quo)**

Under this option further regulation would not be introduced and current arrangements in relation to bovine TB controls and compensation arrangements provided by the Tuberculosis (Scotland) Order 2007 as amended would continue as they are now.

The early identification and removal of test positive cattle under the existing disease control policy has kept Scotland Officially TB free for the last eight years and we hope that would continue to be the case in future.

TB Freedom does not mean that there are no cases of bovine TB in Scotland; it is instead recognition of a disease incidence below the threshold set by the EU in Council Directive 64/432/EEC where the percentage of bovine herds confirmed as infected with TB must not exceed 0.1% of all herds per year, for six consecutive years. We still have a small number of new confirmed breakdowns each year which can generally be attributed in the most part to imported infection from other parts of the UK where TB continues to be a significant problem for both the cattle industry and Government alike.
To do nothing could therefore potentially put our OTF status and the future of the Scottish cattle industry at risk and would result in strong criticism from the cattle industry for appearing complacent in not taking strong enough action to incentivise compliance and best practice and keep disease out of Scotland.

**Option 2 - Introduce changes to current TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007**

The second option is to make legislative changes to the way we pay compensation for bovine TB reactors and to the post movement testing requirements for bovine animals coming to Scotland from high incidence TB areas.

The proposed amendment to the Tuberculosis (Scotland) Order 2007 would contain a number of new provisions, including:

- Reduced or non-payment of compensation (£1 nominal payment) where animals illegally moved onto restricted herds go on to become TB reactors.
- Reduced compensation where the owner has failed to have his cattle TB tested within the allotted time period and TB reactors are subsequently disclosed.
- A process of appeal for any decision to either reduce or withhold compensation in the above circumstances will be introduced to ensure that this policy is administered fairly and allows for any mitigating circumstances to be considered.
- Strengthened post movement testing rules, requiring that the post movement TB test is completed on the destination holding within 60-120 days of arrival and before any further movement of that animal is permitted.
- Introduction of a two tiered cap on compensation for individual animals. Set at £5,000 for all non-pedigree bovine animals and £7,500 for all pedigree bovine animals.
- Prohibition on TB testing without written consent extended to include any test for tuberculosis.
- Revised definition of “high incidence area” to mean an area in Great Britain where bovine animals are subject to routine TB testing on a two yearly or more frequent basis.

We would also intend to take this opportunity to tighten up the wording of some of the existing provisions to remove any ambiguity in the following situations and ensure they are properly applied:

- **Cost recovery where removal of a reactor animal is refused** – Historically this is something that rarely happens in Scotland, but we would look to recover costs from the owner should such a situation arise.
- **Non-payment of compensation for NoR animals** – In order for cattle to be eligible for compensation they must be identified with an eartag and have a
full cattle passport issued in accordance with the Cattle Identification (Scotland) Regulations 2007. Cattle that have been issued with a Notice of registration (NoR) instead of a cattle passport are therefore only eligible for a £1 nominal compensation payment.

Sectors and groups affected

The Scottish cattle industry and those owning or keeping bovine animals on premises in Scotland that may be affected or suspected of being affected by bovine TB caused by Mycobacterium bovis (M.bovis) the bacterium that causes TB in cattle and other species.

Benefits

Option 1 – Do Nothing (Status Quo)

The current system generally works well and livestock keepers are familiar with the existing requirements for TB testing and control.

Doing nothing would not however be in the best interest of the cattle industry as a whole, and we do not consider there to be any real financial or disease control benefits for either Government or industry.

Option 2 - Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007

Under this option we will have the opportunity to strengthen our existing TB controls, and provide fairer compensation arrangements that will help to maintain our current low levels of TB in cattle and to safeguard our valuable OTF status.

Since 2012 cattle herds categorised as “low risk” have been exempt from routine herd testing for bovine TB and so with 57% of the national herd now exempt it is more important than ever that testing of the remaining herds is completed within the allotted time period and that all steps are taken to prevent disease incursion at the point of movement.

In introducing the proposed changes we expect to incentivise livestock keepers to reduce the number of overdue TB tests and discourage non-compliance by removing compensation (£1 nominal payment) for those that have illegally moved cattle onto restricted herds.

Other benefits include;

- Reduced bovine TB compensation payments to livestock keepers who have moved animals illegally or failed to meet their statutory testing obligations and where TB reactors are subsequently disclosed.
- A reduction in the number of tests that are delayed or become overdue without good reason.
- Tighter controls on testing of bovine animals moving to Scotland in order to maintain current low levels of TB and to safeguard our OTF status.
A more financially sustainable compensation system that is fair to all and safeguarded from the potentially significant compensation costs associated with the highest value animals.

TB policy now more consistent with the rest of GB.

We know that the vast majority of farmers abide by the rules and continue to work with Government to maintain the current low levels of TB in Scotland. Accordingly for the vast majority the impact of the proposed changes will be minimal.

Costs

**Option 1 - Do Nothing (Status Quo)**
No additional costs or savings are anticipated with this option although compensation would continue to be paid at full market value for all cattle that become diseased and are slaughtered as a result of poor farming practices or non-compliance.

**Option 2 - Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007**
The proposed changes will provide Scottish Ministers with powers enabling them to reduce or withhold compensation where a keeper has broken the rules and illegally moved cattle onto a restricted herd or allowed their statutory herd testing to go overdue.

**Reduced or non-payment of compensation for illegal moves onto restricted herds**

Two options considered
- Reduced compensation.
- No compensation (£1 nominal payment).

Illegal moves onto restricted herds do not happen often in Scotland and therefore data on this is not routinely held by APHA. We have therefore been unable to quantify exactly how many herds have been or are likely to be affected by this change and can only say that the number of illegal moves onto restricted herds in the last five years have been very few and the number of those animals moved illegally that have gone on to be TB reactors are fewer still. Any additional costs or savings to government or industry are therefore expected to be minimal.

As our operational delivery partners, APHA have carried out a Change Management Assessment and have advised that they do not anticipate any significant additional costs as a result of the changes required to implement this policy.

**Reduced compensation for overdue testing**

Two options considered:
- Reduced compensation on a sliding scale. **(Agreed Option)**
- No compensation (£1 nominal payment).
We have used data provided by APHA to quantify how many herds have had overdue tests in the last five years and also how many reactor animals were subsequently disclosed. The figures set out in the table below show that there have been relatively few TB reactor cattle identified from overdue testing in Scotland in recent years and so the impact on Scottish cattle keepers from implementing this policy is likely to be limited.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number TB tests completed</th>
<th>Number of TB tests overdue</th>
<th>Overdue &lt; 60 Days</th>
<th>Overdue between 60-90 days</th>
<th>Overdue &gt; 90 Days</th>
<th>Total number of TB reactors identified from overdue tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>3068</td>
<td>350 (11%)</td>
<td>328</td>
<td>11</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>2014</td>
<td>3404</td>
<td>331 (8%)</td>
<td>312</td>
<td>9</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>2015</td>
<td>3521</td>
<td>304 (9%)</td>
<td>260</td>
<td>9</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>2016</td>
<td>3244</td>
<td>271 (8%)</td>
<td>252</td>
<td>8</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>2017</td>
<td>2635</td>
<td>220 (8%)</td>
<td>175</td>
<td>7</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>15,872</td>
<td>1476 (9%)</td>
<td>1327</td>
<td>44</td>
<td>46</td>
<td>18</td>
</tr>
</tbody>
</table>

**Change to rules for Post Movement Testing**

Two options considered

- Statutory requirement that post movement test is completed on original destination holding before the animal is permitted to move again. *(Agreed Option).*
- Statutory obligation on seller to inform both purchaser and APHA where post movement test has not been completed prior to sale and on the purchaser to complete the test within the original 60-120 day testing window.

Cattle keepers who opt to purchase animals from high risk areas will now have to keep the animal on the original holding of destination for a minimum of 60 days before they can be moved or sold on. The possible additional costs associated with this would be those incurred from keeping these animals on farm for this set period of time i.e. feeding, housing, medicines etc.

The table below provides the number of Post Movement tests carried out on individual animals in the last five years. However it has not been possible to quantify exactly how many of these animals were sold on before the post movement test was completed at 60-120 days and would therefore have been affected by this change although actual numbers affected are expected to be low.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Post Movement Animal tests done in Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>5531</td>
</tr>
<tr>
<td>2014</td>
<td>5482</td>
</tr>
<tr>
<td>2015</td>
<td>2292</td>
</tr>
<tr>
<td>2016</td>
<td>1414</td>
</tr>
</tbody>
</table>
Introduction of a Cap on compensation levels for individual animals

In Scotland we currently pay compensation at full market value to the owner of any animals which are disclosed as TB reactors with no fixed upper limit. This is not the case in other areas of GB where valuation and compensation arrangements differ significantly.

In order to protect our OTF status we want to ensure that compensation values in Scotland are relatively consistent with those in the rest of GB, and so we propose to introduce a two tiered cap on compensation for individual animals. Which will be set at £5,000 for all non-pedigree bovine animals and £7,500 for all pedigree bovine animals.

Owners of high value animals would instead be encouraged to explore insurance options to cover any animal valued in excess of £5,000 or £7,500 respectively, which if they opted to do so would be at an additional cost to the cattle owner.

We have used data provided by APHA to calculate the actual number of cattle valued over £5,000 in the last four years. The figures set out in the tables below show that there have been relatively few high value TB reactor cattle in Scotland in recent years and so the impact on Scottish cattle keepers from implementing this cap is likely to be limited.

In the years 2014-2017 there were 767 animals slaughtered with compensation paid at an average of £2,126 per animal. Only 18 (2\%) of the animals slaughtered were valued at over £5,000 and therefore if this cap had been in place during these years we would have saved £72,650 from the total compensation bill of £1,630,661 (4.5\%). The savings are progressively less if the cap was raised to £10,000, £15,000 or £20,000.

<table>
<thead>
<tr>
<th>Year</th>
<th>Culled</th>
<th>Total Comp paid (£)</th>
<th>Average comp (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>221</td>
<td>635,642</td>
<td>2,876</td>
</tr>
<tr>
<td>2015</td>
<td>128</td>
<td>248,471</td>
<td>1,941</td>
</tr>
<tr>
<td>2016</td>
<td>150</td>
<td>331,498</td>
<td>2,209</td>
</tr>
<tr>
<td>2017</td>
<td>268</td>
<td>415,050</td>
<td>1,548</td>
</tr>
<tr>
<td>2014-17</td>
<td>767</td>
<td>1,630,661</td>
<td>2,126.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Cattle value over £5k</th>
<th>Cattle value over £10k</th>
<th>Cattle value over £15k</th>
<th>Cattle value over £20k</th>
<th>Over 5k Saved £</th>
<th>Over 10k Saved £</th>
<th>Over 15k Saved £</th>
<th>Over 20k Saved £</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>9,050</td>
<td>0</td>
<td>0</td>
<td>15,000</td>
</tr>
<tr>
<td>2015</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>7,600</td>
<td>10,000</td>
<td>0</td>
<td>12,000</td>
</tr>
<tr>
<td>2016</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>7,000</td>
<td>12,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
As our operational delivery partners, APHA have carried out a Change Management Assessment and have advised that they do not anticipate any significant additional costs as a result of the changes required to implement this cap.

**Cost recovery where removal of a reactor animal is refused by the owner**

This policy is already in place and the amendment is simply to provide clarification for the avoidance of doubt. There are no additional costs anticipated in making this change.

**Non-payment of compensation for NoR animals (£1 Nominal payment)**

This policy is already in place and the amendment is simply to provide clarification for the avoidance of doubt. There are no additional costs anticipated in making this change.

**Extended Prohibition on testing**

There are no additional costs anticipated in making this change.

### Scottish Firms Impact Test

**Competition Assessment**

An initial competition assessment has been carried out as provided below, but no detrimental effects on competition are envisaged from these legislative amendments.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will the measures directly or indirectly limit the number or range of suppliers?</td>
<td>No</td>
</tr>
<tr>
<td>Will the measures limit the ability of suppliers to compete?</td>
<td>No</td>
</tr>
<tr>
<td>Will the measures limit suppliers’ incentives to compete vigorously?</td>
<td>No</td>
</tr>
<tr>
<td>Will the measure limit the choices and information available to consumers?</td>
<td>No</td>
</tr>
</tbody>
</table>

**Test run of business forms**

No new business forms are required to be completed by herd owners affected by these legislative amendments. Some amendments will be made to existing forms to reflect the changes and these will be actioned by the APHA as required.
Legal Aid Impact Test - It is not anticipated that these changes will give rise to any additional need for legal aid.

Enforcement, sanctions and monitoring

APHA as SG’s operational delivery partners are responsible for all aspects of disease control for bovine TB (inspections, test notifications, testing, reactor removal, valuation and payment of compensation) for reported or suspected cases of disease including any follow up in relation to non-compliance and all activity associated with the judicial process.

The Local Authority are responsible for enforcement of the Tuberculosis (Scotland) Order 2007 under the Animal Health Act 1981 (AHA) due to the potential health risk to both humans and animals as a result of non-compliance with the rules.

Scottish Ministers are required to pay compensation for any bovine animals slaughtered in relation to bovine TB under section 32 of the AHA. Under the proposed changes where a keeper has acted illegally or failed to comply with the statutory testing requirements for their herd, we would have the powers to either withhold (£1 nominal payment) or reduce the amount of compensation paid, depending on the circumstances. It is considered only fair and reasonable that where a keeper has knowingly broken the rules, they should not then be able to recover the full market value for animals that become diseased and are slaughtered as a result of their poor farming practices or non-compliance.

This TB Order is made under the AHA and so inspector powers of entry, testing, seizure and slaughter are all contained in that Act. Obstruction of inspectors in exercise of their duties and non-compliance with any requirements of the Order will be prosecuted under the AHA. A person guilty of an offence under the AHA is liable on summary conviction to a term not exceeding 6 months imprisonment or to a fine not exceeding level 5 on the standard scale or to both.

Implementation and delivery plan

Implementation

The legislation required to introduce these changes to TB policy in Scotland will come into force on 12 December 2018.

Delivery Plan

TB controls in Scotland are already well established and delivered by APHA as our operational delivery partners. APHA have carried out the required Change Management Assessment for all the proposed changes and which are now in the process of being adopted into “business as usual” by the APHA project delivery team.

As part of the agreed communications plan APHA will write to all private vets and active cattle keepers in Scotland to ensure they are made fully aware of the changes and implementation dates.
• **Post-implementation review**

Disease Control measures for bovine TB are subject to continuous monitoring and review.

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**Summary and recommendation**

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. This status is a unique position within Great Britain and recognises the low and stable incidence of TB and the high standards of animal welfare achieved in Scottish herds.

Defra and the Welsh Government have both recently introduced substantial changes to their respective TB Programmes, which highlighted the need for us to also review Scottish TB controls and compensation arrangements. This will ensure that they continue to be fit for purpose, incentivise compliance and best practice and are financially sustainable in the future.

Maintaining Scotland’s OTF status and reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry. For this reason the recommended option is:

- **Option 2** – Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007.

Responses to the consultation provided useful feedback on the proposals and gave a clear indication that there is support among the various respondent groups for the changes proposed and the importance attached to maintaining the OTF status by the Scottish cattle industry.

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**Summary costs and benefits table**

<table>
<thead>
<tr>
<th>Option</th>
<th>Total benefit per annum: - economic, environmental, social</th>
<th>Total cost per annum: - economic, environmental, social - policy and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1 Do Nothing (Status Quo)</td>
<td>The current system generally works well and livestock keepers are familiar with the existing requirements for TB testing and control. To do nothing would not be in the best interest of the cattle industry as that could potentially put Scotland’s OTF status at risk</td>
<td>No additional costs or savings are anticipated with this option. Compensation would continue to be paid at full market value for all cattle that become diseased even as a result of poor farming practices or non-compliance.</td>
</tr>
<tr>
<td>Option 2 Introduce changes to TB controls</td>
<td>This option provides the opportunity to: • strengthen our existing TB controls in order to maintain</td>
<td>As our operational delivery partners, APHA have carried out a Change Management Assessment for all proposals and</td>
</tr>
</tbody>
</table>
and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007

current low levels of TB and to safeguard OTF status.
- provide a more financially sustainable compensation system that is fair to all and safeguarded from the potentially significant compensation costs associated with the highest value animals. OTF status.
- Reduction in numbers of overdue TB tests.
- Policy which is more consistent with the rest of GB.

do not anticipate any significant costs to implement any of the proposed changes.

The possible additional costs associated with the change to post movement testing requirements would be those incurred from keeping these animals on farm for this set period of time i.e. feeding, housing, medicines etc. It has not been possible to quantify the numbers of cattle likely to be affected by this change or the associated costs.

Compensation can be reduced or withheld (£1 nominal payment) where livestock keepers have broken the rules and illegally moved cattle onto restricted premises or allowed their statutory herd testing to go overdue. We know that the majority of farmers abide by the rules and continue to work with Government to maintain low levels of TB in Scotland. The proposed reductions in compensation related to non-compliance are entirely avoidable except for the imposed two tiered £5,000/£7,500 cap which will have some impact on those with higher value animals. However only eighteen TB reactor animals would have breached this cap over the last five years and so we would anticipate that numbers affected are likely to be limited. (see table below)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cattle value over £5k</th>
<th>Cattle value over £10k</th>
<th>Cattle value over £15k</th>
<th>Cattle value over £20k</th>
<th>Over 5k Saved £</th>
<th>Over 10k Saved £</th>
<th>Over 15k Saved £</th>
<th>Over 20k Saved £</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>9,050</td>
<td>0</td>
<td>0</td>
<td>15,000</td>
</tr>
<tr>
<td>2015</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>7,600</td>
<td>10,000</td>
<td>0</td>
<td>12,000</td>
</tr>
<tr>
<td>2016</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>7,000</td>
<td>12,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2014-17</td>
<td>12</td>
<td>4</td>
<td>0</td>
<td>2</td>
<td>23,650</td>
<td>22,000</td>
<td>0</td>
<td>27,000</td>
</tr>
<tr>
<td>---------</td>
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<tr>
<td></td>
<td>1.5%</td>
<td>0.5%</td>
<td>0%</td>
<td>0.3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Minister’s name - Mairi Gougeon**
**Minister’s title – Minister for Rural Affairs and the Natural Environment**

**Scottish Government Contact point:**

Angela McMorland  
Scottish Government  
Agriculture & Rural Economy  
Animal Health & Welfare Division  
Animal Disease Control Branch  
P Spur  
Saughton House  
Broomhouse Drive  
Edinburgh, EH11 3XD
Dear Steve

I am writing in relation to the Tuberculosis (Miscellaneous Amendments) (Scotland) (No.2) Order 2018 (SSI 2018/333) which is shortly to be considered by the Rural Economy and Connectivity Committee, ahead of its proposed in force date of the 12 December 2018.

The Committee have asked for clarity relating to the compensation paid for both BSE and bovine TB and why compensation is being changed in SSI 2018/333, meaning that the two schemes will then be different. The basis for the query is as follows;

- The compensation scheme for cattle killed under the regulations for BSE provides compensation based on market value for the animal, and the equivalent scheme for TB also currently provides compensation based on market value.
- The SSI 2018/333 proposes to change the TB scheme by introducing a two-tiered cap on the value of compensation awarded and reduced compensation in instances where specified regulations were not followed.

Scottish Ministers are required to compensate owners for animals that are compulsorily slaughtered for the purposes of disease control under the provisions of the Animal Health Act 1981. However, no uniform compensation formula is specified by the Act thereby allowing different compensation schemes to be developed on a disease–by-disease basis, reflecting the particular circumstances of each as appropriate. The levels of compensation paid for individual animals can vary between £1 and full market value. Examples of this would be;

- **Equine infectious Anaemia** – Compensation paid for affected animals is £1
- **Swine Fever** - Compensation for affected animals is 50% of the value of the animal immediately before it became affected.
- **Foot and Mouth Disease** – Compensation for affected animals is the value of the animal immediately before it became affected.
For BSE, there are now very few cases identified and detection of those cases is reliant on reporting of suspect clinical disease. Compensation needs to be paid at full market value to encourage reporting of these suspect cases where we need to take prompt action.

TB on the other hand is a serious infectious disease of cattle which is endemic throughout the whole of the UK with many thousands of TB reactors culled in England and Wales each year. This figure is much less in Scotland at around one hundred reactors per year, and most of these are identified by the surveillance testing arrangements already in place and are not reliant on the reporting of suspect clinical disease, as it is with BSE.

The overriding objective of the changes being made to the TB compensation system, is to achieve better management of animal disease risk by introducing incentives to encourage good practice and responsible sourcing. We also want to ensure Scotland is not seen by some as a more favourable option in terms of moving high risk cattle to Scotland in order to benefit from a more generous compensation system than is available elsewhere in the UK.

Yours Sincerely

Angela McMorland
Policy Manager
Animal Health & Welfare Division.
Title of Instrument:

- Draft SSI: The Agricultural Holdings (Scotland) Act 1991 (Variation of schedule 5) Order 2019

Type of Instrument: Affirmative

Laid Date: 5 November 2018

Minister to attend the meeting: Yes

Procedure

1. The Rural Economy and Connectivity (REC) Committee is lead committee for this instrument and is required to report to the Parliament on its considerations.

2. Under Rule 10.6.1 (a), these regulations are subject to affirmative resolution before they can be made. It is for the REC Committee to recommend to the Parliament whether these draft regulations should be approved.

3. The Cabinet Secretary for the Rural Economy has, by motion (S5M-14752 as set out in the agenda), proposed that the Committee should recommend the approval of this instrument.

4. The Cabinet Secretary will attend to explain the purpose and policy objective of the instrument and to answer any questions from members, He will then (under a subsequent agenda item) be invited to speak to and move the motion seeking approval. The formal debate on the motion may last for up to 90 minutes.

5. At the end of the debate, the Committee must decide whether it agrees or disagrees with the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.

Purpose

6. The policy objective of this Order is to modernise the list of improvements for which compensation may be payable at the end of a tenancy, to ensure that they are fit for purpose and reflect the realities of modern farming practice. The changes made to schedule 5 are not to be retrospective and do not change the terms on which any existing improvements were carried out, to avoid any unfairness to either landlord or tenant.

7. An earlier version of this Order was laid and withdrawn by the Scottish
Government to correct a technical error noted by the legal advisors to the Delegated Power and Law Reform Committee.

8. The Policy Note and instrument are attached and available online at the first link above. A Business and Regulatory Impact Assessment has been prepared and is also attached.

**Consideration by the Delegated Powers and Law Reform Committee**

9. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 13 November 2018 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

**Recommendation**

The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on this instrument.

Clerking Team
Rural Economy and Connectivity Committee
November 2018

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

LANDLORD AND TENANT

The Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019

Made - - - - 2019

Coming into force - - 2019

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 73(1) and (2) of the Agricultural Holdings (Scotland) Act 1991(1) and all other powers enabling them to do so.

The Scottish Ministers have consulted with persons appearing to them to represent the interests of landlords and tenants of agricultural holdings, as required by section 73(1) of that Act. In accordance with section 73(2) of that Act, they have made such provision in relation to tenancies current when this instrument takes effect as appears to them to be just having regard to the variation effected by the instrument.

In accordance with section 73(4) of that Act(2), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 and comes into force on the day after the day on which it is made.

(2) In this Order, “1991 Act” means the Agricultural Holdings (Scotland) Act 1991.

Variation of Part II of schedule 5 of the 1991 Act

2.—(1) Part II of schedule 5 of the 1991 Act (improvements for which notice is required) is varied in accordance with paragraphs (2) to (4).

(2) For paragraph 17, substitute—

“17. Installation, provision, distribution or storage of electricity, gas, power, heat or light.”.

(1) 1991 c.55. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) Section 73(4) of the Agricultural Holdings (Scotland) Act 1991 has been modified by paragraph 5 of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).
(3) For paragraph 22, substitute—

"22. Provision of means of sewage, waste or pollutant disposal, or provision of means of managing water on land."

(4) After paragraph 23, insert—

"23A. Erection of structures for the management or storage of slurries or manures.
23B. Provision of means of storing silage.
23C. Works to dwellings."

Variation of Part III of schedule 5 of the 1991 Act

3.—(1) Part III of schedule 5 of the 1991 Act (improvements for which no consent or notice is required) is varied in accordance with paragraphs (2) to (4).

(2) For paragraph 29, substitute—

"29. Eradication of bracken, whins or broom growing on the holding at the commencement of the tenancy."

(3) After paragraph 29, insert—

"29A. Removal of tree roots, boulders, stones or other similar obstacles to cultivation from arable land or from permanent grass land."

(4) For paragraph 30, substitute—

"30. Application to land of soil improvers, conditioners, digestates, manure or fertiliser, whether organic or inorganic."

Saving provision

4. The variations made by articles 2 and 3 have no effect in relation to an improvement begun prior to the coming into force of this Order.

Name
A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date
EXPLANATORY NOTE

(This note is not part of the Order)

The Agricultural Holdings (Scotland) Act 1991 (“1991 Act”) and the Agricultural Holdings (Scotland) Act 2003 (“2003 Act”) allow for tenants of agricultural holdings to claim compensation for improvements they make to their holding during their tenancy. This right is available to tenants on quitting the holding, at the termination of the tenancy.

Compensation for improvements to land which is part of a tenancy formed under the 1991 Act (“1991 Act tenancies”) may be claimed under section 34 of the 1991 Act, and compensation for improvements to land which is part of a short limited duration tenancy, limited duration tenancy and modern limited duration tenancy may be claimed under section 45 of the 2003 Act.

This Order varies Parts II and III of schedule 5 of the 1991 Act. Schedule 5 of the 1991 Act lists the types of improvements that tenants of 1991 Act tenancies, short limited duration tenancies, limited duration tenancies and modern limited duration tenancies may claim compensation for. These changes update schedule 5 of the 1991 Act in accordance with modern farming practices.

The variations made to schedule 5 are not applicable to improvements that were begun before the coming into force of this Order.
Business and Regulatory Impact Assessment

Title of Proposal
The Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2018

Purpose and intended effect
- **Background**
  When an agricultural tenancy ends, the tenant may be entitled to waygo compensation - compensation for improvements they carried out as tenant to the agricultural holding. The landlord and tenant should come to an agreement about what compensation is due.

  The general principles behind waygo compensation claims are:
  (a) to allow both a tenant farmer and their landlord a fair measure of compensation for improvements made to the farm land or the holdings fixed equipment or for that matter their deterioration as the case may be; and

  (b) to provide for costs incurred by the tenant farmer associated with quitting the farm land, and for re-organisation where termination of the tenancy arrangement is for non-agricultural purposes.\(^3\)

  Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 (the 1991 Act) sets out a list of improvements to agricultural holdings which may be eligible for compensation when the tenant leaves the holding.

  The list was originally created for the Agriculture (Scotland) Act 1948 (the 1948 Act), and has not been updated since, meaning that some items which are readily accepted now as being legitimate improvements are not listed. The Agricultural Holdings Legislation Review Group (AHLRG) in their Final Report published in 2015, called for the list to be updated, to reflect modern farming practice and for the avoidance of doubt and confusion.

  Consequently, the Land Reform (Scotland) Act 2016 (the 2016 Act) required the Tenant Farming Commissioner to make recommendations to modernise the list. This was part of the overall modernisation of agricultural holdings delivered by the Act. The Tenant Farming Commissioner delivered his recommendations to Scottish Ministers in December 2017. The Scottish Government is now seeking to implement those recommendations through this Order.

- **Objective**
  This Order falls under one of the objectives identified for the 2016 Act - to take forward much needed reforms to Agricultural Holdings legislation, identified by the AHLRG, to improve relationships, redress imbalances, and to provide tools to help the industry begin to move forward.

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\(^3\) SM Notley, *Scottish Agricultural Law Handbook*, p.197
The objective of this legislative change is to update list of improvements for which a tenant may be entitled to compensation. In doing so, the Scottish Government seeks to ensure compliance with modern farming practice and to provide legal clarity for existing practice, reducing the need for agreements to be made outside the legislative framework.

• **Rationale for Government intervention**

The underlying rationale of current provisions for waygo contained within the 1991 Act is to encourage tenant farmers to invest in the agricultural holding and keep the holding in good condition, knowing that they will be adequately compensated. Updating of schedule 5 to reflect modern farming practice ensures that this remains the case.

The AHLRG Final Report considered recent moves in the sector away from the traditional partnership model between landlord and tenant. Traditionally the partnership was one where the former contributes the fixed capital and the latter provides the working capital, management and labour. The development of capital intensity of farming over many decades has increased the proportion of working capital in the overall capital employed (excluding land value), and in addition a trend among landlords to limit their investment in fixed equipment, often as a response to low rents.

As a result many 1991 Act tenants now provide a significant fixed capital element. If a tenant carries out certain improvements during the course of his tenancy then they should be able to do so in the knowledge that the landlord must compensate them for such improvements on termination of the tenancy (compensation at waygo).

Aligned to this rationale is the Scottish Government’s vision for a Scottish tenant farming sector that is dynamic, getting the best from the land and the people farming it, and provides opportunities for new entrants, forming part of a sustainable future for Scottish farming. 21% of agricultural land in Scotland is tenanted (this does not include crofts), and tenant farmers and landlords play an important part in the wider rural community. It is important that the legislative framework governing these arrangements reflects modern farming practice where possible, to ensure that these businesses can continue to contribute to the rural economy.

The Scottish Government’s overarching purpose is “to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth”.

This Order is part of the aims of the 2016 Act, which identified as contributing to the following National Outcomes:

- We have tackled the significant inequalities in Scottish society.
We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

We value and enjoy our built and natural environment and protect it and enhance it for future generations.

**Consultation**

The updating of schedule 5 was an issue raised during the extensive consultation conducted by the AHLRG, which informed the policy provisions for the Agricultural Holdings provisions in the 2016 Act. The AHLRG consultation consisted of:

- first stage of work during Spring 2014 where the AHLRG members met with the key stakeholder organisations (National Farmers Union of Scotland, Scottish Tenant Farming Association, Scottish Land and Estates, Scottish Agricultural Auctioneers and Valuers Association and Royal Institute of Chartered Surveyors) and conducted over 50 meetings and private sessions with tenant farmers, their landlords and professional intermediaries in Islay, Oban, St Boswells, Dumfries, Turriff, Perth, Inverness, Stranraer, Ayr and Isle of Bute;

- in June 2014, launch of the AHLRG’s Interim Report at the Royal Highland Show, where the AHLRG held a further 16 private meetings with tenant farmers, their landlords and land agents;

- second stage of work, during Summer/Autumn 2014, where the AHLRG sense tested their emerging proposals (which includes the update of schedule 5) in 12 meetings held with the main stakeholder organisations, and again, well attended public meetings in Kelso, Inverurie, Bridge of Allan and Dumfries.

In addition to the above meetings, the AHLRG received 100 written submissions. 27 of these came from the main stakeholder organisations, and 73 came from individual tenant farmers, landowners and land agents.

The detailed notes of the AHLRG confirm that the main industry bodies, the Scottish Tenant Farming Association, Scottish Land & Estates and National Farmers Union Scotland, all suggest that the list of improvements in schedule 5 is revised to reflect modern agricultural practice.

They also note that this seems uncontroversial but any revision would need to be done with the benefit of expert opinion as to current agricultural practice and possible future developments.

In order to ensure that this is the case, in drafting his recommendations in 2017/18 the Tenant Farming Commissioner once again consulted with:

- The Scottish Tenant Farmers Association
- Scottish Land & Estates
- National Farmers Union Scotland
- Royal Institute of Chartered Surveyors
In addition, in drafting the Order, Scottish Government has discussed the draft with all of these parties.

In recognition of the extensive consultation work already undertaken in 2014, the further consultation work undertaken in 2017 and the widespread support for this industry-led amendment (there is no evidence of any objection to this proposal on any side), and in line with the approach taken for the BRIA for the 2016 Act, further interviews with firms have not been carried out as part of this BRIA. Scottish Government will continue to keep schedule 5 under review as farming practice continues to evolve, and will consider further updates to the schedule in future years if the sector advise that this is required.

Options

Sectors and groups affected

Tenant farming is a private arrangement between landlords and their tenant farmers not covered by the provisions of crofting law. Therefore, those primarily affected by this Order are landlords and tenant farmers of agricultural holdings.

Of the 52,000 farms in Scotland, there are over 6,700 with agricultural holding tenancy agreements. Figures obtained from the Central Association of Agricultural Valuers\(^4\) suggest that in Scotland in 2017 49 tenancies ended, and therefore waygo compensation may be due. This compares to 51 in 2016, 50 in 2015 and 25 in 2014. This change is not retrospective, so is unlikely to affect waygo payments for several years.

Other secondary groups will also be affected, such as land agents, agricultural valuers and surveyors, where the landlord or tenant chooses to engage their services as part of the waygo process.

**Option 1 – do nothing**

If the schedule is not updated, waygo compensation will continue as it is. In some cases this will not be problematic, as landlords and tenants come to separate agreements about compensation payable for improvements not covered by the schedule. A recent review by the Tenant Farming Commissioner of the conduct of agents of agricultural tenants and landlords found that 82% of tenant farmers and 88% of landlords would describe their relationship with the other as either very good or good. Only 6% of tenants and 1% of landlords reported that the relationship was poor or very poor\(^5\). This indicates that, in general, amicable agreements should be able to be reached. However, in some cases, particularly where the landlord-tenant relationship is difficult, then tenants will have no

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incentive to improve or modernise the holding if they do not anticipate being compensated for it, and thus maintain or improve productivity. This drives inequity across the sector, as compensation for some modern improvements remains outside the legislative provisions and therefore not uniform.

**Benefits:** - The current system allows for some way-go compensation and is understood by current parties, even if seen as unfair or not working properly.

**Costs:** - Under this option there would be no change to the costs to landlord or tenant. However, there would be a potential cost to the rural economy if, as noted above, tenants have no incentive to invest in the modernisation of holdings.

**Option 2 – adopt the recommendations of the Tenant Farming Commissioner to update schedule 5**

The Tenant Farming Commissioner has proposed a number of changes to schedule 5 which will modernise it in line with modern farming practice. Under this option all these recommendations would be adopted wherever possible, from the date that the Order comes into force.

Only one aspect of the Tenant Farming Commissioner’s recommendations is not adopted - he recommends the addition of ‘permissions, consents, contracts, authorisations and restrictions’ to cover intangible benefits that have been obtained by the tenant and have a value to an incoming tenant. However, we do not have the legal power to include these items in the schedule.

**Benefits:** - Updating schedule 5 would bring it into line with modern farming practice and would provide legal clarity for existing practice. There would be uniformity across the sector, leading to greater certainty and therefore greater likelihood of investment in the holding, and therefore potentially an increase in the value of their property for the landlord.

**Costs:** - For landlords who are already happy to come to arrangements with their tenants on compensation for items not on the schedule but which add value to the holding, the change will have minimal cost as it will simply confirm existing practice. For other landlords, there could be a cost at waygo if their tenant makes an improvement which is added to the schedule but this should be offset by the increase in value of their asset as a result of the improvement. However, the Order is not retrospective and will only apply going forward – that means that costs should not be unexpected and can be planned for.

The compensation for an asset is calculated on the basis of the value to the incoming tenant. This is done by assessing the cost to install that asset at the point of waygo and adjusting for the remaining utilisable life of the asset.

For example, if a tenant erects a shed with a 35 year life span and leaves the tenancy after 25 years the shed is likely to have a remaining utilisable life of 10 years. If the cost to build an equivalent shed new at the point of waygo was £100k then approximately £2,860...
(£100k divided by 35 years) would be due for each year of remaining utilisable life, in this example £28,600. The actual cost of building the shed 25-years ago is not a factor in the calculations, only the value to an incoming tenant. Other factors are considered at waygo, such as appropriateness of the installation to the farm and, for assets such as wind turbines, any income streams.

Given the number of variables involved, which will depend on individual circumstances and actions, it is not possible to estimate an overall cost. However, the cost to the landlord should be balanced by the increase in value of their asset as a result of the improvement and this may also be reflected in the level of rent that can be charged to a new tenant.

There may be some costs associated with increased paperwork, but these are likely to be negligible as this will be adding items to the existing waygo process, rather than creating a new process of its own.

<table>
<thead>
<tr>
<th>Scottish Firms Impact Test</th>
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</thead>
<tbody>
<tr>
<td>Agricultural and landholding businesses were key contributors to the AHLRG report which informed this policy proposal and others in the 2016 Act. This measure was uncontroversial, with no evidence of any objection – it is logical that schedule 5 should be updated to reflect modern farming practice.</td>
</tr>
</tbody>
</table>

As each circumstance will be unique to that tenancy, it is not possible to estimate the future cost to parties. However, the Order aims to reduce uncertainty and therefore lead to a greater likelihood of investment in the holding.

<table>
<thead>
<tr>
<th>Competition Assessment</th>
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</thead>
<tbody>
<tr>
<td>Agricultural tenancies are private arrangements between landlords and tenants. This Order is concerned with eligibility for compensation at waygo, after an improvement has been made, so will not directly or indirectly limit the number or range of suppliers of that improvement, will not limit the ability or incentive of suppliers to compete vigorously and will not limit choices or information available to consumers.</td>
</tr>
</tbody>
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<thead>
<tr>
<th>Test run of business forms</th>
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<tbody>
<tr>
<td>No new forms will be required.</td>
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</table>

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<tr>
<th>Legal Aid Impact Test</th>
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<tbody>
<tr>
<td>The Order should clarify matters around what is eligible for compensation at waygo. The provisions of the 2016 Act were assessed by the legal aid team as having minimal impact on the legal aid fund. This Order does not change that.</td>
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</tbody>
</table>

<table>
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<tr>
<th>Enforcement, sanctions and monitoring</th>
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</thead>
<tbody>
<tr>
<td>The Order is concerned with private leasing arrangements between agricultural landlords</td>
</tr>
</tbody>
</table>
and tenants. These arrangements are enforceable contractually between the parties. The Tenant Farming Commissioner can provide advice on the resolution of any issues and parties have recourse to the Scottish Land Court in event of dispute.

**Implementation and delivery plan**
The Order will be laid in Parliament and come into force by the end of 2018.

**Post-implementation review**
It is anticipated that the Scottish Government will ask the Tenant Farming Commissioner to reconsider schedule 5 on a regular basis, potentially every 5-10 years, to ensure it is still in line with modern farming practice.

**Summary and recommendation**
Option 2 is recommended. This is an industry-led change, which will ensure that schedule 5 reflects modern farming practice. This will encourage tenants to invest in the holding and keep the holding in good condition, knowing that they will be adequately compensated for improvements.

**Declaration and publication**
The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- **Sign-off for Partial BRIAs:**
  I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

- **Sign-off for Final BRIAs:**
  I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:
Date: Thursday 4th October 2018

Fergus Ewing
Cabinet Secretary for the Rural Economy

Scottish Government Contact point:
Jen Willoughby
Agricultural Holdings Team
D Spur
Saughton House
Edinburgh
EH11 3XD
Tel: 0131 244 1971
POLICY NOTE

THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991 (VARIATION OF SCHEDULE 5) ORDER 2019

SSI 2019/XXX

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 73 of the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”). It is subject to the affirmative procedure.

Background

2. Schedule 5 of the 1991 Act sets out improvements to agricultural holdings for which compensation may be payable at the end of a tenancy. Schedule 5 has been in place for a lengthy period and some things which are widely accepted now as being legitimate improvements are not listed. The Bill for the Land Reform (Scotland) Act 2016 (“the 2016 Act) received Royal Assent on 22nd April 2016. Section 37 of Chapter 3 of Part 2 of the 2016 Act sets out that the Tenant Farming Commissioner must prepare a report setting out recommendations for a modern list of improvements to agricultural holdings. The Tenant Farming Commissioner submitted his report to Scottish Ministers in December 2017. Scottish Ministers accepted his recommendations and this Order amends Schedule 5 accordingly.

Policy Objective

3. Schedule 5 of the 1991 Act lists the types of improvements that tenants with tenancies formed under the 1991 Act (“1991 Act tenancies”), or with short limited duration tenancies, limited duration tenancies and modern limited duration tenancies, may claim compensation for. Any improvement claimed under schedule 5 must have begun on or after 1 November 1948.

4. Schedule 5 has been in place, unchanged, for a lengthy period, but modern farming practice has evolved significantly and continues to change. Items which were not thought of when the schedule was drawn up are commonplace today and widely considered to be appropriate for compensation. Private agreements between landlord and tenant may well mean that, in practice, these modern items are already compensated for. However, to protect the interests of both parties and to encourage tenants to invest in the holding, it is important to update the schedule. The overall policy objective of this Order, therefore, is to modernise the list of improvements for which compensation may be payable at the end of a tenancy, to ensure that they are fit for purpose and reflect the realities of modern farming practice. The changes made to schedule 5 are not to be retrospective and do not change the terms on which any existing improvements were carried out, to avoid any unfairness to either landlord or tenant.

5. Section 2(2) replaces paragraph 17 of the schedule in order to widen it. It previously referred to the provision or laying on of electric light or power, but electricity is not the only energy source used on farms. The new paragraph 17 refers to the installation, provision, distribution or storage of electricity, gas, power, heat and light – this covers the original paragraph 17 but also widens this out to include other sources of energy which the tenant may
have invested in to the benefit of the holding. This new paragraph is deliberately fairly wide in order to ensure it can encompass new technologies which may come into use.

6. Section 2(3) replaces paragraph 22 of the schedule, again in order to widen it. It previously referred simply to sewage disposal, but now covers sewage, waste or pollutant disposal, and provision of means of managing water on land. This is to ensure that a range of anti-pollution devices are eligible. Again, the new paragraph is fairly wide to ensure it can encompass new technologies which may come into use.

7. Section 2(4) inserts new paragraphs to deal with items which the Tenant Farming Commissioner recommended be added to address clear omissions. Management or storage of slurries or manures is an essential aspect of farming and the erection of structures built for these purposes needs to be added, as does the storage of silage as a result. Works to dwellings is also added. This is to ensure that it is clear that improvements to homes can be considered to be improvements that are eligible for compensation. Whether or not such improvements are eligible will depend on the value to the incoming tenant, and will vary from holding to holding.

8. Section 3(2) and (3) replace paragraph 29 of the Schedule, splitting it into two. New paragraph 29 preserves part of old paragraph 29. New paragraph 29A widens the removal of obstacles to cultivation by applying it to both arable land and permanent pasture. Hill ground is not included as this type of land may be subject to environmental schemes that would require environmental impact assessments before removal of boulders etc.

9. Section 3(4) replaces paragraph 30, expanding it to include soil improvers, conditioners and digestates, which are all commonly used to improve the physical qualities of soil. The new paragraph also removes the requirement for manure or fertiliser to be purchased, to take account of situations where farmers might exchange such items with others for payment in kind.

10. Section (4) ensures that the variations made by this Order are not retrospective and only have effect for those improvements begun after the coming into force of this Order.

Consultation

11. The impetus for this change came from industry engagement with the Agricultural Holdings Legislation Review Group in 2014. Significant consultation was carried out, which is detailed in the BRIA which accompanies this policy note. The update of schedule 5 then became part of the change envisaged by the 2016 Act, which placed a requirement on the Tenant Farming Commissioner to produce recommendations. The Tenant Farming Commissioner consulted with a range of relevant stakeholders in reaching his recommendations. These can be found here: https://landcommission.gov.scot/wp-content/uploads/2018/01/Update-of-Schedule-5-amends-Jan-2018.pdf

12. As part of the development of this Order, further informal consultation with key stakeholders has taken place to ensure that it meets requirements.
Impact Assessment and Financial Effects

13. This Order is part of the overall change and modernisation of legislation envisaged by the 2016 Act, the impacts and effects of which were considered in detail at that time, including the range of impacts for tenants and their landlords of legislative change. The relevant assessments can be found here.


Link to the Business and Regulatory Impact Assessment:

Link to the Financial Memorandum:
http://www.parliament.scot/S4_Bills/Land%20Reform%20(Scotland)%20Bill/SPBilll76AFMS042016.pdf

14. An additional BRIA has been prepared for this Order. This can be found here:
https://www2.gov.scot/Publications/2018/10/9249

Scottish Government
Agricultural Holdings
Agriculture and Rural Development
November 2018
Rural Economy and Connectivity Committee

31st Meeting 2018 (Session 5), Wednesday 28 November 2018

Public Petition PE01616: Parking Legislation

Introduction

1. PE01616 was lodged on 05 October 2016 by John S Shaw:

“Calling on the Scottish Parliament to urge the Scottish Government to make it an offence to park in front of a dropped kerb.”

Background to PE01616

2. The petitioner is an elderly wheelchair user and has experienced difficulty in crossing roads due to cars parked in front of dropped kerbs.

3. Parking in front of a dropped kerb in Scotland is not a specific offence. However, parking in front of some dropped kerbs is subject to restrictions, shown by yellow or red lines. These restrictions can only be imposed through a Traffic Regulation Order promoted by the local authority (Transport Scotland for trunk roads).

4. It is an offence to leave a vehicle in such a way as to cause an obstruction to other road users, including pedestrians. A police officer can require the owner of a vehicle that is causing an obstruction to move it, or where this is not possible, to arrange for the vehicle to be moved. There is no statutory definition of what constitutes an obstruction. The decision on whether any particular vehicle is causing an obstruction is a matter for the police officer dealing with the incident. In practice, police officers rarely require a vehicle parked in front of a dropped kerb to be moved.

5. For more information see the SPICe briefing produced for the Public Petitions Committee.

Public Petitions Committee Consideration

6. At its meeting on 8 November 2018, the Public Petitions Committee (PPC) agreed to refer this petition to the Rural Economy and Connectivity Committee under Rule 15.6.2 of Standing Orders.

7. The PPC first considered the petition on 27 October 2016 and agreed to write to the Scottish Government, COSLA, Guide Dogs Scotland, Living Streets Scotland and the Society of Chief Officers of Transportation in Scotland.

8. It deferred its consideration of the petition until consultation on parking from the Scottish Government was complete. The consultation results on parking were considered by the Scottish Government in developing the parking provisions within the Transport (Scotland) Bill.
9. On 8 November the PPC agreed to refer the petition to the REC Committee on the basis that the issues raised sit in the remit of the Transport (Scotland) Bill. The PPC share the concerns raised by the petitioner and identified particular affects for people with mobility issues, visual impairments and wheelchair or pram users.

**Transport (Scotland) Bill**

10. The Committee has received evidence from witnesses calling for the Bill to be amended to prohibit parking in front of dropped kerbs. The Committee at its meeting on 21 November 2018 asked the Cabinet Secretary for Transport, Infrastructure and Connectivity whether he would support such an amendment.

11. The Scottish Government confirmed it was currently investigating the issue as part of the Bill. It is working with stakeholders to identify how best to define dropped kerbs and what should be covered in any parking restrictions.

**Recommendation:**

12. **Members are invited to consider what further action should be taken in respect of the petition. Options include—**

- continuing to pursue the issues raised in the petition as part of the Committee’s current scrutiny of the Transport (Scotland) Bill and closing the petition; or

- taking any other action the Committee considers to be appropriate

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Clerks to the Committee
Rural Economy and Connectivity Committee
November 2018