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Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

# Consultation on the Tuberculosis Eradication (Wales) Order 2009 under the Animal Health Act 1981



# Consultation on the Tuberculosis Eradication (Wales) Order 2009 under the Animal Health Act 1981

## 1. Introduction

- 1.1 The aim of this consultation is to seek views of interested parties and members of the public on an Order under the Animal Health Act 1981 to allow for badger control strategies, alongside cattle measures, to pursue the eradication of bovine tuberculosis (bovine TB) in Wales.
- 1.2 On 24 March 2009, based on comprehensive evidence, the Minister for Rural Affairs announced her intention to implement a cull of badgers, alongside additional cattle disease control measures, within an Intensive Action Pilot Area (IAPA) to simultaneously deal with both sources of infection. The IAPA would be located in an area where bovine TB is endemic, and located to maximise the opportunities and benefits of the locality. The Minister has agreed that north Pembrokeshire would be a preferred location.
- 1.3 The Minister also recognises that vaccination is another tool to reduce disease prevalence in susceptible populations, and Welsh Assembly Government officials continue to work with Defra on research to explore the potential for the use of an effective badger vaccine. An injectable licensed vaccine for badgers is expected in mid 2010 and an oral bait vaccine by late 2014.
- 1.4 To enable these strategies, an Order under the Animal Health Act 1981 is needed, so as to confer the necessary powers on the Minister for Rural Affairs. On the instruction of the Minister for Rural Affairs, officials have drafted such an Order (The Tuberculosis Eradication (Wales) Order 2009) and this can be found at **Annex A** of this consultation document.
- 1.5 **Section 2** sets out background information with regards to bovine TB in cattle and badgers. Within this context, the Minister for Rural Affairs emphasises that the welfare of both farmed and wild animal species is of paramount importance, and any measures taken towards the eradication of bovine TB will benefit both the cattle population and susceptible wild animal species alike. The Minister for Rural Affairs recognises that this is a particularly emotive issue and any decisions on tackling the disease reservoir in badgers are not made lightly.
- 1.6 **Section 3** sets out the badger control strategies.
- 1.7 **Section 4** provides a summary of the draft Order.

1.8 **Section 5** sets out arrangements for submitting responses to the consultation. Please note that closing date is **17 July 2009**.

1.9 For information, a list of consultees can be seen at **Annex B**.

## **2. Background Information**

2.1 Bovine TB is a serious infectious disease of cattle, caused by the bacterium *Mycobacterium bovis*. Up until the 1930's, a large proportion of dairy herds in Great Britain were infected with bovine TB and by 1934 at least 40% of cattle in dairy herds were thought to be infected. Prior to the widespread use of pasteurisation, this was thought to be responsible for over 2,500 human deaths and over 50,000 new cases of bovine TB per year in the human population. In 1935, a voluntary national testing programme for cattle herds was introduced. By 1950, a test and slaughter programme had become compulsory. By 1960, the disease was confined to a few pockets in the south west of England. Despite compulsory cattle testing, by the late 1970's there was an increase in bovine TB; this persistent increase has continued to the present day.

2.2 As part of the 'One Wales' Programme for Government, the Welsh Assembly Government has committed to 'vigorously pursue a programme of bovine TB eradication'. In April 2008, an additional £27.7m of funding was allocated to support this commitment over three years. Further information on the One Wales Strategy can be found at: <http://wales.gov.uk/about/strategy/1wales/?lang=en>

2.3 Bovine TB incidents are increasing in Wales along with associated costs to the agricultural industry, Government and ultimately tax payers. In 2008 over 12,000 cattle were slaughtered because of bovine TB; an increase of 52% on the number slaughtered in 2007. The Welsh Assembly Government is legally obliged to pay compensation for cattle removed because of bovine TB. The cost of this reached £23.5 million for the 2008-09 financial year; an increase of 47% on the previous year. On current trends, compensation will reach £80 million in the 2013-14 financial year.

2.4 Bovine TB is claiming a huge cost in animal life and, along with the associated loss of quality breeding genetics, is having a significant impact on rural businesses. It is widely accepted that the current rate of increase in cattle slaughtered is not sustainable. This increase has taken place despite the existence of cattle surveillance and control measures being in place across Great Britain. Other sources of infection are important in the spread of disease and must be addressed.

- 2.5 The Wales TB Eradication Programme is considering all aspects of bovine TB policy, particularly cattle surveillance and controls, addressing the disease in non-bovine species (both domesticated and wild) and husbandry practices, which includes promoting the importance of good biosecurity to reduce the risk of bovine TB re-introduction through cattle to cattle transmission.
- 2.6 A number of additional cattle-based measures have been introduced as part of the bovine TB Eradication Programme. Information on the bovine TB Eradication Programme and on initiatives such as TB Health Check Wales, the consultation on compensation arrangements and the earlier removal of inconclusive reactor cattle can be found on the Welsh Assembly Government website at: [www.wales.gov.uk/bovinetb](http://www.wales.gov.uk/bovinetb)
- 2.7 Compelling evidence now exists to show that badgers not only act as a host for *Mycobacterium bovis* but also contribute significantly to the disease reservoir in cattle. Not addressing the disease reservoir in badgers leaves a source of infection for cattle and other animals.
- 2.8 The badger continues to be a protected species in Wales under the Protection of Badgers Act (PoBA) 1992, which prohibits, except under license, any interference or disturbance of badgers or badger setts. Illegal action against badgers will not be tolerated and any evidence of potentially illegal activity will be reported by the Minister for Rural Affairs to the police; the Minister encourages members of the public to do the same.

### **3. Badger Control Strategies**

- 3.1 In an initial statement on the bovine TB Eradication Programme, on 8 April 2008, the Minister for Rural Affairs explained that a badger cull would be pursued only if certain criteria were met. The Minister made it clear that ecological reviews, ethical considerations, epidemiological assessments, practical and legal requirements would all be taken into account, and that further expansion of this policy would only take place after appropriate evaluation.
- 3.2 The Minister for Rural Affairs is satisfied by the available evidence that;
- a) bovine TB exists in the badger population in Wales and that the disease is being transmitted between badgers and other animals in Wales, and;
  - b) the destruction of badgers in parts of Wales is necessary in order to substantially reduce the incidence of bovine TB in Wales.

- 3.3 Existing cattle-only measures are not reducing the incidence of bovine TB, and the Minister for Rural Affairs recognises the need to address the disease reservoir in badgers, as well as enhancing cattle controls.
- 3.4 The Minister for Rural Affairs has considered options for badger control strategies within an IAPA with the aim of reducing the opportunity for transmission of bovine TB between badgers and other animals. The options considered were:
- a) A pro-active non-selective badger cull.
  - b) Vaccination of badgers.
  - c) The use of a diagnostic test for a combined badger vaccinate or cull strategy.
- 3.5 Following consideration of the above options the Minister is of the opinion that a pro-active non-selective cull of badgers is necessary alongside additional cattle measures within an IAPA. The intention is that a cull would be co-ordinated and delivered/managed by Government. Badgers would be culled by trapping and shooting (this would be the primary method), trapping and lethal injection, or shooting without trapping; these are considered to be the most effective and humane methods. Culling methods that have been considered but discounted include poisoning, gassing and the use of snares. To maximise the benefits, any culling would have to be carried out competently and efficiently, in a co-ordinated manner, covering a large area and sustained for at least four years. This policy would initially be implemented in one area (the IAPA), and further expansion would only be considered following evaluation.
- 3.6 Vaccination is a tool that may reduce the risks of bovine TB in susceptible populations. Vaccine development will be monitored closely with a view to introducing vaccination into Welsh policy as and when it is available and appropriate. It is the view of the Minister for Rural Affairs that both culling and vaccination (of badgers) should form part of the measures required to pursue the eradication of bovine TB in Wales.
- 3.7 A combined option, whereby badgers would be trapped, tested for bovine TB and either destroyed or vaccinated according to their disease status is not being considered further at this present time, as there are a number of technical difficulties associated with this approach. Modeling has revealed that it has significant potential to increase the number of cases of bovine TB in cattle if perturbation occurs.

#### **4. The Tuberculosis Eradication (Wales) Order 2009**

4.1 Welsh Ministers have powers under the Protection of Badgers Act (PoBA) 1992 to authorise any person to kill badgers for the purpose of preventing the spread of disease. The Minister for Rural Affairs has decided that Government-managed delivery is appropriate for the IAPA. To enable this strategy, and any future strategy of vaccination to be delivered, an Order under the Animal Health Act 1981 is needed so as to confer the necessary powers on the Welsh Ministers. The draft Order provides that Welsh Ministers may vaccinate or destroy badgers in Wales.

**Q1 Is Government the most appropriate body to manage the delivery of these strategies or are there alternatives that should be considered?**

#### **4.2 Destruction of Badgers**

4.2.1 The Minister's policy is that culling should be done humanely. The draft Order imposes a requirement that badgers are destroyed by;

- a) trapping in a cage and either shooting or using a lethal injection; or
- b) shooting, without trapping them in a cage first.

**Q2 Do you agree that these are the most humane and appropriate ways or should other methods be included?**

**Q3 Where the disease is endemic, do you agree that the destruction of badgers (alongside cattle measures) is necessary to have an impact in the short to medium term? Should other strategies be included in this Order?**

4.2.2 The draft Order would make it an offence to;

- a) take into captivity, harbour, conceal or otherwise protect wild members of the badger species to prevent their destruction; or
- b) in any other way obstruct or interfere with anything which has been, is being or is to be done or used in connection with that destruction.

**Q4 Do you agree with these offences and/or should others be included?**

### **4.3 Vaccination of Badgers**

- 4.3.1 The draft Order also provides that an authorised person may enter onto land or premises to treat badgers with vaccine for the purpose of preventing the spread of bovine TB. If required, the authorised person may apply to a justice of the peace for a warrant to enter land or premises for the purpose of treating badgers with vaccine.

**Q5 Do you agree that the development of a badger vaccination policy should be pursued and therefore included within this Order?**

**Q6 Do you agree that authorised persons should be able to enter land for the purpose of vaccinating badgers?**

## **5. Arrangements for submitting responses to the consultation**

- 5.1 Please send your comments to the address below by **17 July 2009**.

TB Team  
Office of the Chief Veterinary Officer  
Department of Rural Affairs  
Welsh Assembly Government  
Cathays Park  
Cardiff  
CF10 3NQ

Fax: 02920 826120  
Email: [bovinetb@wales.gsi.gov.uk](mailto:bovinetb@wales.gsi.gov.uk)

- 5.2 This consultation document can be found on the Welsh Assembly Government website at:

<http://wales.gov.uk/consultations/environmentandcountryside/?lang=en>

- 5.3 At the end of the consultation period copies of the responses we received will be made publicly available. The information responses contain will also be published in a summary of the responses. If you do not consent to this you must clearly request that your response be treated confidentially. Any confidential disclaimer generated by your IT system in e-mail responses will not be treated as such a request. You should also be aware that there may be circumstances in which we will be required to

communicate information to third parties on request, in order to comply with our obligations under the Freedom of Information Act 2000.

- 5.4 The summary of responses will be published on the Welsh Assembly Government internet site ([www.wales.gov.uk/bovinetb](http://www.wales.gov.uk/bovinetb)) and will also be available, together with copies of the responses, on request from the Assembly Library and Publication Service. You can either write to:

Assembly Library & Publication Services  
Welsh Assembly Government  
Cathays Park  
Cardiff  
CF10 3NQ

or

e-mail: [Assembly-publications@wales.gsi.gov](mailto:Assembly-publications@wales.gsi.gov)

## **Annex A: The Tuberculosis Eradication (Wales) Order 2009**

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2009 No. (W. )**

### **ANIMALS, WALES**

## **The Tuberculosis Eradication (Wales) Order 2009**

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

The Welsh Ministers are satisfied that tuberculosis exists in the wild badger population in Wales; that the disease has been or is being transmitted from badgers to cattle in Wales and that the destruction of wild badgers in Wales is necessary in order to eliminate or substantially reduce the incidence of tuberculosis in animals of any kind in Wales.

The Order provides that the destruction of badgers must be accomplished by trapping and either shooting or giving a lethal injection, or by shooting without trapping. The carcase of a badger so destroyed is the property of Welsh Ministers and may not be removed without their authority.

The Order provides that the authorised person may enter onto land or premises and do other things as are required to treat badgers with vaccine for the purpose of preventing the spread of tuberculosis. The authorised person may apply to a justice of the peace for a warrant to enter land or premises for purposes connected with treating badgers with vaccine.

The Order provides that a person must not—

- (a) take into captivity, harbour, conceal or otherwise protect wild members of the badger species with intent to prevent their destruction or their being treated with vaccine; or
- (b) in any other way obstruct or interfere with anything which has been, is being or is to be done or used in connection with that destruction or their being treated with vaccine.

**2009 No. (W. )**

**ANIMALS, WALES**

**The Tuberculosis Eradication (Wales)  
Order 2009**

*Made* \*\*\*

*Laid before the National Assembly for Wales* \*\*\*

*Coming into force* \*\*\*

The Welsh Ministers—

being satisfied that tuberculosis exists among the wild members of the badger species in the area which has been or is being transmitted from badgers to animals of any kind in the area;

being satisfied that destruction of wild members of the badger species in that area is necessary in order to eliminate or substantially reduce the incidence of tuberculosis in animals of any kind in the area; and

after consultation with the Countryside Council for Wales,

in exercise of the powers conferred by sections 1, 21(2), (4) and (5) and 86(1) of the Animal Health Act 1981(1), make the following Order:

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(1) 1981 c.22. Functions under the Act are exercisable by the Welsh Ministers (in relation to Wales), by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044); and section 162 of and paragraph 30 of schedule 11 to the Government of Wales Act 2006 (c.32).

### **Title, commencement and interpretation**

1.—(1) The title of the Order is the Tuberculosis Eradication (Wales) Order 2009 and it comes into force on [date].

(2) In this Order—

“authorised person” (“*person awdurdodedig*”) means—

- (a) an officer of the Welsh Assembly Government;
- (b) a veterinary inspector; and
- (c) any person, who, not being such an officer or inspector, is authorised by the Welsh Ministers to exercise the power conferred by this Order.

“badger” (“*mochyn daear*”) means an animal belonging to the species *Meles meles* of the order Carnivore; and

“carcase” (“*carcas*”) includes part of a carcase.

### **Application of Order for the purposes of section 21 of the Animal Health Act 1981**

2. For the purposes of section 21 (destruction of wildlife) of the Animal Health Act 1981 this Order—

- (a) applies to Wales;
- (b) relates to tuberculosis; and
- (c) applies to the species of badger.

### **Destruction of badgers**

3.—(1) The authorised person may destroy badgers using one of the methods set out in paragraph (2).

(2) The badgers must be—

- (a) trapped in a cage and either—
  - (i) shot; or
  - (ii) given a lethal injection; or
- (b) shot without being trapped in a cage.

(3) The carcase of any badger destroyed under this Order is the property of the Welsh Ministers and must not be removed from the land or premises on which it was destroyed or in any way disposed of without the authority of the Welsh Ministers.

### **Vaccination of badgers**

4.—(1) In relation to treating badgers with vaccine for the purpose of preventing the spread of tuberculosis, an authorised person may enter any land or premises and may treat badgers with vaccine.

(2) The powers conferred by this article extend to the taking of any action—

- (a) which is necessary for enabling the appropriate treatment to be administered; or
- (b) which is otherwise required in connection with that treatment.

(3) If a justice of the peace is satisfied on sworn information in writing that the first condition is satisfied and that the second or third condition is satisfied the justice of the peace may issue a warrant authorising the authorised person to enter any land or premises, if necessary using reasonable force, for the purpose of vaccinating badgers.

(4) The information must include—

- (a) a statement as to whether any representations have been made by the occupier of the land or premises to the authorised person concerning the purpose of treating badgers with vaccine;
- (b) a summary of any such representations.

(5) The first condition is that there are reasonable grounds for the authorised person to enter the land or premises for that purpose.

(6) The second condition is that the occupier of the land or premises has been—

- (a) informed of the decision to seek entry to the land or premises and of the reasons for that decision;
- (b) requested by the authorised person, either in writing or otherwise, to indicate by a date specified in the request, that the occupier will allow entry to the land or premises during a period of time specified in the request and has failed to do so; and
- (c) informed of the decision to apply for a warrant.

(7) The third condition is that the land or premises are unoccupied, or the occupier is absent and (in either case) notice of intention to apply for the warrant has been left in a conspicuous place on the land or premises.

(8) Paragraphs (9) to (13) apply to the authorised person who enters any land or premises by virtue of paragraph (1) or under a warrant issued under paragraph (3).

(9) The authorised person may take with him or her—

- (a) such other persons as he or she thinks necessary to give such assistance as he or she thinks necessary;
- (b) such equipment as he or she thinks necessary.

(10) The authorised person may require any person on the land or premises who falls within paragraph (11) to give such assistance as may reasonably be required for the purpose of vaccinating badgers.

(11) The following persons fall within this paragraph—

- (a) the occupier of the land or premises;

- (b) a person appearing to the authorised person to be under the direction or control of the occupier.

(12) If the authorised person enters any unoccupied land or premises, the land or premises must be left as effectively secured against entry as the authorised person found them.

(13) If the authorised person enters any land or premises by virtue of a warrant issued under paragraph (3) the authorised person must at the time of entry—

- (a) serve a copy of the warrant on the occupier of the land or premises, or (if the occupier is not on the land or premises);
- (b) leave a copy of the warrant in a conspicuous place on the land or premises.

(14) A warrant issued under paragraph (3) remains in force for one month starting with the date of its approval by the justice of the peace, which date must be clearly visible on the warrant.

(15) A warrant issued under paragraph (3) must be executed only at a reasonable hour.

(16) In relation to any land or premises to which entry is obtained by virtue of a warrant under this article the authorised person must retain for a period of not less than 12 months beginning with the day after entry—

- (a) a copy of the warrant;
- (b) a copy of any record of the steps taken to effect entry to the land or premises and the actions taken on the land or premises by the authorised person and any other person entering the land or premises with him or her.

## **Offences**

**5.** A person must not—

- (a) take into captivity, harbour, conceal or otherwise protect wild members of the badger species with intent to prevent their destruction or their being treated with vaccine; or
- (b) in any other way obstruct or interfere with anything which has been, is being or is to be done or used in connection with that destruction or their being treated with vaccine.

*Elin Jones*

Minister for Rural Affairs, one of the Welsh Ministers

[date]

## **Annex B: Consultation List**

Aberdeen Angus Cattle Society  
ADAS (Wales)  
Badger Trust Cymru  
Baha'i Council for Wales  
Beef Shorthorn Cattle Society  
Brecon Beacons National Park Authority  
British Alpaca Society  
British Belgian Blue Cattle Society  
British Blonde Society  
British Camelids Trust (BCT)  
British Cattle Veterinary Association (BCVA)  
British Charolais Cattle Society  
British Friesian Breeders Club  
British Limousin Cattle Society  
British Llama Society  
British Simmental Society  
British Veterinary Association (BVA)  
British Veterinary Camelid Society (BVCS)  
Brown Swiss Cattle Society  
Buddhist Council for Wales  
Central Association of Agricultural Valuers (CAAV)  
Centre for Business Relationships, Accountability, Sustainability and Society (BRASS)  
Church Liaison Office  
Country Land and Business Association (CLA) (Wales)  
Countryside Alliance  
Dairy Shorthorn Society  
Devon (Red Ruby) Cattle Breeders' Society  
Dexter Cattle Society  
Evangelical Alliance Wales  
Farm Animal Welfare Council (FAWC)  
Farm Crisis Network  
Farmers' Union of Wales (FUW)  
Free Church Council for Wales  
Gelli Aur College Farm  
Guernsey Cattle Society  
Hereford Cattle Society  
Holstein UK  
Institute of Biological, Environmental and Rural Sciences (IBERS)  
Institute of Rural Health  
Jersey Cattle Society  
Lord Lieutenants (Clwyd, Dyfed, Gwent, Gwynedd, Mid Glamorgan, Powys, South Glamorgan and West Glamorgan)  
Meat Promotion Wales

Milk Development Council (MDC)  
Murray Grey Cattle Society  
Muslim Council for Wales  
National Beef Association (NBA)  
National Farmers' Union (NFU) Wales  
National Sheep Association (NSA) Wales  
Older People's Commissioner for Wales  
Organic Centre Wales  
Pembrokeshire Coast National Park Authority  
RICS Wales  
Royal College of Veterinary Surgeons (RCVS)  
Royal Society for the Prevention of Cruelty to Animals (RSPCA) Wales  
Royal Veterinary College (RVC)  
Royal Welsh Agricultural Society (RWAS)  
RSPB Wales  
Salers Cattle Society  
Shree Swaminarayan Temple (Cardiff)  
Sikh Cultural Association for South Wales  
Snowdonia National Park Authority  
South Devon Society  
South Wales Jewish Representative Council  
The Church in Wales  
The National Trust (Wales)  
The Rural Stress Information Network  
Wales Council for Voluntary Action (WCVA)  
Wales Environment Link (WEL)  
Wales Rural Forum  
Wales Young Farmers' Club (YFC)  
Welsh Black Cattle Society  
Welsh Deer Initiative  
Welsh Lamb and Beef Promotions (Ltd)  
Welsh Livestock Auctioneers' Association (LAA)  
Welsh Local Government Association (WLGA)  
Women in Agriculture  
Women's Food & Farming Union



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