



**Bill Research Paper 04/09**

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# **DISEASES OF ANIMALS BILL**

The Department of Agriculture and Rural Development introduced the Diseases of Animals Bill in the Northern Ireland Assembly on 30 June 2008. This Bill is largely a result of a review of the operation of the Diseases of Animals (Northern Ireland) Order 1981. The Bill will amend the order and update it to take into account additional preventative biosecurity measures to deal with any disease outbreak. This paper highlights some of the main amendments and places them in context to the wider issues relating to animal health and welfare.

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## SUMMARY OF KEY POINTS

The Bill aims to introduce new powers by amending the Disease of Animals (Northern Ireland) Order 1981 which will:

- Protect and improve Northern Ireland's animal health status through enhanced disease prevention, biosecurity and control measures;
- Enable policies to be introduced reflecting the latest developments in research and technology to trace and combat disease;
- Ensure that appropriate enforcement powers are available including measures to deal with certain types of offences<sup>1</sup>.

A number of amendments are proposed to achieve this and these include:

- The preparation of departmental guidance on biosecurity measures. The order also states that a person to whom this guidance applies but who fails to comply with it will not be liable in any civil or criminal proceedings solely as a result of that failure but the guidance *will* be admissible in evidence in such proceedings and the court may take account of failure to act in accordance with it.
- The establishment of an offence for deliberately or recklessly performing an act which results in the infection of an animal, or bird, with a disease; and providing the court with the option of disqualifying a person convicted of such an offence of dealing or keeping any animals or poultry.
- Control of vaccines including the administration to any animal or bird as may be specified in the order as well as the prohibition or regulation of the manufacture, import, sale, supply or possession of vaccines.
- The department will also reserve the right to give treatment to any animal or bird in order to control or prevent the spread of disease, including treating with serum or vaccine.
- The ability to authorise the slaughter of animals or birds which the department thinks should be slaughtered with a view to preventing the spread of disease. This would include those animals treated with a vaccine or serum.
- The bill will also give the department powers to specify TSE susceptible livestock genotypes, identify genetically susceptible livestock, place restrictions on movement and breeding, and slaughter livestock susceptible to TSEs and pay compensation.
- New powers of entry linked to the provisions in the bill on the slaughter, treatment and identity of animals, investigation of disease outbreaks and the exercise of functions in respect of TSE controls.

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## INTRODUCTION

Animal Health and Welfare has become an issue of national importance highlighted by the BSE, and subsequent, crises in the agriculture and food industry. The facilitation of trade in food products is also being increasingly linked back to the farm and how animals are treated as they are raised for the market.

The White Paper on Food Safety<sup>i</sup>, largely produced as a result of the mishandling of the BSE crisis, can be regarded as a first step in Europe-wide authorities taking a holistic and comprehensive approach to the production of food. This so-called 'farm-to-fork approach' includes consideration of the health and welfare of animals and the integration of these issues into food policy.

A recent development in the EU has been the production of an Animal Health Strategy (2007-2013) which is based on the principle of 'prevention is better than cure'<sup>2</sup>. There is therefore much emphasis on precautionary measures, disease surveillance, controls and research. These are aimed to reduce the incidence of animal disease and minimise the impact when they do occur.

The introduction of the Diseases of Animals Bill is therefore timely in that it updates an older piece of legislation in an attempt to take into consideration relatively new concepts such as biosecurity, in order to protect and improve the animal health status of Northern Ireland.

## BACKGROUND

Animal Health legislation in Northern Ireland is largely contained in the Diseases of Animals (Northern Ireland) Order 1981 ("the Order"). It was reviewed by the Department of Agriculture and Rural Development to ensure that it was fit for purpose and a public consultation was carried out between January and March 2008. As a result of this review and consultation the department has proposed a number of amendments to the Order.

The Explanatory Memorandum that accompanies the Bill states that responses to the consultation reflect broad industrial support for a more effective framework to deal with animal diseases in the future. In many respects this last point is key - does the Bill amend the Order in such a way as to provide a framework for ensuring the protection of animal health and the control and prevention of disease? The Bill itself must therefore underpin and facilitate the Strategy for Animal Health and Welfare in Northern Ireland<sup>ii</sup> if this aim is to be achieved.

## ANIMAL HEALTH AND WELFARE

The Vision for Animal Health and Welfare in Northern Ireland contained in the Northern Ireland Animal Health and Welfare Strategy<sup>3</sup>, states:

*"The Vision is for a Northern Ireland where the standards of animal health and welfare are amongst the highest in the world, and where all stakeholders fully understand and accept their roles and responsibilities".*

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<sup>i</sup> White Paper on Food Safety COM(1999) 719 final

<sup>ii</sup> The Northern Ireland Animal Health and Welfare Strategy. Department of Agriculture and Rural Development

The Strategy, which precedes the proposed Bill by 3 years, identifies the drivers for a Strategy:

- Public Health Concerns;
- Public Interest;
- Economic Interest; and
- Environmental Concerns.

These can be linked to the new powers contained in the Bill, in particular those that will enhance disease prevention, biosecurity and control measures.

The NI Strategy reflects the main aims and objectives of the Community Animal Health Strategy and Action Plan (2007-2013) which focuses on 4 pillars (areas of activity). One of these is the development of a new modern legal framework. It is acknowledged that while this may be multi-faceted it is necessary to have a *single* legal framework rather than the series of linked and inter-related policy actions. In some respects therefore the review and subsequent updating of the 1981 NI Order could be seen as contributing to this goal, though it is envisaged that the EU single legal framework will define and integrate common principles and requirements of existing legislation that are much wider than animal disease control. It will also include intracommunity trade, imports, animal nutrition and animal welfare.

An orientive data for a regulatory proposal for an EU Animal Health Law is 2010. Therefore, it may be that this Bill is an early step towards meeting an EU date for establishing a much wider and comprehensive Animal Health Law for NI. The Bill in general however does reflect a practical outworking of the 5 themes of the NI Strategy:

- Understanding and accepting roles;
- Working in partnership;
- A clear understanding of costs and benefits of animal health and welfare;
- Promoting the benefits of animal health and welfare – prevention is better than cure; and
- Ensuring effective delivery and enforcement.

The following sections of this paper will consider the *main* amendments and attempt to put these in a wider policy context.

## **DISEASE OF ANIMALS BILL**

### CLAUSE 1 – SLAUGHTER TO PREVENT THE SPREAD OF DISEASE

The main change here is a new Article 16(3) which extends the powers to slaughter animals and poultry in order to prevent the spread of disease. Importantly the Article refers to the required slaughter of animals which the department '*thinks*' should be slaughtered in order to prevent the spread of disease. The same wording was criticised by members of the House of Lords as being 'imprecise' when considering the first Animal Health Bill in 2001 and subsequently the Animal Health Act 2002 which referred specifically to the control of Foot and Mouth Disease (FMD)<sup>4</sup>. These criticisms were made in the context of the widespread culling of animals which was pursued in order to contain the spread of FMD but seen by some as an overreaction. The powers are therefore discretionary. Similar powers exist in Scotland but the

Animal Health and Welfare (Scotland) Act 2006 requires the Minister to make a statement *prior* to any slaughter event giving the reasons for authorising such a course of action. The Minister may make the statement in such a manner and publicise it to such an extent as they see fit. This approach at least provides the reassurance that consideration has been given to other possible options before deciding on slaughter as the most appropriate disease control mechanism.

The category of animal could therefore range from those which *are* affected by the disease to those *suspected* of being affected (but which may not be affected at all) e.g. animals which have been in contact with infected animals or in any way exposed to the disease. It also includes the possible slaughter of animals which have been vaccinated.

During the outbreak of FMD in the UK there was considerable tension between the need for a speedy slaughter of infected animals and the certainty of diagnosis. Animals were only slaughtered if tests proved positive but it could take up to four days to obtain results and field tests were not as reliable as laboratory tests. This could leave potentially infected animals alive for that period. In order to prevent the spread of the disease, due to the time delay in obtaining test results, a decision was taken to slaughter *all* suspicious animals whether clinically confirmed or not<sup>5</sup>. This was linked to the policy of contiguous culling i.e. animals on farms adjacent to infected farms were also culled. This was a controversial policy at the time though it is acknowledged that the slaughter policy (including slaughter on suspicion) and the contiguous cull policy were crucial in controlling the disease<sup>6</sup>.

However, while retaining and legislating for such a policy is a sound approach based on past experience, it is not clear whether it would be possible to exercise discretion in respect of culling, particularly in relation to contiguous culling. For example, in Scotland during the FMD outbreak much more discretion was applied in relation to contiguous culling than in England with only those farms on the periphery of the epidemic zone culled to prevent the spread into new territory. It may be that operational guidance in respect of implementing the proposed legislation will more fully describe this aspect of the wider policy and potentially allay any fears that the legislation is a *carte blanche* to slaughter, when perhaps a more nuanced approach would achieve the same aims.

#### CLAUSE 2 – SLAUGHTER OF ANIMALS AND POULTRY TREATED WITH SERUM OR VACCINE

This relates to clause 1 and will allow the department to also slaughter any animal or bird that has been treated with serum or vaccine

#### CLAUSE 3 – TRANSMISSIBLE SPONGIOFORM ENCEPHALOPATHIES

Included in this range of diseases are BSE and scrapie. The history of BSE is well-documented<sup>iii</sup> and it is a good example of the need to take a cautious but robust approach to the eradication of a disease. The powers proposed in the legislation allow the department to identify and take action in order to control livestock genetically susceptible to TSEs. This includes action to restrict breeding in order to reduce the type of genetic material that could make the animal more susceptible to infection by TSE or become a carrier of TSE. It also includes restrictions on movement. Such genotyping could facilitate a targeted surveillance programme with the ultimate aim of eradicating susceptible animals and promoting the breeding of

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<sup>iii</sup> See for example, [The Inquiry into BSE and variant CJD in the United Kingdom](#)

those animals that are TSE-resistant. Australia and New Zealand where similar measures have been introduced are recognised as being 'scrapie free'<sup>7</sup>.

There is however one caveat to this approach: susceptibility to scrapie (a TSE occurring in sheep) is genetically determined but BSE is not<sup>8</sup>. It therefore raises the question why this clause should refer to *all* livestock susceptible to TSE if in fact susceptibility to TSE is evident only in sheep? However, the principle controls on TSEs will be introduced in an order which will be subject to consultation and perhaps clarification will come then.

#### CLAUSE 4 – POWERS OF ENTRY

This inserts new powers of entry into Article 46 of the 1981 Order. In order to fully implement the amended legislation it is necessary to give new powers of enforcement to the department. This, in practice, means Powers of Entry for inspectors which are linked to the provisions in the Bill in respect of slaughter, investigation of disease outbreaks etc. The powers are balanced with controls such as inspections at reasonable times, 24hr notice to enter a dwelling house (none is currently required). Paragraphs 1-4 of Article 46 do not apply to premises used exclusively as dwelling houses so an inspector could not enter a dwelling house with the powers conferred under this article. Also, under Article 46 the inspector has all the powers of a police constable apart from certain specific powers such as those of arrest.

Article 46B refers to the provision of warrants by a lay magistrate to inspectors to give additional powers 'to enter any premises' e.g. to a dwelling house, on receipt of a complaint on oath. A number of conditions apply to the granting of a warrant:

The first condition of 'reasonable grounds' for a warrant must be satisfied. If this is so then the second or third condition must be satisfied.

Second condition: the occupier of the premises

- (a) has been informed of the decision to seek entry to the premises and of the reasons for that decision;
- (b) has failed to allow entry to the premises on being requested to do so by an inspector; and
- (c) has been informed of the decision to apply for the warrant.

Third condition:

- a) the 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 premises, or
- (b) an application for admission to the premises or the giving of notice of intention to apply for the warrant would defeat the object of entering the premises.

#### CLAUSE 5 – FAILURE TO GIVE A NAME AND ADDRESS

A new offence of failing to give a name or address or giving false details is added to Article 52 paragraph 8.

CLAUSE 6 – FIXED PENALTIES FOR CERTAIN OFFENCES

This clause gives effect to schedule 4A of the Bill which enables the department to give a fixed penalty notice to anyone believed to have committed a specified offence. This will also allow the recipient of a notice to elect for a penalty and therefore avoid being subject to formal enforcement proceedings. The amount of the fixed penalty shall not be more than 3% of the maximum fine on summary conviction (currently £5000).

The details in relation to this, such as the particular offences, amount of penalty and method of payment will be subject to consultation.

CLAUSE 7 – PROSECUTIONS FOR CERTAIN OFFENCES

The time limit for certain offences will be extended from six to twelve months.

CLAUSE 8 – BIOSECURITY GUIDANCE

This inserts 4A and 4B into the Order and allows the Department to prepare and publish biosecurity guidance for any disease specified by an order which will be laid before the Assembly. It also refers to biosecurity compliance.

This clause has a particular resonance with the Community Animal Health Strategy which has Prevention and Control as one of its 4 pillars. The EU Strategy will require the development of guidelines that take into account the level of risk associated with different types of production systems and species (e.g. intensive production, extensive production, high density area, hobby farmers). The Department is therefore laying the legislative basis to achieve this and will consult on any biosecurity guidance.

A potentially controversial aspect of the legislation is the issue of *compliance* with the guidance. Specifically, should a person to whom the legislation applies *fail* to comply with the legislation then that person shall not be held liable in any civil or criminal proceeding by reason only of that failure. However, the guidance *will* be admissible in evidence and a court may take account of any failure to act in accordance with it.

Furthermore, failure to act in accordance with the biosecurity guidance could result in the Department withholding compensation, wholly or in part, in respect of any animal slaughtered.

CLAUSE 10 – FEES AND EXPENSES

The Department has revised paragraph (k) of Part II Article 5 to

*“prescribe and regulate the circumstances in which expenses incurred by the Department may be recovered from any person who fails to comply with any provision of this Order or an order of the Department”*



CLAUSE 11 – DELIBERATE INFECTION

This clause will insert new Articles 5A and 5B into the Order to create an offence of deliberately causing an animal or bird to be infected with disease or knowingly acquiring or taking possession of such an animal or bird. It also allows the court upon convicting a person of such an offence to disqualify a person from keeping or dealing in any animals or poultry. The **Animal Health and Welfare Act (Scotland) 2006** has similar provisions but goes further through inclusion of a series of Post-Conviction Orders. For example although the Act includes disqualification i.e. owning or keeping animals, it also prohibits transporting animals, working with or using animals, riding or driving animals etc. The proposed Bill does not indicate, unlike the Scottish Act, if the department has powers of seizure should a person disqualified from keeping or dealing animals breaches this disqualification. On the other hand however, it provides an avenue for appeal against orders. The Act also deprives a person convicted of an offence of compensation in respect of animals to which the offence relates.

CLAUSE 13 – CONTROL OF VACCINES

Previously the Department had powers under the Medicines Act 1968 to regulate or prohibit, by order, animal and poultry vaccines or their use. However, this Act no longer applies therefore the powers to control vaccines are being inserted in the 1981 order.

CLAUSE 14 – TREATMENT OF ANIMALS OR POULTRY

In order to control disease or prevent the spread of disease this clause will give the Department additional powers to treat any animal or bird with serum or vaccine. Again, similar provision exists in the Animal Health and Welfare Act (Scotland) 2006.

CLAUSE 15 – REGULATION OF MOVEMENT OF ANIMALS OR POULTRY

At first glance the amendments to article 19 of the 1981 order appear relatively minor but the deletion of the words 'diseased or suspected' from article 19 gives the Department significant powers to regulate or prohibit the exposure of animals or poultry for sale *regardless* of whether they are diseased or suspected. These are currently restricted to only diseased or suspected animals. In addition they allow the Department to isolate, on the farm, an animal that is diseased or suspected.

CLAUSE 16 – REGISTRATION AND APPROVAL OF LIVESTOCK DEALERS

This clause simply gives the Department powers to regulate all aspects of dealing in livestock. This includes regulating the possession, purchase, sale, or supply of animals or poultry by livestock dealers for the purpose of preventing the outbreak or spread of disease or for the purpose of preventing injury or suffering to animals or poultry.

CLAUSE 19 – INSPECTION ETC., OF IMPORTS

This gives inspectors the power to inspect imports for the purpose of regulating or prohibiting the importation of animals, poultry, carcasses and eggs or other things

(animate or inanimate) that appears to the Department may be carrying disease. In addition the Department may make orders in relation to persons, animals or poultry and other things (animate or inanimate) which may have come into contact with these potentially disease-carrying things.

## **CONCLUSION**

The Diseases of Animals Bill [As Introduced] amends the Diseases of Animals (Northern Ireland) Order 1981. This Order is the equivalent of the Animal Health Act 1981 which applies to England and Wales and the Animal Health and Welfare (Scotland) Act 2006. The powers are wide-ranging and cover a number of diseases. In the Republic of Ireland an Animal Health and Welfare Bill is being drafted in order to consolidate and repeal a long list of outdated legislation. In addition the Bill will update much of the existing legislation. As with the legislation in the UK the Bill will address issues such as<sup>9</sup>:

- the prevention, control and eradication of animal diseases;
- animal welfare;
- animal health and welfare levies;
- destruction and disposal of animals and products;
- compensation and insurance arrangements;
- assurance schemes;
- regulatory making provisions and authorised officers;
- functions of local authorities;
- provisions relating to offences and penalties and
- miscellaneous provisions.

The detail has yet to be worked out but it is probable that the legislation will broadly reflect that of the UK and, as indicated in the summary of the draft Bill, will focus on higher level principles with detailed operational aspects provided by way of statutory instruments (SIs).

The last number of years has seen a number of outbreaks of various animal diseases such as Foot and Mouth, Avian Influenza and Bluetongue in the UK. In addition there are diseases such as Bovine TB and Brucellosis which need to be contained and eradicated. The Diseases of Animal Bill seeks to make amendments to the 1981 Order to protect and improve Northern Ireland's animal health status through a range of enhanced disease prevention, biosecurity and control measures. These reflect the developments in animal health and welfare strategies in Europe and developments in research and technology to combat disease. The updated Act, as amended by the Bill, helps to underpin the Northern Ireland Animal Health and Welfare Strategy which in turn reflects the aims and objectives of the EU Animal Health Strategy (2007-2013). However, as milestones in the Action Plan to implement this Strategy are reached the Bill may have to be reviewed to take account of additional legislative requirements emanating from Europe. In that respect the Order may need to be amended again over the next few years.

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<sup>1</sup> Diseases of Animals Bill. Explanatory Memorandum

<sup>2</sup> DG Health and Consumers

([http://ec.europa.eu/food/animal/diseases/strategy/index\\_en.htm](http://ec.europa.eu/food/animal/diseases/strategy/index_en.htm))

<sup>3</sup> The Northern Ireland Animal Health and Welfare Strategy. Department of Agriculture and Rural Development

<sup>4</sup> <http://www.warmwell.com/tromans03.html>

<sup>5</sup> Foot and Mouth Disease: Lessons to be Learned Inquiry Report: HC888

<sup>6</sup> Ibid. p.98

<sup>7</sup> Report of a WHO Consultation on Clinical and Neuropathological Characteristics of the New Variant of CJD and other Human and Animal Transmissible Spongiform Encephalopathies. World Health Organisation, 1996.

<sup>8</sup> Institute for Animal Health – [Disease Facts, BSE, CJD and Scrapie](#)

<sup>9</sup> Summary of draft Bill

[https://www.agriculture.gov.ie/animal\\_health/AHWBill\\_PublicConsultationPaper280508.doc](https://www.agriculture.gov.ie/animal_health/AHWBill_PublicConsultationPaper280508.doc)