



City Solicitor and Secretary

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TO: THE MAYOR AND MEMBERS OF
THE CITY COUNCIL

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IJD/DS

9 January 2002

Dear Member

RE: COUNCIL MEETING – TUESDAY 15 JANUARY 2002

I refer to the Summons which I recently circulated regarding the meeting of the City Council on 15 January 2002. I have received a request from a representative of the petitioners who submitted the petition relating to the Animal Health Bill to circulate all Members with a copy of the Animal Health Bill.

After consulting the Mayor it has been agreed that a copy of the Bill should be circulated, a copy of which please find enclosed.

The petition relating to the Animal Health Bill is dealt with as Agenda Item 7(c).

Yours faithfully

J. M. Egan /RSM

City Solicitor and Secretary

Some recent theories about the timing of the bill.

Threat to human health from BSE? Or is this a smoke screen? Where is there any truly independent scientific research?

BSE/vCJD link proved? Some dissenting voices

<http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmbills/039/2002039.pdf>

If you wish to download the actual bill.

Animal Health Bill

*These notes refer to the Animal Health Bill
as introduced in the House of Commons on 30th October 2001 [Bill 39]*

ANIMAL HEALTH BILL

EXPLANATORY NOTES

INTRODUCTION

- 1. These explanatory notes relate to the Animal Health Bill as introduced in the House of Commons on 30th October 2001. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.**
- 2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause does not seem to require any explanation or comment, none is given.**

SUMMARY AND BACKGROUND

- 3. The Bill has two main purposes. The first is to provide additional powers to tackle Foot and Mouth Disease (FMD) and for these powers to be extendable to other animal diseases by order. The second is to provide additional powers to deal with transmissible spongiform encephalopathies (TSEs) in sheep. The Bill also makes a number of amendments to the enforcement provisions of the Animal Health Act 1981.**

THE BILL

- 4. The Bill supplements existing powers under the Animal Health Act 1981 ("the 1981 Act") to slaughter animals to control the spread of FMD by allowing animals to be slaughtered wherever this is necessary for disease control reasons. At present, only animals which are affected or suspected of being affected with the disease, have been in contact with affected animals, or exposed to the disease may be slaughtered.**

5. The Bill will alter the existing arrangements under the 1981 Act for compensation for animals slaughtered because of FMD and which have been kept on infected premises. At present, 100% of the value of the animal immediately before it became affected with FMD is payable as compensation. Under the adjusted arrangements, 75% of that value will be payable in all cases. The Minister will decide whether to pay all or part of the additional 25% of the value of the animals after considering an inspector's assessment of whether the occupier of the premises or his or her staff have created a significant risk of the spread of FMD in the previous 21 days. The assessment will take account of compliance with legal disease control requirements, co-operation with inspectors and others and any recent reports by inspectors.

6. The Bill will allow vaccinated animals to be slaughtered and require compensation of an amount to be prescribed in an order to be paid. The Bill provides for the slaughter powers, adjusted compensation arrangements and power to slaughter vaccinated animals and pay compensation to be extended to other animal diseases.

7. The Bill provides powers for the Minister to specify, by Order, genotypes in sheep which are more susceptible than other sheep genotypes to infection by TSEs or to becoming carriers of TSEs and it provides powers for Ministers, by regulation, to make provision for the identification of sheep. Where sheep are identified as being of a genotype specified in the Order the Minister must consider whether there are exceptional circumstances which allow the sheep to be used for breeding. In the absence of exceptional circumstances the Minister must give notice on the keeper of the sheep imposing restrictions on the use of the sheep for breeding and requiring either its castration /sterilisation or slaughter. The Bill provides for appeals, compensation and enforcement powers and penalties in relation to these provisions

8. The Bill will also strengthen enforcement powers and increase penalties under the 1981 Act.

COMMENTARY ON CLAUSES

9. The clauses and Schedule to the Bill which make additional provision for tackling FMD and extension to other diseases amend or extend existing provisions in the 1981 Act. The Schedule containing the TSE provisions inserts a new Part into the 1981 Act.

Part 1: Slaughter

10. *Clause 1* extends the range of animals which the Minister may cause to be slaughtered in relation to FMD. *Subsection (2)* adds a new paragraph to sub-paragraph (1) of paragraph 3 of Schedule 3 to the 1981 Act. This adds to the categories of animals which may be slaughtered because of FMD any animal which the Minister thinks should be slaughtered with a view to preventing the spread of FMD. *Subsection (3)* adds a new sub-paragraph (1A) which makes it clear that the new power may be exercised whether or not the animals concerned are affected or suspected of being affected with

the disease, have been in contact with affected animals, or have been exposed to or vaccinated against the disease.

11. *Clause 2* enables the Minister to extend to diseases other than FMD the power to cause to be slaughtered for disease control purposes animals other than those affected, suspected of being infected or exposed to disease. *Subsection (1)* inserts a new section 32A into the 1981 Act.

Subsection (1) of the new section gives the Minister power to make an order extending to diseases other than FMD the power to cause animals to be slaughtered and requiring the payment of compensation. *Subsection (2)* of the new section enables order to include amendments corresponding to those made by clause 1 of the Bill and makes clear that the power may be exercised in respect of diseases not already covered by Schedule 3 to the 1981 Act. The exercise of the power is subject to the affirmative resolution procedure. *Subsection (2)* extends the powers to seize and dispose of carcasses to apply specifically to animals slaughtered because of transmissible spongiform encephalopathies and to animals slaughtered in pursuance of the exercise of powers by order under new Section 32A.

12. *Clause 3* introduces *Schedule 1* which inserts a new section 35A and a new Schedule 3A into the 1981 Act.

13. New section 35A introduces new Schedule 3A which makes provision for adjusted compensation for animals slaughtered because of FMD and which have been kept on infected premises. Subsections (2) to (4) of section 35A enable provision for adjusted compensation to be extended to animals slaughtered because of diseases other than FMD. The power is exercisable by order subject to affirmative resolution procedure.

14. New Schedule 3A sets out the arrangements and procedure for adjusted slaughter compensation in relation to infected premises for FMD.

Paragraph 1 defines three amounts of compensation on which the adjusted compensation arrangements are based.

15. Paragraph 2 specifies that adjusted compensation arrangements apply to animals slaughtered because of FMD which are or have been kept by or on behalf of the person entitled to compensation on premises which are classified as an infected place, either at the time of slaughter or within 28 days starting with the date of slaughter. In such a case the compensation payable is 75% of what would otherwise be payable (sub-paragraph (3)).

Sub-paragraph (2) defines an infected place as a premises on which a notice has been served under an FMD order made under the 1981 Act which declares the premises to be an infected place. Such notices are served on farms or other premises where animals are infected with FMD. The infection may be diagnosed before slaughter, or subsequently through tests.

16. If paragraph 2 applies, paragraph 3 requires the Minister to cause a disease risk assessment to be carried out by an inspector of the Minister. The assessment is defined as an assessment of whether the occupier of the infected place or his staff had acted in a way, during the previous 21 days, so as to create a significant risk of spreading FMD. In carrying out the assessment, the inspector will be required to take account of compliance

with disease control measures required under the 1981 Act and orders and local authority regulations under the Act, co-operation with the inspector and any relevant report. A relevant report is any report resulting from a inspection of the place where the slaughtered animals were being kept which was carried out in the 21 days before the animals were slaughtered. The Minister must give the person to whom compensation is payable for the slaughtered animals a copy of the assessment. That person will then have 14 days in which to make representations to the Minister.

17. Paragraph 4 specifies what will happen if the inspector is unable to carry out a disease risk assessment because the occupier of the premises or a person under his control refuses him entry or obstructs him in carrying out the assessment. In this case the person entitled to the compensation will always receive 75% of the pre-FMD value of the slaughtered animals and will not have the right of appeal to an independent person.

18. Paragraph 5 requires the Minister to consider the assessment and any representations before deciding whether the person should receive all, some or none of the remaining 25% of the value of the "healthy" animals. The Minister must give the person a notice informing him or her of the Minister's decision.

19. Paragraph 6 gives the person 14 days starting with the day on which the notice under paragraph 5 is given in which to appeal in writing, subject to payment of a fee, the amount to be set in an order, which will be returned if the person is awarded all or any part of the additional amount on appeal. The appeal will be heard by an independent person whom the Minister must appoint. The procedure for appeals will be set out in an order. The independent person will decide how much compensation will be paid. The amount may be larger than the amount decided by the Minister, but cannot be smaller than 75% or greater than 100% of the value of the "healthy" animals. No interest will be payable on any further compensation paid following an appeal.

20. Paragraph 7 requires the Minister to consult representatives of persons likely to be affected by the compensation arrangements. He is required to consult before the matters to be covered by a disease risk assessment are decided for the first time, and after that before they are changed, as to what the matters to be covered in the disease risk assessment should be. After the matters to be covered by a disease risk assessment are decided or amended, the Minister is also required to publish them in such a manner she considers to be appropriate to bring them to the attention of people affected by the compensation arrangements.

21. *Clause 4* confers on the Minister the power to cause to be slaughtered animals because they have been vaccinated against FMD or other animal diseases specified by order. *Subsection (3)* provides a power to take any action required to slaughter the animals or required in connection with the slaughter. *Subsection (4)* requires the Minister to pay compensation for the slaughtered vaccinated animals of such an amount as she may prescribe by order. *Subsection (5)* provides that an order to extend the power to slaughter vaccinated animals to other animals diseases is subject to

affirmative resolution. *Subsection (6)* provides that an order prescribing an amount for payment of compensation is subject to negative resolution.

Part 2: Scrapie

22. *Clause 5* gives effect to *Schedule 2* which inserts a new Part 2A into the 1981 Act.

Sheep genotypes

23. New section 36A empowers the Minister by order to specify sheep genotypes which in her opinion are more susceptible than other sheep genotypes to infection by transmissible spongiform encephalopathies (TSE) generally, or by a particular form of TSE, or to becoming carriers. (TSEs include Scrapie and BSE).

Genetically susceptible sheep

24. New section 36B provides power for the Minister by regulations to make provision for the arrangements to enable genotypes in sheep to be established. These arrangements include taking samples from sheep and administering electronic identification devices to them and requiring the keepers of sheep subject to the arrangements to keep records of the genotype of the sheep.

25. New section 36C makes provision where sheep are identified as being of a genotype specified in an Order under section 36A. Subsection (2) requires the Minister to consider whether there are exceptional circumstances which allow the sheep to be used for breeding. Subsection (3) requires the Minister, in the absence of exceptional circumstances, to give notice on the keeper of the sheep. The effect of the notice is that subsections (7) to (9) apply. These prohibit the use of the sheep, or its semen, eggs or embryos, for breeding or connected purposes, require the destruction of any of its semen, eggs or embryos taken from the sheep and require the keeper of the sheep to arrange either within one month for the sheep to be castrated/sterilised or within 7 months to be slaughtered.

26. New section 36D makes provisions for appeals against a restriction notice. The appeal would be heard by an independent person ("an assessor") appointed by the Minister. An appeal must be brought within 21 days of the service of the restriction notice. In exceptional circumstances there is an extended period for bringing an appeal. If the assessor allows the appeal, he may revoke the restriction notice or direct that a further test in relation to the sheep is carried out. Subsection (7) provides a power for the Minister to make Regulations to supplement the provisions of section 36D. Subsection (8) provides that these regulations may make provision for appeals procedure, costs of further sampling or tests and recovery of these costs.

Enforcement

27. New section 36E applies where a person has not complied with a requirement of a restriction notice in relation to a sheep which is not subject to an appeal or which as a result of a successful appeal are no

longer subject to a restriction notice. Subsection (3) enables the Minister to take such reasonable steps as he considers appropriate to remedy the failure to comply. Subsection (4) provides that these may include arrangements for the slaughter or castration or sterilisation of the sheep. Subsection (5) provides power for the Minister to make Regulations supplementing the provisions of section 36E.

28. New section 36F creates offences. Subsection (1) creates offences committed by the person given a restriction notice of selling a sheep to which the restriction notice applies, or its semen, eggs or embryos, or failing without reasonable excuse to comply with any of the restrictions imposed on him by subsections (7) to (9) of section 36C. Subsection (2) creates an offence for anyone else knowingly to use semen, eggs or embryos taken from a sheep subject to a restriction notice. Subsection (3) creates an offence of failing to comply with provisions of Regulations made under section 36B (provision for arrangements to enable genotypes in sheep to be established). Subsection (4) creates an offence of obstructing an inspector or anyone else in the discharge of their functions under Part 2A of the Act.

Power of entry

29. New section 36G provides powers of entry for inspectors or constables to carry out functions under new Part 2A. It will be possible to exercise this power at all reasonable times except for premises which are used only as private dwelling-houses, where 24 hours notice must be given.

30. New section 36H makes further provision about powers of entry. These apply if there are reasonable grounds and if either of the two further conditions in subsection (3) or (4) are satisfied. In such a case, a justice of the peace may issue a warrant authorising an inspector or a constable to enter premises, if necessary using reasonable force, for the purposes of carrying out their functions under Part 2A of the Act or to ascertain whether one of their functions should be exercised. New section 36I contains provisions where inspectors or constables enter premises under the powers in section 36G(1) or section 36H. It enables them to inspect and, if necessary seize and detain, records.

31. New section 36J creates offences relating to these powers of entry.

32. New section 36K creates powers for the Minister to make regulations providing for payment of compensation for losses suffered or costs incurred as a result of the exercise of powers under Part 2A of the Act.

General

33. New section 36L provides that powers to make regulations under Part 2A of the Act are exercisable by statutory instrument subject to negative resolution procedure.

Part 3: Enforcement

Powers

34. *Clause 6* and makes further provision for powers of entry to carry out

vaccination. *Subsection (4)* adds ten new subsections to section 16 of the 1981 Act. If there are reasonable grounds and either of the two further conditions in new subsections (5) or (6) are satisfied, a justice of the peace may issue a warrant authorising an inspector to enter land or premises, if necessary using reasonable force, for the purpose of the power to vaccinate. New subsections (8) to (10) contain provisions where inspectors enter land or premises under powers to vaccinate or a warrant.

35. *Clause 7* inserts a new section 62A into the 1981 Act to provide a power of entry for the purpose of ascertaining whether any power to cause animals to be slaughtered should be exercised and for the purpose of doing anything in pursuance of the exercise of that power.

36. It also inserts new sections 62B and 62C. New section 62B makes further provision about powers of entry. These apply if there are reasonable grounds and if either of the two further conditions in subsection (3) or (4) are satisfied. In such a case, a justice of the peace may issue a warrant authorising an inspector to enter premises, if necessary using reasonable force, for the purpose of ascertaining whether any power to cause animals to be slaughtered should be exercised and doing anything in pursuance of the exercise of that power. New section 62C contains provisions where inspectors enter premises under the powers in section 62A(1) or section 62B.

37. Finally, it inserts a new section 66A which makes provision about refusal and obstruction.

38. *Clause 8* inserts new section 62D into the 1981 Act to provide a power of entry for the purpose of ascertaining whether animals are carrying antibodies to FMD or are otherwise infected with FMD. Subsection (2) provides for this power to be extended to such other diseases as the Minister may specify by order.

39. It also inserts new sections 62E and 62F. New section 62E makes further provision about powers of entry. These apply if there are reasonable grounds and if either of the two further conditions in subsection (3) or (4) are satisfied. In such a case, a justice of the peace may issue a warrant authorising an inspector to enter premises, if necessary using reasonable force, for the purpose of ascertaining whether animals are carrying antibodies to FMD or are otherwise infected with FMD. New section 62F contains provisions where inspectors enter premises under the powers in section 62D or a warrant.

40. *Clause 9* creates a new power for inspectors to inspect vehicles to check compliance with disease control measures by inserting a new section 65A into the 1981 Act. It will be possible to exercise this power only in areas and periods designated in an order and the inspector must be accompanied by a uniformed police officer.

41. *Clause 10* clarifies the powers under the Animal Health Act 1981 to arrest for obstruction. It makes clear that police officers and Departmental inspectors may arrest anyone who prevents them from carrying out their functions under the Act.

Offences

42. *Subsection (1) of clause 11* inserts new sections 28A and 28B into the 1981 Act. Section 28A creates a new offence of deliberately infecting an animal with certain diseases or intending to do so and sets the penalties. The penalty on conviction by a Magistrates' Court could be up to 6 months' imprisonment and/or a fine of up to the statutory maximum (currently, #5,000) and the penalty on conviction by a Crown Court could be up to 2 years' imprisonment and/or an unlimited fine. Section 28B gives the court power to disqualify a person convicted with the offence from keeping or dealing in animals for such period as it sees fit. After one year (and each subsequent period of one year) the person may apply to have the disqualification lifted or its duration reduced. The diseases to which this new offence applies are listed in new Schedule 2A to the 1981 Act, inserted by subsection (2) of clause 11.

43. *Clause 12* substitutes a new section 75 in the 1981 Act which standardises the maximum penalties for offences against the Act for which no penalty is specified to a new maximum of a fine not exceeding level 5 on the standard scale (currently, #5,000) and/or 6 months' imprisonment.

44. *Clause 13* inserts a new section 71A which extends the time limit within which prosecutions for offences under the 1981 Act can be brought. It enables prosecutions to be brought within six months of the date on which evidence of the offence is discovered, provided this is within three years of the date on which the offence was committed.

Part 4: General

45. *Clause 14* defines Minister for the purposes of the provisions inserted by the Bill into the 1981 Act which contain that expression. *Clause 17* provides that the Bill extends to England and Wales only.

FINANCIAL EFFECTS OF THE BILL AND EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

46. With regard to the FMD provisions, additional costs to the Government will result from the compensation scheme for infected premises, arising from the disease risk assessments, the appeals system and publication of the scheme. Due to the link with the incidence of FMD cases, it is not possible to predict these costs with any certainty, although illustrations and rough estimates of the cost of individual components are made in the Regulatory Impact Assessment.

47. Manpower requirements for this scheme would largely be met by the State Veterinary Service who already attend each Infected Premises in order to confirm disease, and would carry out the disease risk assessment at this stage. Administration of payments would be covered by existing provisions for current compensation arrangements.

48. Although additional costs would arise from any extended culling programmes carried out under the new powers, any such programme would have the ultimate objective of bringing the epidemic under control

more quickly. This would in turn reduce the total number of animals that need to be slaughtered, disposed of and compensated for.

49. With regard to the TSE/Scrapie provisions, assuming powers for compulsory genotyping of sheep were applied, expenditure planned under the existing voluntary scheme would need to be telescoped into a much shorter period. (The voluntary scheme would need to continue for about 15 years). Expenditure in the short term would therefore rise but expenditure currently planned for later years would not be needed. Total costs could range from #10 million if only rams were sampled, identified and genotyped to up to #300 million if the whole UK flock were involved. However expenditure would be phased over 4 years or so.

50. Additional manpower would be required in both England and Wales to run the scheme. Precise numbers would depend on the timing for introduction of the requirements.

REGULATORY APPRAISAL

51. The Regulatory Impact Assessment for the FMD provisions concludes that the benefits of introducing additional control measures to tackle the outbreak of Foot and Mouth disease and future animal diseases outweigh the costs. Almost all the provisions will only affect farmers and others whose stock are slaughtered for disease control purposes. The Bill will not in itself impose any additional costs on farm businesses which are meeting current requirements as it does not introduce any new obligations. The main benefits of the measures would be to allow a more flexible and effective slaughter policy, more effective enforcement of existing disease control obligations and the creation of a positive incentive for farmers to comply with these obligations. Quicker containment and eradication of the disease would indirectly benefit all farmers, other sectors of the rural economy and the taxpayer in general.

52. The Regulatory Impact Assessment on the scrapie provisions concludes that the benefits of making genotyping compulsory would outweigh the costs. Costs would arise from producers having to slaughter/castrate any animals found to have unacceptable genotypes. The main benefits would be to consumers who would have reassurance that sheepmeat on sale was only from animals of acceptable genotypes, so minimising any risk they faced from BSE in sheep. Government would also benefit in terms of being able to safeguard human health and the future of the sheep industry and sheep farmers would benefit from advancement of the achievement of scrapie-free status for their animals.

EUROPEAN CONVENTION ON HUMAN RIGHTS

53. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Margaret Beckett, Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement:

'In my view the provisions of the Animal Health Bill are compatible with the Convention rights'

COMMENCEMENT DATE

54. It is intended that the Act will come into force on a day to be appointed by order of the Secretary of State.