

Explanatory Memorandum to the Diseases of Swine Regulations 2014.

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Diseases of Swine Regulations 2014.

Rebecca Evans

Deputy Minister for Agriculture and Fisheries

15 July 2014

1. Description

This Statutory Instrument sets out the control procedures to be used in an outbreak of Classical Swine Fever (CSF), African Swine Fever (ASF) or Swine Vesicular Disease (SVD).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Order will be made by the Welsh Ministers and the Secretary of State for Environment, Food and Rural Affairs acting separately, but within a single composite legal instrument. The Secretary of State will act in relation to England and Scotland.

The Welsh Ministers may exercise powers under section 2(2) of the European Communities Act 1972. Section 59(2) of the Government of Wales Act 2006 empowers the Welsh Ministers to exercise the section 2(2) powers if they have been appropriately designated for the purposes of section 2(2). The Welsh Ministers have been designated in relation to the common agricultural policy. The relevant Designation Order is SI 2010/2690.

A composite instrument is likely to minimise the differences of approach between administrations. Furthermore, the order will be implemented across Great Britain by the Animal Health and Veterinary Laboratories Agency and a single instrument with wholly common provisions is far more advantageous to the Agency. Defra and the Welsh Government consider the consistent policy and implementation dates and enforcement coordination achieved by a composite statutory instrument are desirable for all three administrations and for those affected by the Order who may otherwise have to consult several pieces of legislation.

As this instrument is also subject to a Parliamentary procedure it is not considered reasonable or practicable for them to be made bilingually.

It is therefore considered appropriate that the Regulations be made by the Assembly's negative resolution procedure.

3. Legislative background

These Regulations are made under section 2(2) of the European Communities Act 1972 and provide for the implementation of the CSF Council Directive 2001/89/EC, the ASF Directive 2002/60/EC, and the SVD Directive 92/119/EC. The Regulations only apply when ASF, CSF or SVD are suspected or confirmed in the GB.

Previously, the SVD Directive has been transposed utilising the enabling powers available in the 1972 Act, but CSF and ASF Directives have been transposed by two separate Orders made under the Animal Health Act 1981.

These Regulations replace eleven SIs (as set out below) and certain powers from the Animal Health Act 1981 are disapplied.

4. Purpose & intended effect of the legislation

Pig notifiable disease outbreaks can cause significant impacts and costs to both industry and the taxpayer. If an outbreak occurs, government intervention is important in order to eradicate disease and regain disease freedom as quickly as possible.

These Regulations consolidate legislation for the control of disease during an outbreak of ASF, CSF or SVD in GB by replacing 11 Statutory Instruments:

- The African Swine Fever Compensation Order 1980
- The African Swine Fever (Wales) Order 2003
- The African Swine Fever (England) Order 2003
- The African Swine Fever (Scotland) Order 2003
- The Classical Swine Fever (Wales) Order 2003
- The Classical Swine Fever (England) Order 2003
- The Classical Swine Fever (Scotland) Order 2003
- The Swine Vesicular Disease (Wales) Regulations 2009
- The Swine Vesicular Disease (Amendment)(Wales) Regulations 2009
- The Swine Vesicular Disease Regulations 2009
- The Swine Vesicular Disease (Scotland) Order 2009

The Regulations implement EU law (namely Directive 2001/89/EC for CSF; Directive 2002/60/EC for ASF and Directive 92/119/EC for SVD), which requires EU Member States to take strict control measures to eradicate disease quickly and effectively if an outbreak occurs in its territory. Having a single GB-wide instrument should lead to improved compliance and more effective enforcement of controls during an outbreak.

The Regulations are clear and transparent about the measures to be taken during an outbreak of one of these diseases in GB, which in turn should reduce the impact of any outbreak by aiding compliance and enforcement of controls. The Welsh Government needs the appropriate legal powers to deliver a fast and effective response to any outbreak of CSF, ASF or SVD. The overall aim is to reduce the total costs and burdens of the disease outbreak to businesses and taxpayers.

As with the previous legislation, the Regulations would only apply when ASF, CSF or SVD are suspected or confirmed in GB. The likelihood of a disease outbreak in GB is assessed as being very low for CSF and ASF and negligible

for SVD. The last outbreak of CSF occurred in the UK in 2000; the last case of SVD occurred in the UK in 1982; ASF has never occurred in the UK.

A table identifying the key changes to the current legislation addressed in the Diseases of Swine Regulations can be found at Doc 1.

5. Consultation

A four week public consultation was carried out on these Regulations from the 28 April. It was a joint consultation paper agreed by the Welsh Government, Scottish Government and Defra. Defra co-ordinated the process and the relevant consultation documents were published on GOV.UK (https://www.gov.uk/government/publications?departments%5B%5D=department-for-environment-food-rural-affairs&publication_filter_option=consultations). Formal invitations to reply were sent to all major industry stakeholder organisations.

Prior to the formal consultation, a number of stakeholders had been informally consulted during the drafting of the SI. Also during 2013, a Tier 2 UK-wide CSF emergency exercise, Exercise Walnut, was undertaken to assess readiness to respond to an outbreak of CSF. The exercise employed an advanced draft of the Regulations and lessons identified were taken account of in the version of the Regulations consulted on.

There were 8 responses in total. A summary of these responses is scheduled to be published on 14 July 2014 on the GOV.UK website.

The consultation responses clearly supported the idea of consolidating the existing regulations for CSF, ASF and SVD (87.5% agree & 12.5% strongly agree).

The consultation also asked for the industry whether SVD should be included in the Regulations as a recent decision from the World Organisation for Animal Health may mean that the existing controls for this disease may no longer be required in the future. Alternatively, it was proposed that all parties continue to rely on the separate SVD orders made in Wales, England and Scotland in 2009. Half of the consultation responses supported the inclusion of SVD in the Diseases of Swine Regulations. 50% of the responses were clear in their support for retaining SVD requirements in the regulations, 12.5% were undecided and three parties (37.5%) were in favour of its removal.

There was unanimous agreement that the Regulations should include a limited derogation from culling certain category of pigs. This derogation was not included in the current CSF and ASF regulations as they were made in 2003, before the derogation was enshrined in EU law. This derogation is in the current SVD regulations. The derogation will allow, in strictly controlled circumstances, for some pigs to be exempted from slaughter if they are for scientific research, educational purposes or of high value for conservation or genetic purposes. This would be subject to strict biosecurity requirements and dependent on approval by a Veterinary Inspector.

In addition to the above, some technical redrafting has been undertaken to address improvements identified by consultation responses.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared as the Diseases of Swine Regulations consolidate existing regulations and transpose European Commission Directives.

The Disease of Swine Regulations will have no negative impact on business, charities or voluntary bodies compared to existing domestic legislation that is being revoked by this instrument.

The legislation does not apply when there are no suspected or confirmed cases of the pig notifiable diseases ASF, CSF or SVD in GB.

In the event of an outbreak, there are no new costs to businesses under this legislation as the GB control policy remains unchanged. The likelihood of a disease outbreak is currently assessed as being very low for CSF and ASF, and negligible for SVD by AHVLA International Disease Monitoring team.

This instrument will have no negative impact on the public sector compared to existing domestic legislation that is being revoked by this instrument.

The Regulations do not have any effect relevant to the statutory duties at sections 77-79 of the Government of Wales Act 2006, or to the statutory partners (sections 72-75).

Comparison of the proposed Diseases of Swine SI with existing domestic legislation

	Disease control measure/s	The proposed Diseases of Swine SI
1	Killing of pigs on an Infected Premises	<ul style="list-style-type: none"> ▪ The potential derogation from culling for special categories of pigs (including breeds at risk, research animals and zoo animals) available under the EU law for ASF and CSF is included. This derogation was omitted from the ASF and CSF 2003 Orders. This will make it possible to spare rare and genetically valuable pigs (which may also have a high monetary value) from culling in exceptional circumstances where disease control would not be jeopardised and consideration of wider issues and impacts allow this. ▪ EU law requires all pigs to be killed on a premises infected with ASF. The Joint Committee on Statutory Instruments reported that the ASF (England) Order 2003 failed to clearly implement the EU requirement to kill all pigs on infected premises. The Welsh ASF Order mirrored the English one. The proposed SI clearly transposes the EU requirement and therefore reduces the risk of legal challenge.
2	Declaration of control zones	EU law requires Member States to put in place control zones (a protection and surveillance zone) around a premises where disease has been confirmed. The process for declaring control zones has been simplified and improved by removing the existing requirement to use declaratory orders to establish control zones for ASF and CSF. Declaratory orders involve a statutory process, which may take more time.
3	Declaration of a Temporary Control Zone (TCZ) around a suspect premises for SVD	If there is a clinical suspect case of SVD, Foot-and-Mouth Disease (FMD) would also be suspected (as the clinical signs for SVD and FMD in pigs are identical) and therefore a FMD TCZ would be put in place, with movement controls on all FMD-susceptible animals, including cattle, sheep, pigs and goats. However, in a scenario that SVD alone is suspected (i.e. from a non-negative pre-export test), the proposed SI includes optional powers for a SVD-specific TCZ, which requires movements controls on pigs only and optional controls on the movement of other animals that may spread disease.

4	Measures when disease has been confirmed in domestic pigs	<p>Whilst the GB disease control strategy remains the same, there is greater transparency about the likely control measures to be applied during a disease outbreak in the proposed regulations.</p> <p>For example, the responsibilities of the occupier of the premises and the delivery partner (AHVLA) for cleansing and disinfection of infected premises are more clearly set out. Also the proposed legislation is transparent about what control measures apply in the protection and surveillance zones for all the diseases.</p>
5	Measures when suspicion and confirmation of disease in feral pigs	<p>The proposed legislation more clearly sets out the full set of powers and control measures required to effectively control disease in feral pigs when there is suspicion or confirmation of disease and to demonstrate disease freedom as quickly as possible.</p>
6	Vaccination policy	<p>Under EU law there are a number of controls required if vaccination against CSF is permitted. Previous FVO audits have criticised the fact that these controls were omitted in the current CSF 2003 Orders and would therefore require emergency legislation to be drafted if vaccination was permitted during a serious outbreak of CSF.</p> <p>This is addressed in the proposed Regulations.</p> <p>Our published GB policy on vaccination is unchanged – vaccination would not be a routine control measure and is unlikely to be considered appropriate during a controlled outbreak of CSF.</p>