

## End law-breaking on bovine TB, Minister told

Strictly embargoed: 00.01 16 February 2009

Badger Trust has written to Jane Kennedy MP, Minister for Farming and the Environment, calling on her to immediately end England's policy of breaking current EU law on bovine TB testing [1].

For seven years, England and Wales allowed cattle that are "inconclusive" to the traditional skin test to have two retests, each at least 42 days after the previous one.

But EU law only permits one retest when, if the animal is still inconclusive, "it shall be deemed to be positive" and slaughtered [2]. The policy is therefore contrary to EU Directive 64/432, as amended in 2002.

Elin Jones, Minister for Rural Affairs in Wales, has determined that Wales will comply with EU law from 1 March 2009. But no such commitment has been made in England.

Badger Trust believes that Defra's policy of leaving inconclusive animals on farms for at least six weeks longer than EU law permits dramatically increases the likelihood that the disease will persist in herds and spread to others.

This is because Government data obtained by Badger Trust under the Freedom of Information Act 2000 shows that up to seven out of ten twice-inconclusive reactors were later found to be infectious by the more sensitive gamma interferon test in the first six months of 2008 [3].

David Williams, chairman of Badger Trust, commented: "Leaving inconclusive cattle on a farm is asking for trouble. With almost three-quarters of twice-inconclusive cattle turning out to be infected, breaking EU law and leaving them on the farm for weeks longer than is legally permitted is potentially disastrous. Many farms lack adequate isolation facilities [4] and the risk to the wider herd is huge."

Badger Trust has also called on Ms Kennedy to change the rules so that all inconclusive cattle are compulsorily tested with the gamma interferon blood test as a matter of urgency or slaughtered along with conclusive reactors.

Badger Trust has also expressed regret that the industry-led Bovine TB Eradication Group has failed to act decisively on England's failure to adhere to EU [5].

Mr Williams commented: "This is not a decision to be left to a lacklustre industry group, some members of which have been all too eager to demand badger culling in the past but show little enthusiasm for speeding up the removal of infected cattle from farms.

"Bovine TB testing is a matter of EU law and the Minister has a duty to enforce it. The EU highlighted this deficit on an inspection visit in 2004 [6]. Inspectors are due to return this year and there may be some difficulty explaining why the EU Regulation has still not been implemented.

"This is also a matter of huge concern to tax payers, because they are picking up the compensation bill when TB persists in herds."

ENDS

For further comment, contact Badger Trust spokespersons: David Williams in Surrey on 07768 518064; Jack Reedy in Warwickshire on 07751 731107; Steve Clark in Cardiff on 07867 673054; or Pauline Kidner in Somerset on 07717 651513.

1. See attached letter below.

2. See COUNCIL DIRECTIVE of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (64/432/EEC) (OJ P 121, 29.7.1964, p. 1977). As amended by Commission Regulation (EC) No 1226/2002 of 8 July 2002. The amended Directive clearly states: "[Inconclusive] Animals which are not negative to this second test shall be deemed to be positive to the test." The amended Directive is available online at: <http://tinyurl.com/auxuom>

3. The number of twice-inconclusive cattle that were found to be positive to the gamma interferon test:

**Date range:**  $n$  positive/ $n$  tested (percentage positive)

**23 October 2006-31 January 2006:** 66/133 (50%)

**2007:** 793/1810 (44%)

**1 January 2008-30 June 2008:** 652/976 (67%)

Source: Defra, 2008.

4. The last official EU inspection of the UK's TB control programme in 2003 found that "isolation of animals under restriction was not properly implemented" on the farms visited and "no official supervision

of isolation is performed". See Directorate-General SANCO, *Final report of a mission carried out in the United Kingdom from 17 to 26 November 2004 in order to evaluate the bovine tuberculosis eradication programme*, (DG(SANCO)/7251/2004 – MR Final) for more details.

5. At its meeting on 16 December, the Bovine TB Eradication Group "acknowledged that the Inconclusive Reactor policy in England needed to be compliant with the Directive" but decided to "revisit" this breach of EU law at an unspecified time in the future. For a summary of the Bovine TB Eradication Group's meeting, see <http://www.defra.gov.uk/animalh/tb/partnership/eradication-group/meetings/081216.htm>.

6. In 2004 EU inspectors reported "**shortcomings ... in the interpretation of the follow-up test results in inconclusive animals**". See Directorate-General SANCO, *Final report of a mission carried out in the United Kingdom from 17 to 26 November 2004 in order to evaluate the bovine tuberculosis eradication programme*, (DG(SANCO)/7251/2004 – MR Final) for more details.

**Rt Hon Jane Kennedy MP**  
**Minister for Farming and the Environment**  
**Defra**  
**Nobel House**  
**17 Smith Square**  
**London**  
**SW1P 3JR**  
**11 February 2009**  
**cc. Rt. Hon Jane Kennedy, MP**  
**108 Prescott Road, Liverpool, L7 OJA**



Dear Ms Kennedy,

**Re: Bovine TB in cattle**

Thank you for taking the time to meet us in January, to discuss bovine TB. As I said at the time, Badger Trust very much welcomes the decision by Hilary Benn, Secretary of State, not to implement a badger cull.

We remain concerned about the disease and the apparent increase. At our meeting, we briefly discussed inconclusive reactors and we continue to be particularly anxious about these. We have completed some of our own research on this subject, and have found some worrying statistics.

Your Department's own data shows that a very high proportion of cattle that are twice-inconclusive to the skin test go on to test positive to the gamma interferon test. Using Freedom of Information, we have found that the percentage of positive cattle has ranged from four in ten animals to almost seven in ten animals following the implementation of gamma interferon testing in 2006:

<b>Time period</b>	<b>Number of twice-inconclusive cattle tested with gamma interferon</b>	<b>Number of cattle positive to gamma interferon</b>	<b>Percentage of cattle positive to gamma interferon</b>
23 Oct 2006-31 Jan 2006	133	66	50%
2007	1810	793	44%
1 Jan 2008-30 Jun 2008	976	652	67%

Clearly, inconclusive cattle pose a very significant risk. Given the often inadequate isolation facilities on farms (together with Animal Health's poor enforcement of isolation<sup>1</sup>), many of these animals will continue to seed infection into their herd, helping bovine TB to persist.

1 EU inspectors found that "isolation of animals under restriction was not properly implemented" on the farms visited and "no official supervision of isolation is performed". See Directorate-General SANCO, *Final report of a mission carried out in the United Kingdom from 17 to 26 November 2004, in order to evaluate the bovine tuberculosis eradication programme*. 2005 (DG(SANCO)/7251/2004 - MR Final).

Leaving inconclusive cattle in the herd for longer than is necessary can have disastrous effects, clearly lead to re-infection, and is contrary to current EU law.

Directive 64/432/EEC clearly states: "[Inconclusive] Animals which are not negative to this second test shall be deemed to be positive to the test." In other words, only one retest of inconclusive cattle is permitted, not two. Because you allow two retests, in breach of the Directive, a large number of infectious cattle are left on the farm for a minimum of 42 further days whilst awaiting their second retest.

This breach of the Directive has persisted for at least seven years, following its last amendment in 2002. Elin Jones, Minister for Rural Affairs in Wales, has determined that Wales will comply with EU law from 1 March 2009, but no such commitment has been made in England. It is surely perverse that from next month, many infected cattle in England will be left on the farm for six weeks longer than infected cattle in Wales.

Indeed, we believe that you should go beyond the minimum EU criteria for TB testing. All inconclusive cattle should be subject to the gamma interferon test, rather than wait six weeks for a retest with the traditional skin test. The combination of the skin test and gamma interferon gives a very high sensitivity and, if gamma interferon is focused on inconclusive cattle it offers the best chance of the early removal of infected cattle from the herd.

We regret that the industry-led Bovine TB Eradication Group has failed to act decisively on England's failure to adhere to EU legislation. At its meeting on 12 December 2008, the Group acknowledged the deficiency but then promptly put the issue on the back-burner to be considered at an unspecified "later date".

This hardly gives us confidence in this Group to provide urgent or useful advice on policy. I also note, for example, that so far the Group's only recommendation is for the reintroduction of the Disease Report Form (DRF) "in particular as evidence relating to the source of TB in a breakdown herd".

We are not surprised that the Group has recommended this. The DRF has traditionally been used by state vets to pin the blame for an outbreak on badgers. With many members of the Group being very keen on badger culling, they will see the DRF as useful evidence for their cause. Indeed, Animal Health used the DRF data to influence Lord Rooker, who went on to tell the Environment, Food and Rural Affairs Select Committee that "70 per cent of the breakdowns are attributed to badger to cattle transmission"<sup>2</sup>.

Unfortunately, Animal Health did not tell Lord Rooker that the DRF is a direct descendant of the TB49 form, slated by Professor Krebs in 1997 for being: "subjective and not always adequately supported by the evidence"<sup>3</sup>. Thus the "70 per cent" claim has no reliable basis.

Nothing has changed since then. As EU inspectors noted in 2004, "[epidemiological] investigations are not evaluated at local or central level in order to ensure that the decision concerning [the] source of infection / disease spread was correctly done and consequently appropriate measures would be taken"<sup>4</sup>.

Thus, the Bovine TB Eradication Group's sole recommendation is for the reintroduction of a paper form which takes up to four hours to complete but offers no meaningful, reliable epidemiological data.

But to return to the retesting of inconclusive cattle, we contend that this is not a matter for the industry group to decide anyway. Bovine TB testing is a matter of EU law and the Government has a duty to enforce it. On its inspection visit in 2004 the EU found "shortcomings ... in the interpretation of the follow-up test results in inconclusive animals"<sup>5</sup>. With the inspectors due to return this year, it may be difficult to explain why the directive has still not been implemented.

I very much hope, therefore, that you will take our proposal seriously and urgently amend the TB testing regime for inconclusives in England to at least parallel that in Wales.

Yours sincerely,

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<sup>2</sup> Rooker, J., Uncorrected transcript of oral evidence (to be published as HC 130-ii). Environment, Food and Rural Affairs Select Committee, 2007. House of Commons: p. Q537-599.

<sup>3</sup> Krebs, J., Bovine tuberculosis in cattle and badgers, M.o.A.a. Food, 1997

<sup>4</sup> Directorate-General SANCO, op. cit.

<sup>5</sup> Directorate-General SANCO, op. cit.

Dave Williams  
Chairman  
Badger Trust