2. Identification and control of animals showing symptoms of disease

Introduction

2.1 Effective control of a new disease in animals required government to identify its nature and extent as quickly as possible. Bearing in mind that animals are raised on thousands of separately owned holdings, often in remote areas, this is no easy task. This chapter describes the powers and duties available under the Animal Health Act 1981 in respect of:

i. the identification of outbreaks of animal disease;
ii. the assessment of their severity and status; and
iii. the means of controlling the spread of the disease

that were in force at the end of 1986. It then considers the changes made to these powers and duties from that date until 20 March 1996, where these changes were not prompted by BSE.

The Animal Health Act 1981

2.2 This Act consolidated earlier animal health legislation and applied to England, Wales and Scotland. Its equivalent in Northern Ireland was the Diseases of Animals (Northern Ireland) Order 1981, which explicitly covered a larger number of diseases but which was essentially similar as far as BSE was concerned and is therefore not described separately.

2.3 The Act gave Ministers wide Order-making powers to prevent the spread of disease. There was no requirement to consult before making such Orders. The Act defined ‘disease’ to mean, unless the context required otherwise, cattle plague, pleuro-pneumonia, foot and mouth disease, sheep-pox, sheep scab, or swine fever, but it specifically allowed for the definition of ‘disease’ to be extended to include any other animal disease.

2.4 The powers granted by the Act were exercisable by the Minister of Agriculture for the whole of Great Britain, by the Minister of Agriculture, the Secretary of State for Scotland and the Secretary of State for Wales acting jointly, or by ‘the appropriate Minister’ which meant the Minister of Agriculture in England and the appropriate Secretary of State in either Scotland or Wales.
2.5 The Animal Health Act 1981 was not restricted to the prevention of disease in animals. It also empowered Ministers to designate as a zoonosis any disease or organism carried in animals which in their opinion constituted a risk to humans; the Act could then be used to make Orders for the purpose of preventing the spread of disease between animals and between animals and humans.

2.6 Many of these Order-making powers derived from earlier legislation which had been deployed against diseases such as brucellosis and tuberculosis (TB) in cattle, foot and mouth disease, or non-cattle infections such as salmonella in eggs and poultry, and swine fever. Orders continued to be made under the Act against these and other diseases both before and after 1986. Many such Orders were relevant to all kinds of disease, including BSE; for example, restrictions on the movement of animals under section 8, provision for slaughter and compensation under sections 31–34, and the notification of disease under section 15. Other Order-making powers were more specific in their direction or application; for example, those dealing with the seizure and disposal of carcasses under section 35, which were applied only to BSE and a few other diseases.

2.7 A particular feature of the Animal Health Act 1981 was that it offered a quick and simple process for the introduction of secondary legislation. Mrs Elizabeth Attridge, the Under Secretary head of the Animal Health Group of the Ministry of Agriculture, Fisheries and Food (MAFF), told the Inquiry:

> Statutory instruments under the Animal Health Act are relatively easy to make. They are laid before Parliament and have no Parliamentary procedure. On that particular Act it was not difficult to make statutory instruments, unlike the Food Act which was very difficult.¹²

2.8 Almost all the Orders made under this Act could be brought into effect by non-parliamentary procedure. This consisted simply of publishing the Order in the official government publications, the London Gazette and the Edinburgh Gazette, and by requiring local authorities notified by the Minister to publish the Order in a newspaper circulating in their areas, or publicise it by some other means required by the Minister. An exception to this was an Order made under section 32, which concerned the slaughter of and compensation for animals with diseases other than those listed in section 31.¹³ Orders made under section 32, which was used for BSE, were subject to the negative resolution procedure.¹⁴

2.9 The Animal Health Act was also unusual in that section 60 gave the police force of each police area responsibility for its execution and enforcement.¹⁵ But in addition ‘inspectors’ were given wide enforcement powers by section 63 of the Act. Inspectors were appointed on the one hand by the Minister, in which case their powers extended throughout Great Britain or the area to which they were appointed; and on the other, by each local authority,¹⁶ which was required by section 52 to

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¹¹ An animal disease that presents a risk to human health through a pathway of infection
¹² T117 pp. 98–9
¹³ The diseases defined in section 31 were: cattle plague, pleuro-pneumonia, foot and mouth disease, swine fever and poultry diseases
¹⁴ This meant that the new Regulation would come into force on the day specified without any parliamentary debate or approval, unless a resolution for annulment was laid and passed within 40 days. The ‘resolution for annulment’ process is known as ‘praying against’ a Regulation and is relatively uncommon
¹⁵ Article 42 of the Diseases of Animals (Northern Ireland) Order 1981 likewise made the Royal Ulster Constabulary responsible for enforcement
¹⁶ The relevant local authorities were the County Councils, London Borough Councils and metropolitan District Councils in England; County Councils in Wales; and Regional Councils in Scotland
appoint as many inspectors as it thought necessary for the execution and enforcement of the Act.

Identification of disease

2.10 A farmer faced with a condition that he did not recognise or that did not respond to a standard treatment would contact a private veterinary surgeon. The veterinarian, if unable to treat or diagnose the condition, would normally seek assistance from the nearest MAFF Veterinary Investigation Centre (VIC). As part of the State Veterinary Service (SVS) the VIC had access to research information and knowledge from its own databases and those of other VICS across the country, which together formed the Veterinary Investigation Service, and also from MAFF’s Central Veterinary Laboratory (CVL).

2.11 The VICS recorded such voluntary submissions of information from farmers, made through their vets, on the Veterinary Investigation Diagnosis Analysis (VIDA) system, thus creating a database of disease knowledge. Hence, the initial recognition of a new disease remained an entirely voluntary matter for farmers and private vets until it reached the VIDA system and could be identified in an orderly and structured way. In Scotland, a similar service was offered by the Scottish Agricultural Colleges, which were independent of MAFF.

2.12 For known diseases, explicit control measures were to be applied from the moment the disease was recognised. Section 15(1) of the Animal Health Act 1981 required anyone with an animal affected by disease to keep it separate from unaffected animals and to give notice to the police that it was suffering from a disease, with all due speed. Section 88(1) of the Act stated that

... unless the context otherwise requires, ‘disease’ means cattle plague, pleuro-pneumonia, foot-and-mouth disease, sheep-pox, sheep scab or swine fever

subject to section 88(2), which empowered Ministers to extend, by Order, this definition of ‘disease’ to comprise ‘any other disease of animals’.

Notification of disease

2.13 Once a new disease was recognised, the Minister could make an Order under section 15 requiring the separation and notification of any animal affected by that particular disease. This became the responsibility of anyone possessing such an animal or having charge of it, thus including both the farmer and the private vet, as well as anyone transporting or selling the animal on behalf of the owner. Failure to separate and notify was an offence. An Order made under this section of the Act usually required that the Divisional Veterinary Officer of MAFF be notified. It

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17 VICS provided a laboratory diagnostic service (see DM01 tab 4, footnote on p. 3)
18 A field service responsible for the implementation of statutory controls, including animal disease controls (see DM01 tab 4, footnote on p. 2)
19 The CVL carried out research and diagnostic services for diseases of farm livestock, other domestic animals, and wildlife where appropriate (see CVL First Annual Report 1990/91: Introduction)
20 S94 Matthews Dr D paras 4 and 5
21 That is, the officer in charge of the appropriate geographical area of the State Veterinary Service
was also usual for an Order to require that an affected animal was detained where it
was, whether alive or as a carcass, until a veterinary inspector had examined it. This
power was used for BSE when it was made notifiable in 1988.\textsuperscript{22} Although, at that
time and before, the EC could require notification of animal diseases in the Member
States by Directive 82/894/EEC, that power was not used in making BSE notifiable.

2.14 Notifiable diseases were monitored as part of an international effort to
establish their extent and spread so as to assist in the control and eradication of
animal diseases. Mr William Rees, formerly Chief Veterinary Officer (CVO),\textsuperscript{23}
explained the criteria used by MAFF and relevant international organisations, such
as the Office International des Epizooties (OIE), when deciding whether an animal
disease should be made notifiable:

First, there should be a sufficient number of cases with the disease so that the
relevant experience has accumulated in identifying the cases in the field.
Farmers as well as private veterinary surgeons should be able to recognise
the clinical signs of the disease. This is particularly important if there is no
test to detect the disease in the live animal, in which case the veterinary
surgeon must rely, in his diagnosis, on the clinical signs in the animal.
Secondly, consideration must be given to whether the notification policy will
actually achieve the objectives of both identifying all cases with the disease
and ascertaining the number of cases with the disease.\textsuperscript{24}

Control measures

2.15 As Mr Alistair Cruickshank, a former Grade 3 head of MAFF’s Animal Health
Group, told the Inquiry, making a disease ‘notifiable’ simply meant that:

. . . anybody who finds the disease, is required to notify it to the Ministry.
But it does not follow [that] any particular action is taken in relation to that
disease. It is mainly a statistical exercise . . . an information building
exercise\textsuperscript{25}

So notification did not in itself impose any measures to deal with the disease.

2.16 However, the range of available control measures was wide and, as with
notification, the appropriate powers were usually applied by Order to a particular
disease from the available ‘menu’ within the Animal Health Act itself, depending
upon the nature of the disease concerned. Dr Danny Matthews\textsuperscript{26} explained this as
follows:

Following confirmation of a notifiable disease in an animal, herd or flock the
measures introduced are based upon the epidemiology of the disease, the
consequential public and animal health risks presented, with inevitable
economic consequences, and the powers contained in the appropriate statute.
Increasingly the statutory bases of control are established in European law

\begin{itemize}
\item \textsuperscript{22} L2 tab 3 article 4
\item \textsuperscript{23} The role and responsibilities of the CVO are described in Chapter 4 of vol. 15: Government and Public Administration
\item \textsuperscript{24} S126B Rees p. 9 para. 18
\item \textsuperscript{25} T32 p. 97
\item \textsuperscript{26} Dr Danny Matthews was a former Veterinary Officer with the Veterinary Field Service, and then a Grade 7 (subsequently
Grade 6) Senior Veterinary Officer responsible for exotic viral diseases and BSE, 1988–96
\end{itemize}
but will usually have been predated by existing British legislation. Investigations will usually involve clinical inspections, coupled with sampling for serological evidence of infection. With rapidly spreading diseases such as foot and mouth disease priority may be given to sampling for the detection of virus rather than antibodies.

Consequential action may involve the slaughter of a single animal (a reactor) with further testing of the herd at a later date after a period in which movements out of the herd may be restricted. There will obviously be additional investigations in an attempt to determine the source of infection. Brucellosis and tuberculosis are two diseases that are dealt with by such an approach. Alternatively the nature of the disease may demand more drastic action in order to rapidly break a cycle of infection of other herds. This applies to exotic diseases such as foot and mouth disease, classical swine fever, avian influenza, fowl pest. In such instances confirmation of disease would result in rapid whole herd/flock slaughter and the enforcement of standstill orders on farms within a specified radius of the affected farm. Because live infected animals excrete large quantities of virus in such instances, with considerable potential for spread by air as well as through movements of animals, humans and products, immediate draconian action is both effective and justified.27

2.17 There were specific legislative provisions for control measures. Firstly, section 63 of the Act permitted the inspection of premises in almost any circumstances to establish the extent of disease. Inspectors, who could be appointed by the Minister or by the local authority,28 could enter any land, building or place where they suspected that:

i. the carcass of a diseased or suspected animal was kept or had been kept or disposed of in any manner;

ii. there was any pen, place, vehicle or thing in respect of which anyone had failed to comply with the Act or an Order;

iii. the Act or an Order had not been complied with.

2.18 Then, depending on the terms of any Order made under this section, an inspector could examine any carcass or animal, make any tests on animals he considered necessary, and mark those animals for identification purposes. This power enabled the authorities to check the true extent of the disease where owners might, for whatever reason, be reluctant to give notification of diseased animals. It therefore permitted more effective and complete control of infected animals by enabling more precise knowledge to be obtained.

2.19 Secondly, movement generally could be controlled by Orders made under section 8 of the Act, and movement of diseased or suspected animals in particular was controlled under section 25. These powers enabled Ministers to:

i. prescribe and regulate animal markings;

27 S94 Matthews Dr D p. 5 paras 16–17
28 County Council, London Borough Council or metropolitan District Council
ii. prohibit and regulate animal movement, including the removal of carcasses, fodder, litter and dung, and the isolation of newly purchased animals;

iii. prescribe and regulate the issue and production of movement licences; and

iv. prohibit and regulate the holding of markets, fairs, exhibitions and animal sales.

2.20 More specific Orders could be made under sections 9 to 11 to prohibit animal conveyance by particular means, where this could introduce or spread disease in Great Britain, and to regulate the export to Member States of the EC of animals or carcasses, whether or not subject to licensing arrangements.

2.21 The above powers, which provided a ‘menu’ of options, were usually implemented by veterinary inspectors’ being granted the power to serve notices on particular owners regarding individual diseased animals or entire herds, or by the publication of area-wide or national restrictions on movement. This could be further reinforced by the use of the power to mark and hence identify suspect animals and by the use of movement licences or permits, which could identify and control the movement of the animals in question by reference to the marking system.

2.22 Thirdly, section 7 of the Act empowered Ministers to make Orders prescribing and regulating the cleansing and disinfection of any places used for animals, including any vehicles, vessels or aircraft, and for the disinfection of the clothes of anyone in contact with diseased or suspect animals. This power had been widely used before 1986 in dealing with diseases which were particularly contagious and easily transmitted and spread by contact. In this respect, they complemented the controls requiring separation of diseased animals and those prohibiting or regulating movement.

2.23 Where outbreaks of disease were confined to relatively limited areas, sections 17 and 23 of the Act gave Ministers powers to declare that places or areas were infected with that particular disease. Within these infected areas or places, Ministers could make further Orders prohibiting or regulating movement of animals or people, requiring the isolation or separation of animals, prohibiting the removal of carcasses, fodder, dung, utensils and equipment from such areas or the destruction, burial, disposal or treatment of those items, and prescribing and regulating cleansing and disinfection, including clothes of people in those areas.

2.24 The risk to human health from the transmission of animal diseases was recognised by section 29 of the 1981 Act, which enabled the Ministers to make Orders designating as a zoonosis any disease or organism which carried such a risk. Further Orders could be made under this section to apply the provisions of the Act to the zoonosis and to require anyone who knew, suspected, or had information that any animal was affected by a zoonosis to give information to that effect to persons and in the form specified by the Order. The powers under this section were subsequently used to designate BSE as a zoonosis. Section 30 of the Act enabled a veterinary inspector who had reason to believe that an animal known or suspected of carrying a zoonosis had been on any land, to enter that land and make tests and

29 Orders concerning outbreaks of foot and mouth disease and the eradication of warble fly in cattle had been made under these sections before 1986
30 By means of the Zoonoses Order 1988
take samples to establish whether this was the case. This complemented the general entry powers of section 63 expressly in relation to zoonoses.

2.25 Further general powers for the purpose of preventing the spread of disease were contained in section 16. Under these, the Ministers could cause to be treated with vaccine or serum any animal or bird which had been in contact with a diseased animal or bird, or which appeared to have been in any way exposed to infection, or which was in an infected area. In order to fund the potentially very expensive cost of disease control, section 3 granted the power, subject to Treasury approval, to spend such sums as the Ministers thought fit, with the aim of eradicating diseases of animals in Great Britain. Section 3(2) enabled Ministers to authorise any veterinary inspector or other officer of the Ministry to inspect animals in order to obtain information for disease eradication.

Cattle identification and tracing

2.26 Effective control of animal disease required a means of identifying individual animals so that their movements could be traced. The Tuberculosis (England and Wales) Order 1984, made under the Animal Health Act, required owners of bovine animals to mark or identify them in a manner approved by the appropriate Minister and maintain such marks so that they were clearly identifiable. This requirement did not apply to an animal less than 14 days old that was not removed, or was removed only to a slaughterhouse, within that 14-day period.

2.27 The Movement of Animals (Records) Order 1960 required all animal movements to be formally recorded, with the exception of:

i. those between different parts of the same premises;
ii. movements to or from any premises for feeding, watering or milking purposes, and returns to the same premises, provided that the return took place within 24 hours of the first movement;
iii. movements of pigs (these were subject to different legislation); and
iv. movements to or from lairs, wharves or approved landing places used for imported animals.

These recording requirements did not apply to persons acting as market authorities or auctioneers at any market, saleyard, fairground or other premises, or to persons responsible for holding exhibitions of animals, or to anyone carrying on the business of transporting goods by rail, road, air or water when they were moving animals in the course of that business on behalf of other persons.

2.28 New measures to improve record-keeping in cattle herds were introduced in 1990, partly in response to BSE. These are described in ch. 5, vol. 5: Animal Health, 1989–96. The Bovine Animals (Identification, Marketing and Breeding Records)
Order 1990 required owners to identify their animals and keep a record of all calves born into the herd, including the identity of the dam, within 36 hours of birth in the case of dairy animals or seven days for all other cattle. It also prohibited the movement of identified animals and, by means of the Tuberculosis (England and Wales) (Amendment) Order 1990, took on certain identification and marking provisions from the 1984 Order. The movement of Animals (Records) (Amendment) Order 1990 amended the 1960 Order by requiring records to be kept for ten years instead of three years, as previously.

Slaughter and compensation

2.29 The measures discussed so far deal mainly with circumstances where separation, isolation and treatment offered some prospect of saving animals affected by disease. But in many cases, no such treatment was available or effective at a cost that would be economic. Moreover, some diseases were recognised to be so contagious that it was impossible in practice to provide the necessary isolation and separation, not just of the animals involved, but of the humans tending or treating them. In these cases slaughter, of the affected animals or of entire herds, was the only option for effective disease control. Sections 31 and 32 and schedule 3 of the Animal Health Act gave the Minister power to cause the slaughter of any animal affected by specified diseases, or by any disease to which he directed that the section should apply, or of any animal suspected of those diseases, or which had been in contact with, or in a place occupied by, diseased or suspected animals.

2.30 Section 32(4) required the Minister to pay compensation for animals slaughtered under these provisions, according to scales prescribed by Orders made by him with Treasury approval. Such an Order, exceptionally for the Animal Health Act, had to be laid before both Houses of Parliament and was subject to the negative resolution procedure.

2.31 Further powers relating to slaughter and compensation were contained in section 33, which enabled the Minister to employ and pay additional inspectors, valuers and other persons in order to execute those responsibilities, and to hold animals intended for slaughter for observation and treatment. Under section 34(2), the carcasses of all animals slaughtered under those provisions belonged to the Minister, and could be buried, destroyed or disposed of as he directed. In the case of burial, the Minister could use any ground belonging to the owner of the slaughtered animal for that purpose. Finally, the Minister could make Orders under section 34(7) prescribing the way in which the value of these slaughtered animals was to be calculated, for regulating applications for and the mode of compensation, and for prescribing and regulating the destruction, burial, disposal or treatment of carcasses.

2.32 If Ministers considered it expedient to prevent the spread of a disease specified in sections 31 and 32, they could make an Order under section 35 of the Act providing for the seizure of anything, animate or inanimate, that in their view might carry or transmit disease and for its destruction, burial, disposal or treatment. This

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36 The mother
38 Subject to the agreement of the Minister for the Civil Service
included animal carcasses, but not live animals. Section 35 also enabled Orders to be made to prescribe and regulate the destruction, burial, treatment and disposal of carcasses and anything else seized, and to prohibit or regulate the digging up of buried carcasses. It was an offence to throw or place the carcass of an animal which had died of disease or which had been slaughtered as diseased or suspected, into any river, canal, waterway or the sea, or to dig up a carcass buried by a direction of the Minister or a local authority. Compensation for the seizure of carcasses and for anything else seized under these powers was payable by the Minister subject to conditions similar to those relating to the slaughter and compensation provisions.

2.33 The powers relating to slaughter and compensation and the seizure, and compensation for seizure, of carcasses were subsequently used to deal with BSE by orders made under sections 32, 34, 35 and 36.

**Enforcement**

2.34 As noted above, the duty of executing and enforcing the provisions of the Animal Health Act and of every Order of the Minister was placed on the police force of each police area by section 60(1). Powers of detention, search, entry and apprehension were given to constables for this purpose. But section 62 gave the same powers (apart from those relating to rabies) to 'inspectors', and section 52 required every local authority to appoint as many inspectors and other officers as it thought necessary to execute and enforce the Act. In practice, the inspectors concerned would have been the trading standards officers employed by those authorities.

2.35 However, section 63(8) in turn gave an ‘inspector of the Minister’ the same powers as those of inspectors, while subsection (9) granted the Minister’s inspectors the additional power of entry to land or buildings where they thought animals had been held, to ascertain whether disease was present, or had been present. Section 65 gave the Minister’s inspector the further additional power to detain vessels, vehicles or aircraft. Thus, the widest and most effective powers were given to inspectors appointed by the Minister of Agriculture, notwithstanding the apparent similarity of the responsibilities placed on the police and local authorities.

2.36 In practice, these enforcement powers were executed by Veterinary Officers (VOs) of the Veterinary Field Service (VFS), the statutory arm of the State Veterinary Service. The VFS dealt with notifiable diseases, the protection of animal welfare, facilitating the export of animals and animal products through the control of notifiable disease and the provision of export certification verifying the status of the exported commodity, as well as meat hygiene and slaughterhouse inspection duties. According to Dr Matthews, the duties of VOs varied according to specialism, training and demand. His particular responsibilities were primarily in the area of disease control (notifiable diseases only), monitoring of licensed waste food plants and rendering plants. He explained further:

> As a VO I was personally involved in such episodes involving the eradication of swine vesicular disease in 1979, where whole herd slaughter

39 Under section 50, ‘local authority’ for the purposes of this Act meant the County Council, metropolitan District Council or London Borough Council
of pigs was practised, and Aujeszky’s disease in 1983/4 where despite an initial policy of whole herd slaughter there was an eventual change to partial herd slaughter followed by further testing . . . My role in such investigations would be to inspect and sample pigs, and, after confirmation that infection was present, to carry out the epidemiological investigation into the outbreak, trace origins and possible spread, supervise valuation and the subsequent depopulation and disinfection of the site . . . 40