Subject: State aid/United Kingdom
Aid No NN 76/2004 (ex N 263/2004)
Compulsory Scrapie Flock Scheme

Sir,

1. Procedure

(1) In accordance with Article 88(3) of the EC Treaty, by letter of 16 June 2004, registered on 21 June 2004, the United Kingdom Permanent Representation to the European Union notified the Commission of the 'Compulsory Scrapie Flock Scheme'. Additional information was sent to the Commission on 11 October 2004 and registered on 13 October 2004, on 26 April 2005, registered on 27 April 2005, and on 6 June 2006, registered on the same day. The file was transferred to the register of non-notified aid under number NN 76/2004, as it appeared from the information provided by the UK authorities that the scheme had already been put into operation.

(2) The Commission regrets that the UK authorities have in the meantime put the measures into effect.

(3) The Commission raises no objections to the measures notified by the United Kingdom under Articles 87 and 88 of the EC Treaty.

(4) In reaching this decision the Commission has taken the following considerations into account:

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2. Description

2.1 Title

(5) Compulsory Scrapie Flock Scheme (CSFS)

2.2 Duration of the scheme

(6) From 1 October 2003 for five years, after which the need for continuation will be reviewed. Any extension or amendments to the scheme will be notified to the Commission.

2.3 Budget

(7) A maximum of £12.6 million a year will be disbursed if all sheep and goats on all holdings prove to be infected with scrapie and have to be slaughtered and compensated for (‘worst case scenario’). Expenditure will be provided from the existing budgets for the National Scrapie Plan (NSP) for GB and the Northern Ireland Scrapie Plan (NISP) in NI.¹

2.4 Beneficiaries

(8) Owners of ovine and caprine animals, whose animals have been confirmed to be infected with scrapie.

2.5 Objective

(9) Enforcement by the UK authorities of the requirements of Community veterinary legislation and in particular Regulation (EC) No 999/2001, as amended, to eradicate transmissible spongiform encephalopathies (TSE) in ovine and caprine animals on farms where cases of scrapie are confirmed.

2.6 Legal basis


¹ The current schemes which make up the NSP and NISP were approved by the Commission by the following State Aid decisions: NSP-GB (N4/2001, N544/2002, N743/2002), NISP (N126/2002, N184/2002).
2.7 Description of the measure

(11) The scheme will be administered by the National Scrapie Plan Administration Centre (NSPAC) in GB and by the Department of Agriculture and Rural Development (DARD) in NI as part of their respective National Scrapie Plans. The participants in NSPAC will be the Department for Environment, Food and Rural Affairs (Defra) in conjunction with the Scottish Executive Environment and Rural Affairs Department (SEERAD) and the Welsh Assembly Government Department for Environment, Planning and Countryside (DEPC). Mundane operational activities at farm level will be conducted by the State Veterinary Service (SVS) in GB and DARD in NI.

(12) The current schemes which make up the NSP and NISP were approved by Commission decisions (see footnote 1). The present scheme implements the EU-wide scrapie eradication measures as required by Regulation 999/2001. The UK authorities inform the Commission that they were not in a position to pass domestic legislation implementing Regulation 999/2001 until July 2004 in England and Scotland, October 2004 in NI and November 2004 in Wales. The Voluntary Scrapie Flock Scheme (VSFS) (approved by State Aid Nos N743/2002 and N184/2002) applied to cases of scrapie before the effective entry into force of the respective UK enforcement legislation for Regulation 999/2001. After the entry into force of the respective legislation all the flocks/herds infected with scrapie were automatically registered in the present scheme.

(13) The scheme provides for the obligation for all holdings where cases of scrapie are investigated and clinically confirmed to be registered in the Compulsory Scrapie Flocks Scheme and for membership of any existing voluntary scrapie genotyping schemes currently operating in the UK NSP or NISP to be cancelled forthwith and flocks transferred to the current scheme. The monies will be disbursed from the existing NISP and NSP budgets.

(14) The scheme requires the following actions, the choice of which will depend on the outcome of a veterinary examination. The decision in each case will be taken on the basis of the most effective and best value control of scrapie.

1. Whole Flock/Herd Slaughter

Killing and completely destroying all animals, embryos and ova on the holding identified by the veterinary enquiry. Rams of the genotype recognised by the NSP and NISP as conferring the most resistance to scrapie infection (ARR/ARR) and ewes with at least one ARR allele and no VRQ allele that have a functioning NSP/NISP Electronic Identification (EID) device are exempt from slaughter. In GB, third party contractors to Defra, selected by tender, will collect and deliver the animals to an approved facility for slaughter and disposal. Similar arrangements are being put in place in NI. Only this option applies to goats as they are not known to possess genotypes that confer scrapie resistance.
2. **Genotyping Flock**

Genotyping the flock and then killing and completely destroying all non-resistant animals, embryos and ova on the holding, except for breeding rams of the ARR/ARR genotype that confers the most resistance to scrapie infection, breeding ewes carrying at least one ARR allele and no VRQ allele and sheep carrying at least one ARR allele which are intended solely for slaughter. Concurrent genotype-based breeding and slaughter restrictions will apply to sheep moved on or off the farm for specific purposes. Certain restrictions apply in respect of goats. The culling of sheep may be delayed for a period of up to three breeding years, or animals not of the specified genotypes may be allowed onto holdings where the level of the ARR allele and no VRQ allele in the breed or holding is low or to avoid inbreeding. During a transitional period to 1 January 2006, non-pregnant ewe lambs of unknown genotype may be moved onto the holding if obtaining replacement sheep of a known genotype is difficult.

In GB, all sheep in the flock will be blood sampled by the SVS and samples will be transported to a private laboratory to be genotype tested. The private laboratory is contracted to Defra by public tender (part of the National Scrapie Plan (NSP), approved under State Aid N4/2001). Sheep will be identified according to genotype using EID by State vets. A contractor to Defra, chosen and contracted by a public procurement exercise complying with EU procurement regulations for the NSP, will supply the EID. Unrestricted and restricted certificates will be issued by the SVS for the animals with the most resistant genotype (ARR/ARR) and ewes with one ARR allele and no VRQ allele respectively. Non-scrapie-resistant animals will be slaughtered and disposed of in the same way as under point 1. This will also apply in NI. In NI, blood sampling and EID application will be carried out by Private Veterinary Practitioners (PVPs) under contract to DARD and genotyping will be performed by a private laboratory contracted to DARD (under NISP State Aid N184/2002).

3. **Both options**

(15) When farmers decide to **restock** after culling, limited assistance will be provided for genotyping the replacement sheep. This will typically include 2 tests per animal. Exceptionally, if replacement animals are scarce, a limited number of additional tests may be provided.

(16) The UK authorities announce that the standard rate of compensation for an adult male sheep compulsorily slaughtered is £90. Where breeding rams are compulsorily slaughtered under the scheme, up to £500 (less the £90 paid if the adult male is killed and destroyed as opposed to compulsorily slaughtered and sold for the food chain, in which case no initial payment of £90 is made) will be paid directly to farmers by Defra in GB. The objective is to compensate for the value of the breeding ram compulsorily slaughtered on condition that the owner buys a **replacement breeding animal with the scrapie-resistant ARR/ARR genotype** before the next breeding year after the animal was slaughtered. The UK
authorities inform the Commission that there is no possibility of overcompensation as average market prices of replacement rams for the period in question range from a minimum of £632 to a maximum of £1103. The UK authorities also point out that similar measures and rates were approved by the Commission in State aid N743/2002. In NI, compensation for all slaughtered rams will be based on the individual market value of each culled ram established by the DARD team of valuation officers within the threshold of £700. The UK authorities explain that the possibility of individual valuation of NI flocks results from their comparatively smaller size.

(17) To determine the level of compensation for high value animals in GB, owners can choose to have them valued before culling at their own expense. Valuers from an approved list, nominated by the professional bodies of the Royal Institute of Chartered Surveyors (RICS) in England and Wales and the Institute of Auctioneers and Appraisers in Scotland (IAAS), need to be used to ensure the independence of the valuers. The same tasks in NI will be dealt with by an in-house team of Livestock Valuation Officers of DARD. The valuation will be binding on the authorities and the owner as regards the amount of compensation. Where a valuation is disputed, recourse to an independent valuer is available and the valuation is binding on the parties.

4. **TSE testing**

(18) Under Commission Regulations (EC) No 1915/2003 and (EC) No 1492/2004, TSE testing of culled and dead-on-farm sheep and goats over 18 months of age is exercised during the three-year restriction period. In GB, dead-on-farm animals will be collected as part of Defra's fallen stock arrangements for testing sheep and goats. Where derogation from the legislation permits, service providers will collect and dispose of the carcasses. In each case, the animal is decapitated, the carcass incinerated and the head is sent to the Veterinary Laboratory Agency (VLA), a Defra agency, to be tested. Negative results delivered within 24 hours will allow animals to go into the food chain. Similarly, in NI, dead-on-farm sheep over 18 months of age will be collected under the TSE surveillance arrangements operated by DARD and delivered to a central sampling point where samples will be extracted and transported to the DARD Veterinary Science Division (VSD) laboratory for testing. Culled sheep will be sampled at abattoirs under existing TSE arrangements and the sample will be transported to the VSD laboratory for testing.

**Eligible costs**

(19) Compensation will be paid directly to farmers by Defra on behalf of the GB competent authorities or DARD in NI for any sheep, goat, embryo or ova that have to be destroyed under the control measures or for the replacement of a culled ram.

(20) With regard to TSE testing of culled and fallen stock over 18 months of age, procedures as adopted for TSE testing of sheep and goats for human consumption (N264/2003) and TSE testing of sheep and goats fallen stock (N263/2003) apply. Fees for testing will be paid directly to State-run laboratories.
(21) Other services will either be provided by the UK authorities themselves or will be paid directly to service providers. To ensure that there is no overcompensation, providers of slaughter and disposal services were selected by Defra and DARD by tender procedures in accordance with EC public procurement rules. In GB, genotyping services will be provided by State vets and EID materials will be provided by a company contracted by Defra. In NI, blood sampling and EID materials will be supplied by private veterinary practitioners under contract to DARD and genotype testing will be provided by a private laboratory under contract to DARD.

(22) The UK authorities submit that compensation rates (see Annex) are based on various market indicators, such as: market prices, standard compensation rates for clinically suspect cases of scrapie killed for post mortem analysis, statistical summary of a selection of UK abattoirs and opinions of independent auctioneers (e.g. Hawes Livestock Auctioneers from York). Compensation for rams in NI will be based on the actual market value of individual rams. The UK authorities state that the rates reflect a fair market price in order to encourage reporting of scrapie, but that they are not generous enough to prevent anyone from seeking out infected animals to introduce them to the flock. They point out, moreover, that similar rates were approved for the Voluntary Scrapie Flock Scheme (State aid N743/2002).

(23) Compensation will only be paid for animals with genotypes that prevent entry into the food chain and are culled under these measures. The UK authorities will review the compensation rates at least on a yearly basis to exclude potential overcompensation.

(24) The following eligible costs will be covered at a rate of up to 100%:

1. Whole Flock/Herd Slaughter Option:
   - slaughterer’s fees,
   - transportation of carcasses for disposal,
   - disposal,
   - administration costs,
   - compensation for sheep, goats, embryos, ova and replacement rams,
   - genotyping replacement sheep.

2. Genotyping Flock Option:
   - compensation for sheep, goats, embryos, ova and replacement rams,
   - genotyping replacement sheep.

Costs of genotyping:
- testers’/vets’ fees,
- administration costs,
- costs of test kits,
- transport of samples or postage of samples to approved laboratories,
- laboratory fees for carrying out the tests,
- TSE testing of samples of culled and dead-on-farm sheep and goats (in GB removal and transport of brain stem or heads for testing of culled animals intended for the food chain will be higher as 24 hour turnaround for results is required to allow the animal into the food chain).
Costs associated with identification of the genotyped sheep:
- costs of EID,
- blood sampling and administration of EID (covered in vets’ fees above).

(25) Tables of support rates are set out in the Annex to this decision.

Programme monitoring

(26) The UK authorities assure the Commission that an information note on the benefits of scrapie genotyping, sent to owners of known scrapie-affected flocks in October 2002, notified them of impending EU-wide requirements contained in EC law. An advisory leaflet on recognising the clinical signs of scrapie has been available since 1988 and additional video is currently available. An updated leaflet was sent to farmers in May 2004. In NI, a scrapie information leaflet was issued to all flock owners in 2003.

(27) Domestic legislation is enacted in England, Scotland, Wales and Northern Ireland to enforce the requirements of the Commission Regulation. Non-compliance with the requirements of the current aid scheme will be enforced by UK criminal law sanctions.

(28) Compliance will be monitored by spot checks on farms and by annual surveillance of genotype progeny.

Relation with former aid schemes and aid cumulation

(29) Wherever a case of scrapie is suspected and subsequently confirmed on a holding, that holding will be registered in the Compulsory Scrapie Flock Scheme and membership of any existing NSP or NISP will be cancelled forthwith. Any farmer already participating in any of the existing voluntary scrapie genotyping schemes currently operating in the UK, where scrapie is confirmed on his holding, will have to transfer his flocks to this scheme.

3. Assessment

(30) Under Article 87(1) of the EC Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States. Statistical data indicate significant cross-border trade in sheep.² The advantage is granted out of State resources as the aid measure is financed through a direct grant from the Member State. It favours certain enterprises of the ovine and caprine sector in the UK. It is therefore liable to distort competition and to affect trade between Member States. In consequence, Article 87(1) of the EC Treaty applies.

(31) It should consequently be examined whether derogation from the general principle of the incompatibility of State aid under Article 87(1) of the EC Treaty might be granted. Under Article 87(3)(c) of the EC Treaty, aid to facilitate the

² Trade in live animals and meat and edible meat offal between the United Kingdom with other Member States in 2001: imports € 2 983 million, exports € 753 million (source: Eurostat).
development of certain economic activities or of certain economic areas can be regarded as compatible where such aid does not adversely affect trading conditions to an extent contrary to the common interest.


**Aid for combating animal diseases**

(33) In accordance with point 11.4 of the Guidelines, State aid to combat animal and plant diseases will be regarded as compatible with Article 87(3)(c) of the EC Treaty if it fulfils the criteria set out therein.

(34) For an aid scheme to combat animal diseases to be acceptable under the requirements of the Guidelines, four conditions have to be jointly fulfilled:

* a) The disease has to be a matter of public concern, and the aid should form part of an appropriate programme at Community, national or regional level for the prevention, control or eradication of the disease concerned.

* b) The objectives should be preventative, compensatory or a combination of the two.

* c) Aid should be compatible with both the objectives and the specific provisions laid down in Community veterinary legislation. The disease should be clearly identified, together with a description of the measures concerned.

* d) Evidence has to be submitted that there will be no overcompensation of losses.

From an analysis of the scheme it appears that:

(35) Scrapie is a disease considered to be of public concern, as borne out by the fact it is incorporated in Council Decision 90/424/EEC, which provides for expenditure in the veterinary field to be granted to Member States for the purposes of eradicating certain animal diseases. Support has since then been granted by the Commission towards the costs of scrapie eradication programmes.\(^6\) Furthermore, Regulation (EC) No 999/2001, Annex VII, as amended by Commission Regulation (EC) No 260/2003 of 12 February 2003, Regulation (EC) No 1915/2003 of 30 October 2003 and Regulation (EC) No 1492/2004 of 23 August

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\(^{3}\) OJ L 1, 3.1.2004, p.1-15


2004, imposed extensive obligations on Member States regarding eradication measures for TSE.

(36) Under the scheme State aid is granted for implementation in GB and NI of a scrapie eradication programme which aims to identify animals with the highest resistance to scrapie and eliminate infected animals and those without such resistance. The scheme therefore forms part of a comprehensive eradication strategy subject to regular review by the competent national authorities, as required by EC law.

(37) The scheme is both preventative and compensatory. It is preventative to the extent that it tries to give farmers the opportunity to genotype their flock and upgrade its scrapie-resistance status. It is also compensatory in cases of infected animals or animals lacking scrapie resistance, where the slaughter option and eventual replacement of animals with resistant ones needs to be used.

(38) The UK authorities submit that the scheme aims at full implementation of Community veterinary legislation to eradicate TSE ovine and caprine animals in GB and NI. Both the nature of the disease and the strategy towards its eradication are clearly described in the notification to the Commission.

(39) Aid is granted at a rate of up to 100% of the actual costs incurred. Eligible costs as set out above are permitted under Point 11.4.5 of the Guidelines. The UK authorities have provided a thorough explanation concerning the calculation of payment rates (see Annex). They have given assurances that by careful analysis of various factors there is no possibility of overcompensation. The UK authorities have ensured that there would be no cumulation of aid received under this scheme with aid for the same costs received under other schemes in operation.

(40) Furthermore, the UK authorities have assured the Commission that payments made to third party service providers reflect market prices for such types of services. Such service providers were selected by public tender procedure in compliance with EU public procurement rules, thus ensuring that no State aid is granted to such providers.

(41) It may therefore be concluded that the measure is in line with the provisions of the Guidelines and in particular with point 11.4 thereof.

Aid for TSE testing

(42) The Commission considers that State aid in the agriculture sector is compatible with the common market if it complies with Reg. 1/2004 or the Community Guidelines for State aid in the agriculture sector (hereinafter: the Guidelines). Reg. 1/2004 will apply to this aid for TSE testing since the aid is granted to small and medium-sized enterprises as defined by Commission Regulation (EC) No 70/2001 and Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. The definition included in the Commission Recommendation applies from 1 January 2005.

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8 OJ L 124, 20.05.2003, p. 36-41
Under Article 15 of Reg. 1/2004, the Commission can authorise State aid of up to 100% towards the costs of TSE tests. State aid towards TSE costs has to be paid to the operator where the tests are carried out. However, to facilitate the administration of such State aid, payments of aid may be made to laboratories instead, provided that it can be properly demonstrated that the full amount of State aid paid is passed on to the operator.

The UK authorities have provided a calculation of the payments envisaged for TSE testing. State aid will be paid at a rate of up to 100% of eligible costs.

The UK authorities have demonstrated that laboratories, VLA in GB and DARD Veterinary Science Laboratory in NI, will directly receive payments for TSE testing fees. Thus, the ovine and caprine animals’ keepers will not be charged by the laboratories for the costs of TSE testing. It follows that the full amount of State aid is passed on to those operators.

Aid for removal of fallen stock due to TSE

The Commission considers that State aid in the agriculture sector is compatible with the common market if it complies with the Reg. 1/2004 or the Guidelines. Reg. 1/2004 does not apply to aid for the removal of fallen stock due to TSE since aid of that kind is not covered by this regulation.

Point 31 of the TSE Guidelines states that Member States may grant aid of up to 100% of the costs of removal (collection and transport) and destruction (storage, transformation, destruction and final disposal) of fallen stock where there is an obligation to perform TSE tests on the fallen stock.

Since the UK is legally required to perform such tests under Regulation 999/2001, as amended, aid intensity of 100% for the removal and destruction of carcasses is allowed.

The UK authorities informed the Commission that other costs relating to the removal and destruction of animals subject to TSE testing will be covered by contracts between the UK authorities and service providers. The latter were chosen by public tender procedure in accordance with EU public procurement rules, thus ensuring that no State aid is granted to such providers.

In the light of the above findings, it may be concluded that the scheme is in line with the provisions of Point 11.4 of the Guidelines, Article 15 of Reg. 1/2004 and Point 31 of the TSE Guidelines; it may therefore benefit from the derogation provided for in Article 87(3)(c) of the Treaty, as it facilitates the development of the agricultural sector and does not adversely affect trading conditions to an extent contrary to the common interest.

4. Conclusions

On the basis of the above considerations, the Commission concludes that the 'Compulsory Scrapie Flock Scheme' is compatible with Article 87(3)(c) of the EC Treaty.
(52) In the light of the above, I would inform you that the Commission has decided to raise no objections to the notified aid measure.

(53) If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request by the stipulated deadline, you will be deemed to have agreed to the publication of the full text of this letter in the authentic language on the State aid Internet site: http://ec.europa.eu/community_law/state_aids/index.htm. Any such request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and rural Development
Directorate H.2
Office: Loi 130 5/128
B-1049 Brussels
Fax No: 0032 2 2967672

Yours faithfully,
For the Commission

Mariann FISCHER BOEL
Member of the Commission