EXPLANATORY MEMORANDUM TO

THE ANIMAL HEALTH (APPROVED DISINFECTANTS AND ANIMAL GATHERINGS) (FEES) (ENGLAND) (AMENDMENT) ORDER 2024

2024 No. 1140

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before the House of Commons by Command of His Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Declaration

2.1 Baroness Hayman of Ullock, Parliamentary Under Secretary of State at the Department of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Gareth Baynham-Hughes, Director for Animal and Plant Health and Welfare (APHW) at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ian Webster at the Department for Environment, Food and Rural Affairs Telephone: 02030250867 or email: ian.webster@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument uplifts fees payable under the Diseases of Animals (Approved Disinfectants) (Fees and Amendment) (England) Order 2011 (S.I. 2011/1509) ("the Approved Disinfectants Fees Order"), and the Animal Gatherings (Fees) (England) Order 2018 (S.I. 2018/663) ("the Animal Gatherings Fees Order") for services delivered by the Animal and Plant Health Agency ("APHA", an executive agency of Defra), to enable full cost recovery in respect of those services by APHA.

Where does the legislation extend to, and apply?

4.2 The territorial extent of this instrument is England and Wales.

4.3 The territorial application of this instrument is England.

5. Policy Context

What is being done and why?

5.1 APHA is responsible in England, on behalf of Defra, for delivering a number of services aimed at facilitating trade in animals and plants, preventing the introduction,

and spread of animal diseases, safeguarding public health, and protecting wild flora and fauna. Flora is the plant life occurring in a particular region or time, generally the naturally occurring or indigenous native plant life. Fauna is the corresponding term for animal life.

5.2 It is Government policy to charge users of the services it provides. Charging for services is consistent with the principle that businesses using and benefitting from the service provided should bear the cost of its provision.

5.3 The Animal Gatherings Order forms part of the measures in place to reduce the risk of spread of disease, specifically Foot and Mouth Disease (FMD) to which all the listed farm animals are susceptible. APHA provides services to inspect, approve and license gatherings. Veterinary markets and shows vary considerably in size and complexity and with this variety, the disease risk is different at each venue. Inspectors assess the risk present at the venue, examining many factors to decide if the venue meets the relevant requirements before granting a licence.

5.4 In the event of animal disease outbreaks, there is a statutory requirement for cleansing and disinfection. Only approved disinfectants may be used for this purpose. The initial testing of disinfectants is carried out by APHA to confirm they are effective against specific viruses and bacteria. In order to ensure that all disinfectants are efficacious it was necessary to implement an annual post-approval testing of the disinfectants. The annual charge on manufacturers covers the administrative costs and check tests required to verify that our approvals scheme is sufficiently robust. Manufacturers apply for approval on a voluntary basis. Disinfectants are only added to the list of 'approved' disinfectants if they demonstrate at the time of application efficacy of their product during laboratory testing. Applications are only progressed on receipt of the administrative fee for dealing with the application and the relevant test fees as set out in the Schedule of the instrument for the proposed uses of the product.

What was the previous policy, how is this different?

5.5 The fees under the Animal Gatherings Fees Order and the Approved Disinfectants Fees Order are set to recover full costs for services provided by APHA. The fees were last increased by the Animal Health (Poultry Compartments, Approved Disinfectants and Animal Gatherings) (Fees) (England) (Amendment) Order 2022 (S.I. 2022/1121). There is no change in policy or services provided however, a statutory instrument is required to uplift the fees to maintain cost recovery.

6. Legislative and Legal Context

How has the law changed?

6.1 The Diseases of Animals (Approved Disinfectants) (England) Order 2007 provides for the Secretary of State to approve disinfectants for use in certain circumstances and against certain animal diseases if they can demonstrate efficacy during laboratory testing. The fees associated with these services are currently set out in the Approved Disinfectants Fees Order. This instrument uplifts these fees.

6.2 The Animal Gatherings Order 2010 provides for the licensing of premises for the gathering of cattle, deer, goats, sheep, and pigs for sale, show or exhibition, collection for onward consignment within Great Britain and inspection to confirm the animals possess specific breed characteristics. The fees associated with these services are currently set out in the Animal Gatherings Fees Order. This instrument uplifts these fees.

Why was this approach taken to change the law?

6.3 Powers conferred by the primary legislation allows for fees to be set by secondary legislation. This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A full consultation was conducted prior to new and revised fees coming into force in June 2018. A provision of that consultation stated that fees would be reviewed at least every two years to ensure the fees charged to service-users accurately reflected the full cost of providing them, therefore there is no requirement to conduct a consultation for this uplift.

7.2 Prior to this instrument coming into force, stakeholders will receive a detailed package of the changes being made. These changes will be communicated directly to a number of stakeholders in writing and further guidance, background information and details of the changes will be published on GOV.UK.

8. Applicable Guidance

8.1 Details of the uplifted fees will be published on the Animal and Plant Health Agency ("APHA") section of the GOV.UK website on or shortly after the coming into force date of this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because amendments to fees are outside the scope of the Better Regulation Framework, so no impact assessment was required, and the Regulatory Policy Committee had previously assessed this as being suitable for low-cost fast track approval.

Impact on businesses, charities, and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this is an uplift to existing fees only and doesn't contain any changes to the way the fees are calculated.

9.3 The legislation does impact small or micro businesses.

9.4 This instrument uplifts fees within an existing fee structure. We consider that uplifting fees to achieve full cost recovery will have no disproportionate impact on smaller firms. Small businesses are actually affected less by some of the fees in question – for example, the Animal Gatherings Fees Order provides for an exemption from licence fees for shows and exhibitions that are open to the public for not more than one day at a time and at which no public sale or auction of animals takes place, so small scale local shows that are held for one day only do not have to pay a fee for such a licence. The fees in the Approved Disinfectants Fees Order apply equally to large and small firms, but larger firms will generally have more products and therefore will pay more in fees for a larger number of tests.

9.5 There is no, or no significant, impact on the public sector because this is an uplift to existing fees only and doesn't contain any changes to the way the fees are calculated.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is that the levels of fees will be reviewed periodically with a view to ensuring that they continue to reflect full cost recovery for the provision of these miscellaneous services.

10.2 The instrument does not include a statutory review clause as it contains only charging provisions and therefore falls under the exemption in section 28(3)(a) of the Small Business, Enterprise, and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

11.1 Although Ministers made this instrument on 6 November, it was unfortunately not laid before the House of Commons until 11 November and so has been laid in breach of the 21 day rule.

11.2 The fees in this instrument have been calculated to achieve full cost recovery as stated in HM Treasury's Managing Public Money document[1]). The fees only collect the costs related to the work being performed. There is no profit element, although the fees set in this instrument represent a slightly different cost recovery structure following recent reviews of recoverable costs. Fee tables and methodology have been scrutinised and approved by HM Treasury.

11.3 The fees are calculated using the true cost to APHA; we do not uplift the fees using inflationary rates.

11.4 To reduce the risk of large fee increases, it is APHA's intention to review these fees every 2 years. The fee increases have been assessed internally by APHA and reviewed by HM Treasury. They will be communicated to stakeholders prior to the laying of this legislation, giving them the opportunity to ask for an explanation of any increases.

12. European Convention on Human Rights

12.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State for Defra has made the following statement regarding Human Rights:

"In my view the provisions of The Animal Health (Approved Disinfectants and Animal Gatherings) (Fees) (England) (Amendment) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

[1] https://www.gov.uk/government/publications/managing-public-money