EXPLANATORY MEMORANDUM TO

THE ANIMAL HEALTH (POULTRY COMPARTMENTS, APPROVED DISINFECTANTS AND ANIMAL GATHERINGS) (FEES) (ENGLAND) (AMENDMENT) ORDER 2022

2022 No. 1121

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. Purpose of the instrument

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

2.2 This instrument also revokes provisions in the Poultry Compartments (Fees) (England) Order 2010 ("the Poultry Compartments Fees Order") and the Approved Disinfectants Fees Order which currently allow Value Added Tax (VAT) to be added to fees charged under those Orders.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The fees have been calculated to achieve full cost recovery as stated in HM Treasury's Managing Public Money document (available at https://www.gov.uk/government/publications/managing-public-money). 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.

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

3.3 As the fees have not been uplifted for a number of years, there is a compound effect. To reduce the risk of another large fee increase, APHA will review these fees every 2 years.

3.4 The fee increases have been assessed internally by APHA and reviewed by HM Treasury. They have also been communicated to stakeholders prior to the laying of this legislation, giving them the opportunity to ask for an explanation of the increases.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Poultry Compartments (England) Order 2010 sets out a system for approving poultry breeding companies as "compartments" based on strict bio-security controls, which may be considered separately in the event of avian disease outbreaks. The fees associated with applications for approval of compartments are currently set out in the Animal Gatherings Fees Order. This instrument provides that VAT can no longer be added to these fees.

6.2 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 and provides that VAT can no longer be added to them.

6.3 The Animal Gatherings Order 2010 (the Animal Gatherings Order) 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.

7. Policy background

What is being done and why?

7.1 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.

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

7.3 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. The fees associated with these

services are currently set under the Animal Gatherings Fees Order, but these no longer represent full cost recovery, so this instrument uplifts them.

7.4 In the event of animal disease outbreaks there is a statutory requirement for cleansing and disinfection. Only disinfectants approved by The Secretary of State may be used for this purpose. The initial testing of disinfectants is carried out by the department's executive agency 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. The fees associated with these services are currently set under the Approved Disinfectants Fees Order, but these no longer represent full cost recovery, so this instrument uplifts them.

7.5 There is no requirement to change fees for poultry compartments at this time.

7.6 As regards VAT, HMRC have indicated that statutory fees which can only be performed by APHA are out of scope for VAT, so no VAT is due upon them. VAT was included on invoices for the poultry compartments scheme prior to 2015, but following a review of the treatment of out of scope statutory instruments in 2015 all VAT invoiced in the previous four years was refunded using credit notes. No VAT has been charged against the poultry compartments scheme since that review. This instrument therefore removes the capability to add VAT to fees charged for poultry compartments.

7.7 Article 4 of the Approved Disinfectants Fees Order provides that VAT is payable on fees prescribed in that Order where it is chargeable in respect of those fees. VAT is not currently chargeable on any of the fees prescribed in the Order and has not been charged for many years. This instrument therefore removes the capability to add VAT to fees charged for approved disinfectants.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate at this time.

10. Consultation outcome

10.1 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. The changes being made are to reduce the under-recovery of costs and reduce the burden on the public purse. Changes in fees have been delayed due to a variety of factors including EU Exit.

10.2 The change to fees should not have a significant impact on service users, and to mitigate any impact they do have, increases will be phased in over a two-year period. The fees for the approval of disinfectants, which have resulted in the biggest percentage increases in fees, are not recurrent fees but one-off fees payable when a product is first approved.

10.3 Approximately six months prior to the Order 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. Face-to-Face meetings will be offered to key industry stakeholders, providing an opportunity to further explain the rationale behind the changes.

11. Guidance

11.1 Details of the new fees will be listed on the APHA section of the GOV.UK website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument. Amendments to fees are outside the scope of the Better Regulation framework, so no impact assessment was required and the Regulatory Policy Committee assessed this as being suitable for low-cost fast track approval.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses,

13.3 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. The poultry compartments scheme is voluntary and the fees associated with it are not being uplifted.

14. Monitoring & review

14.1 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.

14.2 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.

15. Contact

15.1 Ian Webster at the Animal and Plant Health Agency (APHA) Telephone: 07917 856148 email: ian.webster@apha.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Lord Benyon at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.