EXPLANATORY MEMORANDUM TO

THE EXOTIC EQUINE DISEASES (COMPENSATION) (ENGLAND) (NO 2) ORDER 2023

2023 No. 565

1. Introduction

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

2. Purpose of the instrument

2.1 Section 1 of the Animal Health Act 1981 ("the Act") provides that Ministers may make orders prescribing and regulating the payment and recovery of expenses in respect of animals and Section 32 of the Act provides that Ministers shall pay compensation for animals slaughtered for exotic disease control purposes.

2.2 For exotic equine diseases, existing legislation currently provides for compensation for only two equine exotic diseases: Equine Infectious Anaemia (EIA) and separately, in regulations, African Horse Sickness.

2.3 This Statutory Instrument will revoke the current Equine Infectious Anaemia (Compensation) (England) Order 2006 which only covers EIA and will widen the range of notifiable diseases for which compensation is payable so that as well as EIA, the SI will also cover Dourine, Equine Viral Encephalomyelitis, Glanders, Surra and Epizootic Lymphangitis.

2.4 It will also revoke the Exotic Equine Diseases (Compensation) (England) Order 2023.This brings legislation up to date and enables greater flexibility by having these compensation measures under one Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This SI revokes and remakes the Exotic Equine Diseases (Compensation) (England) Order 2023, which was subject to a JCSI report in which the JCSI noted the absence of Treasury co-signature and the lack of a general power to make provisions supplementary to ascertainment of compensation. As a result, this SI is re-made under Sections 1 and 32(3) of the Animal Health Act 1981 and the required Treasury co-signatures.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Currently in England, the legislative basis for paying compensation for equines slaughtered for disease control purposes is set out in two separate instruments in respect of two exotic equine diseases. These are for Equine Infectious Anaemia ("EIA") in the Equine Infectious Anaemia (Compensation) (England) Order 2006 (SI 2006/2740) and for African Horse Sickness, the African Horse Sickness (England) Regulations 2012 (SI 2012/2629).

6.2 However, for other exotic notifiable equine diseases, there is no mechanism for paying compensation. Therefore, the Exotic Equine Diseases (Compensation) (England) (No 2) Order 2023 widens the range of exotic notifiable equine diseases for which culling is a key element of the disease control strategy. Diseases where compensation is required include equines culled due to Dourine, Equine Viral Encephalomyelitis, Glanders, Surra and Epizootic Lymphangitis.

6.3 This proposed order will revoke the current Equine Infectious Anaemia (Compensation) (England) Order 2006 and will include compensation powers for EIA as well as adding to the list of diseases covered. This provides greater clarity through the inclusion of compensation measures for these exotic notifiable equine diseases under one order.

6.4 The order will apply only in England as this is a devolved policy area.

7. Policy background

What is being done and why?

7.1 Notifiable exotic diseases of equines have varying degrees of severity and impact on the health and welfare of individual animals and multiple sectors of the equine industry. Culling infected animals following a risk assessment mitigates the risk of the spread of the disease within the country. Where compulsory culling is required under the Animal Health Act 1981 ("the Act") and the owner does not euthanise the diseased animal, Defra will conduct the cull. Defra has held several discussions with representatives of the equine industry and maintains the view that a policy that caps the maximum payment is a proportionate and a fair balance between the interests of the horse owner and the interests of the taxpayer in protecting them from large compensation liabilities.

7.2 This legislation sets two levels of compensation for culled equines, based on suspicion of or confirmation of disease by an appropriate laboratory test conducted by the relevant National Reference Laboratory.

7.3 Compensation at a nominal sum of £1.00 (one pound) is set for when an equine is culled on confirmation of having an exotic equine disease by an appropriate laboratory test or is culled and subsequently is found to be infected. An equine confirmed to be diseased with an exotic notifiable disease is of negligible value. Thus, it is only appropriate to pay a nominal sum by way of compensation and this is already the position for EIA. We believe paying compensation of more than £1.00 for

the culling of horses that are confirmed to be diseased is unlikely to encourage owners to take responsibility for the health and welfare of their horses.

7.4 Compensation up to a maximum of £2,985 is set where suspect equines are culled before confirmation of exotic disease by an appropriate laboratory test and are subsequently found to be not affected by an exotic disease. This level of compensation would also include healthy equines which would have to be culled due to having been in contact with a confirmed infected animal. This is already the position for a horse culled on suspicion of African Horse Sickness where the horse subsequently tests negative.

7.5 £2985 is an adjusted figure which is based on the maximum of £2500 provided for in the African Horse Sickness (England) Regulations 2012 revised to take into account inflation since 2012.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 Separate legislation existed which provided for a nominal £1.00 sum to be paid in compensation for cases of EIA, and for up to £2,500 to be paid where equines were culled to control African Horse Sickness but subsequently found not to be affected. However, there was no legislative mechanism to allow payment of compensation for other exotic notifiable equine diseases.

Why is it being changed?

7.7 Section 32 of the Animal Health Act 1981 provides that the Minister shall pay compensation for animals slaughtered for exotic disease control purposes and Section 1 of the Act provides that Ministers may make orders prescribing and regulating the payment and recovery of expenses in respect of animals. This Statutory Instrument provides for appropriate compensation to be paid for equines for relevant exotic equine diseases where culling may be necessary as a disease control measure.

What will it now do?

7.8 Under this Statutory Instrument, the range of exotic notifiable equine diseases for which appropriate compensation is payable is widened to include Dourine, Equine Viral Encephalomyelitis, Glanders, Surra and Epizootic Lymphangitis. EIA is also included in this Statutory Instrument and the current Equine Infectious Anaemia (Compensation) (England) Order 2006 will be revoked.

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 No consolidation exercise has been carried out.

10. Consultation outcome

10.1 Defra undertook a 4 week informal consultation with members of the Equine Core Group, comprising key stakeholders in the equine sector. Five responses were received, all of which were broadly supportive of the measures this Statutory

Instrument introduces. We consulted on the basis of providing a maximum level of compensation of £2,500 in accordance with the level set out in the African Horse Sickness (England) Regulations 2012 but respondees noted that this was a figure calculated in 2012 and that inflation since 2012 should be taken into account. We have taken this on board and economists have calculated a revised maximum figure of £2985.

11. Guidance

11.1 The gov.uk page on compensation for animal diseases will be updated to reflect the changes made in this SI.

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 A full Impact Assessment has not been prepared for this instrument because the impact on business falls below the threshold for producing one. The SI has been cleared by the Treasury.

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 The basis for the final decision on what action to take to assist small businesses is that there is no cost to business and small businesses may be impacted positively and make savings.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures and will ensure that the provisions are adhered to and implemented.

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Jon Rouse at the Department for Environment, Food and Rural Affairs Telephone: 02080263412 or email: jonathan.rouse@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ronnie Haynes, Deputy Director for Exotic and Endemic Disease Control, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State (Minister for Biosecurity, Marine and Rural Affairs) Lord Benyon at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.