EXPLANATORY MEMORANDUM TO

THE TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 336

1. This explanatory memorandum has been prepared by the Department of Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Instrument is to amend arrangements for administering and enforcing Council Regulation (EC) No 999/2001 ("the EU TSE Regulation") which lays down rules for the prevention, control and eradication of certain Transmissible Spongiform Encephalopathies (TSEs). TSEs include bovine spongiform encephalopathy (BSE) in cattle and classical and atypical scrapie in sheep and goats.

2.2 This amending instrument amends the compensation provisions contained in Schedule 3 so that they are brought into line with the revised compensation provisions for domestic cattle killed to control the spread of bovine tuberculosis, enzootic bovine leukosis and brucellosis that were introduced by the Cattle Compensation (England) Order 2012 (S.I. 2012/1379).

2.3 This instrument also implements amendments to Annex VII of the EU TSE Regulation that permit member states to introduce more proportionate controls for sheep flocks and goat herds affected by classical scrapie.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

The Transmissible Spongiform Encephalopathies (England) Regulations 2010 (S.I. 2010/801) ("the 2010 Regulations") provide the necessary powers to administer and enforce the provisions of the EU TSE Regulation.

5. Territorial Extent and Application

This instrument applies in England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The 2010 Regulations require amendment to reflect the full range of options available under the EU TSE Regulation for controlling classical scrapie in sheep and goats. In 2007 the EU introduced more proportionate controls for sheep flocks and goat herds affected by classical scrapie. The French government challenged the EU's legislative amendments in Case T- 257/07. The EU General Court suspended the contested provisions pending final judgment in the legal case. In its judgment of 9 September 2011, the EU Court dismissed the French government's challenge and reinstated the suspended provisions. The 2010 Regulations are being amended to reflect the full range of options now available under the EU TSE Regulation.

7.2 This amending instrument aligns compensation rates for BSE with the Cattle Compensation (England) Order 2012 which came into force on 1st July 2012. Table valuations are determined on a monthly basis, using market data, and are published on the Department's website. This alignment enables the Department to better reflect average market values in determining compensation for BSE.

7.3 A number of minor technical amendments are also made by this instrument. The Department wants to specify more clearly how notices under the 2010 Regulations are served by introducing the new regulation 15A in line with similar provision found in other animal disease control legislation. Amendments are also made to clarify enforcement procedures and limit unqualified appeals against the killing of BSE cohort cattle under the 2010 Regulations.

7.4 An offence of failure to notify the death of goats over the age of 18 months is being removed from Schedule 2 to the 2010 Regulations because the notification requirement has been redundant since the method for selecting goat carcases for TSE sampling changed in January 2011.

7.5 Minor corrections are also made to Schedules 2 and 6 of the 2010 Regulations.

8. Consultation outcome

8.1 The consultation package was sent to 81 recipients, including industry stakeholders, consumer organisations and private individuals, and was published on the Department's website. The consultation period lasted from 21 June to 13 September 2012. Ten responses were received, all of which were in support of the proposals to adopt proportionate controls for classical scrapie and the proposals to align BSE compensation with that for other major notifiable cattle diseases.

8.2 On BSE compensation, some respondents did not feel that the proposed levels of compensation for pedigree cattle would reflect the true market value for healthy cattle. However cattle killed for BSE (infected cattle, those suspected of infection and cattle killed to eradicate BSE) are automatically excluded from the food chain and therefore their value is greatly reduced. The effect of the proposed changes upon BSE compensation paid by the Department is expected to be very minor, as the disease is in decline and very few cattle are now killed for BSE each year.

8.3 A comment on the technical amendment relating to the service of notices under the 2010 Regulations was taken into account in the final version of the instrument.

9. Guidance

Published guidance is being amended to reflect the changes arising from the amending instrument.

10. Impact

10.1 With regard to the BSE compensation for the relatively few cattle still removed each year for slaughter there will be a very small financial impact upon the farming industry due to the alignment of the 2010 Regulations with the Cattle Compensation (England) Order 2012, which will result in slightly lower compensation payments for some categories of cattle, in line with average market values.

10.2 There is no impact on charities or voluntary bodies. As set out in the Impact Assessment, the impact on the public sector of the amendments made in this instrument is expected to result in a saving of around £110,000 per year.

10.3 The Impact Assessment is attached to this memorandum is published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

The legislation applies to small business.

12. Monitoring & review

Policy on BSE and scrapie is kept under continuous review and is updated regularly in line with EU legislative developments. The 2010 Regulations already have a review provision inserted so that the principal Regulations must be reviewed before the end of November 2016.

13. Contact

Katie Barnes at the Department of Environment, Food and Rural Affairs Tel: 020 7238 6535 or email: katie.barnes@defra.gsi.gov.uk can answer any queries regarding the instrument.