EXPLANATORY MEMORANDUM TO

THE TRANSMISSIBLE SPONGIFORM ENCEPHALOPATHIES (ENGLAND) (AMENDMENT) REGULATIONS 2018

2018 No. 731

1. Introduction

1.1 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 of the European Parliament and the Council, as amended (the EU TSE Regulation) lays down rules for the prevention, control and eradication of certain Transmissible Spongiform Encephalopathies (TSEs), including Bovine Spongiform Encephalopathy (BSE) in cattle and scrapie in sheep and goats.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Regulation (EC) No. 999/2001 of the European Parliament and the Council, as amended (the EU TSE Regulation) lays down rules for the prevention, control and eradication of certain TSEs. The Government needs to implement TSE controls in line with EU requirements. The Transmissible Spongiform Encephalopathies (England) Regulations 2010 (S.I. 2010/801) (as amended) ("the 2010 Regulations") currently provide the necessary powers to administer and enforce the provisions of the EU TSE Regulation. This Instrument is being made to consolidate in English domestic TSE legislation all directly applicable amendments made to the EU TSE Regulation since 2010, plus a number of national amendments, as described at Section 7 below.

4.2 The 2010 Regulations included a number of offences liable to a fine, imprisonment or both. Following guidance provided by the Ministry of Justice (MoJ), in the 2018 Regulations all existing offences are reduced to summary convictions with fines of unlimited amount in Magistrates' Courts, and the option of imprisonment has been removed. This reduction takes into account the continued decline in the BSE epidemic, the fact that only one prosecution has been brought under the 2010 Regulations, and the increase since 2010 in the powers of magistrates to impose fines.

4.3 Because all offences in the 2018 Regulations are reduced and modified from those in the 2010 Regulations, MoJ has advised that nothing in the 2018 Regulations should be regarded as a new offence or penalty.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 This entire instrument applies only to England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Transmissible Spongiform Encephalopathies (England) Regulations 2018 (the 2018 Regulations) would amend and update the 2010 Regulations (as amended). The key measures are:

(i) A national measure to transfer the cost of taking samples for BSE testing from fallen cattle (animals which die, or are killed, other than for human consumption) aged over 48 months from the taxpayer to industry. The intended effect is a more equitable sharing of the cost of BSE surveillance between the farmer and the taxpayer;

(ii) A national measure to amend the provisions in English TSE legislation for the payment of compensation for sheep and goats killed as TSE suspects or following the confirmation of classical scrapie. This is intended to give a fairer balance of cost between the farmer and the taxpayer;

(iii) To remove the legal requirement for a Required Method of Operation (RMOP) signed by the Secretary of State for cattle slaughtered at abattoirs which require BSE testing. Instead, abattoir operators would be expected to agree a Standard Operating Procedure (SOP) with the FSA which would mirror the RMOP and there would be no impact on food safety;

(iv) To provide a statutory mechanism by which food business operators can apply for approval to use an alternative safe method (other than carcase splitting) of spinal cord removal for small ruminants aged over 12 months of age;

(v) To include 7 changes to the EU TSE Regulation since 2010 that relax controls to reflect the worldwide decline in BSE and the reduction in the risk posed by the disease. This is intended to enable the English feed, farming and animal by-products industries to trade on the same terms as their counterparts in other EU Member States;

(vi) 2 technical amendments, replacing the requirement for animals falling within the pedigree category for BSE compensation to have a zootechnical certificate, with a requirement for a pedigree certificate, and to clarify the Secretary of State's powers to select slaughterhouses for the annual EU TSE sheep abattoir survey.

7.2 The amendments to EU TSE legislation are directly applicable in English law and have been implemented in the UK on an administrative basis since they came into force in the EU. Government is therefore obliged to implement these measures in

domestic law. Failure to do so would render the UK liable to infraction proceedings by the EU and could affect our ability to trade with Member States and third countries. The national measures are designed to share costs between Government and industry, or relate to minor technical amendments.

8. Consultation outcome

8.1 The consultation was sent to 84 recipients, including industry stakeholders, consumer organisations and private individuals, and was published on the government's website, GOV.UK. The consultation period lasted from 2 November 2017 to 10 January 2018. 17 responses were received. The responses received to the consultation were largely positive about the majority of the proposed changes.

8.2 A summary of the responses received to each question with the Government's conclusions and proposed way forward, taking account of these responses, has been published on GOV.UK.

8.3 In response to a suggestion from one respondent, we have amended our originally proposed table values for sheep and goat compensation (see 7.1(ii) above) to align them with those laid down in Schedule 1 of The Tuberculosis (Non-bovine animals) Slaughter and Compensation (England) Order 2017.

9. Guidance

9.1 Defra intends to update existing published guidance to reflect the changes arising from the 2018 Regulations as soon as possible.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows:

There no anticipated impacts on charities or voluntary bodies. Two of our proposals are expected to have a relatively small financial impact on businesses, with an equivalent saving to the taxpayer, as set out below. The impact of the other proposals is expected to be positive for business by removing burdens but without increasing the risk to public or animal heath:

(i) The proposal to transfer from Government to industry the cost of sampling fallen cattle aged over 48 months (see 7.1(i) above) is expected to cost the cattle farming industry in England approximately £473,000 per year. However, we have calculated that the average cost per holding is expected to be around £30.00 per year, and is likely to be be lower for small holdings. No additional costs are expected for sampling sites. The government will still bear the costs of carrying out the testing of the samples taken.

(ii) Based on the expected incidence of scrapie, the proposal to amend the provisions in English TSE legislation in respect of TSE compensation for sheep and goats (see 7.1(ii) above) is expected to affect at most three holdings in ten years at a total estimated cost to industry over ten years of £345,272.00. On the same basis the estimated cost to government in compensation is expected to be £577,740.00 over the same period. Depending upon the size and number of holdings culled, the cost to industry and Government could be lower.

10.2 There is no impact on the public sector as there are no anticipated costs to Government.

10.3 No Impact Assessment has been prepared for this statutory instrument because the total cost of our proposals falls below the £5 million de minimis requirement.

11. Regulating small business

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

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 As explained at 10.1 above the impact upon small businesses is expected to be very minor.

12. Monitoring & review

12.1 Under the review provision included in the text for the consolidated Regulations, the Secretary of State must review the Regulations from time to time and reports published of each review. The first report must be published before the end of the period of five years from the date the Regulations come into force and subsequent reports must be published at intervals of no less than five years.

13. Contact

13.1 Katie Barnes at the Department of Environment, Food and Rural Affairs Tel: 0208 0263469 or email: katie.barnes@defra.gsi.gov.uk can answer any queries regarding the instrument.