EXPLANATORY MEMORANDUM TO

THE WILDLIFE LICENCE CHARGES (ENGLAND) ORDER 2018

2018 No. 771

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument introduces a charging scheme for certain licences issued by Natural England relating to wildlife conservation. Natural England is the statutory body responsible for the natural environment in England.

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 This instrument is the first use by the Secretary of State of the power under section 11 of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act") to make provision requiring charges to be paid for licences issued by Natural England.

4.2 Natural England issues licences under various statutory powers. This instrument introduces charges for licences issued under the Wildlife and Countryside Act 1981 (c. 69), the Protection of Badgers Act 1992 (c. 51), the Deer Act 1991 (c. 54), and the Conservation of Species and Habitats Regulations 2017 (S.I. 2017/1012). The Protection of Badgers Act 1992 does not contain a power to charge for licences. The other licensing legislation contains charging powers that do not meet current requirements of HM Treasury for charging schemes, in particular to enable Parliamentary scrutiny of charges. The charging power in section 11 of the 2006 Act is suitable for this purpose.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Natural England manages licensing services for legally protected species on behalf of Defra. Licences are required to balance the protection of species with wider societal needs (e.g. development activity, public health, heritage conservation, etc.), allowing the licence-holder to undertake activities which would otherwise be illegal. The instrument introduces charges for the assessment and issue of certain licences. The policy objective of the 2006 Act is to recover the costs of the licensing service from applicants where appropriate. The new approach reflects Government policy to charge for many publicly funded goods and services.

7.2 The service has been taxpayer-funded since its inception. Increased demand for licences and falling grant in aid have led to increasing delays in the assessment of applications, with cost impacts on applicants. The service is benefitting from a reform programme, but income from charging is needed and will balance likely reduced taxpayer funding in the future.

7.3 Natural England anticipates that up to approximately 8400 licences will be charged for annually, generating a total income from charges of £1.3m pa. The income will be invested in the licensing service thereby reducing delay costs caused by the late issue of licences. Government data was used to calculate the cost of delayed licences, including staff costs and the cost of holding undeveloped land. The gross cost saving to applicants as a result of reduced delay is estimated to be £1.8m pa. The net saving to applicants, once the costs of the licence fee and invoice payment have been taken into account, is estimated to be £0.4m pa. The proportion of delayed licence responses is expected to fall to below 5%.

7.4 The funding of the licence service will move to a mixture of taxpayer funding (for example, for general licences, which are not within the scope of this Order, and charge-exempt licences) and applicant funding for the remainder.

7.5 Charges are a mixture of fixed price for the more predictable and less complex licence applications and variable price, based on an hourly rate, for the less predictable and more complex licences, so cross-subsidy is avoided. A full cost recovery approach is used in line with Government guidance and HM Treasury has approved this approach. Defra and Natural England have agreed the charge rates based on this approach. Income will be invested in the parts of the service that experience delay costs caused by resource shortfalls.

7.6 Exemptions from charging are included for licences for the prevention of the spread of disease and serious damage to property, the preservation of health and safety, conservation science and delivery projects for the natural environment and elements of the built environment, falconry and householder extensions and home improvements.

Consolidation

7.7 This is the first instrument made under section 11 of the Natural Environment and Rural Communities Act 2006.

8. Consultation outcome

8.1 The public consultation ran from 11 December 2017 to 5 February 2018 and received 449 responses.

8.2 The consultation showed mixed responses to the proposal. Support was shown for charges for licences for development and operational delivery projects that are needed when protected species are present. Support was expressed for the exemptions. Concerns were raised about the charge rates and the cost of survey licences for environmental consultants, particularly where the consultant was self-employed or worked for a small consultancy. Other concerns were related to the risk of increase of unlicensed activities and licences for non-professional activities.

8.3 In response, Defra and Natural England have reduced the price of survey licences issued to environmental consultants and removed some charges for mitigation licences (licences to manage the impact of activities on protected species) issued to consultants. The latter change is based on the applicant's ability to demonstrate a high degree of competence to register for the licence. Once registered the licence holder benefits from reduced costs when acting under the licence. As a result of comments on the consultation, one licensing purpose, namely falconry, has been included in the exemptions from charging. Falconry is a non-professional activity where charges would be disproportionate.

8.4 The government's response to the consultation has been published on the website https://consult.defra.gov.uk/natural-england/wildlife-licence-charges/.

9. Guidance

9.1 Natural England will keep applicants up to date with the introduction of charging through the licensing newsletter (1300 recipients), meetings with developer groups and other applicant groups such as aviculturists. Natural England will publish guidance as necessary, for example, on how to pay for applications, ahead of the launch of charging.

10. Impact

10.1 The net impact on business, which will be subject to charges and is also the main beneficiary of service improvements, will be a saving of £0.4m per year. The impact on charities and voluntary bodies will be negligible, as they do not apply for many of the licences for which charges are made.

10.2 The impact on the public sector is negligible as the sector applies for relatively few charged-for licences and any such applications will benefit from reduced delay costs.

10.3 The estimated total income from charges is £1.3m pa, from which there will need to be an investment of £0.9m pa in the improved delivery of the service. The saving to taxpayers is therefore estimated to be £0.4m per year.

10.4 An Impact Assessment has not been prepared for this instrument as it falls below the threshold for Impact Assessment preparation of £5m.

11. Regulating small business

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

11.2 The impacts of the requirements on small businesses (employing up to 50 people) have been managed through a number of measures: costs for survey licences have

been reduced, based on projected efficiency savings, impacts of mitigation licence costs issued to small businesses should be more than offset by the benefits of reduced delays in issuing licences, and the exemption for householder development projects should help to avoid any impact on small businesses engaged in this sector.

11.3 The basis for the final decision on what action to take to minimise impacts on small businesses was determined through conversations with stakeholders (including representative bodies) and through the public consultation.

12. Monitoring & review

12.1 Defra and Natural England will continue to work with applicant groups who have been engaged in developing the proposal. Defra and Natural England will continue to reform the licensing service and will look to pass on savings to applicants.

12.2 Charge levels will be reviewed during the first year of operation.

13. Contact

13.1 David Drake at Natural England, telephone 07785 574205. Email: david.drake@naturalengland.org.uk can answer any queries regarding the instrument.