

EXPLANATORY MEMORANDUM TO
THE ANIMAL BY-PRODUCTS (ENFORCEMENT) AND TRANSMISSIBLE
SPONGIFORM ENCEPHALOPATHIES (ENGLAND) (AMENDMENT) REGULATIONS
2011

2011 No. 2681

1. This explanatory memorandum has been prepared by the Department for Environment Food & 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 the Animal By-Products (Enforcement) (England) Regulations 2011 (S.I. 2011/881) and the Transmissible Spongiform Encephalopathies (England) Regulations 2010 (S.I. 2010/801) to remove the Isle of Wight from the lists of areas designated as 'remote' in England.

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

None

4. Legislative Context

4.1 Since the introduction of the Regulation (EC) No 1774/2002 on Animal By-Products (ABP) it has been illegal for farmers to bury fallen stock (livestock that have died or been killed other than for human consumption) except in certain limited circumstances; such as in 'remote' areas "*where the animal population is so small and where facilities are so far away that the arrangements necessary would be unacceptably onerous*" or (exceptionally) following disease outbreaks. This EU prohibition has been maintained by the new ABP Regulation (EC) No 1069/2009, which revoked and replaced Regulation 1774/2002 with effect from 4 March 2011. That European Regulation, together with its implementing Commission Regulation (EU) No 142/2011, is implemented in England by the Animal By-Products (Enforcement) (England) Regulations S.I. 2011/881.

4.2 In May 2009 the UK designated the Isle of Wight as a 'remote area'; providing a derogation from the Regulation 1069/2009 and allowing farmers to bury their fallen stock on the island. This derogation was replicated in S.I. 2011/881. However, the European Commission considered the UK's designation to be in breach of the legislative requirements on the grounds that the Isle of Wight did not meet the criteria for being designated as a remote area, and in November 2010 the UK was required to remove the designation. The Government agreed to lift the derogation once a suitable fallen stock collection service was set up on the Isle of Wight. Arrangements to start such a service are now in place and therefore an

amendment is being made to S.I. 2011/881 to remove the Isle of Wight as a designated remote area.

- 4.3 In the context of Transmissible Spongiform Encephalopathies (TSE) Article 6 of Regulation (EC) No 999/2001, which lays down rules for the prevention, control and eradication of certain TSEs, requires Member States to carry out an active monitoring programme for TSEs in accordance with Annex III of that Regulation. Annex III requires Member States to monitor all bovine cattle over 48 months of age which have become fallen stock for Bovine Spongiform Encephalopathy (BSE). Regulation 999/2001 provides for Member States to derogate from the fallen stock monitoring requirement “*in remote areas with low animal density, where no collection of dead animals is organised*”.
- 4.4 Following the ending of the Government’s free collection and disposal service in January 2009, all farmers in the UK have had a legal obligation to ensure that cattle over 48 months of age that die on farm and require a BSE test, are presented to approved sites for BSE sampling. As farmers on the Isle of Wight would have had to transport carcasses from the island to an approved BSE sampling site on the mainland (there being none on the island) and as it was believed that the island fulfilled the EU derogation criteria, the Government introduced a derogation for the island from the BSE sampling requirements for such fallen stock in the Transmissible Spongiform Encephalopathies (England) Regulations S.I. 2010/801 (which implement Regulation 999/2001). However, now that arrangements for a collection service for fallen stock are in place the Isle of Wight no longer qualifies for such a derogation and consequently a parallel amendment to the TSE Regulations removing the derogation is required by these amendment Regulations.

5. Territorial Extent and Application

This instrument applies to 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 policy objective is to achieve a solution to the disposal of fallen stock on the Isle of Wight that meets the requirements of the European ABP and TSE legislation, does not compromise public and animal health and the environment, and does not, as far as possible, financially disadvantage farmers on the island compared to those on the mainland.
- 7.2 Regulation 1069/2009 obliges Member States to ensure that adequate arrangements are in place for collection & disposal of fallen stock, and requires

that they are disposed of by an approved method, for instance, by rendering or incineration. Mainland farmers in England have access to a local fallen stock collection & disposal service run under the National Fallen Stock Company (NFSCo), which normally collects fallen stock within 48 hours of reported death. However, despite there being around 300 livestock farms on the Isle of Wight, since 2005 there has been no fallen stock collection service available which has been capable of dealing with all the island's fallen stock, and there are no rendering or incineration facilities on the island, except for a few small on-farm incinerators used for disposing of pigs and poultry on the farm on which they are sited.

- 7.3 In order to meet its policy objective, and ensure a comprehensive and reasonably priced collection service on the island, the Government has agreed to provide a one-off grant to assist in setting up an off-island collection and disposal service.

8. Consultation outcome

- 8.1 The basis for the final decision on what action to take was extensive formal and informal consultations with Isle of Wight interests including the Local Authority and the NFU over several years.

The outcome of these consultations was the development of the off-island collection scheme, as described in the Impact Assessment.

9. Guidance

- 9.1 The Government will publish guidance for farmers, and enforcement bodies on the Isle of Wight who will be affected by the lifting of the island status as a remote area for the purpose of both sets of principal Regulations.

10. Impact

- 10.1 There are around 300 potentially affected farmers on the Island. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business – mainly small farming businesses.
- 11.2 To minimise the impact of the requirements on such businesses employing up to 20 people, the approach taken has been for Government to provide some funding towards start-up costs for a fallen stock collection service.

12. Monitoring & review

- 12.1 This policy will be subject to internal review after 12 months and a revised Impact Assessment published towards the end of 2012 (see Annex 1 of the Impact Assessment: Post Implementation Review Plan.)
- 12.2 In addition a review provision has been inserted into the Animal By-Products (Enforcement) (England) Regulations 2011 and the Transmissible Spongiform Encephalopathies (England) Regulations 2010 that require the Secretary of State to review the Regulations every five years.

13. Contact

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