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Dear Mr Brooks,

RE: CONSULTATION PAPER ON THE PROPOSED AMENDMENTS TO THE VETERINARY SURGEONS ACT EXEMPTION ORDER REGIME

Thank you for the opportunity to comment on the proposed amendments to the Veterinary Surgeons Act Exemption Order regime.

The Royal College of Veterinary Surgeons (RCVS) is the regulatory body for veterinary surgeons in the UK. The role of the RCVS is to safeguard the health and welfare of animals committed to veterinary care through the regulation of the education, and ethical and clinical standards of veterinary surgeons and nurses, thereby protecting the interests of those dependent on animals, and assuring public health. It also acts as an impartial source of informed opinion on relevant veterinary matters.

Whilst the RCVS recognises the need to amend the orders so as to comply with the EU Services Directive (2006/123/EC), the RCVS has grave concerns regarding the Defra proposals and considers that in their current form they will lower standards, increase the risk of non-compliance and potentially have a detrimental effect on animal health and welfare, and biosecurity.

The RCVS is particularly concerned that withdrawing exemption certificates, amongst other factors, will move virtually all responsibility for ensuring that technicians are appropriately qualified to the members of the public seeking their services, and that under the proposals the training requirements for bovine ultrasound technicians will be significantly weakened through the removal of the supervised training period. Moreover, the College is concerned that the veterinary risk assessment that fundamentally underpins the proposals is flawed and is based upon false or misleading assumptions.

Whilst the EU Services Directive requires Member States to remove legal and administrative barriers to provision of services by EU nationals, the Directive is not designed to result in a lowering of standards and such 'barriers' may still be imposed where there is a public interest argument. In order to establish the need for specific standards and measures to ensure competency a thorough veterinary risk assessment is required. The College is also concerned to establish how other Member States are transcribing the Directive at a national level. Defra notes, for example, that some other countries have more robust training

requirements or only let Veterinary Surgeons perform the relevant procedures. Will UK technicians be able to practice in these countries? Furthermore, if there are procedures that only veterinary surgeons can perform in the UK, but technicians may perform in other European countries, will UK be required to let such technicians work to perform such procedures in the UK? It may be questioned whether it is in the public interest to promote such a universal lowering of standards or whether it was ever the intention of the legislators that the Service Directive should result in such an outcome.

The RCVS is keen to work with Defra in order to explore other solutions to ensure the qualifications and experience of the technicians covered by the exemption orders in question and the College wishes to find a solution whereby compliance can be achieved whilst at the same time standards can be upheld and members of the public can be assured that the technicians they employ are suitably qualified and experienced. To this end, the Officers of the RCVS would like to request a meeting with Defra to discuss possible options relating to the amendment of the Exemption Orders and to establish the next steps for Defra in achieving compliance with the Directive.

If you require any clarification on any of the points raised in the RCVS consultation response, please do not hesitate to contact me.

Yours sincerely,

Anthony Roberts
RCVS Policy and Public Affairs Officer

DEFRA CONSULTATION PAPER ON THE PROPOSED AMENDMENTS TO THE VETERINARY SURGEONS ACT EXEMPTION ORDER REGIME

The following response is made on behalf of the Royal College of Veterinary Surgeons (RCVS). The RCVS is the regulatory body for veterinary surgeons in the UK. The role of the RCVS is to safeguard the health and welfare of animals committed to veterinary care through the regulation of the education, and ethical and clinical standards of veterinary surgeons and nurses, thereby protecting the interests of those dependent on animals, and assuring public health. It also acts as an impartial source of informed opinion on relevant veterinary matters.

Questions

Q1: Do you agree that we should recognise training courses that operate in other EU member states?

Given the requirement of the EU Services Directive to remove legal and administrative barriers to the provision of services by EU nationals, some form of recognition of other Member States' training courses through amendment of the relevant Exemption Orders appears to be practical and effective method of achieving compliance. The RCVS, however, has significant concerns regarding the approach proposed by Defra and considers that, as the proposals stand, they would lower standards, increase the risk of non-compliance and potentially have a detrimental effect on animal health and welfare, and biosecurity.

It is the view of the RCVS that compliance with the Directive could be achieved, whilst at the same ensuring that technicians are suitably qualified and experienced. The College notes that such an approach would place an extra burden upon Defra in terms of registering and assessing the qualifications of EU trained technicians, but considers that maintaining appropriate standards of training and experience, and protecting animal health and welfare justifies such an additional burden.

The RCVS is keen to work with Defra in order to seek and exploring other solutions to ensuring the qualifications and experience of the aforementioned technicians. The experience gained by the College in establishing a non-statutory regulatory framework for veterinary nurses might be usefully shared and could provide useful starting point for the regulation of other groups. The College would wish to work towards a situation in which members of the public could be assured that all members of the veterinary team work to common high standards within an established ethical framework.

The RCVS questions the concept of equivalence in relation to the Services Directive in this context. In the preamble to the Consultation, Defra notes that in some other European countries only veterinary surgeons are allowed to carry out the procedures covered by the Exemption Orders – does this mean that under the Services Directive UK trained technicians will be allowed to offer their services in countries where the procedures they are offering are currently restricted to veterinary surgeons? Indeed, it may be questioned whether in other European countries technicians are allowed to perform certain procedures, that only veterinary surgeons can in the UK, and whether this will result in a further lowering of standards whereby

the UK is required to create exemptions to allow EU technicians to perform these procedures in the UK.

The RCVS is deeply concerned by the evidence base and assumptions underlying the veterinary risk assessment associated with the proposed amendments to the Exemption Orders. The College is particularly concerned that the risk assessment relates the likelihood of adverse events occurring to those of a newly qualified 'day one' veterinary surgeon. The RCVS does not believe the risks are comparable to such a veterinary surgeon for three fundamental reasons. Firstly, veterinary surgeons are subject to robust regulation in the form of the Guide to Professional Conduct and the disciplinary processes of the RCVS. Such regulation means that a day one veterinary surgeon has considerably more reason to comply with the law than a technician who, under the Defra proposals, would not be subject to any direct regulation and who would only have their qualification and experience 'verified' by members of the public that are procuring their services. Secondly, whilst a technician can be trained in a short course to perform certain procedures they will not have the same level of knowledge or understanding that a day one veterinary surgeon who will have received three years grounding in basic biological sciences for example, bacteriology, physiology and epidemiology, coupled with a further two years developing clinical skills. Thirdly, a day one veterinary surgeon is likely to work in a practice together with a number of other veterinary surgeons and will be closely supervised by a senior colleague during their early years and in particular while they are undertaking the PDP phase of their training. This is quite a different situation to a technician that is likely to work on their own and unsupervised for much of their career.

Furthermore, the RCVS is concerned that Defra considers 'wilful illegal activity' to be outside the scope of the risk assessment. Given that the amendment to the exemption orders means that members of the public will primarily be responsible for ensuring the qualifications and experience of the exempted technicians, it would appear that the amendments potentially increase the likelihood of illegal activity. It is therefore imperative that the risk assessment takes account of the likelihood and impact of such non-compliance with the law.

It is also disappointing that further information has not been made available regarding Defra's research on how the aforementioned procedures are regulated in other Member States and more importantly how these Member States intend to achieve compliance with the Directive.

It is perhaps also worth noting that the shortcomings of the Exemption Order system have been noted for some years and in particular concerns have been expressed that assessment of the quality of training that technicians receive must be controlled and ongoing to ensure that training and assessment is both adequate and appropriate. Furthermore, more fundamental questions could be raised as to whether the Veterinary Surgeons Act is the most appropriate instrument to regulate the provision of veterinary services by non-veterinary surgeons.

Q2: Do you agree with the proposal to discontinue the issue of exemption certificates for AI of Mares and Epidural Anaesthesia?

The RCVS does not consider that the current exemption certificates for the AI of Mares and Epidural Anaesthesia should be discontinued. The issuance of certificates by Defra could be amended so as to provide an effective means of complying with the Services Directive, whilst ensuring that technicians were appropriately qualified. Thus Defra could recognise other Member States' training courses by granting exemption certificates, on application, to anyone holding an approved EU qualification that wished to practise in the UK.

The RCVS has grave concerns that the approach proposed by Defra involves transferring virtually all responsibility for ensuring that technicians are appropriately qualified to the members of the public seeking their services. Whilst members of the public have a duty of care

under the Animal Welfare Act to prevent unnecessary suffering to their animals, it is not clear that this duty should be extended so far as to require members of the public to personally assess the competence of a particular technician, a duty that they are unlikely to be competent to fulfil. The RCVS is also concerned that under the proposals it is conceivable that a member of the public could end up being found guilty of causing unnecessary suffering to an animal if the animal were to suffer as a result of unknowingly allowing an inexperienced or unsuitably qualified technician to perform a procedure that goes wrong.

Furthermore, in the absence of exemption certificates, it is not clear exactly what documentation a technician would be required to present or how a member of the public could assess whether or not the presented documentation was genuine or that it proved that the technician was appropriately qualified and experienced. Assessment of the documentation could be especially difficult as the documentation could originate from any European country and could be printed in any European language.

The purpose of the exemption order itself could be brought into question if the public cannot rely on the fact that those who are covered by the exemption are appropriately qualified and experienced.

The RCVS considers that as the Exemption Order relating to Epidural Anaesthesia specifically relates to bovines and the title should reflect this fact. This would help to remove any ambiguity or suggestion in the future that the Order should also cover equines. This is of particular concern as embryo transfer is becoming increasingly common in equidae.

Q3: Do you agree that a requirement for a technician to demonstrate experience following successful completion of a course is necessary?

Q4: Do you agree that two years is a reasonable period for this requirement?

Answer to questions 3 and 4:

The RCVS considers that the demonstration of an ultrasound scanning technician's experience is essential following the formal training. The intention when the exemption order was made was that someone who had successfully completed a short course would then be required to gain a certain amount of practical experience under supervision, as a trainee operator, before satisfying the Secretary of State that he or she should be granted a qualified scanner certificate. Unfortunately the drafting of the Order left a good deal to be desired, as the RCVS pointed out at the time. In particular it did not make it at all clear that, for a newcomer to this work, the completion of the formal course was only part of the process. The definition of "trainee scanner operator" should have made clear that a trainee was someone who had completed an approved course but was still acquiring practical skill, under the supervision of a veterinary surgeon or qualified operator who had to sign the record of each scan and say whether or not it had been satisfactorily performed. If the order were to be amended so as to remove the need for trainees to produce evidence of supervised scans this would be a substantive relaxation of the requirements for training and assessment.

It appears that the Defra proposals confuse the requirement for an initial period of supervised practice with the separate requirement for fully-fledged operators to keep a record of their experience. The RCVS considers that both requirements are important and neither should be abandoned.

Q5: Do you agree that guidance should be developed?

Yes.

If the Exemption Order itself does not prescribe what evidence can be used to demonstrate experience, and it is the strongly held view of the RCVS that it should, then it is imperative that guidance is made available both to technicians and the public.

If the Defra proposals are adopted, the RCVS considers that any guidance should be formalised as a code of practice under the Animal Welfare Act. This could be used to detail training and experience requirements and the evidence that can be used to demonstrate such training and experience. Such an approach would result in guidance that carried authority, because there is provision in legislation for codes of conduct to be taken into account in legal proceedings.

Q6: Are there any specific issues that you feel should be included in the proposed guidance?

Should the Defra proposals for the amendment the exemption order be adopted, which in the view of the RCVS would pose significant risks to animal welfare as explained above, the RCVS would be keen to work in partnership with Defra and other key stakeholders to develop and review the associated guidance.

Q7 Do you feel that the proposed approach will unfairly discriminate against any technician? If so how do you think this could be rectified?

No.