

**2009 No. 262**

**FOOD**

**The Meat (Official Controls Charges) (Scotland)  
Regulations 2009**

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| <i>Made</i>                                | - - - - | <i>21st June 2009</i>      |
| <i>Laid before the Scottish Parliament</i> |         | <i>25th June 2009</i>      |
| <i>Coming into force</i>                   | - -     | <i>28th September 2009</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any reference to a Community instrument defined in Schedule 1 to be construed as a reference to that instrument as amended from time to time.

There has been consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(b).

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Meat (Official Controls Charges) (Scotland) Regulations 2009 and come into force on 28th September 2009.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“accounting period” means a period of less than a year determined by the Agency;

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(a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, so far as exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the 1998 Act. In so far as not so transferred and in so far as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the 2006 Act.

(b) O.J. No. L 31, 1.2.02, p.1. The Regulation was amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.06, p.3) and by Commission Regulation (EC) No. 202/2008 (O.J. No. L 60, 5.3.08, p.17).

“the Agency” means the Food Standards Agency;

“audit” has the meaning given to it in Article 2.6 of Regulation 882/2004;

“controls” means those official controls performed by the Agency—

- (a) under Regulation 854/2004, at slaughterhouses, game-handling establishments and cutting plants, for the verification of compliance with the provisions of Regulation 853/2004 in so far as they apply in relation to meat of domestic ungulates, meat from poultry and lagomorphs, meat of farmed game and meat of wild game;
- (b) at slaughterhouses, for the verification of compliance with the provisions of the Welfare of Animals (Slaughter or Killing) Regulations 1995(a) insofar as they apply in relation to animals slaughtered there for human consumption;
- (c) in relation to domestic ungulates slaughtered outside the slaughterhouse, pursuant to Chapter VI of Section I of Annex III to Regulation 853/2004;
- (d) in relation to poultry slaughtered on farm, pursuant to Chapter VI of Section II of Annex III to Regulation 853/2004; and
- (e) in relation to—
  - (i) farmed ratites,
  - (ii) farmed game mammals of the family *Cervidae* or the family *Suidae*, or
  - (iii) bison,

slaughtered at the place of origin pursuant to Section III of Annex III to Regulation 853/2004;

“cutting plant” means an establishment which is used for boning and/or cutting up fresh meat for placing on the market and which—

- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31st December 2005, operating as licensed cutting premises under the Fresh Meat (Hygiene and Inspection) Regulations 1995(b) or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(c);

“cutting up” has the meaning that it bears in Regulation 853/2004 and “cut up” shall be construed accordingly;

“Directive 2004/41”, “Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 2075/2005” and “Regulation 2076/2005” have the meanings respectively given to them in Schedule 1;

“domestic ungulates” has the meaning given to it in point 1.2 of Annex I to Regulation 853/2004;

“establishment” has the meaning given to it in Article 2.1(c) of Regulation 852/2004;

“farmed game” has the meaning given to it in point 1.6 of Annex I to Regulation 853/2004;

“food business operator” has the meaning given to it in Article 3.3 of Regulation 178/2002;

“fresh meat” has the meaning given to it in point 1.10 of Annex I to Regulation 853/2004;

“game” has the meaning that it bears in Regulation 853/2004;

“game-handling establishment” means any establishment in which game and game meat obtained after hunting are prepared for placing on the market and which—

- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or

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(a) S.I. 1995/731, amended by S.I. 1999/400, S.I. 1999/1820, S.I. 2000/656, S.I. 2000/3352, S.I. 2001/447, S.I. 2001/3830, S.I. 2003/3272, S.I. 2006/1200 and S.I. 2007/402.  
(b) S.I. 1995/539, revoked with effect from 1st January 2006 by S.I. 2005/2059.  
(c) S.I. 1995/540, revoked with effect from 1st January 2006 by S.I. 2005/2059.

- (b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31st December 2005, operating as a licensed wild game processing facility under the Wild Game (Hygiene and Inspection) Regulations 1995(a);
- “game meat” has the meaning that it bears in Regulation 853/2004;
- “inspector” means an official veterinarian, an official auxiliary or any other person appointed by the Agency for the purpose of performing controls;
- “lagomorphs” has the meaning given to it in point 1.4 of Annex I to Regulation 853/2004;
- “meat” has the meaning given to it in point 1.1 of Annex I to Regulation 853/2004;
- “official auxiliary” has the meaning given to it in Article 2.1(h) of Regulation 854/2004;
- “official controls” shall be construed in accordance with definition of “official control” in Article 2.1 of Regulation 882/2004;
- “official controls charge” means the charge calculated in accordance with Schedule 2 and notified in accordance with regulation 3(1), (2) or (3);
- “official veterinarian” has the meaning given to it in Article 2.1(f) of Regulation 854/2004;
- “operator” means a food business operator who is carrying on a food business at any premises or that person’s duly authorised representative;
- “place of origin” has the meaning that it bears in point 3 of Section III of Annex III to Regulation 853/2004;
- “placing on the market” has the meaning given to it in Article 3.8 of Regulation 178/2002;
- “poultry” has the meaning given to it in point 1.3 of Annex I to Regulation 853/2004;
- “premises” means any slaughterhouse, game—handling establishment, cutting plant, place that is outside the slaughterhouse for the purposes of Chapter VI of Section I of Annex III to Regulation 853/2004, farm or place of origin;
- “slaughterhouse” means an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption and which—
- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that that establishment requires under Article 4.3 of Regulation 853/2004) was, on 31st December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995 or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995;
- “time costs”, means in relation to any establishment for any accounting period, the costs calculated in accordance with paragraphs 7 to 9 of Schedule 2;
- “verification” means checking, by examination and provision of objective evidence; and
- “wild game” has the meaning given to it in point 1.5 of Annex I to Regulation 853/2004.

(2) In these Regulations, any reference to a Community instrument defined in Schedule 1 is a reference to that instrument as amended from time to time.

### **Charges**

3.—(1) The Agency shall, subject to the following provisions of this regulation, notify each operator of any premises at which controls have been exercised in any accounting period of an official controls charge in respect of those controls as soon as practicable after the end of that period.

(2) Where the Agency cannot comply with paragraph (1) because it has insufficient information available to it to enable it to calculate the official controls charge for any accounting period in respect of any premises, it shall notify the operator of those premises of an interim charge, being

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(a) S.I. 1995/2148, revoked with effect from 1st January 2006 by S.I. 2005/2059.

such amount as the Agency estimates (having regard to the information it has) the official controls charge to be.

(3) Where the Agency has notified an operator of an interim charge in accordance with paragraph (2), and sufficient information becomes available to the Agency to calculate the official controls charge, it shall calculate that charge and—

- (a) where it exceeds the interim charge, notify the operator of the amount by which the official controls charge exceeds the interim charge; or
- (b) subject to paragraph (5), where it is less than the interim charge, credit to the operator the amount by which the interim charge exceeds the official controls charge.

(4) Any charge notified to an operator under paragraph (1), (2) or (3) shall be payable by the operator to the Scottish Ministers and shall be recoverable on demand by the Scottish Ministers, or by the Agency acting on their behalf, as a debt from the operator concerned.

(5) Where under paragraph (3)(b) a sum is to be credited to an operator, the Scottish Ministers may if they so determine pay such sum to the operator concerned instead of crediting such sum to the operator.

#### **Withdrawal of official controls**

4. Where the Scottish Ministers, or the Agency acting on their behalf, have obtained decree against an operator of any premises for any sum which is payable to the Scottish Ministers under regulation 3(4) and the operator fails within a reasonable time thereafter to comply with that decree, the Scottish Ministers may (without prejudice to any other legal remedy open to them) direct the Agency not to exercise any further controls at those premises in respect of which the debt accrued until the debt has been satisfied.

#### **Information**

5.—(1) An operator shall, on demand being made by the Agency, supply—

- (a) such information as the Agency may reasonably require for the purpose of calculating the official controls charge or notifying an operator of it; and
- (b) such evidence as the Agency may reasonably require to enable it to verify information supplied under sub—paragraph (a).

(2) Any demand made by the Agency under paragraph (1) shall be in writing and may be served on the operator concerned—

- (a) by delivering it to that operator;
- (b) in the case of an operator that is a body corporate other than a limited liability partnership—
  - (i) by delivering it to their secretary at their registered or principal office, or
  - (ii) by sending it in a prepaid letter addressed to their secretary at that office;
- (c) in the case of an operator that is a limited liability partnership—
  - (i) by delivering it to a designated member of the partnership at their registered or principal office, or
  - (ii) by sending it in a prepaid letter addressed to a designated member of the partnership at that office;
- (d) in the case of an operator that is a partnership other than a limited liability partnership, by delivering it to the partnership's principal place of business; or
- (e) in the case of any other operator, by leaving it or sending it in a prepaid letter addressed to the operator at the operator's usual or last known residence.

(3) Where a demand is to be served on an operator under paragraph (2) but it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the

premises of the operator are unoccupied, the document may be served by addressing it to the operator in the capacity of occupier of those premises (naming them), and—

- (a) by delivering it to some other person at the premises; and
- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

(4) Any person who—

- (a) without reasonable excuse, fails to comply within a reasonable time with a demand made under paragraph (1); or
- (b) in purported compliance with paragraph (1), knowingly or recklessly supplies information or evidence that is false or misleading in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Revocation**

- 6. The Meat (Official Controls Charges) (Scotland) Regulations 2008(a) are revoked.

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
21st June 2009

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(a) S.S.I. 2008/98.

## DEFINITIONS OF COMMUNITY LEGISLATION

“Directive 2004/41” means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(a);

“Regulation 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;

“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(b) as read with Regulation 2073/2005;

“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(c) as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2076/2005;

“Regulation 854/2004” means Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(d) as read with Directive 2004/41, Regulation 2074/2005, Regulation 2075/2005 and Regulation 2076/2005;

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- (a) O.J. No. L 157, 30.4.04, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (O.J. No. L 195, 2.6.04, p.12).
- (b) O.J. No. L 139, 30.4.04, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.3) and is corrected by Corrigendum (O.J. No. L 204, 4.8.07, p.26). The Regulation was amended by Commission Regulation (EC) No. 1019/2008 amending Annex II to Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (O.J. No. L 277, 18.10.08, p.7).
- (c) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.22). The Regulation was amended by Regulation 2074/2005, Regulation 2076/2005, Commission Regulation (EC) No. 1662/2006 amending Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (O.J. No. L 320, 18.11.06, p.1), Council Regulation (EC) No. 1791/2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania (O.J. No. L 363, 20.12.06, p.1), Commission Regulation (EC) No. 1243/2007 amending Annex III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (O.J. No. L 281, 25.10.07, p.8), Commission Regulation (EC) No. 1020/2008 amending Annexes II and III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No. 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products (O.J. No. L 277, 18.10.08, p.8) and corrected by Corrigendum (O.J. No. L 204, 4.8.07, p.26).
- (d) O.J. No. L 139, 30.4.04, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.83). The Regulation was amended by Regulation 882/2004, Regulation 2074/2005, Regulation 2076/2005, Commission Regulation (EC) No. 1663/2006 amending Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (O.J. No. L 320, 18.11.06, p.11), Council Regulation (EC) No. 1791/2006, Commission Regulation (EC) No. 1021/2008 amending Annexes I, II and III to Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption and Regulation (EC) No. 2076/2005 as regards live bivalve molluscs, certain fishery products and staff assisting with official controls in slaughterhouses (O.J. No. L 277, 18.10.08, p.15) and corrected by Corrigendum (O.J. No. L 204, 4.8.07, p.29).

“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(a) as read with Regulation 2074/2005 and Regulation 2076/2005;

“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(b);

“Regulation 2073/2005” means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(c);

“Regulation 2074/2005” means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(d);

“Regulation 2075/2005” means Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat(e); and

“Regulation 2076/2005” means Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(f).

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- (a) O.J. No. L 165, 30.4.04, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (O.J. No. L 191, 28.5.04, p.1). Regulation (EC) No. 882/2004 was amended by Commission Regulation (EC) No. 776/2006 amending Annex VII to Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards Community reference laboratories (O.J. No. L 136, 24.5.06 p.3), Council Regulation (EC) No. 1791/2006, Commission Regulation (EC) No. 180/2008 concerning the Community reference laboratory for equine diseases other than African horse sickness and amending Annex VII to Regulation (EC) No. 882/2004 of the European Parliament and of the Council (O.J. No. L 56, 29.02.08, p.4), Council Regulation (EC) No. 301/2008 adapting Annex I to Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules (O.J. No. L 97, 9.4.08, p.85) and Commission Regulation (EC) No. 1029/2008 amending Regulation (EC) No. 882/2004 of the European Parliament and of the Council to update a reference to certain European standards (O.J. No. L 278, 21.10.08, p.6) and corrected by Corrigendum (O.J. No. L 204, 4.8.07, p.29).
- (b) O.J. No. L 271, 15.10.05, p.17.
- (c) O.J. No. L 338, 22.12.05, p.1, corrected by Corrigenda at O.J. No. L 278, 10.10.06, p.32 and O.J. No. L 283, 14.10.06, p.62 and amended by Regulation (EC) No. 1441/2007 amending Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (O.J. No. L 322, 7.12.07, p.12).
- (d) O.J. No. L 338, 22.12.05, p.27, as amended by Commission Regulation (EC) No. 1664/2006 amending Regulation (EC) No. 2074/2005 as regards implementing measures for certain products of animal origin intended for human consumption and repealing certain implementing measures (O.J. No. L 320, 18.11.06, p.13), Commission Regulation (EC) No. 1244/2007 amending Regulation (EC) No. 2074/2005 as regards implementing measures for certain products of animal origin intended for human consumption and laying down specific rules on official controls for the inspection of meat (O.J. No. L 281, 25.10.07, p.12) and Commission Regulation (EC) No. 1022/2008 amending Regulation (EC) No. 2074/2005 as regards the total volatile basic nitrogen (TVB-N) limits (O.J. No. L 277, 18.10.08, p.18).
- (e) O.J. No. L 338, 22.12.05, p.60, as amended by Commission Regulation (EC) No. 1665/2006 amending Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat (O.J. No. L 320, 18.11.06, p.46) and Commission Regulation (EC) No. 1245/2007 amending Annex I to Regulation (EC) No. 2075/2005 as regards the use of liquid pepsin for the detection of *Trichinella* in meat (O.J. No. L 281, 25.10.07, p.19).
- (f) O.J. No. L 338, 22.12.05, p.83, as amended by Commission Regulation (EC) No. 1666/2006 amending Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 (O.J. No. L 320, 18.11.06, p.47), Commission Regulation (EC) No. 479/2007 amending Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004 (O.J. No. L 111, 28.04.07, p.46), Commission Regulation (EC) No. 1246/2007 amending Regulation (EC) No. 2076/2005 as regards the extension of the transitional period granted to food business operators importing fish oil intended for human consumption (O.J. No. L 281, 25.10.07, p.21), Commission Regulation (EC) No. 439/2008 amending Annex II to Regulation (EC) No. 2076/2005 as regards imports of fishery products from Fiji (O.J. No. L 132, 22.5.08, p.16), Commission Regulation (EC) No. 1020/2008, Commission Regulation (EC) No. 1021/2008 and Commission Regulation (EC) No. 1023/2008 amending Regulation (EC) No. 2076/2005 as regards the extension of the transitional period granted to food business operators importing fish oil intended for human consumption (O.J. No. L 277, 18.10.08, p.21).

**CALCULATION OF THE OFFICIAL CONTROLS CHARGE****The official controls charge**

1.—(1) The official controls charge payable by the operator of any premises for any accounting period shall be the sum that is equal to such percentage of the time costs generated by those premises in that period as the Agency considers appropriate and the Agency may determine different percentages for different premises on different types of premises.

(2) The Agency may vary any percentage determined pursuant to sub-paragraph (1) where it appears to the Agency to be appropriate to do so.

2. In calculating the official controls charge, the Agency shall comply with Article 27.3 of Regulation 882/2004.

**Declarations by operators**

3. The operator of any premises shall, on demand being made by the Agency, declare the working hours and working practices to be undertaken by the operator at the premises.

**Agreements between the Agency and operators concerning the performance of official controls other than audit**

4.—(1) The Agency and the operator of any premises shall—

- (a) make all reasonable efforts to agree the number of inspectors required for the purpose of carrying out controls other than audit at the premises and the number of hours required daily for that purpose; and
- (b) keep the matters agreed under sub-paragraph (a) under review.

(2) Where, following any such review, it appears to the Agency and the operator that it is appropriate to do so, they may by further agreement vary any matters agreed pursuant to sub-paragraph (1)(a).

(3) Where any matters agreed pursuant to sub-paragraph (1)(a) have been varied pursuant to sub-paragraph (2) they shall be treated as having been agreed pursuant to sub-paragraph (1)(a).

5.—(1) Where the Agency and the operator fail to agree as to a matter specified in sub-paragraph (1)(a) of paragraph 4, the Agency shall determine the matter and shall notify the operator of that determination.

(2) An operator who does not agree with a determination made by the Agency pursuant to sub-paragraph (1) may, within 3 weeks of the Agency giving notification to that operator under that sub-paragraph, request that the determination be reviewed by the Agency.

(3) Where an operator makes a request under sub-paragraph (2) and pays to the Agency the sum of £250 by way of contribution to the costs incurred by the Agency in connection with the review, the Agency shall review the determination concerned and notify the operator of its decision.

(4) Where, pursuant to sub-paragraph (3), the Agency decides that a determination made by it pursuant to sub-paragraph (1) was incorrect, it shall refund to the operator the payment made by that person in accordance with sub-paragraph (3).

(5) Where—

- (a) following review conducted pursuant to sub-paragraph (3), the Agency decides that its determination was correct; and

- (b) the operator has complied with the most recent demand made by the Agency pursuant to paragraph 3,

the operator may request that the matter that is the subject of that decision be determined by a person nominated for the purpose pursuant to sub-paragraph (7)(a).

(6) A request under sub-paragraph (5) shall be made within 1 week of the Agency giving notification to the operator under sub-paragraph (3).

(7) Where an operator makes a request under sub-paragraph (5)—

- (a) the Agency shall nominate a person to determine the matter from the list established under sub-paragraph (8); and
- (b) within 1 month of being nominated, the person so nominated—
  - (i) shall give the operator and the Agency an opportunity to make representations on the matter to be determined,
  - (ii) shall determine the matter concerned,
  - (iii) may make such order as to the costs incurred by the operator and the Agency as the person considers appropriate, and
  - (iv) shall notify the operator and the Agency of the determination and of any such order.

(8) The Agency shall establish and maintain a list of people who may be nominated for the purposes of this paragraph and shall consult those organisations appearing to represent operators before including any person on the list.

(9) Where, pursuant to sub-paragraph (7)(b)(ii), the person nominated determines that the decision made by the Agency pursuant to sub-paragraph (3) was incorrect, the Agency shall refund to the operator the payment made by the operator in accordance with sub-paragraph (3).

6. Nothing in paragraph 4 or 5 shall restrict the Agency in the performance of such controls as it considers necessary in order to ensure that the objectives specified in Article 1.1 of Regulation 882/2004 are achieved and that the obligation specified in Article 3.1 of that Regulation is fulfilled.

### **Time costs**

7. The time costs generated by any premises in any accounting period shall (subject to paragraphs 8 and 9) be calculated by—

- (a) multiplying the time (expressed in hours and fractions of an hour) spent by each inspector exercising controls at those premises in the period by the hourly rate applicable to that inspector determined in accordance with paragraph 10 or varied in accordance with paragraph 12; and
- (b) adding the results together.

8. The time costs in respect of any controls shall include any overtime payments or allowances made to the inspector concerned under any contract of employment or contract for services for exercising those controls.

9.—(1) In determining the total time spent in exercising controls, any time spent by an inspector in travelling to or from premises at which the inspector exercises controls and for which the inspector is paid under a contract of employment or contract for services may be counted as if it were time when the inspector was exercising controls.

(2) In determining the total time spent in exercising controls, any time spent by an inspector—

- (a) at any premises to which the inspector has gone for the purpose of exercising controls and for which the inspector is paid under a contract of employment or contract for services (regardless of whether or not the inspector is able to exercise controls there); and

- (b) at any other place—
  - (i) when the inspector is available for exercising controls but is not in fact exercising any controls, and
  - (ii) for which the inspector is paid under the inspector's contract of employment or contract for services,

shall be counted as if it were time when the inspector was exercising controls.

**10.** The Agency shall determine the hourly rate applicable to inspectors, and may determine different rates for different inspectors or different classes of inspector, having regard to the level of qualifications and experience of different inspectors or classes of inspector and to the cost of exercising controls by different inspectors or classes of inspector.

**11.** The hourly rate for any inspector or class of inspector shall be calculated so as to reflect such proportion of the costs of the items listed in Annex VI to Regulation 882/2004 incurred by that inspector or class of inspector in exercising controls (excluding any payments or allowances taken into account pursuant to paragraph 8) as the Agency considers it appropriate to apportion to that hourly rate.

**12.** The Agency may vary any rate determined pursuant to paragraph 10 where, having regard to variations in the costs referred to in paragraph 11, it appears to it to be necessary to do so.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations extend to Scotland only. They revoke and replace the Meat (Official Controls Charges) (Scotland) Regulations 2008.

2. These Regulations provide for the execution and enforcement in relation to Scotland of Articles 26 and 27 of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules in so far as those provisions—

- (a) require or, in the case of certain types of poultry (e.g. quail) permit, fees to be collected in respect of official controls performed under Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption at slaughterhouses, game-handling establishments and cutting plants for the verification of compliance with the provisions of Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for good food of animal origin in so far as they apply in relation to meat of domestic ungulates, meat from poultry and lagomorphs, meat of farmed game and meat of wild game;
- (b) require fees to be collected to cover the costs occasioned by official controls performed at slaughterhouses to verify compliance with the animal welfare rules set out in Council Directive 93/119/EC on the protection of animals at the time of slaughter or killing (O.J. No. L 340, 31.12.93, p.21) in so far as they apply in relation to animals slaughtered for human consumption at slaughterhouses;
- (c) permit fees to be collected to cover the costs occasioned by official controls performed outside the slaughterhouse where domestic ungulates have been slaughtered outside the slaughterhouse having suffered accidents that for welfare reasons prevent their transport to the slaughterhouse;
- (d) permit fees to be collected to cover the costs occasioned by official controls performed where certain kinds of poultry are slaughtered on farm; and
- (e) permit fees to be collected to cover the costs occasioned by official controls performed at the place of origin of farmed ratites, certain farmed game mammals and bison where for safety or animal welfare reasons the animals concerned are slaughtered there, rather than at a slaughterhouse.

3. These Regulations—

- (a) provide that reference to the Community instruments defined in Schedule 1 are to be construed as references to those instruments as they may be amended from time to time (regulation 2(2));
- (b) require the Food Standards Agency (“the Agency”) to notify each operator who is carrying on a food business at any slaughterhouse, game-handling establishment, cutting plant, farm or place of origin at which official controls have been exercised of the official controls charge that has arisen in relation to those official controls (the terms “slaughterhouse”, “game-handling establishment”, “cutting plant”, “place of origin”, “official controls” and “official controls charge” are all defined in regulation 2(2)) (regulation 3);
- (c) provide that any official controls charge so notified is payable by the operator to the Scottish Ministers on demand (regulation 3);
- (d) allow the Scottish Ministers to direct the Agency not to exercise any further official controls at given premises where, despite a court decree requiring the operator of the premises to pay the official controls charge for which the operator is liable, that operator fails to comply with the order (regulation 4);

- (e) require persons to supply the Agency on demand—
  - (i) with such information as the Agency may reasonably require for the purpose of calculating the official controls charge or notifying the operator of it, and
  - (ii) with such evidence as the Agency may reasonably require to enable it to verify that information (regulation 5);
- (f) make provision as to the service of any such demand on the operator (regulation 5); and
- (g) provide that a person to whom such a demand has been made—
  - (i) without reasonable excuse, fails to comply within a reasonable time with the demand for information or evidence; or
  - (ii) in response to the demand for information or evidence, knowingly or recklessly gives false or misleading information,is guilty of an offence (regulation 5).

4. Schedule 2 to these Regulations sets out how the official controls charge is to be calculated.

5. A full regulatory impact assessment of the effect that this instrument will have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.

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