

2005 No. []

FOOD, ENGLAND

**The Meat (Hygiene and Inspection) (Charges) (England)
Regulations 2005**

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| <i>Made</i> | - - - - | 2005 |
| <i>Laid before Parliament</i> | | 2005 |
| <i>Coming into force</i> | | 1st January 2006 |

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to food (including drink) including the primary production of food, in exercise of the powers conferred on him by that section, after 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(c), makes the following Regulations:

Title, commencement and application

1. These Regulations may be cited as the Meat (Hygiene and Inspection) (Charges) (England) Regulations 2005, come into force on 1st January 2006, and apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

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

“the Agency” means the Food Standards Agency;

“agreed slaughterhouse staff costs” means, in respect of any slaughterhouse approved, or conditionally approved, in accordance with Article 4 of Regulation 853/2004, to slaughter poultry and lagomorphs —

(a) the proportion (expressed as a sum of money) of the salaries (including overtime payments and employers’ pension and National Insurance contributions) paid to the staff at that slaughterhouse in respect of an accounting period that the Agency and the operator of the slaughterhouse shall agree as being attributable to any such staff assisting with official controls by carrying out certain tasks there during that period under Article 5.6 of Regulation 854/2004; plus

(b) 25% of that sum;

“cutting plant” has the meaning given to it in point 1.17 of Annex I to Regulation 853/2004;

(a) S.I. 2003/2901.

(b) 1972 c. 68.

(c) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

“employers’ National Insurance contributions” means those social security contributions for which employers are liable under Part I of the Social Security Contributions and Benefits Act 1992(a);

“food business operator” has the meaning given to it in 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, as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 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;

“game-handling establishment” has the meaning given to it in point 1.18 of Annex I to Regulation 853/2004;

“lagomorph” shall be construed in accordance with the definition of the term “lagomorphs” 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 control” means a control that the Agency performs for the verification of compliance with —

(c) Articles 3, 4(1)(a), 5, 7 and (save insofar as it relates to minced meat and eggs) 8 of Regulation 853/2004; and

(d) the requirements of the Welfare of Animals (Slaughter or Killing) Regulations 1995(b) insofar as such verification relates to the welfare of animals slaughtered for human consumption in slaughterhouses;

“official controls charge” means the charge calculated in accordance with the Schedule to these Regulations and notified in accordance with regulation 3(1), (2) or (3) of these Regulations;

“operator” means a food business operator who is carrying on the business of a slaughterhouse, game-handling establishment or cutting plant or his duly authorised representative;

“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 or cutting plant;

“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);

“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 amended by 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(e);

“slaughterhouse” has the meaning given to it in point 1.16 of Annex I to Regulation 853/2004; and

“verification” means checking, by examination and the provision of objective evidence.

(a) 1992 c. 4.

(b) 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 and S.I. 2003/3272.

(c) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22).

(d) OJ No. L155, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.83).

(e) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1).

Charges

3.—(1) The Agency shall, subject to the following provisions of this regulation, notify the operator of each slaughterhouse, game-handling establishment and cutting plant in which official controls have been exercised in any accounting period of an official controls charge in respect of those official 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 such premises as are specified in that paragraph, it shall notify the operator of those premises of an interim charge, being 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 final charge, being the amount by which the official controls charge exceeds the interim charge; or
- (b) subject to paragraph (6), 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 him to the Agency on demand.

(5) Where any agreed slaughterhouse staff costs have been used to calculate a charge falling to be notified under paragraph (1), (2) or (3), those costs shall be set off against the amount of that charge in calculating the actual charge notified thereunder, provided that no refund shall be made to the relevant operator.

(6) Where under paragraph (3)(b) a sum is to be credited to an operator, the Agency may if it so determines pay such sum to the operator concerned instead of crediting it to him.

Withdrawal of official controls

4. Where the Agency has had judgment entered against an operator of any premises for any sum which is payable to it under regulation 3(4) and the operator fails within a reasonable time thereafter to satisfy the judgment, the Agency may (regardless of any other legal remedy open to it) refuse to exercise any further official controls at those premises until the judgment has been satisfied.

Information

5.—(1) Any person 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) of this paragraph.

(2) Any person who —

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

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 (Hygiene and Inspection) (Charges) Regulations 1998^(a) are revoked in so far as they apply in relation to England.

Signed by authority of the Secretary of State for Health

2005

Parliamentary Under Secretary of State
Department of Health

^(a) S.I. 1998/2095, amended by S.I. 2000/224, S.I. 2000/656 and S.I. 2001/750.

THE SCHEDULE

Regulation 2(1)

CALCULATION OF THE OFFICIAL CONTROLS CHARGE

The official controls charge

1. Subject to paragraphs (2) and (3), the official controls charge payable by the operator of any premises for any accounting period shall be the lower of —

- (a) the sum of —
 - (i) the standard charge incurred in relation to those premises for that period, and
 - (ii) any additional charge incurred in relation to those premises for that period by virtue of paragraph 8; and
- (b) the time costs generated by those premises for that period.

2.—(1) This paragraph applies where the official controls charge calculated under paragraph 1 for any accounting period (amount A), when added to the official controls charge payable in respect of all earlier accounting periods falling within the same financial period (amount B), produces a total (amount C) which is greater than the amount of the official controls charge which would be payable under paragraph 1 if those accounting periods were one accounting period (amount D).

(2) Where this paragraph applies, the official controls charge payable by an operator for an accounting period shall be the amount by which amount D exceeds amount B.

(3) In this paragraph “financial period” means a period commencing on the Monday immediately following the last Sunday in March in any year and ending on the last Sunday in March in the following year.

3. The official controls charge payable by the operator of a slaughterhouse, game-handling establishment or cutting plant for any accounting period shall not be lower than 45% of the standard charge incurred in relation to those premises for that period.

The standard charge

4. The standard charge for any accounting period (expressed in Euros) payable by the operator of a slaughterhouse shall be calculated by multiplying the rate given in the following Table applicable to animals of a particular type by the number of animals of that type slaughtered or as the case may be dressed there in the period.

5. The standard charge for any accounting period (expressed in Euros) payable by the operator of a game-handling establishment in respect of wild game dressed there during that period shall be calculated by multiplying the rate given in the following Table applicable to animals of a particular type by the number of animals of that type dressed there in the period.

| <i>Species</i> | <i>Type</i> | <i>Rate per type of animal in Euros</i> |
|---|--|---|
| Bovines | bovine animals aged 6 weeks or more at slaughter | 4.5 |
| | bovine animals aged less than 6 weeks old at slaughter | 2.5 |
| Equidae and other solipeds | | 4.4 |
| Pigs including wild boar | carcase weight less than 25 kg | 0.5 |
| | carcase weight greater than or equal to 25 kg | 1.3 |
| Sheep, goats and other ruminants not listed elsewhere in this Table | carcase weight less than 12 kg | 0.175 |
| | carcase weight between 12 and 18 kg inclusive | 0.35 |
| | carcase weight greater than 18 kg | 0.5 |
| Poultry, rabbits, small game birds and ground game | all broilers; all cast hens; other poultry, rabbits, small game birds and ground game weighing less than 2 kg | 0.01 |
| | poultry (not being broilers or cast hens), rabbits, small game birds and ground game weighing at least 2 kg (except those which are adult and weigh at least 5 kg) | 0.02 |
| | poultry (not being broilers or cast hens), rabbits, small game birds and ground game (all being adult) and weighing at least 5 kg | 0.04 |
| Ostriches and other ratites | | 1.3 |
| Land mammals and birds of a type not mentioned above | | 1.3 |

6. The standard charge for any accounting period (expressed in Euros) payable by the operator of a cutting plant or of a game-handling establishment shall be calculated by multiplying by 3 the number of tonnes of meat brought into the plant or establishment concerned during that period to be cut up or boned there.

7. The standard charge (expressed in Euros) shall be converted into sterling by multiplying it by the Euro / sterling conversion rate applicable in the year the inspection was carried out.

8.—(1) Where in respect of an accounting period the Agency incurs increased costs because of inefficiency in the operation of premises, it may, in accordance with this paragraph, add an additional charge to the standard charge incurred in relation to the premises for that period.

(2) The additional charge shall be a sum equal to the time costs generated by the inefficiency for the accounting period concerned.

(3) The Agency may not make an additional charge in accordance with this paragraph unless it has notified the operator of its intention to do so.

(4) The notification referred to in sub-paragraph (3) shall be given as soon as is practicable after the Agency has concluded that it wishes to make an additional charge in accordance with this paragraph.

(5) For the purposes of this paragraph “inefficiency” means inefficiency on the part of the operator and shall include in particular —

- (a) delay in the start of slaughtering attributable to the operator;
- (b) mechanical breakdown caused by lack of maintenance;
- (c) enforcement action taken by the Agency or an inspector;
- (d) under-employment of inspectors caused by the operator’s failure to adhere to the working hours or working practices agreed for the purposes of this paragraph pursuant to sub-paragraph (6);
- (e) insufficient provision of slaughter staff caused by the operator’s failure to adhere to the working hours or working practices agreed for the purposes of this paragraph pursuant to sub-paragraph (6);
- (f) delays caused by risks to the health or safety of inspectors attributable to the operator; and
- (g) any change to the working hours or working practices agreed for the purposes of this paragraph pursuant to sub-paragraph (6) which is attributable to the operator.

(6) For the purposes of sub-paragraph (5)(d), (e) and (g), the Agency and the operator shall agree working hours and working practices and shall keep the working hours and working practices so agreed under review.

(7) 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 working hours or working practices agreed pursuant to sub-paragraph (6).

(8) Where any working hours or working practices have been varied pursuant to sub-paragraph (7) they shall be treated as having been agreed pursuant to sub-paragraph (6).

(9) No additional charge may be made in accordance with this paragraph in respect of any increased costs incurred because of any variation in working hours or working practices which does not alter the working hours or working practices which have been agreed in accordance with sub-paragraph (6).

9.—(1) An operator who does not agree that an additional charge is justified under paragraph 8 may request that the question be determined by a person nominated for the purpose pursuant to sub-paragraph (3)(a).

(2) A request under sub-paragraph (1) shall be made within 1 week of the Agency giving the operator notice under paragraph 8(3).

(3) Where an operator makes a request under sub-paragraph (1) —

- (a) the Agency shall nominate a person to determine the question from the list established under sub-paragraph (4);
- (b) the person so nominated shall give the operator and the Agency an opportunity to make representations on the question to be determined; and
- (c) the person so nominated shall, within 1 month of being nominated, decide whether an additional charge is payable and shall notify the operator and the Agency of his decision.

(4) 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.

Time costs

10. The time costs generated by any premises in any accounting period shall (subject to paragraphs 11 and 12) be calculated by —

- (a) multiplying the time (expressed in hours and fractions of an hour) spent by each inspector exercising official controls at those premises in the period by the hourly rate applicable to that inspector determined in accordance with paragraphs 13 to 16;
- (b) adding the results together; and
- (c) adding any agreed slaughterhouse staff costs for the period.

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

12. In determining the total time spent in exercising official controls, any time spent by an inspector —

- (a) in travelling to or from premises at which he exercises official controls and for which he is paid under a contract of employment or contract for services;
- (b) at any premises to which he has gone for the purpose of exercising official controls and for which he is paid under a contract of employment or contract for services (regardless of whether or not he is able to exercise official controls there); and
- (c) at any other place —
 - (i) when he is available for exercising official controls but is not in fact exercising any such controls, and
 - (ii) for which he is paid under his contract of employment or contract for services,

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

13. 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 official controls by different inspectors or classes of inspector.

14. The hourly rate for any inspector or class of inspector shall be calculated so as to reflect —

- (a) the mean salary costs and fees (including pension and employers' National Insurance contributions, but excluding any additional costs taken into account pursuant to paragraph 11) and other costs of the exercise of official controls by that inspector or that class of inspector; and
- (b) such proportion of the administrative costs of the exercise of official controls as the Agency considers it proper to apportion to that hourly rate.

15. For the purposes of paragraph 14(b), “administrative costs” means all costs reasonably incurred in exercising official controls including in particular the costs of —

- (a) post-qualification training given to inspectors of a particular class in relation to the performance of their functions as a member of that class;
- (b) the salaries (including the cost of overtime, pension contributions and employers' National Insurance contributions) of the staff other than inspectors engaged in the exercise of official controls, and such proportion of inspectors' remuneration as is not directly accounted for in the calculation of time costs;
- (c) providing office accommodation, equipment and services in relation to the exercise of official controls, including depreciation of any office furniture and equipment and also of providing information technology, stationery and forms;
- (d) protective clothing and equipment used in exercising official controls and of laundering such clothing;
- (e) accounting and collecting charges and of providing pay-roll and personnel services in connection with the employment of inspectors; and
- (f) other expenses and overheads incurred by or in relation to —
 - (i) inspectors exercising official controls, and

(ii) other staff engaged in the administration of those controls.

16. The Agency may vary any rate determined pursuant to paragraph 13 where, having regard to the factors set out in paragraphs 14 and 15, it appears to it to be necessary to do so.

17. Prior to determining or varying hourly rates in accordance with paragraphs 13 to 16, the Agency shall consult such operators as are likely to be affected by those rates.

Definitions

18.—(1) In this Schedule —

- (a) “official auxiliary” and “official veterinarian” have the meanings respectively given to them in Article 2.1(h) and (f) of Regulation 854/2004;
- (b) “inspector” means an official veterinarian or an official auxiliary;
- (c) “the standard charge” means, in relation to any slaughterhouse, game-handling establishment or cutting plant for any accounting period, the charge calculated in accordance with paragraph 4, 5 or 6, as the case may be, converted into sterling in accordance with paragraph 7;
- (d) “the Euro / sterling conversion rate” applicable in respect of any given year shall be —
 - (i) for 2006, 1 Euro = £X, and
 - (ii) in each subsequent year, the rate published in the C Series of the Official Journal of the European Communities on the first working day of the September of the preceding year or, if no rate is published in it on that day, the first rate published in it thereafter;
- (e) “time costs” means, in relation to any establishment for any accounting period, the costs calculated in accordance with paragraphs 10 to 12; and
- (f) “wild game” has the meaning given to it in point 1.5 of Annex I to Regulation 853/2004.

(2) Expressions used in this Schedule, other than those defined in sub-paragraph (1), which are used in Council Directive 85/73/EEC on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (as amended and consolidated by Council Directive 96/43/EC) have the same meaning as in the first-mentioned Directive.

EXPLANATORY NOTE

(This note is not part of the Regulations)