EXECUTIVE NOTE

THE MEAT (OFFICIAL CONTROLS CHARGES) (SCOTLAND) REGULATIONS 2006 S.S.I. 2006/580

Made by Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [1]and of all other powers enabling them in that behalf, 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 [2]. This instrument is subject to negative resolution procedure.

Issue

1. The Statutory Instrument requires the Food Standards Agency to charge the operators of approved meat premises in Scotland in order to recover the costs incurred by the Agency's Executive Agency, the Meat Hygiene Service (MHS), in carrying out official controls at such premises for the purpose of checking compliance with applicable meat hygiene requirements.

Background

2. The instrument is being made to continue to provide for the collection of meat hygiene official controls charges in Scotland, as required by EC legislation. It needs to come into force from 1 January 2007 when the finance provisions contained in Article 27 of Regulation (EC) 882/2004 on Official Feed and Food Controls (OFFC Regulation) take effect in all Member States and form the legal basis for charging for official controls. From that date, the Meat (Official Controls Charges) (Scotland) Regulations 2005, which currently provide for recovery of meat hygiene official controls charges in Scotland, will be revoked. This is because the Council Directive on which they are based, Directive 85/73/EEC, as last amended by Directive 96/43, (the Charging Directive), will be superseded by OFFC Regulation from that date.

3. The OFFC Regulation allows, with one exception, the current charging arrangements to continue until 1 January 2008 and this instrument has that effect. The exception is that, from 1 January 2007 the current requirement in the Charging Directive that charges for meat hygiene official controls must not be lower than 45% of the amount calculated on the basis of specified throughput rates (the 45% rule) is revoked

4. The SI is made under the powers given by section 2 (2) of the European Communities Act (ECA) 1972.

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[1] 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46) ("the 1998 Act"), Schedule 8 paragraph 15(3). The function was conferred on the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The competence of Scottish Ministers was extended to include all "food" as defined in EC Regulation 178/2002 by virtue of Section 63 of the 1998 Act.

[2] O.J. No. L31, 1.2.02, p.1, as last amended by Regulation (EC) No. 1642/2003 (O.J. No. L245, 29.9.03, p.4).

Extent

4. The Regulations apply to Scotland only. Parallel legislation has been made in England, and is being developed in Wales and Northern Ireland.

Policy Background

5. The finance provisions of the OFFC Regulation set minimum throughput rates that must be charged for specified meat hygiene official controls, but allow higher rates to be charged provided that the total charge does not exceed the actual cost of inspection. There is flexibility as to implementation, which allows the present charging system to be continued, that is to charge slaughterhouses, game handling establishments and meat cutting businesses the lesser of the amount calculated from current EC minimum throughput rates or the time cost of exercising the controls. This system is to ensure that charges are affordable by small to medium sized businesses.

6. The retention of the current EC minimum throughput rates is permitted until 1 January 2008 by a transitional provision in the OFFC Regulation.

7. The instrument reflects the above and the only change to the current charging system made by the instrument is the removal of a requirement that charges must not be lower than 45% of the amount calculated on the basis of EC throughput rates. This rule currently means that where charges based on time costs are lower than the throughput charge, the amount payable must be increased to at least 45% of the throughput charge.

Public Consultation

7. A public consultation was carried out by the Agency in Scotland between 28 June 2006 and 20 September 2006 on the draft Meat (Official Controls Charges) (Scotland) Regulations. Around 66 stakeholders in Scotland were consulted, including organisations representing slaughterhouses, game handling establishments and meat cutting sectors. In addition, the operators of all approved slaughterhouses, game handling establishments and meat cutting businesses were sent a letter alerting them to the consultation and giving the opportunity for them to respond either directly or via a representative organisation. Four responses were received, none of which made substantive comments. A summary of the responses may be found at: http://www.food.gov.uk/multimedia/pdfs/consultationresponse/meatchargescotresp06.pdf.

8. A list of interested parties consulted is attached at Annex A below.

Parliamentary Procedure

9. The intention is for these regulations to come into force on 1 January 2006. They are subject to negative resolution procedure and the 21-day rule applies.

Publicity

10. Guidance on the charges for official controls is available from the Meat Hygiene Service and from the Agency's web-site. A summary of the responses to the consultation has also been placed on the Agency's web-site.

Impact

11. The Instrument will not impose additional cost implication on businesses, and some businesses will benefit from reduced charges. A Regulatory Impact Assessment is attached to this Executive Note.

FOOD STANDARDS AGENCY SCOTLAND

OCTOBER 2006

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Scottish consultation on draft Meat (Hygiene and Inspection) (Charges) (Scotland) Regulations: List of Interested Parties

Aberdeen Angus Cattle Society
Aberdeen Scotch Meat Ltd
ABP Scotland
ANM Group Ltd
Association of Deer Management Groups

Association of Meat Inspectors

BASC Scotland

Braehead Foods Ltd

Branded Beef Breeders Ltd
British Deer Society
British Goat Society
British Poultry Council
British Veterinary Association
Coldstorage and Distribution Federation
Deer Commission for Scotland
Department for Environment and Rural Affairs
Fenton Barns (Scotland) Ltd
Food Industry Forum

Glasgow University Veterinary School
Grampian Country Food Group
Grampian Pig Producers

Greggs Scotland
Independent Farming Group

James Finlay Ltd

MacSween of Edinburgh
M D Longhorn & Co
Meat and Livestock Commission
Meat Hygiene Service

National Beef Association Scottish Council
National Farmers Union Scotland

National Pig Association

Orkney Direct Waste Disposal
Orkney Meat Ltd
Pataks Frozen Food
Quality Meat Scotland
Rick Bestwick Ltd
Royal Environmental Health Institute for Scotland
Royal Highland and Agricultural Society of Scotland
Scottish Agricultural College

Scottish Association of Meat Wholesalers
Scottish Cattle Association

Scottish Centre for Infection and Environmental Health

Scottish Chambers of Commerce

Scottish Committee of the Council on Tribunals

Scottish Consumer Council

Scottish Crofting Foundation

Scottish Executive
Scottish Executive Environment and Rural Affairs Department

Scottish Federation of Meat Traders Association

Scottish Food and Drink Federation

Scottish Food Quality Certification Ltd

Scottish Game Dealers and Processors Association

Scottish Gamekeepers Association

Scottish Retail Consortium

Scottish Rural Property and Business Association

Scottish Society for the Prevention of Cruelty to Animals

Simply Organic

State Veterinary Service
The Halal Food Authority
The Scottish Gourmet (Scotland Direct)
Tombuie Smokehouse
Women's Food and Farming Union
And 4 individuals

FINAL REGULATORY IMPACT ASSESSMENT

1. TITLE OF THE PROPOSAL

THE MEAT (OFFICIAL CONTROLS CHARGES) (SCOTLAND) REGULATIONS 2006 S.S.I. 2006/580

1.1 Implementation of the provisions of Regulation (EC) 882/2004 on Official Feed and Food Controls (OFFC) relating to charging for official controls at approved meat establishments for which domestic legal provisions are necessary.

2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

2.1 The Objective

2.1.1 The objective of the proposed SSI is to implement in Scotland the provisions of Regulation (EC) 882/2004 on Official Feed and Food Controls (the EC OFFC Regulation) that relate to the requirement to charge for meat hygiene official controls at approved meat establishments.

2.1.2 The EC OFFC Regulation includes a new framework on financing on official controls that will apply from 1 January 2007. At that time it will form the legal basis for any charges for official controls in Member States.

2.1.3 The EC OFFC Regulation is directly applicable, i.e. it has automatic legal effect from the date it comes into force, in each Member State. It continues to require Member States to collect charges to cover the costs occasioned by meat hygiene official controls. There is flexibility in the means of giving effect at national level to some of its provisions, for which domestic legislation is necessary and this is the purpose of the proposed SSI. The scope of this proposal extends only to charging for meat hygiene official controls at approved meat establishments in Scotland and its principal purposes are:

- to enable the collection of charges by competent authorities to cover the costs occasioned by meat hygiene official controls; and
- to ensure that charges collected are not higher than the cost borne by the competent authorities in relation to the controls

2.2 Background

2.2.1 The charges to which this RIA relates are currently implemented in Scotland by the Meat (Official Controls Charges) (Scotland) Regulations 2005 (SSI 2005 No. 607). These charges are paid to the Meat Hygiene Service (MHS), an Executive Agency of the Food Standards Agency. The current SSI implements certain EC requirements that are set out in Council Directive 85/73, as last amended by Directive 96/43 (the Charging Directive). This lays down standard Community fees for relevant official controls. In the case of slaughterhouses the fees are per animal or bird slaughtered and/or dressed there. For game-handling establishments the fees are headage charges per bird

or animal dressed there. For meat cutting plants and game-handling establishments the fee is a fixed amount per tonne of meat entering the premises to be cut up or boned there. The Directive allows some flexibility in the way Member States may charge for meat hygiene controls but stipulates that, as a minimum, charges must not be lower than 45% of the standard Community fees.

2.2.2 From 1 January 2007, the EC OFFC Regulation will form the legal basis for charging for official controls in Member States and will supersede the current EC charging Directive. This will mean that the current national legislation for charging will no longer be effective or compliant with EC law and new national legislation will be needed to implement EC requirements for charging for meat hygiene official controls.

2.2.3 It is proposed to make use of a transitional provision in the EC OFFC Regulation that allows, with one exception, the current charging arrangements to continue until 1 January 2008. The exception is that the OFFC Regulation stipulates that from 1 January 2007 official control charges must not exceed the cost of the official control. This has the effect of abolishing the current Charging Directive requirement that charges for meat hygiene controls must not be lower than 45% of the charge calculated from standard Community throughput fees (the 45% rule). The application of this current rule to the system of meat hygiene charges used in Scotland (and across the UK) means that where charges based on time costs are lower than the throughput charge, the amount payable must be at least 45% of the throughput charge. About 11 operators of approved meat cutting plants in Scotland currently pay charges at the 45% level that exceed the time costs of the controls they receive.

2.2.4 The abolition of the minimum charge due to the 45% rule will reduce charges to the meat industry in Scotland by an estimated £82,000 per annum at 2005/6 rates.

2.3 Rationale for Government Intervention

2.3.1 The SSI is required to ensure continued compliance with the EC requirements to charge for meat hygiene official controls and to ensure that the charge does not exceed the cost of the official controls. Failure to introduce an SSI would mean that there would be no national powers to enforce the required charges. It would leave the UK open to infraction proceedings by the Commission for failing to comply with the meat hygiene official controls charges requirements of the EC OFFC Regulation, which might have cost implications.

2.4 Devolution

2.4.1 The Regulations apply in Scotland only. England, Wales and Northern Ireland will make separate, parallel legislation.

3. CONSULTATION

3.1 The Agency conducted a full public consultation from 28 June to 20 September 2006 with Stakeholders and other Government Departments in Scotland and has taken their views into account in the proposed SSI.

4. OPTIONS

4.1 Charges for enforcement of meat hygiene controls

4.1.1 The EC OFFC Regulation requires charges to be made in all Member States for meat hygiene official controls at approved establishments. The options considered to implement this requirement in Scotland are:

- **Option 1** – do nothing.
- **Option 2** – make use of the transitional provision in the EC OFFC Regulation to maintain the current charging system, amended to the minimum necessary to ensure compliance with the EC OFFC Regulation.
- **Option 3** – amend the current charging system more significantly.

4.1.2 Analysis

- Option 1 (doing nothing) would breach an EU obligation to apply the OFFC Regulation and leave the UK (as the Member State) open to infraction proceedings by the Commission for failing to comply with the meat hygiene official controls charges requirements of the EC OFFC Regulation, which might have cost implications. In addition, there would be no legal basis for charging for the costs occasioned by meat hygiene official controls.

- Option 2 would ensure continuing compliance with EC law and minimum change to the current system whilst proposals for making more significant changes are developed. It would maintain the current system of charging with the exception of a provision that stems from the current EU requirement; that charges for official controls must not be lower than 45% of the throughput charge. Removal of this provision would mean that no meat business operator would pay more than the official controls costs in respect of their business with the result that some would pay lower charges. There would be no economic, social or environmental impacts (on businesses) associated with this option. A one-off administration cost (to the Agency) to implement this option across Great Britain would amount to an estimated £50,000 (the cost has not been broken down by country, but would be higher if the change were implemented for one country at a time).

- Option 3 would require detailed proposals to be developed for formal consultation and more time would be needed to complete this work. In addition, the further changes introduced by the OFFC Regulation do not need to take effect until 1 January 2008.

5. COSTS AND BENEFITS

5.1 Sectors and Groups Affected

5.1.1 The proposed SSI will apply to operators of approved meat establishments.

5.1.2 We consider that the proposal will have no impact on racial equality, social or environmental issues.

5.2 Benefits

Option 1

5.2.1 None

Option 2

This option will ensure continuing compliance with EC law and minimum change to the current system whilst proposals for making more significant changes are developed. It will maintain the current system of charging with the exception of the provision that stems from the current EU requirement that charges for official controls must not be lower than 45% of the throughput charge. Removal of this provision will mean that no meat business operator would pay more than the official controls costs in respect of their business with the result that some would pay lower charges. This will reduce charges in Scotland by an estimated £82,000 per annum at 2005/6 rates.

Option 3

5.2.3 This option would require detailed proposals to be developed for formal consultation. Any benefit from this option will not become apparent until the detailed proposals are developed.

5.3 Costs

Option 1

5.3.1 This option would leave the UK (as the Member State) open to infraction proceedings by the Commission for failing to comply with the meat hygiene official controls charges requirements of the EC OFFC Regulation, which might have cost implications. In addition, there would be no legal basis for charging for the costs occasioned by meat hygiene official controls.

Option 2

5.3.2 The proposed Regulations will continue to provide the current meat hygiene official control charges system and will not increase industry costs. There are no additional administrative costs for businesses or economic, social or environmental impacts associated with this option. The cost to the Agency in the 2006/7 financial year is estimated on the basis of 2005/6 rates to be £20,500. A one-off administration cost (to the MHS) to implement and communicate this option would amount to an estimated £50,000.

Option 3

5.3.3 This option would require detailed proposals to be developed for consultation and more time would be needed to complete this work.

6. SMALL FIRMS IMPACT TEST

6.1 The proposed Regulations will not impose any regulatory change and will have no effect on the operation of approved meat establishments. Except for the abolition of the 45% rule described in paragraph 2.2.3, the Regulations will not affect the meat hygiene official control charges payable by approved meat plant operators.

6.2 The abolition of the minimum charge due to the 45% rule will ensure that no operator of an approved meat establishment will be charged more than the cost of official controls in respect of their business, and will reduce total costs to the meat industry in Scotland by an estimated £82,000 per annum at 2005/6 rates. Any impact on small firms would be beneficial. Businesses of any size that are subject to infrequent official control audits because they pose a low meat hygiene risk, are likely to benefit the most.

7. TEST RUN OF BUSINESS FORMS

7.1 No changes to the administration of the system for charging for meat hygiene official controls are intended as part of these proposals. No new or additional forms will be introduced.

8. COMPETITION ASSESSMENT

8.1 The abolition of the minimum charge due to the 45% rule will ensure that no operator of an approved meat establishment will be charged more than the cost of official controls in respect of their business. The proposed SSI will not impose any new costs on businesses, nor affect market share or market structure. It will marginally improve the competitive position of businesses that benefit from the abolition of the 45% rule.

9. ENFORCEMENT, SANCTIONS AND MONITORING

9.1 The Meat Hygiene Service, an Executive Agency of the Food Standards Agency, will remain responsible for the enforcement, sanctions and monitoring of the meat hygiene charging provisions set out in the proposed SSI. The Meat Hygiene Service will collect meat hygiene official controls charges on behalf of the Scottish Ministers, and may ultimately, under the direction of the Scottish Ministers, withdraw official controls where a decree has been obtained against an operator for any sum of such charges payable, and the operator fails within a reasonable time to comply with that decree.

10. IMPLEMENTATION AND DELIVERY PLAN

10.1 The MHS has re-programmed its computer-based charging system to implement the abolition of the 45% rule from 1 January 2007 and this is being tested. A back-up plan is in place to implement the abolition of the 45% rule

manually if this proves to be needed.

11. POST-IMPLEMENTATION REVIEW

11.1 EC law will require from 1 January 2007 that official control charges must not exceed the cost of those controls. The MHS will monitor its charging arrangements to ensure that implementation is effective. In line with Scottish Executive guidance we will review the continued effectiveness of this Regulation through the use of a Review Regulatory Impact Assessment that will be completed within 10 years.

12. SUMMARY AND RECOMMENDATION

12.1 The proposed SSI will ensure continuing compliance with EC law and minimum change to the current system and will implement an EC requirement that comes into effect from 1 January 2007 that official controls charges must not exceed the cost of those controls.

12.2 The costs and benefits of option 1 (doing nothing) are not analysed here, as implementing this option would be in breach of EC charging requirements. It has not been possible to analyse the costs and benefits of making more significant changes to meat hygiene charges (option 3) as proposals have not been developed.

Analysis of option 2 (minimum change)

	Benefit (Economic, Social, Environmental) per annum	**Cost** (Economic, Social, Environmental, Policy & Administrative) per annum
Meat Industry	£50,000 (economic) Nil (environmental & social)	Nil
FSA/MHS	Nil	£132,000*

*Estimated annual cost in Scotland of the abolition of the 45% minimum charge rule (£82,000) plus estimated one-off GB-wide implementation cost (£50,000)

13. DECLARATION AND PUBLICATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed……..

Date

Deputy Minister for Health and Community Care

Contact Point

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