EXPLANATORY MEMORANDUM TO

THE ZOONOSES AND ANIMAL BY-PRODUCTS (FEES) (ENGLAND) REGULATIONS 2010

2010 No. 1668

1. This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument provides the Secretary of State with powers to charge farmers and operators of private laboratories in order to recover costs incurred by the government in providing the following services:

- Official sampling and testing of *Salmonella* in laying flocks of domestic fowl
- Official sampling and testing of *Salmonella* in breeding flocks of domestic fowl
- Official sampling and testing of *Salmonella* in broiler flocks of domestic fowl
- Official sampling and testing of *Salmonella* in turkey flocks
- Approval of private laboratories to carry out testing under the Control of Salmonella in Poultry Order 2007 and the Animal By-Products Regulations 2005.

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

3.1 None

4. Legislative Context

4.1 The Zoonoses and Animal By-Products (Fees) (England) Regulations 2010 ("The Fees Regulations 2010") allow the Secretary of State to recover costs for services provided by Government in the implementation of European Legislation, particularly Regulation (EC) No 2160/2003 of the European Parliament and of the Council on the control of *Salmonella* and other specified food-borne zoonotic agents. European Legislation on targets for the reduction of *Salmonella* also applies: Commission Regulation (EC) No 1003/2005 (breeding flocks), Regulation (EC) No 1168/2006 (laying flocks), Regulation (EC) No 646/2007 (broiler flocks) and Regulation (EC) 584/2008 (turkey flocks).

4.1 The Fees Regulations 2010 revoke and replace the Zoonoses and Animal By-Products (Fees) (England) Regulations 2009 ("The Fees Regulations 2009").

4.2 The Fees Regulations 2010 allow for cost recovery for services provided in relation to *Salmonella* control programmes and Defra's laboratory scheme.

4.3 This instrument is made under section 56(1) and (2) of the Finance Act 1973 which permits a Government department to require the payment of fees or other charges for the provision of any services or facilities or the issue of any authorisation, certificate or other document, in pursuance of any Community obligation. As an instrument made under the Finance Act 1973, the Regulations are subject to Treasury consent.

4.4 The Control of *Salmonella* in Poultry Order 2007 enforces National Control Programmes (NCPs) for breeding and laying flocks of domestic fowl. The Control of *Salmonella* in Broiler Flocks Order 2009 enforces the NCP for broiler flocks. The Control of *Salmonella* in Turkey Flocks Order 2009 enforces the NCP for turkey flocks. The NCPs set out the requirements for the monitoring and control of *Salmonella* in breeding, laying and broiler flocks of domestic fowl and in turkey flocks in accordance with EC legislation.[1]

4.5 In order to monitor progress towards meeting the reduction targets specified in the EC legislation, the following official controls will apply to:

- Breeding flocks (with over 250 birds) will be required to provide official control samples on three occasions during the production cycle;
- Laying holdings (with over 1000 birds) must provide at least one official sample from one flock each year;
- All flocks on 10% of broiler holdings with over 5000 birds are selected at random for official control sampling each year;
- All flocks on 10% of holdings with more than 500 fattening turkeys are selected at random for official control sampling each year
- All flocks on 10% of holdings with 250 or more adult breeding turkeys and all holdings with elite, grandparent and great grandparent breeding turkeys.
- All holdings where *S*. Enteritidis or *S*. Typhimurium was detected during the previous 12 months.
- All flocks on holdings in case of trace-back of *S*. Enteritidis or *S*. Typhimurium from samples taken at hatchery/ holding by the Food Business Operator/official controls

4.6 Charges are made to recover costs incurred by Animal Health in their role in managing the collection of official samples on behalf of the Secretary of State and by the Veterinary Laboratories Agency (VLA) in examining any samples received.

4.7 The Poultry Order, the Broiler Flocks Order and the Turkey Flocks Order also require operators to provide the Secretary of State with certain information relating to their flocks, and impose record-keeping requirements. All three Orders were the subject of full public consultations in 2007, 2008 and 2009, respectively. Impact Assessments are available at:

http://www.opsi.gov.uk/si/si2007/em/uksiem_20073574_en.pdf
http://www.opsi.gov.uk/si/si2009/em/uksiem_20090260_en.pdf
http://www.defra.gov.uk/corporate/consult/turkey/consultation.pdf

4.8 The proposed Regulations will also allow the VLA and Defra to recover costs for services in respect of the approved laboratory scheme. Under this scheme private

1 Regulation (EC) No 2160/2003, Regulation (EC) No 1003/2005, Regulation (EC) No 1168/2006, Regulation (EC) No 584/2008 and Regulation (EC) No 646/2007.

laboratories are authorised by the competent authority to test operator samples for *Salmonella* under the NCPs and for *Salmonella*, Enterobacteriaceae, *Clostridium perfringens* and other organisms as required under the Animal By-Products Regulations 2005.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 This Regulation will be introduced to ensure that the Secretary of State is able to recover costs for services provided by Government in relation to the implementation of European Legislation on the control of *Salmonella* and other zoonotic diseases in primary production.

- ***Consolidation***

7.2 The Fees Regulations 2010 revoke and replace the Zoonoses and Animal By-Products (Fees) (England) Regulations 2009.

8. Consultation outcome

8.1 The introduction of the NCPs for breeding, laying, broiler and turkey flocks followed full public consultations in 2006, 2007, 2008 and 2009, respectively. Full details regarding plans to revise the charging legislation were included in the consultations. When the Zoonoses and Animal By-Products (Fees) (England) Regulations 2008 were introduced stakeholders were fully consulted and supported the preferred option of phasing in charges.

8.2 When the Zoonoses and Animal By-Products (Fees) (England) (No 2) Regulations 2008 were introduced, following discussions with the Treasury and the Department for Business, Enterprise and Regulatory Reform it was agreed that it was not necessary to consult again on these charging proposals.

8.3 Industry representatives have been made aware of the introduction of the Fees Regulations 2010 through regular stakeholder meetings.

9. Guidance

9.1 The charges to industry are set out in the Regulations. Guidance on the services for which the Fees Regulations 2010 will recover costs is provided in the NCPs, publicly available on the Defra website.

10. Impact

10.1 Charges are made to recover costs incurred by Animal Health in their role in managing the collection of official samples on behalf of the Secretary of State and by the Veterinary Laboratories Agency (VLA) in examining any samples received.

10.2 The legislation transfers the costs of performing sampling from Government to industry. The benefit to Government is therefore equal to the cost to industry.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The majority of farm holdings affected by the proposed Fees Regulations 2010 would be classed as small businesses (i.e. 20 people or less). It is not considered that these businesses would be disproportionately affected by the charges as the charges themselves are relatively small and fall equally across all parts of the industry. The increases are also relatively small

11.3 During the consultation process for the NCPs detailed discussions were held with industry on how to avoid placing unnecessary burdens on business. Defra continues to work closely with industry on their implementation. Whilst the Fees Regulations 2010 are not able to provide a specific mechanism to reduce costs on small business (as most businesses they apply to could be classified as small business) charges placed on smaller holdings will be lower as less time will be required to collect samples.

12. Monitoring & review

12.1 Defra's financial objective is full cost recovery for the services provided. In principle the full cost should be recovered each year. This is the total cost of all the resources used in providing the service (direct and indirect costs, including a full proportional share of overhead costs and any selling and distribution expenses, insurance, depreciation and cost of capital etc.).

12.2 Annual accounts will be produced to assess progress against the target of full cost recovery for the provision of the relevant services. It is intended that the level of fees will be reviewed annually. The applicable fees will also be published on the Defra website.

13. Contact

Rebecca Dominey at the Department for Environment, Food and Rural Affairs Tel: 020 7238 5242 or email: Rebecca.Dominey@defra.gsi.gov.uk can answer any queries regarding the instrument.