EXECUTIVE NOTE

THE ZOONOSES AND ANIMAL BY-PRODUCTS (FEES) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2008 (SSI 2008/423)

The above instrument was made in exercise of the powers conferred by section 56(1) and (2) of the Finance Act 1973. This instrument is subject to negative Parliamentary procedure.

Policy Objective

This instrument will enable Scottish Ministers to recover costs associated with optional confirmatory sampling and testing for flocks of laying hens, as provided for by point 4(b) of Part D (specific requirements concerning flocks of laying hens) of Annex II (control of zoonoses and zoonotic agents) of Commission Regulation (EC) No 1237/2007.

This optional testing will enable producers, when tests carried out under National Control Plans (NCPs) indicate *Salmonella* in their flocks, to ask for further testing which will if clear enable the Scottish Ministers to lift the restrictions they must apply under paragraph 2 of Part D to Annex II (eggs to be treated in a manner that guarantees the destruction of all *Salmonella* serotypes).

Background

Section 56(1) and (2) of the Finance Act 1973 permits Government to require the payment of fees or other charges for the provision of any service in pursuance of any Community obligation.

The Control of Salmonella in Poultry (Scotland) Order 2008 enforces NCPs for both breeding and laying flocks of domestic fowl. These NCPs are required under Regulation (EC) 2160/2003, Commission Regulation (EC) 1003/2005 and Commission Regulation (EC) 1168/2006 ("the EC Regulations"). The main aim of these NCPs is to improve public health through the enhanced detection and control of salmonellas of human health significance at the point of primary production.

The EC Regulations also set Member States a target to reduce the level of infection on holdings each year for a period of 3 years. The reduction targets assigned to individual Member States are based on the findings of EU-wide surveys.

In order to chart progress towards meeting the reduction target specified in the EC Regulations operators of breeding and laying flocks undergo official sampling and testing at predetermined intervals during the life of the flocks. The costs associated with this official sampling and testing need to be recovered by the Scottish Ministers.

The Zoonoses and Animal By-Products (Fees) (Scotland) Regulations 2007 ("the 2007 Regulations") currently allow Scottish Ministers to recover these costs. The 2007 Regulations came into force on 28 January 2008 and extended only to the recovery of fees incurred for sampling and testing in breeding flocks. These Regulations were amended to include recovery of fees incurred for sampling and testing in laying flocks on 12 December 2008.

The 2007 Regulations need to be amended for a second time to take account of cost recovery for optional confirmatory sampling and testing under both the breeding and laying flocks NCPs.

This SSI allows for the government to recover the costs associated with optional confirmatory testing. These tests allow producers a discretionary right to verify the outcome of the official samples and testing in order to exclude false-positive initial results. This discretionary right was introduced by Commission Regulation (EC) 1237/2007 which amends Part D of Annex II to Commission Regulation (EC) 2160/2003 to include 4(b) of Part D of said Annex.

Currently, breeding and laying flock owners and private laboratories are aware of charges being raised for Government services in this field. Industry have been fully involved in the development of the breeders and layers NCPs through regular stakeholder meetings.

Consultation

There has been no consultation on the amending Regulations as our policy is simply to set fees at such a level as to achieve full cost recovery. Accordingly, decisions on the level of fees to be charged would not alter as a result of consultation.

Industry have however been involved in the development of this policy through regular NCP stakeholder meetings. It is also for individual producers to decide whether or not to ask for optional sampling.

Additionally, the Regulatory Impact Assessment that was prepared (and consulted on) to coincide with the introduction of the layers NCP made clear Government's intent to recover costs associated with optional confirmatory testing.

Financial Effects

The charges presently recovered for services provided under the breeding fowls NCP are not set out on the face of the legislation, but are instead published on the Scottish Government web site. This favoured approach was set out clearly in the Regulatory Impact Assessment (RIA) that accompanied the 2007 Regulations.

This removes the need to bring forward amending legislation every time the level of fees needs to be revised. It also significantly reduces Government costs and the administrative effort associated with the development of new legislation. Any increase in the charges to be levied are discussed beforehand with industry through the NCP stakeholder groups.

In the following table "the Regulations" means the Animal By-Products (Scotland) Regulations 2003 and "the European Regulation" means Regulation (EC) 2160/2003. These Regulations require certain activities, for which costs can be recovered under the 2007 Regulations. The charges that are intended to apply across the UK for 2009, are as follows:

Activity	*Fee (£)*	*Fee to be paid by:*
Taking or supervising the taking of official control samples	55 plus 25 per ½ hour (or part thereof)	The person in charge of the holding
Examination of official control samples	15	The person in charge of the holding
Processing of an application for approval of a laboratory under Regulation 21 of the 2005 Regulations or Article 12 of the European Regulation	13	The operator of the laboratory
Processing of annual registration documentation in respect of a laboratory approved under Regulation 21 of the 2005 Regulations or Article 12 of the European Regulation	31	The operator of the laboratory
Inspecting a laboratory for the purpose of Regulation 21 of the 2005 Regulations or Article 12 of the European Regulation for—		The operator of the laboratory
(a) one test	631	
(b) two tests	650.5	
(c) three tests	670	
(d) four tests	689.5	
Administering a quality control test under Regulation 21 of the 2005 Regulations or Article 12 of the European Regulation for—		The operator of the laboratory
(a) *Salmonella*	37	
(b) *Enterobacteriaceae*	67	
(c) *Clostridium perfringens*	67	
Conducting tests under point 4(b)(i) of part D of Annex II to the European Regulation(1)	105	The person in charge of the holding
Conducting tests under point 4(b)(ii) of part D of Annex II to the European Regulation	3,300	The person in charge of the holding
Conducting tests under point 4(b)(iii) of part D of Annex II to the European Regulation	2,150	The person in charge of the holding

(**1**) Regulation 1237/2007 has substituted a new Part D to Annex II to Regulation 2160/2003.

SCOTTISH GOVERNMENT RURAL DIRECTORATE