

EXPLANATORY MEMORANDUM TO THE MEAT (OFFICIAL CONTROLS CHARGES) (WALES) REGULATIONS 2009

This explanatory memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

1. Description

The Statutory Instrument introduces, in Wales, time-based charging arrangements for meat hygiene and animal welfare at slaughter official controls in approved meat premises. The Instrument introduces a system that charges such premises a proportion of the official meat controls costs. This will provide each business with an incentive to reduce the number of official control hours it requires and to work cooperatively with the official controls authority.

2. Legislative Background

The powers enabling this Instrument to be made are contained in section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food. These powers are transferred to Welsh Ministers by virtue of the EC (Designation (No2) Order 2005 (which function has been transferred to them by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales act 2006) in respect of measures relating to food (including drink) including the primary production of food.

3. Purpose and intended Effect of the Legislation

The Instrument (which replaces the Meat (Official Controls Charges) (Wales) Regulations 2008 (S.I. 2008/601 (W.63)) 'the current Regulations', which came into force on 31 March 2008), continues to require the Food Standards Agency (FSA) to charge the operators of approved meat premises in Wales in order to recover a percentage of the costs incurred by the FSA's Executive Agency, the Meat Hygiene Service (MHS), in carrying out official controls at such premises to check for compliance with applicable meat hygiene and animal welfare at slaughter requirements. Official controls are carried out by the MHS in Great Britain and DARD in Northern Ireland. In doing so, the Instrument supplements the like requirements imposed on Member States by Article 27 of Regulation (EC) No. 882/2004 on Official Feed and Food Controls (the OFFC Regulation). References below to 'meat hygiene' official controls should be taken to include animal welfare at slaughter official controls.

The instrument provides for an unspecified percentage (to be determined by the Agency) of meat hygiene official control costs to be charged to businesses. This reflects the fact that, under Article 27 of the OFFC Regulation, charges must, other than in exceptional cases specified in that provision, be in amounts no less than ones equating to the relevant EC minimum charge rates, be no more than the full cost of the official controls being charged for and be determined having regard to specified plant specific

factors set out in that provision, such as whether or not the plant concerned is a low throughput one.

4. Implementation

It is intended that these Regulations will come into force on 28 September 2009. This Statutory Instrument applies only to Wales. Separate but parallel legislation will be made for England, Scotland and Northern Ireland.

The MHS will enforce the measures in GB and will implement time cost charges and the other measures for which the Regulations provide in GB, in accordance with their usual procedures. This includes notifying businesses of the new system of charging for meat hygiene controls and about the other measures. They will explain that the new system of charges has been designed to keep the level of charge to each businesses unchanged. They will also explain that any increase to charges that is subsequently agreed will be notified separately.

5. Consultation

Interested parties, including approved meat establishments, industry representative bodies and farming unions were invited to comment on the draft Regulations and stakeholder events were held in Wales, England and Scotland. Details are included in the Regulatory Impact Assessment below.

6. Regulatory Impact Assessment

6.1 Options

The options and proposals on which the FSA consulted are detailed below. The FSA was open to introducing a combination of proposals:

Option	- do nothing.
Proposal 1	- introduce generally applicable time-cost charging for meat hygiene and animal welfare at slaughter controls.
Proposal 2	- increase hygiene control charges by: a) inflation (4% assumed ¹) but introduce a standard hourly rate for calculation of a 95% rebate of PIA costs; b) 6% but introduce a standard hourly rate for calculation of a 95% rebate of PIA costs; c) an amount sufficient to recover an additional £3 million charges in total over a full year (estimated to be just under 9%) but introduce a standard hourly rate for calculation of a 95% rebate of PIA costs.
Proposal 3	- introduce charges for controls relating to Specified Risk Material (SRM) and the cost of additional BSE controls ² of either; a) 5% of total time-costs incurred carrying out these official controls from 29 th June 2009;

¹ This relatively high estimate of inflation takes into account but is lower than the overall increases in pay rates for MHS staff (3.9% for OVs and 5.9% for MHIs)

² BSE control costs are paid by Defra, and these figures will also appear in Defra calculations.

- b) 5% of those time-costs but to be deferred and begin within 2010/11.
- Proposal 4 - provide for charges to be made for official controls carried out on-farm.
- Proposal 5 a) require operators to declare the working hours and practices of their business;
b) introduce a £400 fee to initiate a semi-independent review of MHS assessment of required staff levels made having regard to that assessment; and
c) enable businesses to appeal to an independent third person against any assessment of required staff levels made as a result of such a review as mentioned in paragraph b.
- Proposal 6 Comments were also sought on whether to continue to adjust charge rates in order to comply with EC minima from January in each calendar year or whether, with effect from 2010, to adjust those rates as from the start of each MHS financial year.

6.2 Analysis of Options

Option – do nothing

Doing nothing would have meant continuing with the Maclean charging system. Under this, the majority of businesses paid throughput charges, which do not provide an incentive for them to make the most efficient use of the MHS services. There would thus have been no encouragement through charging for them to minimise the official control time the MHS needed to expend and an opportunity to reduce the cost of official controls would have been lost. It would also have meant that charges would not be increased, so in real terms they would have fallen if their value was eroded by inflation.

Proposal 1 – introduction of generally applicable time based charging

It was decided to implement this proposal.

Businesses will be charged a proportion of the cost of each hour (with quarter hours being the minimum unit of charge) that an official of the MHS works in an approved meat plant to carry out official controls. The chargeable proportion of the cost will be expressed as a discount rate that will be notified to each business. Account will continue to be taken of the interests of small/isolated businesses in determining the proportion of costs that will be charged to them.

The move to time-cost charges will mean that throughput charges will need to be calculated only for the purpose of ensuring that the EC minimum rates per animal or per tonne of meat are respected. That is, to ensure that the sum the FSA charges as a proportion of the time costs does not fall below the amount which would have to be charged in order to comply with the EC minima if charging was on a headage/tonne of meat basis, except in circumstances where EC law permits or requires it to do so. For example, a sum falling below one calculated from EC minima may be charged if it is to take account of the interests of a low throughput business and must be

charged if the full time-cost of carrying out the official controls is less than the amount calculated from the minima.

The FSA believes that moving to time-cost charging will encourage commercial discipline that will lead to savings for industry and taxpayers. This will be achieved through the more efficient use of available enforcement resources and by clearly setting out the basis of charges for each monthly period. Time-cost charging will also provide stronger incentives for businesses to comply with meat hygiene and animal welfare at slaughter requirements and will be easier, and thus slightly cheaper, to administer than the Maclean system.

The move to discounted time-cost charging will not, in itself, affect the level of charges. This will be achieved by using the Maclean charging system to calculate discount rates. Each business will be charged at a rate discounted to the same extent in percentage terms (compared with full-time costs of official controls) that would have applied under the current charging system if it had remained in place. This is on the basis that business practise, throughput and official control time stay the same. However, any changes in practice or throughput would affect the charge because businesses would be charged by the hour. As explained above, the FSA expects that charging by the hour will lead to efficiencies in many cases, meaning that overall charges might be lower, all else remaining equal and subject to continuing compliance with EC minima requirements.

Each business will continue to receive a discount from the full cost of the controls. This will be based on the discounts that are currently applicable to ensure that the introduction of time-cost charging will not affect the level of charge that each business pays, this being on the assumption that the businesses practices and throughput stay the same as does the amount of official control time. However, the FSA expects that the time spent on carrying out official controls will fall as a result of MHS efficiencies, with a concomitant reduction in the charges to businesses.

Some poultry slaughterhouses employ Plant Inspection Assistants (PIAs) who carry out certain official controls for the premises. The FSA encourages plants to employ PIAs as a means to reduce official control costs and to encourage businesses to take responsibility for official controls in their premises. Under time-cost charging, the use of PIAs by a business will contribute to the calculation of the discount it will receive, because the full cost of official controls (MHS and PIA costs) will be used in the calculation.

Proposal 2 – increases in general charging level

All of the proposals for a general increase to meat hygiene charges set out in proposal 2 above, took account of increases to rates from January 2009 effected to comply with the EC minima.

The FSA decided to defer any increase in charges this year.

The analysis of the alternative charges increases considered, indicated that:

- a. Increasing charges by 4% would, after taking account of the fall in inflation since the option was first assessed, slightly close the gap between the cost of controls and the charges for those controls. Doing this would be in line with UK Government cost sharing policy and with the FSA's general principle that it is generally inappropriate for it to subsidise the costs of official controls for business and that FSA expenditure should be aligned more closely with its strategic objectives. A 4% increase would have also made a significant allowance for the ability of industry to meet the additional costs.
- b. Increasing charges by 6% would have taken greater account of the FSA's intention that businesses should pay a greater proportion of the cost to the FSA of delivering official controls at approved meat plants, of the funds available to the FSA, and it would have been more closely in line than a 4% increase with the UK Government's cost sharing policy. It would have also have taken significant account of the ability of the industry to meet the additional costs.
- c. Increasing charges by an amount sufficient to recover an additional £3 million in total over a full year (previously estimated, based on 2007/08 data, to be just under 9%) would have been a significant move towards closing the gap between the actual cost of delivery of official controls and the charges made to industry for those controls. It would have also had regard to the ability of industry to meet the charges.

The FSA also considered the possibility of increasing meat hygiene charges by 12%. However, it was decided not to consult on this because, when combined with the additional revenue from the EC minima increases from January 2009, it would have generated more than the £3 million that the FSA had decided to seek.

Costs of Plant Inspection Assistants

It was decided not to implement the proposal to reduce by 5% (from 100% to 95%) the deduction made from meat hygiene charges in respect of the costs borne by some poultry slaughterhouses in employing Plant Inspection Assistants (PIAs) to undertake official controls and to base this deduction on a standard hourly rate of £11 for PIA employment costs instead of agreed actual costs. This decision means that official control charges will continue to take account of 100% of the actual PIA employment costs for each business.

Proposal 3 – charges for SRM and the cost of additional BSE controls

The alternatives on which the FSA consulted were to:

- introduce charges for controls relating to Specified Risk Material (SRM) and the cost of additional BSE controls³ of either;
 - a) 5% of total time-costs from 29th June 2009; or
 - b) 5% of total time-costs to be deferred and begin within 2010/11.

³ BSE control costs are paid by Defra, and these figures will also appear in Defra calculations.

The FSA decided not to introduce charging for these controls either from 29 June or during 2010/11. The matter will be considered further at a later date. The intention of the proposed charges was to recover a proportion of MHS costs as a first step in the FSA's intended process of balancing the cost sharing agenda with the need for official controls and the benefit that businesses derive from them. These controls only affect red meat slaughterhouses and cutting plants.

Proposal 4 - Charges for official controls carried out on-farm by the MHS

A provision has been included in the Regulations to enable charges to be made for meat hygiene official control work that is done on-farm or other place of origin if certain conditions are satisfied. The FSA has decided to set the level of charge for each farm/place of origin with reference to the charging discounts that apply to slaughterhouses with similar levels of throughput in order to take account of the needs of low throughput on-farm slaughterers. This is instead of charging for the full cost of the controls, as was proposed in the consultation document.

Currently the MHS carry out very few on-farm official controls. It is not known how much, if at all, the volume of this would change if they had to charge a proportion of the cost of this work. However, the overall impact of the charges will be small as the overwhelming majority of animals for human consumption are slaughtered in approved abattoirs.

Proposal 5a – businesses declaration of working hours and practices

The Regulations require businesses to declare their working hours and practices. This information is to be included in a Business Agreement (BA) with the MHS that will also set out the chargeable official control resources that the MHS allocates to meet the needs of the business. There will be costs associated with the Business Agreement, but since there is currently a requirement for businesses and the MHS to agree operating hours it is expected that any additional costs from requiring businesses to declare their working hours and practices will be minimal.

The MHS intends to work co-operatively with each business to enable the official control resource allocation to be kept as low as practicable.

Proposal 5b – introduction of a fee to initiate a semi independent review of MHS chargeable staff resource allocations

The Regulations that introduce a £250 fee⁴ for businesses to initiate a semi-independent review of the MHS's initial assessment of the staff resources needed to carry out chargeable official controls rather than the £400 fee that was proposed in the FSA's consultation document. The FSA Board favoured reducing the fee to £250 in order not to unduly deter small businesses from initiating a review.

⁴ Instead of £400 that was proposed.

It is not possible to estimate the impact of this fee as it is not known how many businesses are likely to be discontented with the MHS's initial assessment of the staff it needs to effectively carry out meat hygiene official controls at the premises. However, the MHS will be seeking to work cooperatively with business operators, which will minimise the likelihood of reviews being initiated. Also, the £250 fee will be reimbursed if the review finds in the operator's favour.

Proposal 5c - appeals against MHS chargeable staff resource allocations

The Regulations provide that where agreement still cannot be reached between the MHS and the business as to MHS staffing arrangements at the plant, businesses may have recourse to an appeals process. This appeal will be to an independent person nominated by the FSA who will review the evidence of both parties and will determine the appeal. The Regulations provide for the independent person to award appropriate costs.

The independent person's determination will be binding on the FSA unless it would mean that it would not fully comply with its obligation under EC law to carry out official controls. In that circumstance, the MHS would provide the staff resources it considered necessary to meet its legal obligations, but would charge the business only in respect of the staff resources considered necessary by the independent person.

The FSA expect that there will be few appeal cases, but it is not possible to estimate their number or their complexity and thus their impact in terms of cost.

Proposals 5b and 5c - administration costs

The cost to the FSA/MHS of administering reviews and appeals is estimated to be around £1,000 - £2,000 per case on average, including the inclusion of industry representation at the first stage review and the use of an independent person for cases that are appealed. The total cost for this cannot be estimated because the number of reviews and appeals cannot be predicted, nor is it known the extent to which appeal costs will be awarded for or against the MHS.

Proposal 6 – Applicable date for determining UK minimum charge rates per animal or per tonne of meat

EC regulations set out minimum meat hygiene official control charge rates per type of animal or per tonne of meat (by type of meat) that apply to all Member States. These rates are specified in EC law in Euros and need to be converted into Pounds Sterling. Current national regulations provide for the Pound/Euro exchange rate to be set each September to apply from the start of the following calendar year and the consultation document asked whether it would be more appropriate to make such changes from the start of each MHS financial year, starting in 2010. The response to this suggestion was positive.

The FSA decided to:

- a. change the implementation date for future changes to UK minimum charge rates that are required due to variations of the £/Euro exchange rate from the start of each calendar year to the start of each financial year; and
- b. change from applying an exchange rate prevailing at one point in time to applying an average exchange rate based on the previous calendar year⁵. This change will moderate the effect of large or small annual changes to charges based on an exchange rate set at a single point in time.

In summary, taking account of responses to the consultation exercise, it has been decided to pursue, with some modifications, proposals 1, 4, 5a, b & c and 6 as described above.

6.3 Costs and Benefits

The financial impact of the proposals is expected to be very small, with most having a zero impact. Businesses initiating reviews that find against them will incur a cost of £250.

Discounts will continue to be targeted to provide support to smaller and geographically remote plants in accordance with EC requirements and in a manner consistent with the FSA's wider policy towards such businesses.

The measures being implemented would mainly affect rural areas, as they are where many slaughterhouses, game handling establishments, cutting plants and farms are located. However, they are likely to have little impact on the rural economy as the introduction of generally applicable time-cost charging would be cost-neutral and would affect all similar businesses.

The move to discounted time-cost charging will not, in itself, affect the level of charges if business practice, throughput and official control time stays the same. This will be achieved by using the Maclean charging system to calculate discount rates. Each business will be charged at a rate discounted to the same extent in percentage terms (compared with full-time costs of official controls) that would have applied under the current charging system if it had remained in place. However, any changes in practice or throughput would affect the charge because businesses would be charged by the hour. As explained below, the FSA expects that charging by the hour will lead to efficiencies in many cases, meaning the overall charges might be lower, all else remaining equal and subject to continuing compliance with EC minima requirements.

⁵ Calculated using the first exchange rate to be published each month in the C series of the Official Journal of the European Community.

The FSA believes that moving to time-based charging will encourage commercial discipline that will lead to savings for industry and taxpayers. This will be achieved through the more efficient use of available enforcement resources and by clearly setting out the basis of charges for each monthly period. Time-cost charging will also provide stronger incentives for businesses to comply with meat hygiene and animal welfare at slaughter requirements and will be easier, and thus slightly cheaper, to administer than the Maclean system.

6.4 Competition Assessment

The introduction of generally applicable time-cost charging is unlikely to affect significantly the ability of approved meat businesses to compete or affect their incentives to do so, as all such businesses within the UK will be affected by them. The FSA does not expect that these measures will directly or indirectly limit the number or range of approved meat businesses.

Limited information is available on the profile of the meat processing sector. However, some analysis has been possible for red meat slaughterhouses. Based on employment information for 27 medium and large businesses in GB in 2007⁶, it has been possible to infer an average number of employees per animal unit. Data on throughput for red meat slaughterhouses has been converted into animal units, and the result used to estimate the number of employees and assign each business to a size category. This suggests that in Wales approximately three quarters of red meat slaughterhouses are micro businesses, approximately 15% are small, less than 10% are medium-sized and only 1 slaughterhouse is large.⁷

6.5 Consultation

Around 100 key stakeholders across the UK, including 15 in Wales, were consulted, including industry representative organisations. In addition, around 900 operators of approved slaughterhouses, game handling establishments and meat cutting businesses were alerted to the consultation and given the opportunity to respond to it, either directly or via a representative organisation.

A 14-week consultation period proved to be necessary, instead of the usual 12 weeks, as the consultation period straddled the Christmas and New Year holiday period. (Consultations were also carried out on the equivalent instruments proposed in England, Scotland and Northern Ireland).

There was a good response to the United Kingdom consultations, with the receipt in Great Britain of 48 written responses, 5 in Wales, including responses from all of the main industry representative bodies; views aired at stakeholder events were also held across the UK; food business operator feedback from discussions with MHS Business Managers about plant level

⁶ Source: Plimsoll (2007)

⁷ Note that these estimates are based on a small sample of medium-sized and large firms, and the average applied to all businesses. This procedure is likely to over-estimate the number of micro and small firms, because those firms probably have relatively more employees per AU than larger ones, given the economies of scale in the sector.

business agreements; consideration by the Food Advisory Committees for Wales, Scotland and Northern Ireland and a discussion of the Advisory Body on Official Meat Controls. There was a mixed but generally supportive response to the main proposal of moving to a time-based system of charging; but there were strong concerns expressed about both a proposed increase to meat hygiene official control charges of either 4%, 6% or 9% (the percentage of any increase to be selected to be decided in the light of any comments received from consultees) and the introduction of a new charge for Specified Risk Material (SRM)/ BSE controls. (SRM are those parts of cattle, sheep and goats most likely to contain BSE infectivity in an infected animal. By law, SRM must be removed as soon as possible after slaughter, stained and disposed of safely. These controls are enforced by the Meat Hygiene Service in approved slaughterhouses, cutting plants and game-handling establishments in Great Britain.). Those concerns resulted in it being concluded that the instrument should be amended as set out below.

The instrument provides for generally applicable time-cost charging to be introduced to replace the current charging system. However, the proposals relating to the circumstances when charges will be made have been modified to introduce two limited flexibilities. These are that it is proposed not to charge for time when scheduled official controls are not being carried out (downtime) due to: a) *force majeure*, for example, where a business is unable to operate due to a utility supply failure that the business could not have prevented; or b) any other reason, for up to two hours on any two occasions in any four/five week charging period, where downtime was the result of contractual or customary practices or where the circumstances were otherwise outside of the business's control, e.g. machinery failure where an acceptable programme of maintenance is in place. Where this flexibility is required on a regular basis, the Business Agreement between the food business operator and the MHS will be reviewed to assess whether it could more accurately reflect the working times and practices of the business.

Currently, in poultry slaughterhouses, a deduction is made from charges otherwise payable by the operators of the slaughterhouses in an amount equating to the full cost to such operators of employing their own staff, PIAs, to undertake official control duties under the supervision of the Official Veterinarian responsible for carrying out official controls at the slaughterhouse concerned. (EU meat hygiene legislation allows for the use of PIAs by the operators of poultry slaughterhouses where certain conditions are satisfied). The proposals to introduce a standard average rate of the hourly cost to businesses of employing such PIAs and to reduce from 100% to 95% the deduction made from charges in respect of these costs have been dropped, pending the development of a more suitable way of implementing the Board's policy of encouraging the use of PIAs.

For charges to be made for meat hygiene official controls that are carried out on farm or at other places of origin, charges will be set with reference to the charging discounts that apply to slaughterhouses with similar levels of throughput rather than, as was proposed, at the full cost of the controls.

For businesses to pay a £250 fee, rather than the proposed £400 fee, to initiate a semi-independent review of the MHS's initial determination of the staff time and numbers it considers it needs effectively to carry out chargeable official controls at the businesses. This is on the basis that the effectiveness of the fee in deterring frivolous/vexatious cases will be monitored, with a view to raising it to £400 at some future date should that prove to be necessary.

Finally, the proposals to increase charges by one of the percentages referred to earlier and to introduce a charge to recover 5% of the cost of official controls on Specified Risk Material, including additional BSE controls that apply to cattle slaughtered for human consumption that are required to be tested for BSE, has been deferred pending further consideration of them as part of the development by the FSA of future charging proposals.

6.6 Post Implementation Review

The MHS will monitor the implementation of the measures in GB in accordance with their usual procedures. The effect of the measures will be reviewed in April 2010 to establish their actual costs and benefits and the achievement of their desired objectives.

6.7 Summary

The scope of official controls will not be affected in any way by implementing the measures described above, so there will be no reduction in the level of consumer protection and the public health benefits afforded by the meat hygiene controls. The financial impact of the proposals is expected to be very small, with most having a zero impact. The move to a time-based charging system will strengthen incentives for businesses to comply with food and animal welfare at slaughter requirements.