

2005 No. 12

FOOD

**The Charges for Inspections and Controls (Amendment)
Regulations 2005**

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| <i>Made</i> - - - - | <i>8th January 2005</i> |
| <i>Laid before Parliament</i> | <i>11th January 2005</i> |
| <i>Coming into force</i> - - | <i>5th February 2005</i> |

The Secretary of State in exercise of the powers conferred by sections 45 and 48(1)(b) and (c) of the Food Safety Act 1990(a) which are now vested in her(b);

After carrying out the consultation required by section 48(4) of that Act and having had regard, in accordance with section 48(4A) of that Act, to any relevant advice given by the Food Standards Agency;

And after carrying out the consultation 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);

Hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Charges for Inspections and Controls (Amendment) Regulations 2005 and come into force on 5th February 2005.

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- (a) 1990 c.16. Sections 45 and 48 were amended by section 40(1) of and Schedule 5 to the Food Standards Act 1999 (c. 28): paragraphs 7, 8 and 20 of that Schedule amended section 45 and paragraphs 7, 8 and 21 amended section 48.
- (b) The powers, so far as they are exercisable in relation to England, were transferred by article 2(6) of the Transfer of Functions (Agriculture and Food) Order 1999 (S.I. 1999/3141) to the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly, and by article 2(3) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794) to the Secretary of State.
In so far as they are exercisable in relation to Scotland, they were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46) but the Secretary of State retains a concurrent power to exercise them under section 57(1) of that Act.
In so far as they are exercisable in relation to Wales, they were transferred to the National Assembly for Wales by article 2(a) of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) but the Ministers of the Crown responsible retain a concurrent power to exercise them under paragraph 5 of Schedule 3 to the Government of Wales Act 1998 (c.38); that concurrent power became vested in the Secretary of State in consequence of section 40 of and Schedules 5 and 6 to the Food Standards Act 1999 (c.28), but subject to any power of the Minister of Agriculture, Fisheries and Food, saved by regulation 13 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000 (S.I. 2000/656), to join in making regulations in relation to charges for inspection in relation to residues of veterinary products; that joint power was transferred to the Secretary of State by article 2(3) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002.
- (c) OJ No. L23, 28.1.2000, p. 72.

Amendment of previous Regulations

2. The Charges for Inspections and Controls Regulations 1997^(a) shall be amended as follows:
- (a) in regulation 2(1), omit the definition of “the Minister”, and for those words, wherever they appear in those Regulations, substitute the words “the Secretary of State”;
 - (b) in regulation 3(1) and 4(1), for “him”, wherever it appears, substitute “her”;
 - (c) in regulation 3(1), after “shall”, insert “, except where regulation 4(4D) applies,”;
 - (d) in regulation 4(1), after “paragraph (2)”, insert, “ or, as the case may be, paragraphs (4D) and (4E),”;
 - (e) after paragraph (4A) of regulation 4 insert the following paragraphs—
 - “(4B) Where the charge made under regulation 3(1) concerns the inspection and control of eggs, the Secretary of State may enter into an agreement with an organisation providing for the organisation to make payments to her in accordance with paragraphs (4C) to (4E), if she reasonably considers that the organisation is supported by persons falling within paragraph (2)(h).
 - (4C) If she enters into an agreement she must publicise—
 - (a) the fact of having done so;
 - (b) its duration; and
 - (c) if not of a term certain, the way in which she will notify its termination,in a manner she considers suitable for informing persons concerned in the egg trade.
 - (4D) So long as the agreement is in effect following that publication—
 - (a) paragraph (2)(h) shall not apply, and
 - (b) the organisation shall pay the Secretary of State the total actual cost of control as referred to in point 1(d) of Annex B to Council Directive 96/43/EC amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directive 90/675/EEC and 91/496/EEC^(b);
 - (4E) Where paragraph (4D) applies—
 - (a) the Secretary of State shall demand payment in writing specifying the period to which the demand relates, and
 - (b) in any proceedings for recovery brought by the Secretary of State a certificate made by her stating the amount recoverable shall be evidence of the amount in question.”; and
 - (f) in paragraph (5) of regulation 4, for “operator”, substitute “occupier”.

8th January 2005

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

^(a) S.I. 1997/2893; relevant amending instruments are S.I. 1998/2880, 2004/1871.
^(b) OJ No. L162, 1.7.96, p.1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Charges for Inspections and Controls Regulations 1997 (S.I. 1997/2893) ('the principal Regulations') which give effect to Article 2, as read with Article 5, of 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 (OJ No. L32, 30.1.98, p. 14); that Directive was last amended by Council Directive 97/79/EC (OJ No. L24, 30.1.98, p. 31). These Regulations continue to give effect to the requirement in paragraph 1(b) of Annex B to collect the amount corresponding to the actual total cost of undertaking the controls provided for by Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directive 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ No. L125, 23.5.96, p. 10).

Regulation 2 amends the fees set in the principal Regulations to provide that the Secretary of State may make arrangements with an organisation for that organisation to pay the Secretary of State the total actual cost incurred by the Secretary of State in undertaking the egg inspections required by Community law. Where no such arrangements are in place, the fee for inspecting eggs remains at £0.0083 per case of 360 eggs, imposed directly on egg packing centres.

A full Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0014 1/2005 150014T 19585

ISBN 0-11-051521-8



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