

**EXPLANATORY MEMORANDUM TO
THE ZOOSES AND ANIMAL BY-PRODUCTS (FEES) (ENGLAND)
REGULATIONS 2009**

2009 No. 2043

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
- 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 2009 (“The Fees Regulations 2009”) 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) and Regulation (EC) No 646/2007 (broiler flocks).

4.2 The Fees Regulations 2009 revoke and replace the Zoonoses and Animal By-Products (Fees) (England) (No 2) Regulations 2008.

4.3 The Fees Regulations 2009 allow for cost recovery for services provided in relation to *Salmonella* control programmes and Defra’s laboratory scheme.

4.4 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.

4.5 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 NCPs set out the requirements for the monitoring and control of *Salmonella* in breeding, laying and broiler flocks in accordance with EC legislation.¹

4.6 In order to monitor progress towards meeting the reduction targets specified in the EC legislation, breeding flocks (with over 250 birds) will be required to provide official control samples on three occasions during the production cycle and laying holdings (with over 1000 birds) must provide at least one official sample from one flock each year. Each year 10% of broiler holdings with over 5000 birds are selected at random for official control sampling. 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 and the Broiler Flocks Order also require operators to provide the Secretary of State with certain information relating to their flocks, and impose record-keeping requirements. Both Orders were the subject of full public consultations in 2007 and 2008, 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

4.8 The proposed Regulations will also allow VLA and Defra to recover costs for services in respect of the approved laboratory scheme. Under this scheme private laboratories are authorised by the competent authority to test operator samples for *Salmonella* under the National Control Programmes 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.

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

- **Consolidation**

7.2 The Zoonoses and Animal By-Products (Fees) (England) Regulations 2009 (“The Fees Regulations 2009”) revoke and replace the Zoonoses and Animal By-Products (Fees) (England) (No 2) Regulations 2008.

8. Consultation outcome

8.1 The introduction of the NCPs for breeding, laying and broiler flocks followed full public consultations in 2006, 2007 and 2008, 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. As the Fees Regulations 2009 implement the previously agreed phased increase in charging and contain no new additional charges, it was again decided that a full consultation was not necessary. Industry representatives have been made aware of the introduction of the Fees Regulations 2009 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 2009 will recover costs are 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. The Fees Regulations 2009 represent a previously agreed phased increase in charging and contain no new additional charges.

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 2009 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 and are in line with the previously agreed phased-in charging levels.

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 2009 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

Charmaine Govindasamy at the Department for Environment, Food and Rural Affairs
Tel: 020 7238 4436 or email: Charmaine.Govindasamy@defra.gsi.gov.uk can answer any queries regarding the instrument.