

EXPLANATORY MEMORANDUM TO THE ZONOSSES AND ANIMAL BY-PRODUCTS (FEES) (WALES) (AMENDMENT) REGULATIONS 2008

This Explanatory Memorandum (EM) has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

1. This instrument provides the Welsh Ministers with powers to charge fees for conducting tests that farmers and operators may request under Commission Regulation (EC) No 1237/2007 (OJ No L280, 24.10.2007, p5). These regulations amend the Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2008.

Matters of Special Interest to the Subordinate Legislation Committee

2. There are no matters of special interest to the Committee.
3. Treasury consent to these regulations has been obtained.

Legislative Background

4. The Control of Salmonella in Poultry Order 2008 enforces National Control Programmes (NCP) for breeding and laying flocks of domestic fowl. The NCPs set out the new requirements for the monitoring and control of Salmonella in breeding flocks and laying of Regulation (EC) No 2160/2003, Regulation (EC) No 1003/2005 and Regulation (EC) No 1168/2006.
5. Regulation (EC) 1237/2007 amending Regulation (EC) 2160/2003 as regards the placing on the market of eggs from Salmonella infected flocks of laying hens allows for optional tests which may be carried out after Salmonella Enteritidis or Salmonella Typhimurium has been detected in an official sample to rule out false positive results. These tests are at the discretion of the Competent Authority and will only take place if specifically requested by the producer. Charges are made to recover costs incurred by Animal Health in its role in managing the collection of samples and by the Veterinary Laboratory Agency (VLA) in examining any samples received.
6. Welsh Ministers make this instrument under section 56 (1) and (2) of the Finance Act 1973. This 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. The powers are vested in Welsh Ministers by section 59(5) of the Government of Wales Act 2006. As an instrument made under the Finance Act 1973, the Regulations are subject to Treasury consent, which was received on 4th December 2008.
7. These Regulations follow the negative resolution procedure.

8. Failure to bring the Zoonoses and Animal By-Products (Fees) (Wales) (Amendment) Regulations 2008 into force would mean that Welsh Ministers could not recover the costs incurred for the services provided as described in paragraphs 5.

Purpose and Intended Effect of the Legislation

9. The Zoonoses and Animal By-Products (Fees) (Wales) (Amendment) Regulations 2008 amend legislation introduced in November 2008. The Amendment Regulations allow for charging for optional testing allowed under Regulation (EC) 1237/2007 under the national control programme (NCP) for Salmonella in laying flocks which started on 1 February 2008.
10. In order to reflect changes in the costs faced by delivery agents, Animal Health and VLA, in providing services, the Amendment Regulation also gives Welsh Ministers the powers to charge fees at an appropriate level on the basis of certain criteria. The fees will be published on the Welsh Assembly Government website and will not appear on the face of the Regulations themselves.
11. The objective is to provide the Welsh Ministers with powers to set fees for optional tests at a level to achieve full cost recovery. The fees will therefore be amended to reflect more clearly the charges that are applicable under current legislation and to take account of administrative costs.

Implementation

12. The instrument was laid on 10 December 2008 and is intended to come into force on 1 January 2009. The equivalent Regulations in England are also intended to come into force on 1 January 2009.

REGULATORY IMPACT ASSESSMENT

Consultation

13. No formal consultation was conducted, as the issue is very specialised with a limited range of stakeholders. There was a full consultation on the introduction of the National Control Plans (NCP) for laying flocks in summer 2007. Provision for optional tests within Regulation (EC) 1237/2007 was negotiated by the UK at the request of industry. The proposed charges have been considered by industry representatives through the GB wide regular stakeholder forum.

Option 1 – Amend Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2008 to Optional Testing

1. Annex 1 of Regulation (EC) 1237/2007 sets out three additional optional tests which may be carried out after SE or ST has been detected in an

official sample to rule out false positive results. These tests are at the discretion of the competent authority and will only take place if specifically requested by the producer. These include:

- enhanced faeces and dust sampling (6 faecal samples and 1 dust sample); or
 - sampling caeca and oviducts of 300 birds; or
 - sampling 4,000 eggs
2. These additional tests allowed by Regulation 1237/2007 were negotiated by the UK on the understanding that they are vital to keep the continued co-operation of producers. The rationale for the inclusion of caecae and eggs in the testing regime was that industry considered that detection of *Salmonella* in eggs/organs was directly related to the risk to the consumer (of contracting salmonellosis from infected egg products).
 3. These samples will be collected by the Competent Authority under full cost recovery. The collection of these samples will need to be supervised by the Competent Authority – in practice AH or EMI staff while on the holding, the visit charges for which are not included above. It is assumed that it will take 5 hours for AHOs/EMIs to oversee the collection of the eggs and carcasses and 4 hours to oversee the collection of the faecal and dust samples. The cost will be a base fee of £55 plus investigation fee of £25 per ½ hour (or part thereof). It will be the responsibility of the operator to ensure that these samples are delivered to the VLA for testing. The laboratory charges for these tests and assumed collection fees are set out in Table 1:

Table 1: Cost of Optional Tests

	VLA	Animal Health	Total
Optional Tests for Layer Flocks permitted under regulation 1237/2007. a) Testing 4,000 eggs for the presence of <i>Salmonella</i>	£ 2,150	£55 + £250 = £305	£2,455
b) Testing internal organs from 300 carcasses for the presence of <i>Salmonella</i>	£ 3,300	£55 + £250 = £305	£3,605
c) Enhanced Environmental Testing to 6 faecal samples and 1 dust.	£ 105 (7 x 15.00)	£55 + £200 = £255	£360

4. The cost to the industry of charging for optional tests is difficult to estimate as it is not known how many holdings would choose to undertake voluntary testing. Current salmonella prevalence in laying flocks is about 7.2%. This means that about 86 of the 1200 laying holdings eligible for official control sampling would be found to be infected. It is assumed here that about 20% of infected holdings would choose to undertake optional testing, and that equal proportions of these holdings would choose the three testing methods listed in the table above (6 holdings each per year).
5. Using these assumptions, the total cost of optional testing to industry is estimated to be £38,520 per annum.

Option 2 - Do Nothing

6. The provision for optional testing was negotiated by the UK at the request of industry. Failure to bring the Zoonoses and Animal By-Products (Fees) (Wales) (Amendment) Regulations 2008 into force would mean that Welsh Ministers could not recover the costs incurred for the services provided by Animal Health and VLA in carrying out optional tests.

Competition Assessment

7. We do not believe there will be a competitive impact as a result of these proposals. It is not considered that the proposed regulations will affect the market structure or erect barriers to entry for new firms.

Post Implementation Review

8. Annual accounts will be produced (by DEFRA) 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.

Summary

9. The costs relating to optional testing will be borne by industry. However, it should be noted that sampling is optional and its inclusion in Regulation 1237/2007 was at the request of industry. The proposed charges have been considered by industry representatives through the GB wide regular stakeholder forum.