

2009 No. 1557 (W. 152)

FOOD, WALES

**The Meat (Official Controls
Charges) (Wales) Regulations 2009**

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations apply in relation to Wales. They revoke and replace the Meat (Official Controls Charges) (Wales) Regulations 2008 (S.I. 2008/601 (W.63)).

2. These Regulations provide for the execution and enforcement in relation to Wales of Articles 26 and 27 of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ No. L165, 30.4.2004, p.1; the revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum, OJ No. L191, 28.5.2004, p.1, which should be read with a further Corrigendum, OJ No. L204, 4.8.2007, p.29), in so far as those provisions—

- (a) require or, in the case of certain types of poultry (e.g. quail) permit, fees to be collected to cover the costs occasioned by official controls performed under Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ No. L139, 30.4.2004, p.206; the revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.83, which should be read with a further Corrigendum, OJ No. L204, 4.8.2007, p.26) at slaughterhouses, game-handling establishments and cutting plants for the verification of compliance with the provisions of Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (OJ No. L139, 30.4.2004, p.55; the revised text of Regulation

(EC) No. 853/2004 is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.22, which should be read with a further Corrigendum, OJ No. L204, 4.8.2007, p.26) in so far as they apply in relation to meat of domestic ungulates, meat from poultry and lagomorphs, meat of farmed game and meat of wild game; and

- (b) require fees to be collected to cover the costs occasioned by official controls performed to verify compliance with the animal welfare rules set out in Council Directive 93/119/EC (OJ No. L340, 31.12.93, p.21) in so far as they apply in relation to animals slaughtered at slaughterhouses for human consumption;
- (c) permit fees to be collected to cover the costs occasioned by official controls performed outside the slaughterhouse where domestic ungulates have been slaughtered outside the slaughterhouse having suffered accidents that for welfare reasons prevent their transport to the slaughterhouse;
- (d) permit fees to be collected to cover the costs occasioned by official controls performed where certain kinds of poultry are slaughtered on farm; and
- (e) permit fees to be collected to cover the costs occasioned by official controls performed at the place of origin of farmed raptives, certain farmed game mammals and bison where for safety or animal welfare reasons the animals concerned are slaughtered there, rather than at a slaughterhouse.

3. These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 (1972 c.68) and any reference to a Community instrument defined in Schedule 1 is to be construed as a reference to that instrument as amended from time to time.

4. These Regulations —

- (a) require the Agency to notify each operator who is carrying on a food business at any slaughterhouse, game-handling establishment, cutting plant, farm or place of origin at which official controls have been exercised, of the official controls charge that has arisen in relation to those official controls (the terms “slaughterhouse”, “game-handling establishment”, “cutting plant”, “place of origin”, “official controls” and “official controls charge” are all defined in regulation 2(1)) (regulation 3);

- (b) provide that any official controls charge so notified is payable by the operator to the Agency on demand (regulation 3);
- (c) allow the Agency to refuse to exercise any further official controls at given premises where, despite a Court order requiring the operator of the premises to pay the official controls charge for which the operator is liable, the operator fails to comply with the order (regulation 4);
- (d) require persons to supply the Agency on demand—
 - (i) with such information as it may reasonably require for the purpose of calculating the official controls charge or notifying the operator of it, and
 - (ii) with such evidence as it may reasonably require to verify that information (regulation 5);
- (e) make provision as to the service of any such demand on the operator (regulation 5);
- (f) provide that persons to whom such a demand has been made commit an offence if—
 - (i) in purported compliance with the demand, they knowingly or recklessly furnish information or evidence that is false or misleading information in a material particular, or
 - (ii) without reasonable excuse, they fail to comply within a reasonable time with the demand (regulation 5).

5. Schedule 2 to these Regulations sets out how the official controls charge is to be calculated.

6. A full regulatory impact assessment of the effect that this instrument will have is available from the Food Standards Agency, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW.

2009 No. 1557 (W. 152)

FOOD, WALES

**The Meat (Official Controls
Charges) (Wales) Regulations 2009**

Made *24 June 2009*

Laid before the National Assembly for Wales

25 June 2009

Coming into force *28 September 2009*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾.

The Welsh Ministers are designated for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food⁽²⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to a Community instrument defined in Schedule 1 to be construed as a reference to that instrument as amended from time to time.

As 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

⁽¹⁾ 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51).

⁽²⁾ S.I. 2005/1971. By virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006, functions conferred on the National Assembly for Wales by this designation are exercisable by the Welsh Ministers.

Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾ there has been open and transparent public consultation during the preparation of the following Regulations.

Title, application and commencement

1. The title of these Regulations is the Meat (Official Controls Charges) (Wales) Regulations 2009, they apply in relation to Wales and come into force on 28 September 2009.

Interpretation

2.—(1) In these Regulations —

“accounting period” (“*cyfnod cyfrifyddu*”) means a period of less than a year determined by the Agency;

“the Agency” (“*yr Asiantaeth*”) means the Food Standards Agency;

“audit” (“*archwilio*”) has the meaning given to it in Article 2.6 of Regulation 882/2004;

“controls” (“*rheolaethau*”) means those official controls performed by the Agency—

- (a) pursuant to Regulation 854/2004, at slaughterhouses, game-handling establishments and cutting plants, for the verification of compliance with the provisions of Regulation 853/2004 in so far as they apply in relation to meat of domestic ungulates, meat from poultry and lagomorphs, meat of farmed game and meat of wild game;
- (b) at slaughterhouses, for the verification of compliance with the provisions of the Welfare of Animals (Slaughter or Killing) Regulations 1995⁽²⁾ insofar as they apply in relation to animals slaughtered there for human consumption;
- (c) in relation to domestic ungulates slaughtered outside the slaughterhouse, pursuant to Chapter VI of Section I of Annex III to Regulation 853/2004;
- (d) in relation to poultry slaughtered on farm, pursuant to Chapter VI of Section II of Annex III to Regulation 853/2004; and
- (e) in relation to—

⁽¹⁾ OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L100, 8.4.2006, p.3).

⁽²⁾ S.I. 1995/731, amended by S.I. 1999/400, S.I. 1999/1820, S.I. 2000/656, S.I. 2001/1303 (W.80) and S.I. 2007/2461 (W.208).

- (i) farmed ratites,
- (ii) farmed game mammals of the family *Cervidae* or the family *Suidae*, or
- (iii) bison,

slaughtered at the place of origin, pursuant to Section III of Annex III to Regulation 853/2004;

“cutting plant” (“*safle torri*”) means an establishment which is used for boning and/or cutting up fresh meat for placing on the market and which —

- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as licensed cutting premises under the Fresh Meat (Hygiene and Inspection) Regulations 1995(1) or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(2);

“cutting up” (“*torri*”) has the meaning that it bears in Regulation 853/2004;

“Directive 2004/41” (“*Cyfarwyddeb 2004/41*”), “Regulation 178/2002” (“*Rheoliad 178/2002*”), “Regulation 852/2004” (“*Rheoliad 852/2004*”), “Regulation 853/2004” (“*Rheoliad 853/2004*”), “Regulation 854/2004” (“*Rheoliad 854/2004*”), “Regulation 882/2004” (“*Rheoliad 882/2004*”), “Regulation 1688/2005” (“*Rheoliad 1688/2005*”), “Regulation 2073/2005” (“*Rheoliad 2073/2005*”), “Regulation 2074/2005” (“*Rheoliad 2074/2005*”), “Regulation 2075/2005” (“*Rheoliad 2075/2005*”) and “Regulation 2076/2005” (“*Rheoliad 2076/2005*”) have the meanings respectively given to them in Schedule 1;

“domestic ungulates” (“*carnolion domestig*”) has the meaning given to it in point 1.2 of Annex I to Regulation 853/2004;

“establishment” (“*sefydliad*”) has the meaning given to it in Article 2.1(c) of Regulation 852/2004;

“farmed game” (“*anifeiliaid hela a ffermir*”) has the meaning given to it in point 1.6 of Annex I to Regulation 853/2004;

“food business operator” (“*gweithredydd busnes bwyd*”) has the meaning given to it in Article 3.3 of Regulation 178/2002;

(1) S.I. 1995/539, revoked with effect from 1 January 2006 by S.I. 2005/3292 (W.252).
 (2) S.I. 1995/540, revoked with effect from 1 January 2006 by S.I. 2005/3292 (W.252).

“fresh meat” (“*cig ffres*”) has the meaning given to it in point 1.10 of Annex I to Regulation 853/2004;

“game” (“*anifeiliaid hela*”) has the meaning that it bears in Regulation 853/2004;

“game-handling establishment” (“*sefydliad trin anifeiliaid hela*”) means any establishment in which game and game meat obtained after hunting are prepared for placing on the market and which—

(a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or

(b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed wild game processing facility under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(1);

“game meat” (“*cig anifeiliaid hela*”) has the meaning that it bears in Regulation 853/2004;

“inspector” (“*arolygydd*”) means an official veterinarian, an official auxiliary or any other person appointed by the Agency for the purpose of performing controls;

“lagomorphs” (“*lagomorffiaid*”) has the meaning given to it in point 1.4 of Annex I to Regulation 853/2004;

“meat” (“*cig*”) has the meaning given to it in point 1.1 of Annex I to Regulation 853/2004;

“official controls” (“*rheolaethau swyddogol*”) is construed in accordance with the definition of “official control” in Article 2.1 of Regulation 882/2004;

“official controls charge” (“*ffi rheolaethau swyddogol*”) means the charge calculated in accordance with Schedule 2 and notified in accordance with regulation 3(1), (2) or (3);

“official veterinarian” (“*milfeddyg swyddogol*”) has the meaning given to it in Article 2.1(f) of Regulation 854/2004;

“operator” (“*gweithredydd*”) means a food business operator who is carrying on a food business at any premises or his or her duly authorised representative;

“place of origin” (“*tarddle*”) has the meaning that it bears in point 3 of Section III of Annex III to Regulation 853/2004;

“placing on the market” (“*rhoi ar y farchnad*”) has the meaning given to it in Article 3.8 of Regulation 178/2002;

(1) S.I. 1995/2148, revoked with effect from 1 January 2006 by S.I. 2005/3292 (W.252).

“poultry” (“*dofednod*”) has the meaning given to it in point 1.3 of Annex I to Regulation 853/2004;

“premises” (“*mangre*”) means any slaughterhouse, game-handling establishment, cutting plant, place that is outside the slaughterhouse for the purposes of chapter VI of Section I of Annex III to Regulation 853/2004, farm or place of origin;

“slaughterhouse” (“*lladd-dy*”) means an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption and which —

- (a) is approved or conditionally approved under Article 31.2 of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995 or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995;

“time costs” (“*costau mewn amser*”) means, in relation to any establishment for any accounting period, the costs calculated in accordance with paragraphs 7 to 9 of Schedule 2;

“verification” (“*gwirhau*”) means checking, by examination and provision of objective evidence; and

“wild game” (“*anifeiliaid hela gwyllt*”) has the meaning given to it in point 1.5 of Annex I to Regulation 853/2004.

(2) In these Regulations, any reference to a Community instrument defined in Schedule 1 is a reference to that instrument as amended from time to time.

Charges

3.—(1) The Agency must, subject to the following provisions of this regulation, notify each operator of any premises at which official controls have been exercised in any accounting period of an official controls charge in respect of those official controls as soon as practicable after the end of that period.

(2) Where the Agency cannot comply with paragraph (1) because it has insufficient information available to it to enable it to calculate the official controls charge for any accounting period in respect of any premises, it must notify the operator of those premises of an interim charge, being such amount as the Agency estimates (having regard to the information it has) the official controls charge to be.

(3) Where the Agency has notified an operator of an interim charge in accordance with paragraph (2), and sufficient information becomes available to the Agency to calculate the official controls charge, it must calculate that charge and —

- (a) where it exceeds the interim charge, notify the operator of the amount by which the official controls charge exceeds the interim charge; or
- (b) subject to paragraph (5), where it is less than the interim charge, credit to the operator the amount by which the interim charge exceeds the official controls charge.

(4) Any charge notified to an operator under paragraph (1), (2) or (3) is payable by the operator to the Agency on demand.

(5) Where under paragraph (3)(b) a sum is to be credited to an operator, the Agency may if it so determines pay such sum to the operator concerned instead of crediting it to the operator.

Withdrawal of controls

4. Where the Agency has had judgment entered against an operator of any premises for any sum which is payable to it under regulation 3(4) and the operator fails within a reasonable time thereafter to satisfy the judgment, the Agency may (regardless of any other legal remedy open to it) refuse to exercise any further official controls at those premises until the judgment has been satisfied.

Information

5.—(1) An operator must, on demand being made by the Agency, supply —

- (a) such information as the Agency may reasonably require for the purpose of calculating the official controls charge or notifying an operator of it; and
- (b) such evidence as the Agency may reasonably require to enable it to verify information supplied under sub-paragraph (a).

(2) Any demand made by the Agency under paragraph (1) must be in writing and may be served on the operator concerned—

- (a) by delivering it to that operator;
- (b) in the case of an operator that is a body corporate other than a limited liability partnership—
 - (i) by delivering it to the operator's secretary at the operator's registered or principal office, or
 - (ii) by sending it in a prepaid letter addressed to the operator's secretary at that office;

- (c) in the case of a limited liability partnership—
 - (i) by delivering it to a designated member of the partnership, at the operator’s registered or principal office, or
 - (ii) by sending it in a prepaid letter addressed to a designated member of the partnership at that office;
- (d) in the case of an operator that is a partnership other than a limited liability partnership, by delivering it to the partnership’s principal place of business; or
- (e) in the case of any other operator, by leaving it or sending it in a prepaid letter addressed to the operator at the operator’s usual or last known residence.

(3) Where a demand is to be served on an operator under paragraph (2) but it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises of the operator are unoccupied, the document may be served by addressing it to the operator in the capacity of occupier of those premises (naming them), and—

- (a) by delivering it to some other person at the premises; and
- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

(4) Any person who —

- (a) in purported compliance with paragraph (1), knowingly or recklessly furnishes information which is false or misleading in a material particular; or
- (b) without reasonable excuse, fails to comply within a reasonable time with a demand made under paragraph (1),

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Revocation

6. The Meat (Official Controls Charges) (Wales) Regulations 2008⁽¹⁾ are revoked.

⁽¹⁾ S.I. 2008/601 (W.63).

Gwenda Thomas

Deputy Minister for Social Services under authority of
the Minister for Health and Social Services, one of the
Welsh Ministers

24 June 2009

SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF COMMUNITY LEGISLATION

“Directive 2004/41” (“*Cyfarwyddeb 2004/41*”) means Directive 2004/41/EC of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(1);

“Regulation 178/2002” (“*Rheoliad 178/2002*”) means 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;

“Regulation 852/2004” (“*Rheoliad 852/2004*”) means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(2) as read with Commission Regulation (EC) No. 2073/2005;

(1) OJ No. L157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p.12).

(2) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26). Regulation (EC) No. 852/2004 has been amended by Commission Regulation (EC) No. 1019/2008 amending Annex II to Regulation (EC) No. 852/2004 of the

“Regulation 853/2004” (“*Rheoliad 853/2004*”) means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(1) as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2076/2005;

“Regulation 854/2004” (“*Rheoliad 854/2004*”) means Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(2) as read with Directive 2004/41, Regulation 2074/2005, Regulation 2075/2005 and Regulation 2076/2005;

“Regulation 882/2004” (“*Rheoliad 882/2004*”) means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(3) as read with Regulation 2074/2005 and Regulation 2076/2005;

“Regulation 1688/2005” (“*Rheoliad 1688/2005*”) means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(4);

European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L277, 18.10.2008, p.7).

- (1) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22), which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26). Regulation (EC) No. 853/2004 was last amended by Council Regulation (EC) No. 1020/2008 amending Annexes II and III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products (OJ No. L277, 18.10.2008, p.8).
- (2) OJ No. L139, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.83) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26). Regulation (EC) No. 854/2004 was last amended by Council Regulation (EC) No. 1021/2008 amending Annexes I, II and III to Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption and Regulation (EC) No. 2076/2005 as regards live bivalve molluscs, certain fishery products and staff assisting with official controls in slaughterhouses (OJ No. L277, 18.10.2008, p.15).
- (3) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in Corrigendum (OJ No. L191, 28.5.2004, p.1), which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.29). Regulation (EC) No. 882/2004 was last amended by Council Regulation (EC) No. 1029/2008 amending Regulation (EC) No. 882/2004 of the European Parliament and of the Council to update a reference to certain European standards (OJ No. L278, 21.10.2008, p.6).
- (4) OJ No. L271, 15.10.2005, p.17.

“Regulation 2073/2005” (“*Rheoliad 2073/2005*”) means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(1);

“Regulation 2074/2005” (“*Rheoliad 2074/2005*”) means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(2);

“Regulation 2075/2005” (“*Rheoliad 2075/2005*”) means Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat(3); and

“Regulation 2076/2005” (“*Rheoliad 2076/2005*”) means Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(4).

-
- (1) OJ No. L338, 22.12.2005, p.1, as read with the Corrigenda at OJ No. L278, 10.10.2006, p.32 and OJ No. L283, 14.10.2006, p.62 and as amended by Regulation (EC) No. 1441/2007 amending Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (OJ No. L332, 7.12.2007, p.12).
 - (2) OJ No. L338, 22.12.2005, p.27, as last amended by Commission Regulation (EC) No. 1022/2008 amending Regulation (EC) No. 2074/2005 as regards the total volatile basic nitrogen (TVB-N) limits (OJ No. L277, 18.10.2008, p.18).
 - (3) OJ No. L338, 22.12.2005, p.60, as last amended by Commission Regulation (EC) No. 1245/2007 amending Annex I to Regulation (EC) No. 2075/2005 as regards the use of liquid pepsin for the detection of *Trichinella* in meat (OJ No. L281, 25.10.2007, p.19).
 - (4) OJ No. L338, 22.12.2005, p.83, as last amended by Commission Regulation (EC) No. 1023/2008 amending Regulation (EC) No. 2076/2005 as regards the extension of the transitional period granted to food business operators importing fish oil intended for human consumption (OJ No. L277, 18.10.2007, p.21).

SCHEDULE 2

Regulation 2(1)

CALCULATION OF THE OFFICIAL CONTROLS CHARGE

The official controls charge

1. The official controls charge payable by the operator of any premises for any accounting period is the sum that is equal to such percentage of the time costs generated by those premises in that period as the Agency considers appropriate and the Agency may determine different percentages for different premises or different types of premises.

2. The Agency may vary any percentage determined pursuant to paragraph 1 where it appears to it to be appropriate to do so.

Declarations by operators

3. The operator of any premises must, on demand being made by the Agency, declare the working hours and working practices to be undertaken by the operator at the premises.

Agreements between the Agency and operators concerning the performance of controls other than audit

4.—(1) The Agency and the operator of any premises must—

- (a) make all reasonable efforts to agree the number of inspectors required for the purpose of carrying out controls other than audit at the premises and the number of hours required daily for that purpose; and
- (b) keep the matters agreed under sub-paragraph (a) under review.

(2) Where, following any such review, it appears to the Agency and the operator that it is appropriate to do so, they may by further agreement vary any matters agreed pursuant to sub-paragraph (1)(a).

(3) Where any matters agreed pursuant to sub-paragraph (1)(a) have been varied pursuant to sub-paragraph (2) they must be treated as having been agreed pursuant to sub-paragraph (1)(a).

5.—(1) Where the Agency and the operator fail to agree as to a matter specified in sub-paragraph (1)(a) of paragraph 4, the Agency must determine the matter and notify the operator of that determination.

(2) An operator who does not agree with a determination made by the Agency pursuant to sub-paragraph (1) may, within 3 weeks of the Agency giving notification to him or her under that sub-paragraph, request that the determination be reviewed by the Agency.

(3) Where an operator makes a request under sub-paragraph (2) and pays to the Agency the sum of £250 by way of contribution to the costs incurred by the Agency in connection with the review, the Agency must review the determination concerned and notify the operator of its decision.

(4) Where, pursuant to sub-paragraph (3), the Agency decides that a determination made by it pursuant to sub-paragraph (1) was incorrect, it must refund to the operator the payment made by the operator in accordance with sub-paragraph (3).

(5) Where—

- (a) following a review conducted pursuant to sub-paragraph (3), the Agency decides that its determination was correct; and
- (b) the operator has complied with the most recent demand made by the Agency pursuant to paragraph 3,

the operator may request that the matter that is the subject of that decision be determined by a person nominated for the purpose pursuant to sub-paragraph (7)(a).

(6) A request under sub-paragraph (5) must be made within 1 week of the Agency giving notification to the operator under sub-paragraph (3).

(7) Where an operator makes a request under sub-paragraph (5) —

- (a) the Agency must nominate a person to determine the matter from the list established under sub-paragraph (8); and
- (b) within 1 month of being nominated, the person so nominated—
 - (i) must give the operator and the Agency an opportunity to make representations on the matter to be determined,
 - (ii) must determine the matter concerned,
 - (iii) may make such order as to the costs incurred by the operator and the Agency as he or she considers appropriate, and
 - (iv) must notify the operator and the Agency of his or her determination and of any such order.

(8) The Agency must establish and maintain a list of people who may be nominated for the purposes of this paragraph and consult those organisations appearing to

represent operators before including any person on the list.

(9) Where, pursuant to sub-paragraph (7)(b)(ii), a person nominated pursuant to sub-paragraph (7)(a) determines that a decision made by the Agency pursuant to sub-paragraph (3) was incorrect, the Agency must refund to the operator the payment made by the operator in accordance with sub-paragraph (3).

6. Nothing in paragraph 4 or 5 restricts the Agency in the performance of such controls as it considers necessary in order to ensure that the objectives specified in Article 1.1 of Regulation 882/2004 are achieved and that the obligation specified in Article 3.1 of that Regulation is fulfilled.

Time costs

7. The time costs generated by any premises in any accounting period is (subject to paragraphs 8 and 9) calculated by —

- (a) multiplying the time (expressed in hours and fractions of an hour) spent by each inspector exercising controls at those premises in the period by the hourly rate applicable to that inspector determined in accordance with paragraph 10 or varied in accordance with paragraph 12; and
- (b) adding the results together.

8. The time costs in respect of any controls includes any overtime payments or other similar allowances made to the inspector concerned under his or her contract of employment or contract for services for exercising them.

9.—(1) In determining the total time spent in exercising controls, any time spent by an inspector in travelling to or from premises at which the inspector exercises controls and for which he or she is paid under a contract of employment or contract for services may be counted as if it were time when the inspector was exercising controls.

(2) In determining the total time spent in exercising controls, any time spent by an inspector—

- (a) at any premises to which the inspector has gone for the purpose of exercising official controls and for which he or she is paid under a contract of employment or contract for services (regardless of whether or not he or she is able to exercise controls there); and
- (b) at any other place—
 - (i) when the inspector is available for exercising controls but is not in fact exercising any such controls, and

- (ii) for which the inspector is paid under his or her contract of employment or contract for services,

is to be counted as if it were time when the inspector was exercising controls.

10. The Agency must determine the hourly rate applicable to inspectors, and may determine different rates for different inspectors or different classes of inspector, having regard to the level of qualifications and experience of different inspectors or classes of inspector and to the cost of exercising controls by different inspectors or classes of inspector.

11. The hourly rate for any inspector or class of inspector is to be calculated so as to reflect such proportion of the costs of the items listed in Annex VI to Regulation 882/2004 incurred by that inspector or class of inspector in exercising controls (excluding any additional costs taken into account pursuant to paragraph 8) as the Agency considers it proper to apportion to that hourly rate.

12. The Agency may vary any rate determined pursuant to paragraph 10 where, having regard to variations in the costs referred to in paragraph 11, it appears to it to be necessary to do so.