

**EXPLANATORY MEMORANDUM TO**  
**THE CHARGES FOR INSPECTIONS AND CONTROLS (AMENDMENT) REGULATIONS**  
**2005**

**2005 No. 12**

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This instrument changes the arrangements for collecting the charge to cover the costs incurred in carrying out surveillance for residues of veterinary medicines and related substances in eggs in Great Britain. This is currently collected by the Veterinary Medicines Directorate (VMD) from egg packing centres, but under the new arrangement the VMD will collect it from the British Egg Industry Council (BEIC).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The competent authorities of Member States responsible for conducting surveillance of animals and food for residues of veterinary medicinal products have two obligations in respect of fees: first, they must collect the total actual cost of undertaking the controls required by Community law (Directive 85/73, as referred to in the Explanatory Note – see in relation to egg products Annex B point 1(d)); second the fees under Annex B are stated to be payable by the operator or owner of the establishments concerned, who may pass the fee charged on to those on whose behalf the operations concerned are carried out (point 3).

3.2 Currently the VMD collects the full cost of its surveillance work from several hundred eligible egg packers. The amount they are charged is based on their throughput. Because the majority of egg production is dominated by the ten largest egg packers this means that several hundred small egg packers pay very small amounts. This results in the administrative cost incurred by the VMD in collecting the charges, which the packers must bear, being disproportionate to the cost of surveillance.

3.3 BEIC is an organisation whose members include the ten largest egg packing businesses. These pack the majority of eggs produced in the UK. It has offered to pay the total actual cost of control to the VMD on behalf of all egg packers liable to pay the charge. To reflect the voluntary nature of the offer, the BEIC will pay this sum to the VMD unconditionally, that is, not dependent on receipt of funds in respect of the egg inspection charge from its members or any non-member egg producer or packer. The advantage to the VMD and the egg industry of this scheme is that the administrative component of the total charge is substantially reduced, by having only one payee to correspond with. This reduces the total actual cost of control from £0.0083 per case of 360 eggs inspected to £0.00704 per case of 360 eggs inspected (based on the number of eggs inspected remaining constant. Accordingly, the majority of egg packers will thus be paying nothing whereas the cost for

the largest egg packers, borne by their trade association, will be less in real terms. Should the agreement between the BEIC and the VMD terminate, the VMD will resume collecting the egg inspection charge directly from all egg packers at the current rate of £0.0083 per case of 360 eggs.

3.4 Defra's position is that as the underlying aim of the Directive was to eliminate advantages arising from Member States' variations in financing charges (see recitals), it would not be open to a Member State either to avoid full cost recovery or to arrange for it to be paid by persons outside the trade altogether; however accepting the offer of an organisation supported by the trade to pay a charge in place of the establishments concerned is able to be reconciled with the underlying aim of the Directive, provided that the arrangement is voluntary, and on that basis these Regulations can be stated to continue to implement the Directive. The S.I. itself does not eliminate responsibility of egg packers to pay the charge: they are liable except where such a third party undertakes to pay to the Secretary of State instead and the Secretary of State agrees. Neither the draft agreement nor the Regulations themselves give the third party the right to recover the sum it has paid from egg producers or packers; with no right to recover the money it has paid, this underpins the third party's position as a true volunteer.

3.5 If, contrary to Defra's position, Community law does not enable the third party's offer to be accepted, it logically follows that the agreement will not count as an effective one and therefore the right to recover sums from the egg trade will have survived unaffected, and that clearly is consistent with the wording of Annex B, point 3 as well as the underlying aim of the Directive.

#### **4. Legislative Background**

4.1 The Charges for Inspections and Controls Regulations 1997 ("the principal Regulations") implements EU legislation requiring Member States to recover the costs of surveillance for residues of veterinary medicines and other residues in animals and animal products from the relevant industry sectors. The costs were reviewed earlier this year and amended charges for this financial year introduced in the Charges for Inspections and Controls (Amendment) Regulations 2004 (S.I. 2004/1697). Unfortunately there was an error in the charge shown for eggs and a second amendment was issued correcting the figure (S.I. 2004/1871).

#### **5. Extent**

5.1 This instrument applies to Great Britain.

#### **6. European Convention on Human Rights**

6.1 Not applicable

#### **7. Policy background**

7.1 The legislative requirement and policy objective is to recover all of the costs associated with the surveillance programmes in the sectors for red meat, poultry meat, milk, eggs, farmed salmon and trout, honey and wild and farmed game. As outlined in section 3,

this has proved difficult in the egg sector: the sheer numbers of those liable to pay (several hundred small egg packers and ten or so large packers) has made default by some almost inevitable, in addition to collection being administratively burdensome and costly.

7.2 Interested organisations and individual businesses affected by the proposed amended charges were included in the consultation exercise between February and May 2004. Two individual egg packers complained about the proposed increase of 25% in the charge for each of the three financial years 2004/05 to 2006/07 – one pointed out that his charge would increase from around £500 per annum to around £1,000 per annum by 2007 without any benefits (e.g. increased residues surveillance) to show for it.

7.3 The BEIC, which represents around 85% of egg throughput under the “Lion” brand, also responded to the consultation exercise asking for a meeting to discuss how the increases could be reduced. A proposal that the BEIC pay the levy on behalf of the egg industry, and then seek, through its own arrangements to recover this money from its members was put to Defra Ministers. Ministers noted the small risk of infraction proceedings from the Commission, but nevertheless agreed to this arrangement in principle.

7.4 The VMD thus re-consulted the egg trade on this proposal for one month. One response was received which was from a packer (a member of the BEIC) in favour of the proposal provided he did not have to pay. He will not have to pay the VMD directly, and Defra’s information is that he is not one of those egg packers from whom the BEIC intends to seek payment.

## **8. Impact**

8.1 This SI has no direct impact on industry. However, an agreement entered into by the Secretary of State in pursuance of these Regulations can be predicted to benefit the egg trade by removing egg packing centres’ liability to pay residues charges.

## **9. Contact**

9.1 Eric Crutcher at the Veterinary Medicines Directorate can answer any queries regarding the instrument: Tel: 01932 338322 or e-mail: e.crutcher@vmd.defra.gsi.gov.uk