

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.