

Rural Affairs and Islands Committee

17th Meeting, 2023 (Session 6), Wednesday, 31 May

Subordinate legislation cover note

Title of instrument:	Animal By-Products and Animal Health (Miscellaneous Fees) (Scotland) Regulations 2023
Type of instrument:	Affirmative (see paras. 20 to 23)
Laid date:	10 May 2023
Reporting deadline:	18 June 2023
Coming into force:	1 July 2023
Motion to approve:	S6M-08906
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	<ul style="list-style-type: none"> • section 10 of the Animal Health and Welfare Act 1984 • paragraph 7 of schedule 4, and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018
Supporting documentation:	Policy note – Annexe A

Background

1. The Animal and Plant Health Agency (APHA) in Scotland is accountable for providing several services that support trade in animals and plants, prevent the spread of animal diseases, protect public health, and offer various animal health services. Charging fees for these services aligns with the principle that businesses benefiting from the services should cover the costs. APHA has calculated the fee changes to ensure that the expenses of the services are borne by the users who directly benefit from them.
2. The policy note explains that the fees associated with these services no longer represent full cost recovery (FCR), as the fees have not been uplifted for a

number of years. Currently, the APHA receives £2.6 million in fee income for the statutory services it provides to businesses through chargeable schemes. However, due to various resource constraints, the fees for these schemes have not been updated since at least 2018, resulting in a deficit of £0.9 million, as they fail to achieve FCR.

3. In 2015, Defra conducted a public consultation regarding the increase of statutory fees to achieve FCR for the delivery of certain statutory services.
4. In 2018, after formal stakeholder engagement, animal by-products (ABP) were introduced with a 50% FCR, which transitioned to 100% FCR in 2019 within a year. FCR does not include any profit and only pertains to the activities related to the corresponding business.
5. In August 2022, APHA announced its commitment to working towards achieving FCR for its statutory services. As part of this effort, a review of all fees is being conducted. APHA has engaged with key business representatives and informed them about the intention to review fees, with plans to publicise the proposed changes by April 2023. These representatives have subsequently informed their respective sectors about the potential fee adjustments. APHA will reconnect with these representatives, presenting a detailed package of proposed changes to gather evidence of their impact. In cases where risks are significant, appropriate measures will be taken to mitigate them, such as phasing in fee increases.

Purpose of the instrument

6. The policy note states the purpose of the instrument is to modify the APHA fees structure in order to achieve FCR for various statutory services. According to the policy note, these modifications aim to ensure operators can engage in domestic and international trade.
7. According to the policy note, the fee changes and increases are directly linked to covering APHA's costs for the services provided, and there is no profit included in the fees. The fees are calculated based on the actual cost incurred by APHA, without any adjustments for inflation. To minimise the impact on businesses, the fee changes (except for checking live animal consignments at a border control post) will be implemented gradually over a period of two years.
8. The charging provisions being modified include—
 - **Animal By-Products (ABPs) fees** – for approving and inspecting premises carrying out operations involving the handling of ABPs under retained EC Regulation 1069/2009 which lays down health rules as regards ABPs.
 - **Salmonella National Control Programme (NCP) (Zoonoses) fees** – activities, including inspection services, in relation to the control of Salmonella in accordance with the Salmonella National Control Programme for poultry and retained Regulation (EC) 2160/2003.

- **Poultry Health Schemes (PHS)** – registration, approval, inspection and proficiency testing services for the poultry health scheme for verification of compliance with animal health rules applicable to poultry and hatching eggs to be exported from Great Britain to certain countries and territories.
- **Bovine semen fees:** Regulation 7 and schedule 4 of the new SSI set out fees payable for the purposes of the Bovine Semen (Scotland) Regulations 2007.
- **Porcine semen fees:** Regulation 8 and schedule 5 of the new SSI set out fees payable for the purposes of the Artificial Insemination of Pigs (Scotland) Regulations 1964 or the Artificial Insemination of Pigs (EEC) Regulations 1992.
- **Bovine embryo (collection, production and transfer) fees:** Regulation 9 and schedule 6 of the new SSI set out fees payable for the purposes of the Bovine Embryo (Collection, Production and Transfer) Regulations 1995.
- **Checking consignments of live animals from third countries at border control posts (BCP) fees:** inspections services for traded consignments of live animals in accordance with the Trade in Animals and Related Products (Scotland) Regulations 2012 (TARP).

9. The Schedules setting out the specific fees to be paid are provided on pages 6 to 22 of the instrument.

Effect of the regulations

10. As stated in the explanatory note, these regulations revoke and replace, with modified fees and minor amendments, the Animal By- Products and Pet Passport Fees (Scotland) Regulations 2018 and the Animal Health (Miscellaneous Fees) (Scotland) Regulations 2018. They make provision for the fees payable to the Scottish Ministers in relation to activities conducted to verify compliance with rules on the prevention and minimisation of risks to human and animal health arising from animal by-products and derived products, and to verify compliance with rules on animal health requirements.
11. **Regulation 3** sets out the circumstances in which the Scottish Ministers must refund to an applicant fees paid in respect of an application.
12. **Regulation 4 and schedule 1** set out fees payable by operators of establishments and plants that are required to be approved for the purposes Regulation (EC) 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption.
13. **Regulation 5 and schedule 2** set out fees payable in relation to control programmes under Regulation (EC) 2160/2003 on the control of salmonella and other specified food-borne zoonotic agents.

14. **Regulation 6 and schedule 3** set out fees payable in relation to registrations and approvals for the purpose of the poultry health scheme and the export of poultry or hatching eggs to Northern Ireland, the EU and certain other third countries.
15. **Regulation 7 and schedule 4** set out fees payable in relation to considering applications and carrying out routine examinations for the purposes of the Bovine Semen (Scotland) Regulations 2007.
16. **Regulation 8 and schedule 5** set out fees payable in relation to licence applications, approvals and testing for the purposes of the Artificial Insemination of Pigs (Scotland) Regulations 1964 and the Artificial Insemination of Pigs (EEC) Regulations 1992.
17. **Regulation 9 and schedule 6** set out fees payable in relation to approvals and inspections for the purposes of the Bovine Embryo (Collection, Production and Transfer) Regulations 1995. Regulation 10 and schedule 7 set out fees payable in relation to the performance of official controls on imported consignments of live animals at border control posts.
18. **Regulation 11** revokes the Animal By-Products and Pet Passport Fees (Scotland) Regulations 2018 and the Animal Health (Miscellaneous Fees) (Scotland) Regulations 2018 (and provisions of instruments which amended those Regulations). Provision for fees for the delivery of pet passport identification documents is not re-enacted in these Regulations.

Consideration by the Delegated Powers and Law Reform Committee

19. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [23 May 2023](#) and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Parliamentary procedure – affirmative instruments

20. The affirmative parliamentary procedure is set out in Chapter 10 of the [Parliament's Standing Orders](#). Instruments subject to the affirmative procedure cannot come into force unless they are approved by Parliament.
21. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument. The Committee will take evidence from the Cabinet Secretary and Scottish Government officials at **agenda item 3**.
22. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The Committee will formally consider the motion during **agenda item 4**.

23. The lead committee must report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed. The deadline for the Committee to report on this instrument is 16 March 2023.

For decision

24. **The Committee is invited to—**

- **take evidence from the Cabinet Secretary and Scottish Government officials on the instrument (agenda item 3);**
- **ask the Cabinet Secretary to move, and then to debate, the motion on the instrument (agenda item 4); and**
- **delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument.**

**Rural Affairs and Islands Committee clerks
May 2023**

The Animal By-Products and Animal Health (Miscellaneous Fees) (Scotland) Regulations 2023 SSI 2023/XXX – policy note

The above instrument was made in exercise of the powers conferred by:

- section 10 of the Animal Health and Welfare Act 1984
- paragraph 7 of schedule 4, and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018,

The instrument is subject to *affirmative procedure*.

Summary Box

This instrument provides for modified fees for some statutory services provided by the Animal and Plant Health Agency (APHA) on behalf of Scottish Ministers to deliver government policy of full-cost recovery for those services.

Policy Objectives

1. The purpose of the instrument is to introduce changes to the APHA fees structure to modify the statutory fees to achieve Full Cost Recovery (FCR) for delivery of statutory services provided for Animal By-Products, Salmonella Control Programmes, Artificial Breeding Controls, checks on live animals at Border Control Posts and the Poultry Health Scheme for work carried out to allow operators to trade domestically and/or internationally.
2. APHA is responsible in Scotland for delivering a number of services (summarised below) aimed at facilitating trade in animals and plants, preventing the introduction and spread of animal diseases, safeguarding public health and carrying out various services in the area of animal health. Charging for services is consistent with the principle that businesses using and benefiting from the service provided should bear the cost of its provision. All of the fee changes included in this instrument have been calculated by APHA to ensure that the costs of services should be borne by users who benefit directly from the service provided.
3. The fees associated with these services no longer represent full cost recovery, as the fees have not been uplifted for a number of years. Therefore, there has been a compound effect over the fees in the relevant instruments.
4. The fee changes and increases relate to the collection of APHA's costs relating to the work being performed. There is no profit element. The fees are calculated using the true cost to APHA and are not uplifted using inflationary rates. In order to mitigate any impact on businesses the fee changes (other than for checking consignments of live animals at a border control post) will be phased in over a 2-year period.

5. The charging provisions modified include:

Animal By-Products (ABPs) fees – for approving and inspecting premises carrying out operations involving the handling of ABPs under retained EC Regulation 1069/2009 which lays down health rules as regards ABPs.

Salmonella National Control Programme (NCP) (Zoonoses) fees – activities, including inspection services, in relation to the control of Salmonella in accordance with the Salmonella National Control Programme for poultry and retained Regulation (EC) 2160/2003.

Poultry Health Schemes (PHS) – registration, approval, inspection and proficiency testing services for the poultry health scheme for verification of compliance with animal health rules applicable to poultry and hatching eggs to be exported from Great Britain to certain countries and territories

Bovine semen fees: Regulation 7 and schedule 4 of the new SSI set out fees payable to the Scottish Ministers on demand for activities conducted by the Scottish Ministers for the purposes of the Bovine Semen (Scotland) Regulations 2007.

Porcine semen fees: Regulation 8 and schedule 5 of the new SSI set out fees payable to the Scottish Ministers on demand for activities conducted by the Scottish Ministers for the purposes of the Artificial Insemination of Pigs (Scotland) Regulations 1964 or the Artificial Insemination of Pigs (EEC) Regulations 1992.

Bovine embryo (collection, production and transfer) fees: Regulation 9 and schedule 6 of the new SSI set out fees payable to the Scottish Ministers on demand for activities conducted by the Scottish Ministers for the purposes of the Bovine Embryo (Collection, Production and Transfer) Regulations 1995.

Checking consignments of live animals from third countries at border control posts (BCP) fees: inspections services for traded consignments of live animals in accordance with the Trade in Animals and Related Products (Scotland) Regulations 2012 (TARP).

Provision for charging for the supply of blank pet passport identification documents, for issue and completion by a veterinarian under Article 22 of Regulation (EU) 576/2013 in respect of the non-commercial movement of pet animals within the EU, is not re-enacted in these Regulations. Since the UK's exit from the EU, these documents are no longer supplied.

Consultation

6. In 2015 Defra, on behalf of the Scottish Government and Welsh Government, conducted a public consultation on increasing the statutory fees to achieve Full Cost Recovery (FCR) for delivery of some statutory services.
7. In 2018, following formal stakeholder engagement, Animal By-Products (ABP) were introduced at 50% FCR, moving onto 100% FCR in 2019, after 12 months.

FCR does not include any profit and only relates to the activities that relate to the business to which the fees relate.

8. APHA currently receives fee income (£2.6m) for statutory services delivered to business through the chargeable schemes. Due to a number of resourcing pressures the fees for these schemes have not been refreshed since at least 2018 and are failing to achieve full-cost recovery, with a deficit of £0.9m.
9. In August 2022 APHA announced that it was committed to working towards achieving full cost recovery for the statutory services it provides and that a review of all fees was being conducted. APHA has engaged with key business representatives, outlining the desire to review fees and aim to publicise these changes by April 2023. These representatives have in turn raised awareness of this tentative proposal within their sectors. APHA will re-engage with these representatives with a detailed package of proposed changes to seek evidence of their impact and where risks are significant, design mitigations (e.g., phasing of fee increases).

Impact Assessments

10. There are no children's, equality, data protection, environmental or island community impact issues.

Financial Effects

11. The Cabinet Secretary for Rural Affairs and Islands confirms that no BRIA is necessary as the instrument is not considered to have any, or any significant, financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
2 May 2023