RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

19th Meeting, 2018 (Session 5)

Wednesday 20 June 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. Decision on taking business in private: The Committee will decide whether to take item 7 in private, and whether its consideration of its approach to its anticipated scrutiny of the Transport (Scotland) Bill; its approach to pre-budget scrutiny; and consideration of options for post-legislative scrutiny should be taken in private at a future meeting.

2. Subordinate legislation: The Committee will take evidence on the Digital Government (Scottish Bodies) Regulations 2018 [draft] from—
   
   Derek Mackay, Cabinet Secretary for Finance and Constitution, Susie Braham, Head of Data Sharing and Access, and Graham Fisher, Head of Constitutional and Civil Law, Scottish Government.

3. Subordinate legislation: Derek Mackay (Cabinet Secretary Finance and Constitution) to move—
   
   S5M-12602—That the Rural Economy and Connectivity Committee recommends that the Digital Government (Scottish Bodies) Regulations 2018 [draft] be approved.

4. Glasgow Prestwick Airport: The Committee will take evidence from—
   
   Stewart Adams, Chief Executive Officer, Andrew Miller, Non-Executive Chairman, and Ian Forgie, Director Finance, Glasgow Prestwick Airport Ltd.

5. Subordinate legislation: The Committee will consider the following instrument which is not subject to any parliamentary procedure—
   
   The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (SSI 2018/164).
6. **Subordinate legislation:** The Committee will consider the following negative instruments—

- The Marketing of Fruit Plant and Propagating Material (Fees) (Scotland) Regulations 2018 (SSI 2018/175)
- The Animal By-Products and Pet Passport Fees (Scotland) Regulations 2018 (SSI 2018/176)
- The Animal Health (Miscellaneous Fees) (Scotland) Regulations 2018 (SSI 2018/177)
- The Beef and Pig Carcase Classification (Scotland) Amendment Regulations 2018 (SSI 2018/182)

7. **Pre-Budget Scrutiny:** The Committee will consider its approach to its pre-budget scrutiny.

   Steve Farrell
   Clerk to the Rural Economy and Connectivity Committee
   Room T3.40
   The Scottish Parliament
   Edinburgh
   Tel: 0131 348 5211
   Email: steve.farrell@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 2**
SSI cover note

**Agenda Item 4**
Cover note
PRIVATE PAPER

**Agenda Item 5**
SSI cover note

**Agenda Item 6**
SSI cover note
1. The Committee will consider the following **affirmative** SSI:

- Draft SSI: The Digital Government (Scottish Bodies) Regulations 2018 (Annex A)

2. Annex A contains – the clerk’s note, the Scottish Government policy note (which includes related UK regulations as an Annex), Equality Impact Assessment Record, Data Protection Impact Assessment Record, Child Rights and Wellbeing Impact Assessment (CRWIA) and the instrument itself.

3. Related reference material to the UK Government’s draft Regulations can be found online:

- [Explanatory Memorandum to the Digital Government (Disclosure of Information) Regulations 2018](#)
- [Draft Information Sharing Code of Practice - Code of Practice for public authorities disclosing information under Chapters 1, 3 and 4 (Public Service Delivery, Debt and Fraud) of Part 5 of the Digital Economy Act 2017](#)
- [Explanatory Memorandum to the Digital Economy Act Part 5 (Digital Government) Codes of Practice and Statement of Principles](#)
Annex A – Draft SSI: The Digital Government (Scottish Bodies) Regulations 2018

Type of instrument: Affirmative

Laid date: 17 May 2018

Coming into force: 13 September 2018

Minister to attend the meeting: Yes, the Cabinet Secretary for Finance and Constitution will attend the meeting.

Reporting Deadline: 25 June 2018

Procedure

1. The Rural Economy and Connectivity (REC) Committee is acting as lead committee for this instrument and is required to report to the Parliament.

2. Under Rule 10.6.1 (a), these regulations are subject to affirmative resolution before they can be made. It is for the REC Committee to recommend to the Parliament whether these draft regulations should be approved.

3. The Cabinet Secretary for Finance and Constitution has, by motion S5M-12602 (set out in the agenda), proposed that the Committee should recommend the approval of this instrument.

4. The Cabinet Secretary will attend to answer any questions on the instrument (Agenda item 1), and then, under a separate agenda item (Agenda item 2), will be invited to speak to and move the motion for approval. The formal debate on the motion may last for up to 90 minutes.

5. At the end of the debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendations.

Consideration by the Delegated Powers and Law Reform Committee

6. At its meeting on 5 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Policy Objectives

7. The aim of the Digital Government (Scottish Bodies) Regulations 2018 is to enable certain Scottish public bodies (or persons providing services to Scottish public bodies) to be able to disclose personal data under new powers in Part 5 of the Digital Economy Act 2017 (“the Act”), to improve Public Service Delivery, subject to restrictions set out in the Act. This will enable specified public bodies to share data for specific reasons and in certain conditions.
8. Draft UK regulations – the Digital Government (Disclosure of Information) Regulations 2018 (included as an Annex to the policy note) set out the specific objectives for which personal information can be disclosed. These draft regulations are currently before the UK Parliament. Relevant objectives for Scotland include – multiple disadvantage, fuel poverty and television retuning.

9. Taken together, the Scottish and UK Regulations will, if approved, list:

- the Scottish Government, local authorities in Scotland and Skills Development Scotland in relation to the multiple disadvantage objective;
- the Scottish Government and local authorities in Scotland in relation to the fuel poverty objective;
- local authorities in Scotland in relation to the television retuning objective;
- persons providing services to these Scottish public bodies to be listed in schedule 4, in connection with any objective to which that public body is listed.

10. As a result of these regulations data could also be shared between UK and Scottish bodies.

11. There are a number of safeguards supporting this legislation including an information sharing code of practice (currently in draft, before Westminster) and existing legislation on data protection.

Consultation

12. A public consultation ran from 12 December 2017 to 5 February 2018 and four responses were received. Feedback related to the benefits, need to explain the data sharing and the need to be specific when describing instances of data sharing to assess whether this is justified and proportionate.

13. A privacy impact assessment was carried out and specific instances of data sharing will be subject to further privacy impact assessments. An Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment have also been carried out and these are included below.

14. The policy note and instrument are attached and also available online at the below link:

Recommendation

15. The Committee is invited to consider the motion recommending approval of this instrument and to raise any issues that it wishes to raise in reporting to the Parliament.

Rural Economy and Connectivity Committee Clerks
June 2018
POLICY NOTE
THE DIGITAL GOVERNMENT (SCOTTISH BODIES) REGULATIONS 2018
SSI 2018/xxx

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 35(3) of the Digital Economy Act 2017 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Policy Objectives

1. The aim of the Digital Government (Scottish Bodies) Regulations 2018 (the Scottish Regulations) is to enable certain Scottish public bodies to be able to disclose personal data under new powers in Part 5 of the Digital Economy Act 2017 (“the Act”), to improve Public Service Delivery subject to restrictions set out in and preserved by the Act. The Act is an Act of the UK Parliament, Part 5 of which, insofar as it concerns devolved functions and bodies, was subject to a Legislative Consent Motion approved by the Scottish Parliament on 22 February 2017.

2. Only those public bodies or persons providing services to public bodies listed at schedule 4 of the Act are able to make use of this public service delivery power. The power is permissive so persons who are potentially able to share information under it can choose whether or not to do so, but not under a duty to do so.

3. Section 35(3) of the Act provides for the “appropriate national authority” to amend the list of approved public bodies (listed in schedule 4 of the Act) who can share data. The Scottish Government is the appropriate national authority for regulations which add, modify, or remove an entry to schedule 4 which relates to:
   i. a Scottish public authority with devolved functions
   ii. a person providing services to a Scottish public authority,
   iii. or a Scottish public authority with mixed reserved/devolved functions (a category defined in the Part 3 of schedule 5 of the Scotland Act 1998).

4. The purpose of the Scottish Regulations is to add specified bodies to schedule 4.

5. Section 35(1) provides that public bodies wishing to share personal data with each other for the purposes of public service delivery, must do so for the purposes of a ‘specified objective’ in relation to each of those bodies. These objectives need to be specified in regulations under section 35(7) of the Act.

6. The bodies are being listed in the Scottish Regulations to enable those bodies to share data where justified under the Act. Initially, they are intended to be shared for specified objectives being created in separate regulations, the Digital Government (Disclosure of Information) Regulations 2018 (the UK Regulations) being laid in the Westminster Parliament. Those Regulations as laid are annexed to this Note. Under sections 35(7) to (12) of the Act, the UK Regulations will set out specified objectives for which the UK and also Scottish bodies listed in the Scottish Regulations will be able to share data. The authority for
specifying objectives across the UK and in particular which relate to any reserved matter is the Minister for the Department for Digital Culture Media and Sport. The Scottish Government can also by further devolved affirmative procedure regulations specify further devolved objectives where appropriate.


Specified objectives

8. The UK Regulations will specify objectives for which personal information can be disclosed to improve public service delivery. Each of the bodies listed in the Scottish Regulations will be specified in the UK Regulations in respect of one or more of these objectives. The UK Regulations will specify the following three objectives relevant to Scotland:
   i. Multiple Disadvantages
   ii. Fuel Poverty
   iii. Television Retuning

Specified Scottish bodies and linked objectives

9. The Scottish and UK Regulations will therefore, taken together, list:
   - the Scottish Government, local authorities in Scotland and Skills Development Scotland in relation to the multiple disadvantage objective
   - the Scottish Government and local authorities in Scotland in relation to the fuel poverty objective
   - local authorities in Scotland in relation to the television retuning objective
   - persons providing services to these Scottish public bodies to be listed in schedule 4, in connection with any objective to which that public body is listed.

Multiple disadvantage objective

10. The Scottish Government and local government are listed against the multiple disadvantage objective to facilitate specific instances of sharing personal data to and from reserved public bodies for the purposes of public service delivery. The power can only be used in relation to data sharing where two or more of the criteria listed in the UK Regulations are present. Each proposal will be assessed on its merit by the body disclosing the data and will require completion of a Privacy Impact Assessment and data sharing agreement before any disclosure of personal data takes place.

11. A number of safeguards are in place around the powers to ensure the sharing of personal data preserves privacy, is done proportionately and securely, with due regard to legal and ethical frameworks. A draft Code of Practice for Public Service Delivery will accompany the draft Regulations as these are laid in Westminster. The Code of Practice will set out the processes and safeguards to be adopted in sharing data using the Public Service Delivery powers. The purpose of the Code is to provide a set of principles and guidance for the use and disclosure of information under the powers. Anyone sharing information under the Public Service Delivery powers is required to have regard to the Code.
12. Section 35(6) of the Act provides that Scottish Ministers, in making regulations to add Scottish public bodies to schedule 4 must have regard to the systems and procedures for the secure handling of information by that body.

13. The Act does not alter the fact that the Data Protection Act 1998 has to be complied with in every case (reference to that Act is due to be replaced by the Data Protection Bill currently before the UK Parliament).

14. The addition of Scottish public bodies into schedule 4 of the Act will create a new legal gateway and will enable the sharing of information from reserved bodies. The aim of this is to apply these powers to cases where improved information flow between reserved and devolved bodies is needed to allow Scottish bodies to improve delivery of public services to those people or households defined within the multiple disadvantages objective (which includes factors such as unemployment, disability or financial exclusion).

15. Skills Development Scotland (SDS) is listed against the multiple disadvantage objective in order that it can receive data from Her Majesty’s Revenue and Customs on the employment status of individual young people to improve the way it designs and delivers services to the 16-24 age group who are not in employment, education or training. Employment information will complement other data held by SDS to enable identification of those young people who are NEET (not in employment, education or training). This will assist SDS in targeting their resource on those who need the most support. The information which would be made available on a regular basis would further facilitate SDS’s ability to identify individuals at the point they stop working, to enable SDS to offer support and re-engage young people quickly.

16. SDS also report on the learning, training and work activity of all 16-19 year olds in their Annual Participation Measure Publication. This measure forms one of the indicators in the Scottish Government’s National Performance Framework. A joint work stream between the Scottish Government and SDS oversaw development work to define the annual participation measure and agree its content. One of the key issues identified by the group is that the data collection system does not yet have a complete set of shared data from all desired partners. The most important missing individual level data feed relates to the employment status of young people.

17. The current information sharing will improve data coverage for the Opportunities for All Participation Measure – reducing the number of unconfirmed statuses recorded.

Fuel Poverty objective

18. The Scottish Government and Scottish local authorities are listed against the fuel poverty objective in order to share data with specified persons – for the purposes of modelling and mapping of households at risk of fuel poverty, and to support the development and monitoring of local strategies and plans for addressing fuel poverty, energy efficiency and heat decarbonisation. This requires individual household level data on fuel consumption, type and cost, (including electricity, gas and all other fuels), whether the household is in

receipt of benefits, is situated within SIMD areas, has household income below a specified level, in order to establish whether a household is in fuel poverty and therefore eligible for support.

**TV retuning objective**

19. Scottish Local Authorities are listed against the TV retuning objective in order that they may share data with Department for Work and Pensions (DWP) and the Secretary of State for Defence to identify individuals and households to offer support with television retuning.

20. The Regulations will come into force on the 13\textsuperscript{th} September 2018.

**Consultation**

21. The following bodies have been consulted, in accordance to the requirements of Section 44(4) of the Digital Economy Act 2017:

   (a) the Information Commissioner,  
   (b) the Commissioners for Her Majesty’s Revenue and Customs,  
   (c) each other person who is the appropriate national authority in relation to Regulations under this Chapter,  
   (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and  
   (e) such other persons as the appropriate national authority thinks appropriate.

22. A public consultation on these powers, the “Consultation on Digital Economy Act 2017: part 5 (data sharing codes and regulations) in relation to the delivery of Scottish public services”, ran from 12 December 2017 to 5 February 2018. The consultation included an extract from proposed UK Regulations defining the cross-UK objectives for data sharing (previously included in a separate UK Government consultation). The consultation included a draft of the Scottish Regulations.

23. Four consultation responses were received; two from individuals; one from the Information Commissioner Office for the Regions and a response from the Welsh Government. The feedback commented on the benefits of using the powers and also the need to explain the nature of data sharing that would be permitted and to be specific when describing particular instances of data sharing to support public service delivery, to assess whether the sharing of personal data by the specified bodies would be justified and proportionate. In particular, a privacy impact assessment has now been carried out, and specific sharing will be subject to further privacy impact assessments.

24. One change was made to the Regulations so persons providing services to the specified bodies cover each of the three objectives are clearly specified not just for the multiple disadvantages objective to ensure the powers work consistently and effectively.
Impact Assessments

25. The following Impact Assessments have been completed and will be published on the Scottish Government website:-
   - Data Protection/Privacy Impact Assessment
   - Equalities Impact Assessment
   - Child Rights and Wellbeing Impact Assessment

26. A Strategic Environmental Assessment has not been conducted as there are no significant impacts from these data sharing powers.

Financial Effects

27. A Business and Regulatory Impact Assessment has not been conducted. It is unnecessary as the instrument has minimal effects on the Scottish Government, local government or on relevant businesses and the third sector.

28. It is hoped that improved data sharing under these powers will deliver efficiency savings where it promotes better flow of information about people. For example, SDS currently expend resources contacting (with a view to re-engaging) all individuals whose circumstances with respect to learning, training or work are unknown. It is therefore anticipated that the new powers will work to reduce staff time currently devoted to this activity. SDS estimate that they spend in the region of £125,000 to £130,000 annually on this work.

29. The evidence suggests that any additional burdens on relevant businesses and third sector organisations as a result of the permissive powers in these Regulations are expected be minimal. This is because organisations wishing to share personal data with each other need to follow data protection legislation whether or not they use the powers in this Act.

Scottish Government
Digital Directorate

17 May 2018
The Minister for the Cabinet Office, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by sections 35(7), 36(5)(c) and 44(2)(b) of the Digital Economy Act 2017(\(^2\)).

The Minister is satisfied that the purposes of the objectives specified comply with the conditions in section 35(9), (10) and (12) of the Digital Economy Act 2017.

The Minister for the Cabinet Office has consulted the Information Commissioner, the Commissioners for Her Majesty’s Revenue and Customs, the Scottish Ministers, the Welsh Ministers, the Department of Finance in Northern Ireland and such other persons as the Minister for the Cabinet Office considers appropriate, as required by section 44(4) of the Digital Economy Act 2017.

In accordance with section 44(7) of the Digital Economy Act 2017, a draft of these Regulations was laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Digital Government (Disclosure of Information) Regulations 2018 and come into force on the day after the day on which they are made.

(2) In these Regulations, “the Act” means the Digital Economy Act 2017.

(3) These Regulations do not extend to Northern Ireland.

Specified objectives for the disclosure of information in relation to public service delivery

2. The Schedule specifies objectives, and specified persons in relation to those objectives, for the purposes of section 35(7) of the Act.

---

(\(^2\)) 2017 c. 30. Consent of the Treasury is required by section 44(6).
Amendment to section 36 of the Act (disclosure of information to gas and electricity suppliers etc)

3.—(1) Section 36 of the Act (disclosure of information to gas and electricity suppliers etc) is amended as follows.

(2) In subsection (3)—

(a) omit the “or” at the end of paragraph (c), and

(b) after paragraph (d) insert—

“(e) in the case of a disclosure to a licensed gas supplier, a restriction on charges levied on domestic customers by the supplier which is imposed by the Gas and Electricity Markets Authority—

(i) in the exercise of its powers under section 23(1)(b) of the Gas Act 1986(⁵) (modification of conditions of licences), and

(ii) for purposes that include assisting people living in fuel poverty by reducing their energy costs, or

(f) in the case of a disclosure to a licensed electricity supplier, a restriction on charges levied on domestic customers by the supplier which is imposed by the Gas and Electricity Markets Authority—

(i) in the exercise of its powers under section 11A(1)(b) of the Electricity Act 1989(⁶) (modification of conditions of licences), and

(ii) for purposes that include assisting people living in fuel poverty by reducing their energy costs.”.

(3) In subsection (11) at the appropriate place insert—

““domestic customer” means a customer supplied with gas or electricity wholly or mainly for domestic purposes;”.

Date

Name
Minister for the Cabinet Office
Cabinet Office

We consent to these Regulations

Names
Two of the Lords Commissioners of Her Majesty’s Treasury

-----

¹ 1986 c. 44. Section 23 was substituted by Schedule 3 paragraph 21 to the Gas Act 1995 (c. 45) and was amended by section 3 of the Utilities Act 2000 (c. 27) and S.I. 2011/2704. Other amendments have been made which are not relevant to this instrument.

² 1989 c. 29. Section 11A was inserted by section 35 of the Utilities Act 2000, and was amended by S.I. 2011/2704. Other amendments have been made which are not relevant to this instrument.
Specified objectives in relation to a specified person

1.—(1) The specified objectives are—
   (a) the multiple disadvantages objective;
   (b) the television retuning objective;
   (c) the fuel poverty objective; and
   (d) the water poverty objective.

(2) In relation to each specified objective, the following are the specified persons—
   (a) for the multiple disadvantages objective—
      (i) the persons specified at paragraphs 1 to 5, 7 to 8, 10 to 16, 18 to 25, 29 to 34, 40 to 47 and 49 to 51 of Schedule 4 to the Act, and
      (ii) a person providing services in connection with that objective to a person within sub-paragraph (i);
   (b) for the television retuning objective—
      (i) the persons specified at paragraphs 2, 7, 11 to 17, 29 to 34, 47 and 50 of Schedule 4 to the Act, and
      (ii) a person providing services in connection with that objective to a person within sub-paragraph (i);
   (c) for the fuel poverty objective—
      (i) the persons specified at paragraphs 6 to 8, 10 to 21, 26 to 27, 29 to 34, 40, 42 to 47 and 49 to 50 of Schedule 4 to the Act, and
      (ii) a person providing services in connection with that objective to a person within sub-paragraph (i);
   (d) for the water poverty objective—
      (i) the persons specified at paragraphs 7 to 8, 10 to 17, 27, 29 to 34 and 42 to 47 of Schedule 4 to the Act, and
      (ii) a person providing services in connection with that objective to a person within sub-paragraph (i).

Multiple disadvantages objective

2.—(1) In paragraph 1(1)(a) the multiple disadvantages objective is to provide assistance to individuals or households who are affected by multiple disadvantages by—
   (a) assisting in the identification of individuals or households with multiple disadvantages;
   (b) the improvement or targeting of a public service or facilitation of the provision of a benefit provided to individuals or households; and
   (c) the improvement of the physical, mental, emotional, social or economic well-being of individuals or households.

(2) “Multiple disadvantages” means the presence of two or more of the factors listed in sub-paragraph (3) which adversely affect—
   (a) an individual; or
   (b) one or more individuals in a household.

(1) Paragraphs 28 to 48 of Schedule 4 were inserted by the Digital Government (Welsh Bodies) (Wales) Regulations 2018 (S.I. 2018/xxxx) and paragraphs 49 to 52 were inserted by the Digital Government (Scottish Bodies) Regulations 2018 (S.S.I. 2018/xxxx).
(3) The factors are—
   (a) anti-social behaviour;
   (b) being a care leaver;
   (c) being a child in need;
   (d) criminal offending;
   (e) domestic violence;
   (f) financial exclusion;
   (g) having a disability;
   (h) homelessness;
   (i) ill-health;
   (j) irregular attendance at school;
   (k) not being in education or training;
   (l) substance misuse;
   (m) unemployment.

(4) In sub-paragraph (3)—
   “anti-social behaviour” means behaviour by a person which causes, or is likely to cause, harassment, alarm or distress to one or more persons not of the same household as that person;
   “care leaver” means—
   (a) in England, an eligible child within the meaning of paragraph 19B of Schedule 2 to the Children Act 1989(6) or a relevant child for the purposes of section 23A of that Act(7),
   (b) in Scotland, a person entitled to advice, guidance or assistance under section 29 of the Children (Scotland) Act 1995(8) or described in section 30 of that Act,
   (c) in Wales, a category 1 or a category 2 young person as defined in section 104(2) of the Social Services and Well-being (Wales) Act 2014(9);
   “child in need” means—
   (d) in England, a child in respect of whom the local authority in whose area they reside must provide a range of services appropriate to their needs under section 17(10) of the Children Act 1989(10),
   (e) in Scotland, a child who falls within the definition of a child being in need of care and attention as set out in section 93(4)(a) of the Children (Scotland) Act 1995(11),
   (f) in Wales, a child who has been assessed for support under Part 3 of the Social Services and Well-being (Wales) Act 2014;
   “criminal offending” means having been convicted of a criminal offence of any nature, and includes being cautioned (or, in Scotland, includes having received a recorded police warning) in respect of criminal activity;
   “disability” has the meaning set out in section 6 of the Equality Act 2010(12)

---

(6) 1989 c. 41. Paragraph 19B of Schedule 2 was inserted by section 1 of the Children (Leaving Care) Act 2000 (c. 35), and was amended by S.I. 2016/413.
(7) Section 23A was inserted by section 2 of the Children (Leaving Care) Act 2000, and was amended by S.I. 2016/413.
(8) 1995 c. 36. Sections 29 and 30 were amended by section 66 of the Children and Young People (Scotland) Act 2014 (asp 8) and section 29 was amended by section 73 of the Regulation of Care (Scotland) Act 2001 (asp 8).
(9) 2014 anaw/dccc 4.
(10) Section 17 has been amended, but those amendments are not relevant to this instrument.
(11) Section 93 has been amended, but those amendments are not relevant to this instrument.
(12) 2010 c. 15.
“domestic violence” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between two or more individuals who reside or have resided in the same household;

“financial exclusion” means an inability to access, or difficulty in accessing, one or more of the financial services in section 2(1)(a) and (b)(i) to (v) of the Small Business, Enterprise and Employment Act 2015(13);

“homelessness” has the same meaning as in—

(g) in England, section 175 of the Housing Act 1996(14),
(h) in Scotland, section 24 of the Housing (Scotland) Act 1987(15) or,
(i) in Wales, section 55 of the Housing (Wales) Act 2014(16);

“substance misuse” means the harmful and illicit use of psychoactive substances, including alcohol and drugs; and

“unemployment” in relation to an individual includes—

(j) an individual who—
   (i) has actively sought work in the last four weeks; and
   (ii) is available to start work in the next two weeks; or

(k) an individual who—
   (i) has found work; and
   (ii) is waiting to start that work in the next two weeks.

(5) Sub-paragraph (3)(a) applies where a person carries out anti-social behaviour as well as where a person is the victim of such behaviour.

(6) Sub-paragraph (3)(k) applies only to persons who are aged at least 16 years but less than 25 years old.

Television retuning objective

3.—(1) In paragraph 1(1)(b) the television retuning objective is to provide assistance to an individual or a household under a relevant scheme by—

(a) identifying an individual who, or a household which, may be eligible for assistance under such a scheme;

(b) making contact with such individual or household with a view to providing such assistance; or

(c) establishing whether any such individual or household is entitled to such assistance.

(2) In this paragraph—

(a) “relevant scheme” means a scheme set up to assist in the retuning of television receivers pursuant to a change in the use of any part of the electromagnetic spectrum between 470 and 790 MHz;

(b) “television receiver” has the meaning given in regulation 9 of the Communications (Television Licensing) Regulations 2004(17).

---

(14) 1996 c. 52. Section 175 has been prospectively amended by section 1 of the Homelessness Reduction Act 2017 (c. 13).
(15) 1987 asp 26. Subsections (2A), (2B) and (3)(bb) were inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). Section 24 was also amended by section 3 of the Housing (Scotland) Act 2001 (asp 10), section 10 of the Homelessness etc (Scotland) Act 2003 (asp 10) and paragraph 4 of Schedule 4 to the Private Housing (Tenancies) (Scotland) Act 2016 (asp 19).
(16) 2014 anaw/decc 7.
(17) S.I. 2004/692. Regulation 9 was amended by regulation 7(b) and (c) of S.I. 2007/718 and regulation 6 of S.I. 2016/704.
Fuel poverty objective

4. In paragraph 1(1)(c) the fuel poverty objective is to provide assistance to people living in fuel poverty by—
   (a) reducing their energy costs;
   (b) improving efficiency in their use of energy; or
   (c) improving their health or financial well-being.

Water poverty objective

5. In paragraph 1(1)(d) the water poverty objective is to provide assistance to people living in water poverty by—
   (a) reducing their water or sewerage costs;
   (b) improving efficiency in their use of water; or
   (c) improving their health or financial well-being.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations relate to the disclosure of information in relation to public service delivery, pursuant to Chapter 1 of the Digital Economy Act 2017 (c. 30) (“the Act”).

Regulation 2 specifies the objectives set out in the Schedule for the purposes of improving public service delivery. This permits the specified persons identified from the list of specified persons set out in Schedule 4 to the Act to share information for the purposes of each objective.

The Schedule sets out four objectives. The multiple disadvantages objective enables the disclosure of information to enable the identification of individuals or households who face multiple disadvantages. The television retuning objective enables the disclosure of information in order to identify individuals and households and offer support under a television retuning scheme to individuals affected by changes to radio frequencies currently used by terrestrial television broadcasts at 470-790 MHz. The fuel poverty and water poverty objectives enable the disclosure of information for the purposes of assisting people living in fuel poverty and water poverty as defined in sections 36(10) and 38(10) of the Act.

Regulation 3 amends the list of fuel poverty measures in section 36(3) of the Act to include measures imposed by the Gas and Electricity Markets Authority that restrict the charges levied on domestic customers by licensed gas and electricity suppliers. Information cannot be disclosed to licensed gas and electricity suppliers under section 36 of the Act unless it is for use by them in connection with one of the fuel poverty measures listed.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.
EQUALITY IMPACT ASSESSMENT RECORD

<table>
<thead>
<tr>
<th>Title of policy/ practice/ strategy/ legislation etc.</th>
<th>The Digital Government (Scottish Bodies) Regulations 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister</td>
<td>Derek Mackay, Cabinet Secretary for Finance and Constitution</td>
</tr>
<tr>
<td>Lead official</td>
<td>Claire Wainwright</td>
</tr>
<tr>
<td>Officials involved in the EQIA</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Team</td>
</tr>
<tr>
<td>Jessica Roscoe</td>
<td>Data Sharing and Identity Assurance</td>
</tr>
<tr>
<td>Directorate: Division: Team</td>
<td></td>
</tr>
<tr>
<td>Directorate for Digital; Data, Statistics and Outcomes; Data Sharing and Identity Assurance</td>
<td></td>
</tr>
<tr>
<td>Is this new policy or revision to an existing policy?</td>
<td>These are new powers.</td>
</tr>
<tr>
<td></td>
<td>The Digital Economy Act 2017 received Royal Asset on 27 April 2017. Part 5 of the Act introduces new information sharing provisions to support more efficient and effective digital public services.</td>
</tr>
<tr>
<td></td>
<td>The Regulations will allow specified Scottish public bodies to share data for the purposes set out in the ‘policy aim’ below.</td>
</tr>
</tbody>
</table>

SCREENING

Policy Aim

1. The Digital Economy Act 2017 (the “Act”) allows the UK Government, as well as the devolved governments, in certain cases, to specify objectives for which data can be shared, and to name individuals and organisations that can make use of the data sharing powers the Act provides. Part 5 of the Act regulates what data can be shared and for which purposes. It also includes safeguards to make sure that the privacy of citizens’ personal information is protected.

2. The aim of the Digital Government (Scottish Bodies) Regulations 2018 (“the Scottish Regulations”) is to enable Scottish public bodies (or persons providing services to Scottish public bodies) to be able to share personal data under the new Public Service Delivery powers, set out in section 35 of the Act, to improve public service delivery.

3. Section 35(1) provides that public bodies wishing to share personal data with each other for the purposes of public service delivery, must do so for the purposes of a ‘specified objective’ in relation to each of those bodies. These objectives need to be specified in regulations under section 35(7) of the Act.
4. The bodies are being listed in the Scottish Regulations to enable them to share data with other bodies, for the objectives being specified in separate regulations, the Digital Government (Disclosure of Information) Regulations 2018 (“the UK Regulations”). These UK Regulations are being laid in Westminster. Under the powers in section 35(7) to (12), the UK Regulations will set out the specified objectives for which the UK and also Scottish bodies listed in the Scottish Regulations will be able to share data.

5. The Scottish Government consulted on the draft regulations between 12 December 2017 and 5 February 2018. The consultation set out three specific objectives. To allow a public body to share data, for the purposes of public service delivery, it must demonstrate that at least one of these objectives applies. The objectives are:

- multiple disadvantage
- television retuning
- fuel poverty

6. This means that a specified body may share data with another specified body only where they are both listed in regulations in relation to that specified objective. The power is permissive, which means that persons who are potentially able to share information under it can choose whether or not to do so, but are not under a legal duty to do so.

Who will it affect?

7. To be able to use the data sharing provisions in the Act, a Scottish public body needs to demonstrate an express need to share data with another body for the purpose of delivering a particular public service.

8. It is anticipated that by improving the sharing of information to better design and deliver public services, the Regulations should lead to positive changes for individuals interacting with those services.

9. Sec 35 (9) – (12) of the Act identify conditions which specified public service delivery objectives must fulfil. The intent of these conditions is to provide assurance that data sharing is for the benefit of individuals receiving these services.

35 (9) “The first condition is that the objective has as its purpose—
(a) the improvement or targeting of a public service provided to individuals or households, or,
(b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.

35 (10) “The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.

35 (11) “The reference in subsection (10) to the well-being of individuals or households includes—
(a) their physical and mental health and emotional well-being,
(b) the contribution made by them to society, and
(c) their social and economic well-being.

35 (12) “The third condition is that the objective has as its purpose the supporting of—
(a) the delivery of a specified person’s functions, or
(b) the administration, monitoring or enforcement of a specified person’s functions.”

10. The specified objectives cover circumstances which may map either directly or indirectly to the protected equalities characteristics. We assess this overlap and impact as it relates to the proposed specified bodies in the Digital Government (Scottish Bodies) Regulations 2018 and the specified objectives against which they will be listed to share data.

11. To share data on the basis that the need to do so meets the ‘multiple disadvantage’ objective, the presence of two or more factors which adversely affect individuals or households must be demonstrated. These include, but are not limited to:

- the individual, or an individual in the household, carrying out, or being subject to, antisocial behaviour;
- the individual being, or the household including, a care leaver;
- the individual being, or the household including, a child in need;
- disability, including learning disability;
- domestic violence;
- a failure to regularly attend school;
- financial exclusion;
- homelessness;
- ill-health, including mental ill-health;
- offending by the individual or by an individual in the household;
- substance misuse;
- unemployment;
- they are not in education or training.

12. To share data on the basis that the need to do so meets the ‘television retuning’ objective, the following conditions must apply:

- identifying an individual or a household who may be eligible for assistance under a relevant scheme.
- making contact with such individual or household with a view to providing such assistance to establish whether an individual or household is entitled to assistance.

13. The fuel poverty objective consists of assisting people living in fuel poverty by:

- reducing their energy costs;
- improving efficiency in their use of energy;
• improving their health or financial well-being.

STAGE 1: FRAMING

Extent/Level of EQIA required

14. This EQIA examines the potential equalities impacts arising from the addition of the four specified persons listed in the Scottish Regulations.

Stakeholder Engagement

Engagement with Public Bodies:

15. The Scottish Government engaged with a broad range of Scottish public bodies in relation to the objectives being laid in the UK Regulations in Westminster, gauging interest in use of the powers for the purposes of Scottish public service delivery. Scottish Government officials worked with the Cabinet Office to augment the multiple disadvantage objective so that it would work within a Scottish public service delivery context.

16. The following Scottish bodies were identified as having a specific need to share personal data for the purpose of improved public service delivery, these are:

• the Scottish Government, local authorities in Scotland and Skills Development Scotland in relation to the multiple disadvantages objective
• the Scottish Government and local authorities in Scotland in relation to the fuel poverty objective
• local authorities in Scotland in relation to the television retuning objective
• persons providing services to these Scottish public bodies, listed in Schedule 4, in connection with any objective for which that public body is listed.

17. Further consultation and legislation will be required should other public bodies wish to use these powers at a later date.

Public Consultation

18. In December 2017, Scottish Government published its Consultation on Digital Economy Act 2017: part 5 (data sharing codes and regulations) in relation to the delivery of Scottish public services in which the purpose and reach of the proposed new data sharing powers were described. The consultation received 4 responses. This included a response from the Information Commissioner which stated that:

“The Commissioner reaffirms her recognition of the potential benefits of justified and proportionate data sharing. Improving the delivery of public services may require more effective sharing of personal data between public authorities where appropriate but it is important that any provisions that increase data sharing inspire confidence in those individuals who will be affected.”
Inter-Governmental Engagement

19. Throughout the process, Scottish Government officials have liaised and represented Scottish interests – including equality issues and concerns – in dialogue with the UK Government. Both the UK and Welsh Governments have published consultations on the Digital Economy Act 2017: Part 5 (data sharing codes and regulations).

Benchmarking

20. The powers can only be used in well-defined policy delivery instances where improved information flow between bodies would allow for improved public service delivery to those people or households defined within the relevant objective and where there is not already a legal gateway for this to happen. Each proposed data share will need to be fully set out in advance and should make clear why the service cannot be delivered using other less sensitive or non-personal information.

21. Skills Development Scotland are included in the Regulations because their service delivery to young people will be improved by being able to share data with HMRC to better identify and target services to individuals who are not in employment, education or training (which qualifies under the criteria of meeting ‘two or more’ factors under the ‘multiple disadvantage objective’).

22. The security of an individual’s data and the way it is processed will need to be consistent with the Information Sharing Code of Practice for Public Service Delivery, Fraud and Debt and must be consistent with relevant data protection legislation. The General Data Protection Regulation (GDPR) will, when it takes effect, require a data protection by design and default approach to new or different uses of personal data.

23. Section 35(6) of the Act provides:

“in determining whether to make regulations under subsection (3) in relation to a person or description of person the appropriate national authority must have regard, in particular, to…the systems and procedures for the secure handling of information by that person or persons of that description”.

A Privacy Impact Assessment has been undertaken separately to explore the impact of these Regulations in relation to General Data Protection Regulation, Data Protection law and privacy impacts.
### Stage 2: Data and evidence gathering, involvement and consultation

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Evidence gathered and Strength/quality of evidence</th>
<th>Source</th>
<th>Data gaps identified and action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGE</td>
<td>This legislation is expected to deliver benefits to a range of age groups. <strong>Multiple Disadvantage Objective:</strong> Data sharing between public bodies on the basis of this objective has the potential to improve the way public services can be delivered to children and young people and several of the criteria relate directly to children and young people. Skills Development Scotland wish to use the powers to be able to share data with HMRC for the purpose of enhancing service delivery for individuals aged 16 to 24 who are not in employment, education or training. This is expected to improve communications and operational delivery to enable SDS to engage young people in a more timely and effective manner (at the point they fall out of work or study). Specified public bodies will be able to share data for the purposes of improving the lives of...</td>
<td>Consultation on a Fuel Poverty Strategy for Scotland and associated Equalities Impact Assessment (Scottish Government, published 9 November 2017) Scottish House Condition Survey Annual Participation Measure Report 2017, SDS; <a href="https://www.skillsdevelopmentscotland.co.uk/media/43580/2017_annual-participation-measure-report-29th-august-2017.pdf">https://www.skillsdevelopmentscotland.co.uk/media/43580/2017_annual-participation-measure-report-29th-august-2017.pdf</a></td>
<td></td>
</tr>
</tbody>
</table>

18 Refer to Definitions of Protected Characteristics document for information on the characteristics
young people, where one of the following criteria are fulfilled in combination with another of the criteria:

- they are a care leaver (or the household includes a care leaver)
- children or young people with an identified learning disability
- they are considered to be a child in need (or the household contains a child in need)
- they are an individual who fails to regularly attend school

There may be indirect impacts on other age groups where these experience particular combinations of the criteria.

For example ill-health and financial exclusion\(^{19}\) might be of greater relevance to older age groups so improved information sharing about their circumstances to better inform public services should be of benefit to them.

The UK Regulations for information sharing for non-devolved public service delivery objectives exclude the sharing of information between health and care bodies in relation to those functions.

**Fuel poverty:**

Data sharing between public bodies on the basis of this objective will improve the way public services can be delivered to reduce energy costs, improve energy efficiency and

---

improve health or financial well-being.

Specifically this would allow the Department for Business, Energy & Industrial Strategy to share data with the Scottish Government for the purpose of:

1) handling data on behalf of Local Authorities in relation to heat mapping.

2) meeting approvals for proposed Local Heat & Energy Efficiency Strategies

This would allow the Department for Business, Energy & Industrial Strategy to share data with Scottish Local Authorities for the purpose of introducing Local Heat and Energy Strategies, as proposed by the Scottish Government.

This data sharing will focus on assisting those living in fuel poverty. Between November 2017 and February 2018, the Scottish Government consulted on a new draft Fuel Poverty Strategy which would include a proposed new definition of fuel poverty. The ambition of this is to see more households living in well-insulated homes, accessing affordable, low carbon energy, and having an increased understanding of how to use energy in their homes. More information on the impact of the proposed new definition can be found in the Equalities Impact Assessment which accompanied the consultation (http://www.gov.scot/Publications/2017/11/5497).
Initial analysis suggests that the highest rates of fuel poverty under the new definition are likely to be found amongst:

- Younger households (those where the highest income householder is aged under 35).
- Households where at least one member has a long-term illness or disability.
- Households where the highest income householder is female.

TV retuning:

Scottish Local Authorities are listed against the TV retuning objective in order that they may share data with Department for Work and Pensions (DWP) (and the Secretary of State for Defence) to identify individuals and households to offer support with television retuning.

DISABILITY

This legislation is expected to deliver benefits to people with a disability.

Under the Multiple Disadvantage Objective, the Scottish Government and Scottish Local Authorities will be able to share data with other specified bodies where there is a clear advantage to those with a disability, including learning disability, or who have ill-health, including mental ill-health.


Scottish House Condition Survey
This data sharing will focus on assisting those living in fuel poverty. Between November 2017 and February 2018, the Scottish Government consulted on a new draft Fuel Poverty Strategy which would include a proposed new definition of fuel poverty. The ambition of this is to see more households living in well-insulated homes, accessing affordable, low carbon energy, and having an increased understanding of how to use energy in their homes. More information on the impact of the proposed new definition can be found in the Equalities Impact Assessment which accompanied the consultation (http://www.gov.scot/Publications/2017/11/5497).

Initial analysis suggests that the highest rates of fuel poverty under the new definition are likely to be found amongst:
- Younger households (those where the highest income householder is aged under 35).
- Households where at least one member has a long-term illness or disability.
- Households where the highest income householder is female.

This policy does not relate to this characteristic therefore we have not considered it for this EQIA.

The Fuel Poverty Strategy aims to see more households living in well insulated homes, accessing affordable, low carbon energy; and having an increased understanding of how to use energy in their homes regardless of their gender. The policy will benefit all people in fuel
poverty. This includes female-headed households who account for half of all households in fuel poverty under the new definition (a higher proportion than in the population overall).

<table>
<thead>
<tr>
<th>characteristic</th>
<th>description</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREGNANCY AND MATERNITY</td>
<td>This policy does not relate to this characteristic therefore we have not considered it for this EQIA.</td>
</tr>
<tr>
<td>GENDER REASSIGNMENT</td>
<td>This policy does not relate to this characteristic therefore we have not considered it for this EQIA.</td>
</tr>
<tr>
<td>The Fuel Poverty Strategy aims to see more households living in well insulated homes, accessing affordable, low carbon energy; and having an increased understanding of how to use energy in their homes.</td>
<td></td>
</tr>
<tr>
<td>SEXUAL ORIENTATION</td>
<td>There is limited information on fuel poverty for sexual orientation. This information was not collected in the census or the Scottish House Condition Survey (SHCS), and housing providers do not routinely gather such data. Scottish House Condition Survey None. Differences are likely to be reflecting age.</td>
</tr>
<tr>
<td>RACE</td>
<td>On census day 2011, there were approximately 200,000 Black, Asian and Minority Ethnic (BAME) people in Scotland, making up just over 4% of the population. The SHCS sample is not sufficiently large to allow a breakdown of the regulated groups by ethnicity and to analyse the equality impact of these Regulations in relation to race. 2011 Census None. Differences are likely to be reflecting age.</td>
</tr>
<tr>
<td>RELIGION OR BELIEF</td>
<td>According to the 2011 Census, in Scotland, 59% of the population report having a religion: 56% report as being Christian, 1.4% as being... 2011 Census None. Differences are...</td>
</tr>
</tbody>
</table>
| MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details) | Muslim.  
Due to sample size constraints, it is not possible to analyse the impact of these Regulations in relation to religion or belief. | likely to be reflecting age. | This policy does not relate to this characteristic therefore we have not considered it for this EQIA. |
### Stage 3: Assessing the impacts and identifying opportunities to promote equality

**Do you think that the policy impacts on people because of their age?**

<table>
<thead>
<tr>
<th>Age</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td>xx</td>
<td></td>
<td></td>
<td>Enabling data sharing under the conditions outlined in the Regulations will allow for more efficient and better targeted public services for individuals of various age groups.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>xx</td>
<td></td>
<td></td>
<td>The Scottish Government expects this legislation to play a role in supporting Scottish public bodies’ ability to provide more effective and person centred delivery of services. The objectives facilitate the targeting of services to a range of age groups.</td>
</tr>
<tr>
<td>Promoting good relations among and between different age groups</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Do you think that the policy impacts disabled people?**

<table>
<thead>
<tr>
<th>Disability</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td></td>
<td>x</td>
<td></td>
<td>Enabling data sharing under the conditions outlined in the Regulations will allow for more efficient and better targeted public services for individuals with disability and for the households within which they reside.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting good relations among and between disabled and non-disabled people</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Do you think that the policy impacts on men and women in different ways?**

<table>
<thead>
<tr>
<th>Sex (including pregnancy and maternity)</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discrimination</td>
<td>Advancing equality of opportunity</td>
<td>Promoting good relations between men and women</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------</td>
<td>-----------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Do you think your policy impacts on transsexual people?**

<table>
<thead>
<tr>
<th>Gender reassignment</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting good relations</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Do you think that the policy impacts on people because of their sexual orientation?**

<table>
<thead>
<tr>
<th>Sexual orientation</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting good relations</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Do you think the policy impacts on people on the grounds of their race?**

<table>
<thead>
<tr>
<th>Race</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting good race relations</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Do you think the policy impacts on people because of their religion or belief?

<table>
<thead>
<tr>
<th>Religion or belief</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>discrimination</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advancing equality of</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>opportunity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting good relations</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>

Do you think the policy impacts on people because of their marriage or civil partnership?

<table>
<thead>
<tr>
<th>Marriage and Civil Partnership</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>discrimination</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

20 In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.
Stage 4: Decision making and monitoring

24. The assessment process finds that this legislation is anticipated to lead to positive impacts for some of the relevant protected characteristics (as defined by the Equality Act 2010) to the extent that it promotes more efficient and effective targeting of public services to support the wellbeing of individuals, some of whom may map closely to the protected characteristics.

25. Throughout the process significant attention has been given to ensuring that the personal data of the individuals concerned will be protected and shared only where there is a clear need and advantage to the individual and a legal gateway to do so. The number of public bodies listed in Schedule 4 of the Act has been limited for this reason.

26. Should a public service delivery requirement for data sharing arise with an unlisted body in the future this will require proposals to be worked up with stakeholders, consulted on and laid through further Regulations.

Stage 5 - Authorisation of EQIA

Please confirm that:

♦ This Equality Impact Assessment has informed the development of this policy:

   Yes ☒  No ☐

♦ Opportunities to promote equality in respect of age, disability, sex (including pregnancy and maternity), gender reassignment, sexual orientation, race and religion or belief have been considered, i.e:
   o Eliminating unlawful discrimination, harassment, victimisation;
   o Removing or minimising any barriers and/or disadvantages;
   o Taking steps which assist with promoting equality and meeting people’s different needs;
   o Encouraging participation (e.g. in public life)
   o Fostering good relations, tackling prejudice and promoting understanding.

   Yes ☒  No ☐

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Digital Government (Scottish Bodies) Regulations 2018 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Claire Wainwright
Position: Team Leader, Data Statistics and Outcomes Division
Authorisation date: May 2018

31
Data Protection Impact Assessment (DPIA) – template for report

This template was developed by the SG Data Protection and Information Assets team.

This template was last updated in March 2018.

Before conducting the Data Protection Impact Assessment, please refer to the guidance that accompanies this template.

Introduction

The purpose of this document is to report on and assess against any potential privacy impacts as a result of the commencement of the Digital Government (Scottish Bodies) Regulations 2018.

Document metadata

Name of Project: The Digital Government (Scottish Bodies) Regulations 2018

Author of report: Data Sharing Unit; Data, Statistics and Outcomes Division, Digital Directorate

Date of report: 28th March 2018

Name of Information Asset Owner (IAO) of relevant business unit: Roger Halliday, Chief Statistician and Chief Data Officer, Data, Statistics and Outcomes Division, The Scottish Government

Date for review of DPIA

<table>
<thead>
<tr>
<th>Review date</th>
<th>Details of update</th>
<th>Completion date</th>
<th>Approval Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2019</td>
<td>This PIA will be published and updated at critical milestones. It will be revisited as additional bodies or objectives are added to the powers under section 35 of the Digital Economy</td>
<td>May 2018</td>
<td></td>
</tr>
</tbody>
</table>
Act 2017 involving the approval of regulations by the Scottish Parliament.

Description of the project

Description of the work:

The aim of these Regulations is to enable Scottish public bodies, or persons providing services to Scottish public bodies to be able to disclose personal data under the new Public Service Delivery powers, set out in section 35 of the Digital Economy Act 2017 (the “Act”). The addition of Scottish public bodies into Schedule 4 of the Act will create a new legal gateway to enable the sharing of information to/from reserved bodies.

Only those public bodies or persons providing services to public bodies listed at Schedule 4 of the Act are able to make use of the Public Service Delivery power. The power is permissive, which means that persons who are potentially able to share information under it can choose whether or not to do so where that is permitted in particular under data protection legislation, but are not under a duty to do so. Schedule 4 of the Act does not yet list devolved Scottish bodies and it is for the Scottish Parliament to approve Regulations adding Scottish public authorities with only devolved functions or mixed devolved and reserved functions or those providing services to them. This is the purpose of the current regulations.

Section 35(1) provides that public bodies wishing to share personal data with each other for the purposes of Public Service Delivery may only do so for the purposes of an objective which is a specified objective in relation to each of those bodies. These objectives need to be specified in regulations.

Sections 35(9) – (12) of the Act identify three conditions which specified objectives must fulfil and which pertain to any information sharing under a specified objective;

The first condition is that the objective has as its purpose—
(a) the improvement or targeting of a public service provided to individuals or households, or
(b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.

The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households. The reference in subsection to the well-being of individuals or households includes—
(a) their physical and mental health and emotional well-being,
(b) the contribution made by them to society, and
(c) their social and economic well-being.
The third condition is that the objective has as its purpose the supporting of—
(a) the delivery of a specified person’s functions, or
(b) the administration, monitoring or enforcement of a specified person’s functions.

These conditions mean that the power must demonstrate how it leads to the improvement in the delivery of a specific public service for individuals or households, or provision of a benefit to individuals or households – and that these are aimed at supporting the wellbeing of individuals or households. The third condition was added in response to feedback from parliament, suggesting that Ministers should be required to specify closely delineated objectives which supported the delivery of a specified public authority’s functions.

The planned Digital Government (Disclosure of Information) Regulations 2018 specify four objectives for which personal information can be disclosed to improve Public Service Delivery. These are;

i. Multiple Disadvantage
ii. Television Retuning
iii. Fuel Poverty
iv. Water Poverty (not relevant to Scotland)

Each of the bodies listed in the Digital Government (Scottish Bodies) Regulations 2018 will be identified with one or more of these objectives. The scope of any proposal to share personal data is limited to the specified objective identified with the specified body. Any further sharing would require further objectives to be specified by further affirmative Regulations.

The powers can only be used in well-defined policy delivery instances where improved information flow between bodies would allow for improved public service delivery to those people or households defined within the relevant objective and where there is not already a legal gateway for this to happen. This case will need to be fully set out up front and should make clear why the service cannot be delivered using other less sensitive or non-personal information.

The requirements of data protection, in particular the General Data Protection Regulation which comes into effect from 25th May 2018 will continue to apply to the use of the data and the new Data Protection Act 2018 will supersede the previous 1998 Act, once the new Act is commenced.

Third parties providing services to specified public bodies and sharing personal information using the public service delivery powers will need to be appropriately contracted, including through compliant data processing agreements, that specify the conditions for any processing and the obligations and instructions under which they are processing personal information and processes and reporting in the event of a breach.
Personal data to be processed.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Data Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be detailed in individual data sharing agreements and proposals to</td>
<td>Scottish Government</td>
</tr>
<tr>
<td>make use of the powers</td>
<td></td>
</tr>
<tr>
<td>To be detailed in individual data sharing agreements and proposals to</td>
<td>A Scottish local authority – a council constituted under section 2 of the</td>
</tr>
<tr>
<td>make use of the powers</td>
<td>Local Government etc. (Scotland) Act 1994</td>
</tr>
<tr>
<td>Employment status of individual young person living in Scotland (aged</td>
<td>Skills Development Scotland</td>
</tr>
<tr>
<td>16-24 inclusive) to be checked by HMRC and sent back to Skills</td>
<td></td>
</tr>
<tr>
<td>Development Scotland, along with individual’s personal identifying</td>
<td></td>
</tr>
<tr>
<td>information in order that SDS can make contact, or remove from list of</td>
<td></td>
</tr>
<tr>
<td>those eligible.</td>
<td></td>
</tr>
<tr>
<td>• Employer Name</td>
<td></td>
</tr>
<tr>
<td>• Employment Start Date</td>
<td></td>
</tr>
<tr>
<td>• Employment End Date</td>
<td></td>
</tr>
<tr>
<td>• Employment Pay Frequency</td>
<td></td>
</tr>
<tr>
<td>• Hours Worked in Period</td>
<td></td>
</tr>
<tr>
<td>• Taxable Pay in Period</td>
<td></td>
</tr>
<tr>
<td>• Self-Assessment indicator (y/n)</td>
<td></td>
</tr>
<tr>
<td>• Employer PAYE Reference</td>
<td></td>
</tr>
</tbody>
</table>

Describe how this data will be processed:

**PROCESSING**

A number of safeguards are in place around the powers to ensure the processing of personal data preserves privacy, is done proportionately and securely, with due regard to legal and ethical frameworks.

**Security**

Each instance of processing will need to;

- demonstrate that appropriate operational and technological processes and procedures are in place to keep the Personal Data safe from unauthorised use or access, alteration, transmission, publication, loss, destruction, theft or disclosure.

- comply with the requirements of the UK HMG Security Policy Framework and UK HMG Information Security policies, guidelines and standards, including those
produced by the UK Government’s National Technical Authority for Information Assurance.

- implement appropriate technical and organisational measures in accordance with Article 32 of the General Data Protection Regulation to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure - such measures being appropriate to the harm which might result from any unauthorised or unlawful processing accidental loss, destruction, or damage to the personal data and having regard to the nature of the personal data which is to be protected.

Section 35(6) of the Act provides that Scottish Ministers, in making regulations to add Scottish bodies to Schedule 4 must have regard to the systems and procedures for the secure handling of information by that body. This safeguard requires Ministers to scrutinise the security and procedural arrangements supporting the secure handling of data.

- adhere to the UK Government Information Sharing Code of Practice

Information sharing under these powers must adhere to the ICO data sharing code and other existing guidelines on data security, and the requirements of data protection legislation. Any complaints, objections or requests under the right of access to personal information must be addressed swiftly and effectively. Periodic checks will be conducted to ensure data security best practice is adhered to and publish details online of what checks are to be carried out and when. These are often spelt out in individual data sharing agreements. Anyone with concerns about a person’s systems and procedures for handling data may raise those concerns with the responsible Minister.

**Codes of Practice and Data Protection Legislation**

A draft Information Sharing statutory Code of Practice covering Public Service Delivery will accompany the draft Regulations as these are laid in Westminster. The Code of Practice, which is subject to approval by the UK Parliament under the Act will set out the processes and safeguards to be adopted in sharing information using the Public Service Delivery powers. The purpose of the Code is to provide a set of principles and guidance for the use and disclosure of information under the powers. Section 43(3) of the Act provides that a person to whom the Code applies must have regard to the information Sharing Code of Practice – in disclosing information under any of sections 35 to 39, and in using information disclosed under any of those sections.

Scottish Ministers will expect public authorities and other participants in an information sharing arrangement to agree to adhere to the Code before any information is shared. Failure to have regard to the Code may result in public authorities losing the ability to disclose, receive and use information under the powers. In addition, there are criminal sanctions for disclosing personal information in ways that are not permitted by the Act (see sections 41 and 42 of the Act in particular).
The Code refers to other requirements when sharing personal data such as relevant data protection legislation and makes reference to the Information Commissioner’s Privacy Impact Assessment Code of Practice and accompanying guidance. At the time a specified public body wishes to share data, it will need to conduct a Privacy Impact Assessment/Data Protection Impact Assessment and identify the legal bases for sharing personal data under relevant Articles 6 and 9 of the General Data Protection Regulation and list these as part of a data sharing agreement. Any personal data, or special category personal data processed using these powers must do so in line with relevant data protection legislation.

Section 43(2) provides that the Information Sharing Code of Practice must be consistent with the code of practice issued under section 52B of the Data Protection Act 1998, as altered or replaced from time to time.

**Fairness and Transparency**

Parties using the information sharing powers from section 35 will be required to ensure that practices are fair and transparent and only share information once satisfied of this. This is necessary in order to comply with lawfulness, fairness and transparency principle under data protection legislation. The Information Sharing Code of Practice sets out a number of specific obligations for reporting information sharing activities under the powers, building on and in addition to, requirements under data protection legislation.

Details of information sharing agreements concerning non-devolved bodies for disclosures under the PSD powers must be submitted to the Public Service Delivery Secretariat in the Department of Digital, Culture, Media and Sport who will maintain a searchable electronic register available to the general public. Under data protection legislation, data controllers are required to keep records of their data processing activities.

**Compliance with the Code**

Any serious security breaches or serious breaches of the data protection legislation need to be reported immediately to the Public Service Delivery Review Board. This is set out in the Information Sharing Code of Practice. Any breaches should be reported in accordance with the requirements of the data protection legislation (including to the ICO if required). Any breaches of the Code or of the terms of a specific information sharing agreement should also be reported immediately to the Review Board.

**Monitoring the use of the powers**

The Review Board for UK-level and England-only information sharing will meet quarterly to review proposals for new objectives and will provide strategic oversight of the powers in Section 35. The Board will consist of senior officials from relevant information governance or social policy areas and will be attended by representatives from the ICO and invited members from appropriate public representative bodies.
Explain the legal basis for the sharing with internal or external partners:

The current Regulations will provide a legal gateway for sharing personal data under the Public Service Delivery power from Chapter 1 of Part 5 of the Digital Economy Act 2017 in certain circumstances where compatible with data protection legislation. Other specific legal gateways will be used instead where suitable, and the relevant legal bases will be identified separately for each proposed data share, as these are developed. Legal bases will refer to relevant data protection legislation.

Stakeholder analysis and consultation

List all the groups involved in the project, and state their interest.

<table>
<thead>
<tr>
<th>Group</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish public</td>
<td></td>
</tr>
<tr>
<td>The Skills Development Scotland Co Ltd</td>
<td>Wish to be added to Schedule 4 through the current set of Regulations so that they may make use of the powers to receive personal data from HMRC where appropriate to allow them to check the employment status of individual young persons and so re-engage at the point they fall out of work.</td>
</tr>
<tr>
<td>COSLA</td>
<td>Wish local authorities to be added to Schedule 4 through the current set of Regulations so that they may make use of the powers where appropriate.</td>
</tr>
<tr>
<td></td>
<td>The power means that a person providing services to a Scottish local authority can share data with specified bodies listed on Schedule 4 – including to other persons providing services to a public authority where that public authority is listed on Schedule 4. Data processing agreements and other contractual documents will need to specify the terms of the processing and security, technology and safeguards around handling personal data.</td>
</tr>
<tr>
<td>Scottish Government (including executive agencies where legally the Scottish Ministers, Disclosure Scotland, Education Scotland, Transport Scotland, Scottish Public Pensions Agency, Scottish Prison Service, Student Awards Agency)</td>
<td>Wish to be added to Schedule 4 through the current set of Regulations so that they may make use of the powers.</td>
</tr>
</tbody>
</table>
Method used to consult with these groups when making the DPIA.

A public consultation was held from 12\textsuperscript{th} December 2017 to 5\textsuperscript{th} February 2018. The responses and Scottish Government response will be made available on the Scottish Government website at the time the Regulations are laid in Scottish Parliament.

The Scottish Government engaged with a broad reach of Scottish public bodies in relation to the objectives being laid in Regulations in Westminster, gauging interest in use of the powers for the purposes of public service delivery. Scottish Government officials worked with the Cabinet Office on the multiple disadvantage objective so that it would work within a Scottish public service delivery context.

Scottish Government officials have engaged with SDS officials to explore whether existing legal gateways could be used to obtain the required data from Her Majesty’s Revenue and Customs. HMRC officials have also visited Scotland and met with SG and SDS officials to discuss options for data sharing. As part of these conversations, the technical security protocols of SDS have been scrutinised.

Method used to communicate the outcomes of the DPIA.

This DPIA will be submitted with the Policy Note and other Impact Assessments as the Regulations are laid in the Scottish Parliament.

Questions to identify privacy issues

Involvement of multiple organisations

The Scottish Regulations propose to add three Scottish bodies to Schedule 4 of the Act; Scottish Ministers; each of the Scottish local authorities, and Skills Development Scotland.

In addition the Regulations propose adding persons providing services in connection with a specified objective (within the meaning of section 35) to a specified person who—
(a) falls within this Part of this Schedule; and
(b) is a public authority.

Any third parties providing services to Scottish bodies specified in Schedule 4 will need to fulfil the same security and technical requirements.
This approach is proportionate and enables only these specified bodies to use the powers in the Act and only for sharing for the objective/s to which they are paired in the Regulations under section 35(7). Any requirement to use the Public Service Delivery powers in the Act by other Scottish bodies will require separate Regulations that list those bodies at Schedule 4 and will require separate objectives to be specified (in connection with these specified bodies) and also laid in Regulations. The approach has not been to add the wider class of Scottish Public authorities without regard for uses of the data.

Anonymity and pseudonymity

To preserve individuals’ privacy, personal data will only be processed and shared where required to deliver the services focused on the specified objectives set down in the UK Regulations.

Appropriate techniques will be used to pseudonymise and de-identify personal data and access to personal data will be restricted to core individuals involved in processing. This will need to be fully explained as part of any information sharing agreement, setting out how personal data will be stored securely and access to it restricted to a named list of appropriately qualified personnel.

All data flows will need to be documented in information sharing agreements that make clear where and why identifiable data is required and the safeguards in place around this.

Public authorities making their data available must make sure that they share the minimum amount of personal information required to properly fulfil the purpose for which it is being processed. This “data minimisation” principle should guide the way organisations design and structure their information sharing processes. The Information Sharing Code of Practice sets out a series of Principles to be followed, in addition to data protection principles set out in legislation.

Technology

Data format and sharing protocol follow relevant standards set out in the Open standards for government data21 and technology and the API standards22.

Organisations involved in an information sharing arrangement should also agree procedures and processes for correcting inaccurate data, deleting data where there is a right to erasure, contacting the data subject were appropriate, how to treat subject access requests, how data subjects can exercise their rights to restrict and object to processing.

---


22 https://www.gov.uk/service-manual/technology/application-programming-interfaces-apis
The Information Sharing Code of Practice sets out three specific requirements for Security;

1. Public authorities and receiving parties should consider the standards and protocols that apply to their organisation when providing or receiving information before agreeing appropriate standards and protocols; all parties should be satisfied that they provide a level of security that is both appropriate and meets or exceeds their own standards and protocols.

2. Each party involved in the data share must make sure effective measures are in place to manage potential or actual incidents relating to the potential loss of information; and

3. Public authorities and data processors, together with any third parties must be fully engaged in the resolution of a potential or actual data incident.

As part of any formal data sharing agreement, security plans will need to be evidenced and documented to include; secure storage arrangements, protective marking; assurance around process for restricted access by individuals; notification protocol in the event of a breach; procedures to investigate cause of any breach.

Identification methods

Specific to individual data shares

Sensitive/Special Category personal data

Specific to individual data shares

Changes to data handling procedures

The specified bodies listed at Schedule 4 will need to fully specify data handling procedures and methods for transferring data where this has not occurred previously. These decisions will need to take account of the nature and content of any data being shared.

Statutory exemptions/protection

Requirement to comply with other legislation;

- Data protection legislation in particular the General Data Protection Regulation and related legislation, with references to be updated by amendment under the Data Protection Bill in due course.
- Parts 1-7 or Ch 1 of Part 9 of the Investigatory Powers Act 2016
- obligations in European law which are binding in UK law
- and the Human Rights Act 1998

Data sharing powers are not in general suitable for the sharing of information which is sensitive on national security grounds and subject to express restriction or disclosure. Any data share must adhere to the Security Policy Framework and observe handling controls in relation to protective markings.

Justification

Section 35 of the Act is intended to remedy the lack of clear legal gateways for sharing information across public services, and in particular disclosures from reserved departments. To help ensure that any sharing under these powers is justified and proportionate the powers are constructed to only allow public authorities to disclose information for purposes consistent with tightly constrained objectives.

Scottish bodies wishing to disclose or receive personal data using these powers will need to register details of the Information Sharing Agreement with the Department for Digital, Culture, Media and Sport for inclusion on a public register. The register will allow government, the Information Commissioner and the public to understand what information sharing is taking place under the provisions to assess their effectiveness and value. Where an organisation providing services to a public body uses the powers in this Act to share data, their role will need to be appropriately documented in the Register and for publication.

Other risks

Bodies that are defined as public authorities do not always directly deliver public services; the ability to use external partners and sub-contractors is essential to improving the effectiveness and efficiency of those services. In these situations, public authorities are likely to need to access data from external delivery partners and sub-contractors or to provide them with information so that they can fulfil their duties. These organisations will be required to handle information to the same standards as public authorities, including compliance with the Code of Practice and relevant data protection law and contractual agreements where necessary.

Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?
<table>
<thead>
<tr>
<th>Risk</th>
<th>Ref</th>
<th>Solution or mitigation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risks to individuals of disclosure of personal identifying information</td>
<td></td>
<td>Examine proposals of specific data share and document through data sharing agreements, Data Protection Impact Assessments, Data Processing Agreements that detail security and protocol to promote secure handling of data. Following the Information Sharing Code of Practice and ICO data sharing Code of Practice. Only the minimum necessary personal information consistent with the purpose of the data share should be processed, ensure access to personal data is restricted to named individuals with appropriate training in safe handling of personal data. Clarify why data cannot be pseudonymised to minimise sharing of personal identifiers where not required, following data minimisation principles.</td>
<td>Reduce and manage</td>
</tr>
<tr>
<td>Corporate Risks</td>
<td></td>
<td>Reputational risk in the event of a breach. Ensure appropriate IG protocols in place to report breach in line with data protection legislation – that these protocols are understood throughout the relevant organisation using the power to share personal information. Ensure processes in place to regularly review Information Assets, keeping these accurate and updated – to avoid duplication of data or incorrect/out of date personal information being processed.</td>
<td>Reduce and manage</td>
</tr>
<tr>
<td>Compliance Risks associated with breach of Data Protection law and other legal codes.</td>
<td>Risks associated with non-compliance will be managed through publication of the Code of Practice. A review board will be established for all non-devolved and England-only data sharing to ensure a consistent approach to sharing using the powers. The review board will also be responsible for strategic oversight of the public service delivery power including the searchable electronic register of data sharing. The board will advise Ministers on information sharing under the power, consider complaints and act as a point of contact with the ICO. The board will also consider and coordinate any revisions to the code of practice as necessary. A draft Code of Practice for Public Service Delivery will accompany the draft Regulations as these are laid in Westminster. The Code of Practice will set out the</td>
<td>Reduce and manage</td>
<td></td>
</tr>
</tbody>
</table>
processes and safeguards to be adopted in sharing data using the Public Service Delivery powers.

Data sharing agreement requires sign off before start of project/any data being transferred.

All parties aware of roles and responsibilities for ensuring compliance with DPA and SG standards.

Authorisation and publication

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust, has addressed all the relevant issues and that appropriate actions have been taken.

By signing the DPIA report, the IAO is confirming that the impact of applying the policy has been sufficiently assessed against the individuals’ right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase “DPIA report” and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

I confirm that the impact of the proposed Digital Government (Scottish Bodies) Regulations 2018 has been sufficiently assessed against the needs of the privacy duty:

<table>
<thead>
<tr>
<th>Name and job title of a IAO or equivalent</th>
<th>Date each version authorised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roger Halliday, Chief Statistician and Data Officer, Scottish Government</td>
<td>May 2018</td>
</tr>
</tbody>
</table>
### Child Rights and Wellbeing Impact Assessment (CRWIA)

### The Digital Government (Scottish Bodies) Regulations 2018

<table>
<thead>
<tr>
<th>Policy/measure</th>
<th>A general description of the policy/measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Digital Government (Scottish Bodies) Regulations 2018</td>
<td>The Digital Economy Act received Royal Assent on 27 April 2017. Part 5 of the Act introduces new information sharing provisions to support more efficient and effective digital public services. The Digital Government (Scottish Bodies) Regulations 2018 (the Scottish Regulations) allow specified Scottish public bodies to share personal data to improve public service delivery.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initiating department</th>
<th>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directorate for Digital; Data, Statistics and Outcomes; Data Sharing and Identity Assurance</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Policy aims</th>
<th>What the policy or measure is trying to achieve; what are the expected outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Digital Economy Act 2017 (the “Act”) allows the UK Government, as well as the devolved governments, in certain cases, to specify objectives for which data can be shared, and to name individuals and organisations that can make use of the data sharing powers the Act provides. Part 5 of the Act regulates what data can be shared and for which purposes. It also includes safeguards to make sure that the privacy of citizens’ data is protected.</td>
<td>The aim of the Scottish Regulations is to enable Scottish public bodies, or persons providing services to Scottish public bodies, to be able to share personal data under the new powers set out in section 35 of the Act 2017 to improve Public Service Delivery. Section 35 is intended to remedy the lack of clear legal gateways for sharing information across public services.</td>
</tr>
</tbody>
</table>
It is anticipated that the Regulations will promote more effective and efficient delivery of public services through proportionate and justified information sharing that better targets services toward those who need them. This in turn should lead to benefits for the individuals and households that interact with those public services.

The bodies are being listed in the Scottish Regulations to enable them to share data with other bodies, for the objectives being specified in separate regulations, the Digital Government (Disclosure of Information) Regulations 2018 (“the UK Regulations”). These UK Regulations are being laid in Westminster. Under the powers in section 35(7) to (12) of the Act, the UK Regulations will set out the specified objectives for which the UK and also Scottish bodies listed in the Scottish Regulations will be able to share data.

The Scottish Government consulted on the draft regulations between 12 December 2017 and 5 February 2018. The consultation set out three specific objectives. To allow a public body to share data, for the purposes of public service delivery, it must demonstrate that at least one of these objectives applies.

The objectives are:

- multiple disadvantage
- television retuning
- fuel poverty

This means that a specified body may share data with another specified body only where they are both listed in regulations in relation to that specified objective. The power is permissive, which means that persons who are potentially able to share information under it can choose whether or not to do so, but are not under a legal duty to do so.

**Timetable**

<table>
<thead>
<tr>
<th>What is the time frame for a policy announcement/consultation/implementation?</th>
<th>Scottish Regulations will be laid in the Scottish Parliament on 17 May 2018 and are expected to come into force on 13 September 2018.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>17 May 2018</td>
</tr>
<tr>
<td>Signature</td>
<td>Claire Wainwright</td>
</tr>
</tbody>
</table>
## Child Rights and Wellbeing Impact Assessment (CRWIA)

### The Digital Government (Scottish Bodies) Regulations 2018

| Policy/measure | The aim of these Regulations is to enable Scottish public bodies, or persons providing services to Scottish public bodies to be able to disclose personal data under the new Public Service Delivery powers, set out in section 35 of the Act. The addition of Scottish public bodies into Schedule 4 of the Act will create a new legal gateway to enable the sharing of information to/from reserved bodies. Only those public bodies or persons providing services to public bodies listed at Schedule 4 to the Act are able to make use of the Public Service Delivery power. Schedule 4 to the Act does not yet list devolved “Scottish public bodies” and it is for the Scottish Parliament to approve Regulations adding such public bodies. This is the purpose of the current regulations. Section 35(1) provides that public bodies wishing to share personal data with each other for the purposes of Public Service Delivery must do so for the purposes of an objective which is a specified objective in relation to each of those bodies. These objectives need to be specified in regulations. Sections 35(9) – (12) of the Act identify three conditions which specified objectives must fulfil and which pertain to any information sharing under a specified objective; The first condition is that the objective has as its purpose— (a) the improvement or targeting of a public service provided to individuals or households, or (b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households. The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households. The reference in subsection to the well-being of individuals or households includes— (a) their physical and mental health and emotional well-being, (b) the contribution made by them to society, and (c) their social and economic well-being. The third condition is that the objective has as its purpose the supporting of— (a) the delivery of a specified person’s functions, or (b) the administration, monitoring or enforcement of a |
These conditions mean that the power must demonstrate how it leads to improvement in the delivery of a specific public service for individuals or households, or provision of a benefit to individuals or households – and that these are aimed at supporting the wellbeing of individuals or households. The third condition was added in Parliament, suggesting that Ministers should be required to specify closely delineated objectives which supported the delivery of a specified public authority’s functions.

The Digital Government (Disclosure of Information) Regulations 2018 will specify four objectives for which personal information can be disclosed to improve Public Service Delivery. These are;

i. Multiple Disadvantage
ii. Television Retuning
iii. Fuel Poverty
iv. Water Poverty (not relevant to Scotland)

Each of the bodies listed in the Digital Government (Scottish Bodies) Regulations 2018 will be identified with one or more of these objectives. The scope of any proposal to share personal data is limited to the specified objective identified with the specified body.

Third parties providing services to specified public bodies and sharing personal information using the public service delivery powers will need to be appropriately contracted, including through Data Processing Agreements, that specify the conditions for any processing and the obligations and instructions under which they are processing personal information. The role of third parties (providing services to bodies listed at Schedule 4) in relation to a data share under these powers will be documented through appropriate Data Processing Agreements which specify the data to be processed, the nature of any processing and conditions on this, obligations of the Processor and processes and reporting in the event of a breach.

**Background**

The Scottish Government engaged with a broad reach of Scottish public bodies in relation to the objectives being laid in Regulations in Westminster, to gauge interest in use of the powers for the purposes of Scottish public service delivery.

Scottish Government officials worked with the Cabinet Office to augment the multiple disadvantage objective so that it
would work within a Scottish public service delivery context.

The following Scottish bodies were identified as having a specific need to share personal data for the purpose of improved public service delivery, these are:

- the Scottish Government, local authorities in Scotland and Skills Development Scotland in relation to the multiple disadvantage objective
- the Scottish Government and local authorities in Scotland in relation to the fuel poverty objective
- local authorities in Scotland in relation to the television retuning objective
- persons providing services to these Scottish public bodies, listed in Schedule 4, in connection with any objective to which that public body is listed.

Further consultation and legislation will be required should other public bodies wish to use these powers at a later date.

Public Consultation

In December 2017, Scottish Government published its Consultation on Digital Economy Act 2017: part 5 (data sharing codes and regulations) in relation to the delivery of Scottish public services in which the purpose and reach of the proposed new data sharing powers were described.

The consultation received four responses. This included a response from the Information Commissioner which stated that:

“The Commissioner reaffirms her recognition of the potential benefits of justified and proportionate data sharing. Improving the delivery of public services may require more effective sharing of personal data between public authorities where appropriate but it is important that any provisions that increase data sharing inspire confidence in those individuals who will be affected.”

The responses did not highlight any concerns with our intention to list the four specified persons in the Regulations and, as such, support our approach to limit the inclusion of specified persons to just those where data sharing in relation to the specified objectives being laid in Westminster would provide a clear and valid improvement in services to individuals or households.
Inter-Governmental Engagement

Throughout the process, Scottish Government officials have liaised and represented Scottish interests – including the rights and wellbeing of children and young people – in dialogue with the UK Government. Both the UK and Welsh Governments have published consultations on the Digital Economy Act 2017: Part 5 (data sharing codes and regulations).

Proposed use of Powers in Relation to Sharing of Children and Young People’s Data

Getting it right for every child is the national approach in Scotland for working with and for children and their families to improve outcomes for children and young people. Getting it right for every child puts the rights and wellbeing of children and young people at the heart of the services that support them. It helps children and young people get consistent and effective support for their wellbeing wherever they live or learn.

The powers afforded by these Regulations can only be used in well-defined policy delivery instances where improved information flow between reserved and devolved bodies would allow for improved public service delivery to those children and young people, or their families, defined within the relevant objective and where there is not already a legal gateway for this to happen. Each proposed data share will need to be fully set out in advance and should make clear why the service cannot be delivered using other less sensitive or non-personal information.

Data sharing between public bodies on the basis of the multiple disadvantage objective has the potential to improve the way public services can be delivered to children and young people and several of the criteria relate directly to the experiences and circumstances of children and young people.

Specified public bodies will be able to share data for the purposes of improving the lives of children and young people, where one of the following criteria are fulfilled in combination with another of the listed criteria under the multiple disadvantage objective:
- they are a care leaver (or the household includes a care leaver)
- children or young people with an identified learning disability
- they are considered to be a child in need (or the household contains a child in need)
- they are an individual who fails to regularly attend school
Skills Development Scotland are included in the Regulations because their service delivery to young people aged 16-24 years will be improved by being able to share data with HMRC to better identify and target services to young people who are not in employment, education or training (which qualifies under the criteria of meeting ‘two or more’ factors under the ‘multiple disadvantage objective’).

This is expected to improve communications and operational delivery to enable SDS to engage young people in a more timely and effective manner (at the point they fall out of work or study). It will avoid SDS having to re-contact a much wider group of individuals in determining the status of young people who are NEET (not in employment, education or training).

Specifically the powers allow Skills Development Scotland to request data on the employment status of individual young persons living in Scotland from HMRC. HMRC will then return the individual’s personal identifying information (as below) in order that SDS can make contact, or remove from list of those eligible.

- Employer Name
- Employment Start Date
- Employment End Date
- Employment Pay Frequency
- Hours Worked in Period
- Taxable Pay in Period
- Self-Assessment indicator (y/n)
- Employer PAYE Reference

The fuel poverty objective promotes better information sharing with the aim of improving targeted support to those defined as experiencing fuel poverty. The definition of fuel poverty means that families with young children are more likely to be considered fuel poor than other groups. It is expected that improved data sharing under this objective will lead to benefits for these children, young people and the households within which they live.

Scope of CRWIA

The CRWIA should be read in conjunction with the other impact assessments conducted in relation to the Digital Government (Scottish Bodies) Regulations 2018. The Data Protection Impact Assessment (DPIA) considers the impact of the new powers on an individual’s right to privacy. The Equalities Impact Assessment (EQIA) considers the potential impact of the new powers on each of the protected characteristics\(^1\), including consideration of the impacts on
children and young people, as well as wider characteristics which are also applicable to children and young people (e.g. race, religion, disability, sex and sexual orientation or beliefs).

The specified objectives identify circumstances experienced by children and young people. The impact of this is assessed as it relates to the proposed specified bodies in the Scottish Regulations and the specified objectives against which they are to be listed to share personal data.

**Key Findings**

It is anticipated that the Regulations will promote more effective and efficient delivery of public services through proportionate and justified information sharing that better targets services toward those who need them. This in turn should lead to benefits for the individuals and households that interact with those public services. This includes information sharing to improve the delivery and targeting of services for the benefit of children and young people.

All instances of information sharing using the Public Service Delivery information sharing powers must demonstrate full compliance with relevant data protection legislation, as well as with common law and the Human Rights Act 1998.

The risks associated with sharing personal data relating to children and young people will be managed through detailed Data Protection Impact Assessments which will identify risks and develops plans for mitigating these for each data share.

A draft Information Sharing Code of Practice covering Public Service Delivery will accompany the draft Regulations as these are laid in Westminster. The Code of Practice, which is subject to approval by the UK Parliament under the Act will set out the processes and safeguards to be adopted in sharing information using the Public Service Delivery powers. The purpose of the Code is to provide a set of principles and guidance for the use and disclosure of information under the powers. Section 43(3) of the Act provides that a person to whom the Code applies must have regard to the information Sharing Code of Practice – in disclosing information under any of sections 35 to 39, and in using information disclosed under any of those sections.

Scottish Ministers will expect public authorities and other participants in an information sharing arrangement to agree to adhere to the Code before any information is shared. Failure to have regard to the Code may result in public authorities losing the ability to disclose, receive and use information under the powers. In addition, there are criminal sanctions for disclosing personal information in ways that are not permitted by the Act (see sections 41 and 42 of the Act in particular).
Details of information sharing agreements concerning non-devolved bodies for disclosures under the Public Service Delivery powers must be submitted to the Public Service Delivery Secretariat in the Department of Digital, Culture, Media and Sport who will maintain a searchable electronic register available to the general public. Under data protection legislation, data controllers are required to keep records of their data processing activities.

A Review Board will be established by the UK Government to ensure a consistent strategic approach to the use of the powers. The Board will meet quarterly to review proposals for new objectives and will consist of senior officials from relevant information governance or social policy areas and be attended by representatives from the ICO and invited members from appropriate public representative bodies.

These measures will protect children’s rights to privacy, e.g. as recognised in Article 8 of the European Convention on Human Rights and Article 16 of the UN Convention on the Rights of the Child.

| Conclusions and Recommendations | It is therefore reasonable to conclude that the new data sharing powers to be enacted will have a positive impact on the lives of children and young people and that appropriate safeguards have been identified to manage risks relating to inappropriate disclosures of personal information relating to children and young people. |

---

1. The Equality Act 2010 sets out the personal characteristics that are protected by law. These ‘protected characteristics’ are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 35(3) of the Digital Economy Act 2017(23) and all other powers enabling them to do so.

They have consulted the Information Commissioner, the Commissioners for Her Majesty’s Revenue and Customs, the Secretary of State, the Welsh Ministers, the Department of Finance in Northern Ireland, the Minister for the Cabinet Office and such other persons as the Scottish Ministers consider appropriate, as required by section 44(4) of the Digital Economy Act 2017.

In accordance with section 44(8) of the Digital Economy Act 2017, a draft of these Regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

Citation and commencement

6. These Regulations may be cited as the Digital Government (Scottish Bodies) Regulations 2018 and come into force on 13th September 2018.

Scottish bodies for the disclosure of information in relation to public service delivery


“PART 3

SCOTTISH BODIES

49 The Scottish Ministers.

50 A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(25).”

(23) 2017 c.30 ("the 2017 Act"). The Scottish Ministers are the appropriate national authority in respect of the bodies to which these Regulations relate by virtue of section 45(2) of the 2017 Act.

(24) Part 3 is to be inserted after Part 2 (Welsh bodies) to be inserted by the Digital Government (Welsh Bodies) (Wales) Regulations 2018 (S.I. 2018/XXX (W. XXX)).

51 The Skills Development Scotland Co. Limited (company registration number SC202659).

52 A person providing services in connection with a specified objective (within the meaning of section 35) to a specified person who—

(a) falls within this Part of this Schedule; and

(b) is a public authority.”.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations relate to the disclosure of information in relation to public service delivery, pursuant to section 35 of the Digital Economy Act 2017 (c.30) (“the Act”).

They specify the Scottish bodies listed in regulation 2 as specified persons to be added to those set out in schedule 4 of the Act for the purposes of improving public service delivery.

The specified persons may share information for the purposes of objectives specified in relation to that body in regulations made under section 35(7). Under that power, Digital Government (Disclosure of Information) Regulations 2018 (S.I. 2018/XXX) will set out:—

• a multiple disadvantages objective to enable the disclosure of information to enable the identification of individuals or households who face multiple disadvantages;

• a television retuning objective to enable the disclosure of information in order to identify individuals and households and offer support under a television retuning scheme to individuals affected by changes to radio frequencies currently used by terrestrial television broadcasts at 470-790 MHz;

• a fuel poverty objective to enable the disclosure of information for the purposes of fuel poverty as defined in section 36(10) of the Act.

The Scottish Government and local authorities in Scotland are to be specified in those Regulations in relation to the multiple disadvantages and fuel poverty objectives. Local authorities in Scotland are also to be specified for the television retuning objective. Skills Development Scotland is to be specified in relation to the multiple disadvantages objective. Persons providing services to Scottish bodies are also to be specified in connection with the specified objectives.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is foreseen.
Rural Economy and Connectivity Committee

19th Meeting, 2018 (Session 5), Wednesday 20 June 2018

Glasgow Prestwick Airport

Background

1. At its meeting on 20 June, the Committee will receive an update on the progress of Glasgow Prestwick Airport (GPA) and its financial management. GPA last appeared before the REC Committee on 17 May 2017.

2. GPA is an international airport handling both passenger and freight traffic. The airport is wholly owned by Scottish Ministers, who purchased it from previous owners Infratil (Prestwick Aviation Holdings Ltd) on 23 November 2013 for a nominal sum of £1.

3. GPA operates as a commercial business at an arms-length from the Scottish Government. The airport has a two-board structure, the strategic direction being set by the holding company strategic board, with more detailed matters being handled by the Operating Company Board. Day-to-day management is a matter for the airport executive team.


5. Several members of the Committee visit Prestwick Airport on 4 June 2018 to tour the operational facilities at the airport in advance of this evidence session. Written correspondence has been received by the Committee as follow up information from that visit (attached in the Annex).

Rural Economy and Connectivity Committee Clerks
June 2018
Annexe

Response to question from RECC visit on 4 June 2018 to Prestwick Airport

Question: Why does the value of assets (property, plant and equipment) at the airport not increase despite the expenditure each year?

BACKGROUND
The airport has 2 classifications of asset:

Investment properties – Land and property which is held either to earn rental income or for capital appreciation. This is valued annually by Deloitte LLP and held on the balance sheet at fair value. As at 31 March this is £2.8m.

Operational Assets - Property plant and equipment (eg terminal building, runway, plant and equipment)

When the government bought the airport in 2013 it was recognised that the previous owner had not maintained the operational assets of the business and that this would need to be addressed. At the time of acquisition, a valuation by Deloitte was performed on behalf of the Board and valued the operational assets at £1 million. The valuation by Deloitte was performed on an existing use basis and was derived using discounted cash flow techniques and comparable recent market transactions.

Since then the Board has authorised expenditure in the infrastructure by repairing runways and buildings and replacing ageing equipment. The annual cost has historically been around £4m-£5m and a total of £17m since acquisition.

Accounting Treatment
This expenditure is initially capitalised during the year and shown within Fixed Assets. However accounting standards require the Board to consider indicators of impairment when preparing financial statements and if indicators exist to perform an impairment review in accordance with IAS 36. One of the indicators of impairment is recurring losses so on this basis an impairment review has been performed annually. Under IAS 36 any impairment of the operational assets is based on the forecast future cash flows of the airport. Given the recent history of operating losses these projections have always shown negative discounted cash flows.

The overall impact each year has been to impair any costs capitalised within ‘operational assets’ during that year and these are expensed to the profit and loss account. The valuation within the financial statements remains at £1 million in recognition of the value of the operational assets on acquisition. The table below shows the expenditure on operating assets separately from the Capex Maintenance expenditure that has flown through the P&L in the last 3 years audited accounts.
<table>
<thead>
<tr>
<th></th>
<th>ACTUAL 14/15</th>
<th>ACTUAL 15/16</th>
<th>ACTUAL 16/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Loss</td>
<td>(3.7) £m</td>
<td>(4.7) £m</td>
<td>(4.0) £m</td>
</tr>
<tr>
<td>Operating assets - Capex</td>
<td>(4.8) £m</td>
<td>(4.0) £m</td>
<td>(5.1) £m</td>
</tr>
<tr>
<td>Maintenance expenditure</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exceptional Items - non recurring</td>
<td></td>
<td></td>
<td>1.3 £m</td>
</tr>
<tr>
<td>Group Operating Loss before</td>
<td>(8.5) £m</td>
<td>(8.7) £m</td>
<td>(7.8) £m</td>
</tr>
<tr>
<td>Interest</td>
<td>(0.2) £m</td>
<td>(0.5) £m</td>
<td>(0.8) £m</td>
</tr>
<tr>
<td>Tax</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total Loss for Year</td>
<td>(8.7) £m</td>
<td>(9.2) £m</td>
<td>(8.6) £m</td>
</tr>
</tbody>
</table>
1. The Committee will also consider the following SSI, which is not subject to parliamentary procedure but which the Committee can consider:


2. The annexe contains the clerk’s note, the Scottish Government’s policy note, a full business and regulatory impact assessment, and the instrument itself. It also contains correspondence from NFU Scotland and the Scottish Beef Association.
Annex – SSI 2018/164: The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018

Type of Instrument: No procedure

Laid Date: 21 May 2018

Coming into force: 10 July 2018

Minister to attend the meeting: No

Procedure

1. This SSI is not subject to any parliamentary procedure. However, the Committee can consider and/or take evidence on no procedure instruments, provided this is done within the 40 days of it being laid (in this case, the 40 day date is 29 June). The Committee may also report on the instrument.

2. As such instruments are not subject to parliamentary procedure, they cannot be annulled (and without any action to make it otherwise, the instrument will come into force, in this case on 10 July).

3. However, although such instruments cannot be annulled, committees can call for them to be revoked should they have concerns which they consider merit this action. Should such a scenario arise, a committee could agree to write to the relevant Scottish Government Minister recommending revocation of the instrument. The Minister/Scottish Government would not be obliged to accept this recommendation.

4. Other actions open to committees who have concerns about such instruments could include writing to Scottish Government ministers asking them to review the relevant and specific policy area(s) and consider replacing the instrument at a later date. That would allow the policy changes in the instrument on which the committee did not have concerns to be implemented.

Consideration by the Delegated Powers and Law Reform Committee

5. At its meeting on 5 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Policy Objectives

6. This Order amends articles 2, 9, 10, 12, 18, 19, 21, 22 and 26 of the Tuberculosis (Scotland) Order 2007 to introduce changes to the requirements for post movement testing and to the way compensation is paid for bovine animals that are slaughtered under TB control measures. It also inserts an appeals provision where Scottish Ministers have notified a keeper of their intention to reduce
compensation. It further extends the prohibition on testing to include any diagnostic test for tuberculosis.

7. The instrument also removes a redundant definition of “authorised veterinary inspector” in article 2(1) of the Tuberculosis in Specified Animals (Scotland) Order 2015.

8. The Policy Note for this SSI (attached below) states that the £5,000 cap “will have some impact on those keepers with higher value animals, however statistics show that only eighteen animals have breached this cap in the last five years and so numbers affected are expected to be limited.”

9. The policy note and instrument are attached and also available online at the below link: http://www.legislation.gov.uk/ssi/2018/164/contents/made

Consultation

10. The Scottish Government consulted on this SSI from 7 September to 30 November 2017. 15 responses were received. The Scottish Government subsequently made the decision to take forward all changes detailed in the consultation document, with the exception of the introduction of a £3,000 Automatic Justification Threshold for cattle valuations.

Written correspondence

11. The Committee has received correspondence from NFU Scotland (NFUS) and the Scottish Beef Association on this SSI (attached below).

12. The NFUS states that its response to the Scottish Government’s consultation on the SSI was not received and therefore not taken into account in the Scottish Government’s drafting of the SSI. The NFUS states that “it appears that this omission has been made due to some form of technical fault with the Scottish Government’s consultation mailbox”, and that “NFUS has reason to believe that it may not have been the only organisation whose response may have slipped through the net due to this error.” Similarly the Scottish Beef Association have concerns about whether their submission has been taken into account in the consultation process.

13. In terms of the SSI itself, NFUS state that they “would prefer a far ‘blunter’ approach taken to removing the temptation of bringing high risk animals into Scotland and that is to either remove or reduce the compensation paid for high risk imported cattle. This approach would act as a deterrent to all high-risk cattle and not just target those of high value, having a far wider reaching effect of reducing risk to the Scottish herd.” The Scottish Beef Association position is that there should be no limit on compensation.
Recommendation

14. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
June 2018
POLICY NOTE

THE TUBERCULOSIS (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2018

SSI 2018/164

1. The above instrument was made in exercise of the powers conferred by sections 1, 8(1), 28, 32(2) and (3), 34(7) and 83(2) of the Animal Health Act 1981 and is subject to Negative procedure. It amends articles 2, 9, 10, 12, 18, 19, 21, 22 and 26 of the Tuberculosis (Scotland) Order 2007 to introduce changes to the requirements for post movement testing and to the way we pay compensation for bovine animals that are slaughtered under TB control measures. It also inserts an appeals provision where Scottish Ministers have notified a keeper of their intention to reduce compensation. It further extends the prohibition on testing to include any diagnostic test for tuberculosis.

The instrument also removes a redundant definition of “authorised veterinary inspector” in article 2(1) of the Tuberculosis in Specified Animals (Scotland) Order 2015.

Policy Background

2. TB is a serious infectious disease of cattle, caused by the bacterium Mycobacterium bovis (M.bovis). M.bovis, which mainly affects cattle, but can also be passed between most mammals and from infected animals to people. The risk of people contracting TB from animals in Great Britain is considered very low.

3. Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009, and maintaining that OTF status is crucial to the continuing success of the Scottish cattle industry which is already regulated in terms of controls for TB by the Tuberculosis (Scotland) Order 2007 (SSI 2007/147) and EU Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine.

4. The Scottish Government is committed to a comprehensive, practical and proportionate programme of measures to maintain the current low levels of TB in cattle and other species and to safeguard our OTF status. This includes minimising the risks from all potential sources of infection and reducing the risk of disease spread as far as possible.

5. Defra and the Welsh Government have both recently introduced substantial changes to their respective TB Programmes, which highlighted the need to also review Scottish TB controls and compensation arrangements to ensure that they are fit for purpose, incentivise compliance with the rules and best practice and are financially sustainable in the future.
Policy Objectives

6. The objective of this amending Order is to introduce changes to TB controls in relation to post movement testing and compensation. It also tightens up some of the existing provisions for clarity and to ensure they are properly applied.

7. The Order makes provision for circumstances where a bovine animal has been moved to premises in Scotland from other parts of GB and subsequently requires to be post movement tested. The keeper of such animals must ensure the relevant test is carried out within the specified time limit with negative results before the animal is permitted to be moved from those premises, unless the move can be authorised under applicable exceptions. This is to minimise the risk of potential disease incursion into Scotland at the point of movement.

8. The Order also makes several provision for compensation which (a) introduce a £5,000 cap on compensation payments for individual animals and (b) allow for compensation to be reduced on a sliding scale or paid at a nominal sum of £1 where livestock keepers have broken the rules and illegally moved bovine animals onto restricted premises or allowed their statutory herd testing to go overdue. Compensation is also restricted to a £1 nominal sum where animals are not correctly identified by means of eartags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007. An appeals provision is also provided where compensation has been reduced in such circumstances. The objective of this policy is to incentivise compliance and provide a more financially sustainable compensation system that is fair to all and protected from potentially significant compensation costs associated with high value animals.

9. The Order also inserts a revised definition of a high incidence area at article 2 (1) to reflect that TB testing is done at intervals of up to two years in such areas.

Consultation

10. A public consultation was held between 7 September and 30 November 2017. As part of the consultation process Scottish Government officials also engaged directly with both Defra and the Welsh Government to look at disease control and compensation arrangements already in place in other parts of GB.

11. We also consulted with the Animal and Plant Health Agency (APHA) as our operational delivery partners on all aspects of delivery and implementation and to obtain available data on cattle valuations, numbers of overdue tests and post movement tests.

Financial Implications

12. It is not possible to predict the number of bovine animals that will be affected by any potential future TB incidents and more specifically these changes. Neither is it possible to estimate accurately the cost to livestock keepers associated with introducing this Order. The reductions in compensation are completely avoidable except those imposed by the £5,000 cap which will have some impact on those keepers with higher value animals, however statistics show that only eighteen...
animals have breached this cap in the last five years and so numbers affected are expected to be limited.

13. APHA have carried out a Change Management Assessment and do not anticipate any significant implementation costs. There will be some saving to Government where compensation payments are reduced but it has not been possible to estimate accurately how much this might be, however we would expect any savings to be minimal.

14. A business and Regulatory Impact Assessment has been prepared and is attached.

Scottish Government
Agriculture and Rural Economy
Animal Health and Welfare Division
May 2018
**Final Business and Regulatory Impact Assessment**

**Title of Proposal**
The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018

**Purpose and intended effect**

- **Background**

  TB is a serious infectious disease of cattle, caused by the bacterium Mycobacterium bovis (M. bovis) and a major challenge currently facing large parts of the UK cattle farming industry. The disease is characterised by the development of “tuberculosis” lesions in any organ of the body. It mainly affects cattle but can be passed between most mammals. It is also a Zoonotic disease which means it can be passed from infected animals to people, causing an illness similar to human TB. The risk of people contracting TB from cattle in Great Britain (GB) is however considered to be very low.

  Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009 and maintaining that OTF status and Scotland’s reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry.

  We are aware that in recent months both Defra and the Welsh Government have introduced substantial changes to their respective TB control programmes. This has highlighted the need for us to review Scottish TB controls and compensation arrangements, to ensure they continue to incentivise compliance and best practice while being financially sustainable in the future.

  The Scottish cattle industry is already strictly regulated in terms of controls for TB by the Tuberculosis (Scotland) Order 2007 and EU Council Directive 64/432/EEC and we therefore sought to consider whether there is scope to implement the additional measures proposed in this BRIA, further encouraging farmers to follow good farming practices and keep disease out of their herds.

- **Objective**

  The objective of this proposal is to ensure that TB controls in Scotland continue not only to be effective and fit for purpose but incentivise compliance with the rules and encourage farmers to follow best practice when purchasing and moving cattle throughout Scotland and the rest of the UK.

**Position in the rest of GB**

**England** – Despite implementing enhanced cattle controls in 2013, Defra has reported that in some areas of England the overall incidence of bovine TB is...
still increasing. In order to reverse this trend and halt the spread of disease a series of TB consultations aimed at strengthening existing controls were carried out in 2016/17. Following these consultations Defra introduced further enhanced TB controls in November 2017 and in January 2018. These aimed to simplify testing and reduce disease risk in the high risk area. Some of the proposals which were consulted on in 2017 are still under consideration and outcomes are to be advised in due course.

**Approach already taken in England to the changes proposed in Scotland**

- **Reduced compensation for overdue testing** – Defra introduced powers to reduce compensation where TB testing is overdue in July 2012 and have since reported that the number of overdue tests has fallen significantly as a result. Compensation is reduced on a sliding scale depending on the length of time the test is overdue.

- **Reduced or withheld compensation for illegal movements onto restricted premises** – Defra currently have no statutory provision to reduce compensation where cattle have illegally moved on to a restricted herd and are subsequently slaughtered as TB reactors.

- **Post Movement Testing** – In April 2016 Defra introduced a requirement for post movement testing in the English low risk area. This testing is required to be carried out within 60-120 days following arrival on farm and the test must be completed before the relevant animal can move from the original holding of destination in the low risk area. Exceptions to this are permitted for animals that are:
  - Slaughtered within 120 days of arrival
  - Moved solely for veterinary treatment
  - Moved to an agricultural show in the Low Risk Area or return to the low Risk area from an agricultural show outside the low Risk area that does not involve a stay of more than 24 hours or the housing of animals at the showground, and the animal goes either directly from the showground to slaughter or back to its premises of origin.
  - Moved to the following premises in the low risk area;
    - slaughter or exempt markets
    - an approved collecting centre
    - a licensed finishing unit
  - Under the authority of a licence

- **Compensation Cap for Individual Animals** – Defra consulted on the proposal to introduce a £5,000 compensation cap in July 2017. This is one of the measures consulted on that remains under consideration and a final decision is still to be advised.

**Wales** - Since the introduction of the Tuberculosis (Wales) Order 2010 the Welsh Government have continued to take a proactive approach to the control of bovine TB and in 2012 introduced a framework for TB eradication. Following a series of TB consultations carried out in 2015/16 aimed at further strengthening existing TB controls, the **Wales TB Eradication Programme**
was launched in October 2017 which introduced a new regionalised approach as well as putting in place a number of refreshed TB control measures.

**Approach already taken in Wales to the changes proposed in Scotland**

- **Reduced compensation for overdue testing** – Wales introduced powers to reduce compensation where TB testing is overdue in May 2010. Compensation is reduced on a sliding scale depending on the length of time the test is overdue. In 2016 the range of non-compliance provisions where compensation could be reduced was extended beyond just that for overdue testing.

- **Reduced or withheld compensation for illegal movements onto restricted premises** – In 2016 Wales introduced powers to specifically reduce compensation for failure to comply with a notice requiring that no animal is moved on or off restricted premises except under licence. In such situations the compensation will be restricted to 0.05% of the established market value of an animal unless the salvage value is greater in which compensation will be paid at salvage value.

- **Post Movement Testing** – In October 2017 the Welsh Government introduced post movement testing for all cattle moved into the Welsh Low TB area. The intention is that this policy will be extended to moves into the intermediate TB area from October 2018. Post movement testing must be completed on the receiving premises between 60 – 120 days of arrival. Exceptions to this are permitted for animals that move:
  - Directly to slaughter or a slaughter market within 120 days
  - Moved solely for veterinary treatment
  - To an exempt or approved or licenced finishing unit
  - Moved to an agricultural show in the Low TB Area or return to the low TB area from an agricultural show outside the low TB area that does not involve a stay of more than 24 hours or the housing of animals at the showground, and the animal goes either directly from the showground to slaughter or back to its premises of origin.
  - Any other movement approved by Welsh Ministers.

- **Compensation Cap** – The Tuberculosis (Wales) (Amendment) Order 2016 introduced a £15,000 cap on individual animals. Following consultation in 2016 this cap was reduced to £5,000 with effect from 1 October 2017, this was aimed at preventing overvaluation of the highest value cattle and making sure the compensation system was financially sustainable.

**Rationale for Government intervention**

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. This status is currently a unique position within Great Britain and recognises the low and stable incidence of TB and the high standards of animal welfare achieved in Scottish herds. Maintaining that OTF status and Scotland’s reputation for high quality produce is crucial to the
continuing success of the Scottish cattle industry.

The Scottish Government (SG) is therefore committed to a comprehensive, practical and proportionate programme of measures to maintain the current low levels of TB in cattle and other species and to safeguard our OTF status. This includes minimising the risks from all potential sources of infection and reducing the risk of disease spread as far as possible.

Defra has already introduced provisions to reduce compensation for those keepers who have failed to carry out TB testing on time and have recently consulted on further proposed changes to payment of compensation. Wales have gone even further and recently introduced an enhanced TB Eradication Programme which links compensation to good biosecurity, husbandry practices and adherence with the rules, that allows them to reduce compensation across a number of different non-compliance issues.

This action already taken by both Defra and the Welsh Government has highlighted the need to review the Tuberculosis (Scotland) Order 2007 including the current arrangements for payment of compensation, to ensure they continue to incentivise compliance and best practice, while being financially sustainable in the future.

We know that the vast majority of farmers abide by the rules and continue to work with Government to maintain Scotland’s OTF status which is considered by most to be too valuable and important to put at risk.

In making these changes now we aim to continue to safeguard our low levels of TB and in doing so contribute to Scotland’s National Performance Framework by maintaining Scotland’s reputation for high quality produce and helping to increase Scotland’s economic growth by increasing exports of healthy cattle and beef.

We will also be contributing to the following national outcomes;

“We have strong resilient and supportive communities where people take responsibility for their own actions”

“We value and enjoy our built and natural environment and protect and enhance it for future generations”

Consultation

- **Within Government**

SG have consulted with colleagues in both Defra and the Welsh Government to look at what disease control provisions and compensation arrangements for bovine TB are already in place in other parts of GB and to identify what other changes are being considered for the future.

SG have also consulted with the Animal & Plant Health Agency (APHA) as our operational delivery partners for Animal Health to get their veterinary opinion
on some aspects of delivery and implementation of the proposed changes.

- **Public Consultation**

A 12 week public consultation ran from Thursday 7 September until Thursday 30 November 2017 on proposals to introduce changes to disease control measures and compensation arrangements for TB in Scotland.

There were 15 written responses to the consultation. Disease control for Bovine TB is quite a specialised subject, and so a limited number of responses is not entirely unexpected. The low response rate may be indicative of the majority accepting the proposals as being sensible and proportionate.

The responses provided some useful feedback which has been used to inform our thinking on how we would want to see Scotland’s TB policy develop. It was also clear that there is support among the various respondent groups for the changes proposed. SG has therefore decided to take forward four out of the five changes consulted on.

**Changes being implemented**

- Compensation to be withheld (£1 nominal payment) for animals illegally moved onto TB restricted herds that subsequently become TB reactors.
- Where statutory TB testing obligations have not been met the compensation paid for any subsequent TB reactors will be reduced on a sliding scale depending on the length of time the test is overdue.
- A process of appeal for any decision to either reduce or withhold compensation in the above circumstances will be introduced to ensure that this policy is administered fairly and allows for any mitigating circumstances to be considered.
- Post movement testing will have to be completed on the original holding of destination before animals are permitted to move again.
- Introduction of a £5,000 cap on compensation for individual animals.

**Changes not being implemented**

It was decided as a result of the consultation feedback received not to introduce a £3,000 Automatic Justification Threshold. SG agreed with those respondees that were against the proposal (No 33% - Yes 27% - Not sure 40%) that the present valuation process is already satisfactory and fit for purpose and that the small number of reactor cattle likely to be affected by such a justification threshold did not warrant the additional resource required to implement this change.

- **Business**

As well as being made publically available on the Scottish Government website, the consultation was issued directly to a wide range of stakeholder groups including livestock businesses and associations, enforcement agencies and those animal health organisations with a potential interest.
The proposals outlined in the consultation were also discussed with a range of stakeholder groups at the regular SG Animal Health and Welfare General Stakeholder Meeting, with an update on the outcome of the consultation provided at the meeting held on 13 February 2018.

The consultation specifically included the following financial questions in order to help assess the business impact. A summary of the findings are provided below.

**Business Impact Questions and answers**

**Q1 - What financial effects, if any, do you think that payment of either reduced or no compensation in the circumstances proposed would have on your business.**

A – The majority of respondents (66%) either didn’t respond (33%) or indicated this was not applicable to them as Animal Health Organisations or Associations (33%). Three livestock keepers (20%) answered that reduced or no compensation would have little or no impact on their business and expressed the view that it was more important financially to remain TB free and that this measure would encourage responsible sourcing when buying in stock.

Only the remaining two respondents (14%) felt this proposal could potentially have a major financial impact if stock of high genetic merit were lost or where a significant proportion of a herd was affected. However, it should be noted that payment of reduced or no compensation is completely avoidable and will only affect those that have broken the rules.

**Q2 - What financial effects, if any, do you think that the introduction of a £5,000 statutory cap on compensation payments would have on your business.**

A – The majority of respondents (53%) either didn’t respond (26.5%) or indicated this was not applicable to them as Animal Health Organisations or Associations (26.5%). Six respondents (40%) felt that the introduction of a £5,000 cap would have little or no impact on their business. Those that offered further comment advised that it was more important financially to remain TB free and also because they had very few animals that were valued over £5,000. Only one respondent (7%) felt that this proposal could potentially result in a major financial impact that could put them out of business.

**Options**

Two policy options have been considered:

**Option 1 - Do Nothing – (Status Quo)**

Under this option further regulation would not be introduced and current arrangements in relation to bovine TB controls and compensation arrangements provided by the Tuberculosis (Scotland) Order 2007 as amended would continue as they are now.

The early identification and removal of test positive cattle under the existing...
disease control policy has kept Scotland Officially TB free for the last eight years and we hope that would continue to be the case in future.

TB Freedom does not mean that there are no cases of bovine TB in Scotland; it is instead recognition of a disease incidence below the threshold set by the EU in Council Directive 64/432/EEC where the percentage of bovine herds confirmed as infected with TB must not exceed 0.1% of all herds per year, for six consecutive years. We still have a small number of new confirmed breakdowns each year which can generally be attributed in the most part to imported infection from other parts of the UK where TB continues to be a significant problem for both the cattle industry and Government alike.

To do nothing could therefore potentially put our OTF status and the future of the Scottish cattle industry at risk and would result in strong criticism from the cattle industry for appearing complacent in not taking strong enough action to incentivise compliance and best practice and keep disease out of Scotland.

**Option 2 - Introduce changes to current TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007**

The second option is to make legislative changes to the way we pay compensation for bovine TB reactors and to the post movement testing requirements for bovine animals coming to Scotland from high incidence TB areas.

The proposed amendment to the Tuberculosis (Scotland) Order 2007 would contain a number of new provisions, including:

- Reduced or non-payment of compensation (£1 nominal payment) where animals illegally moved onto restricted herds go on to become TB reactors.
- Reduced compensation where the owner has failed to have his cattle TB tested within the allotted time period and TB reactors are subsequently disclosed.
- A process of appeal for any decision to either reduce or withhold compensation in the above circumstances will be introduced to ensure that this policy is administered fairly and allows for any mitigating circumstances to be considered.
- Strengthened post movement testing rules, requiring that the post movement TB test is completed on the destination holding within 60-120 days of arrival and before any further movement of that animal is permitted.
- Introduction of a £5,000 cap on compensation paid for individual animals.
- Prohibition on TB testing without written consent extended to include any test for tuberculosis.
- Revised definition of “high incidence area” to mean an area in Great Britain where bovine animals are subject to routine TB testing on a two yearly or more frequent basis.
We would also intend to take this opportunity to tighten up the wording of some of the existing provisions to remove any ambiguity in the following situations and ensure they are properly applied:

- **Cost recovery where removal of a reactor animal is refused** – Historically this is something that rarely happens in Scotland, but we would look to recover costs from the owner should such a situation arise.
- **Non-payment of compensation for NoR animals** – In order for cattle to be eligible for compensation they must be identified with an eartag and have a full cattle passport issued in accordance with the Cattle Identification (Scotland) Regulations 2007. Cattle that have been issued with a Notice of registration (NoR) instead of a cattle passport are therefore only eligible for a £1 nominal compensation payment.

**Sectors and groups affected**
The Scottish cattle industry and those owning or keeping bovine animals on premises in Scotland that may be affected or suspected of being affected by bovine TB caused by Mycobacterium bovis (M.bovis) the bacterium that causes TB in cattle and other species.

**Benefits**

**Option 1 – Do Nothing (Status Quo)**

The current system generally works well and livestock keepers are familiar with the existing requirements for TB testing and control.

Doing nothing would however be not in the best interest of the cattle industry as a whole, and we do not consider there to be any real financial or disease control benefits for either Government or industry.

**Option 2 - Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007**

Under this option we will have the opportunity to strengthen our existing TB controls, and provide fairer compensation arrangements that will help to maintain our current low levels of TB in cattle and to safeguard our valuable OTF status.

Since 2012 cattle herds categorised as “low risk” have been exempt from routine herd testing for bovine TB and so with 57% of the national herd now exempt it is more important than ever that testing of the remaining herds is completed within the allotted time period and that all steps are taken to prevent disease incursion at the point of movement.

In introducing the proposed changes we expect to incentivise livestock keepers to reduce the number of overdue TB tests and discourage non-compliance by removing compensation (£1 nominal payment) for those that have illegally moved cattle onto restricted herds.

Other benefits include;
Reduced bovine TB compensation payments to livestock keepers who have moved animals illegally or failed to meet their statutory testing obligations and where TB reactors are subsequently disclosed.

A reduction in the number of tests that are delayed or become overdue without good reason.

Tighter controls on testing of bovine animals moving to Scotland in order to maintain current low levels of TB and to safeguard our OTF status.

A more financially sustainable compensation system that is fair to all and safeguarded from the potentially significant compensation costs associated with the highest value animals.

TB policy now more consistent with the rest of GB

We know that the vast majority of farmers abide by the rules and continue to work with Government to maintain the current low levels of TB in Scotland. Accordingly for the vast majority the impact of the proposed changes will be minimal.

**Costs**

Option 1 - Do Nothing (Status Quo)

No additional costs or savings are anticipated with this option although compensation would continue to be paid at full market value for all cattle that become diseased and are slaughtered as a result of poor farming practices or non-compliance.

Option 2 - Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007

The proposed changes will provide Scottish Ministers with powers enabling them to reduce or withhold compensation where a keeper has broken the rules and illegally moved cattle onto a restricted herd or allowed their statutory herd testing to go overdue.

**Reduced or non-payment of compensation for illegal moves onto restricted herds**

Two options considered

- Reduced compensation
- No compensation (£1 nominal payment)

Illegal moves onto restricted herds do not happen often in Scotland and therefore data on this is not routinely held by APHA. We have therefore been unable to quantify exactly how many herds have been or are likely to be affected by this change and can only say that the number of illegal moves onto restricted herds in the last five years have been very few and the number of those animals moved illegally that have gone on to be TB reactors are fewer still. Any additional costs or savings to government or industry are therefore expected to be minimal.

As our operational delivery partners, APHA have carried out a Change Management Assessment and have advised that they do not anticipate any significant additional costs as a result of the changes required to implement this policy.
Reduced compensation for overdue testing

Two options considered

- Reduced compensation on a sliding scale. (**Agreed Option**)
- No compensation (£1 nominal payment)

We have used data provided by APHA to quantify how many herds have had overdue tests in the last five years and also how many reactor animals were subsequently disclosed. The figures set out in the table below show that there have been relatively few TB reactor cattle identified from overdue testing in Scotland in recent years and so the impact on Scottish cattle keepers from implementing this policy is likely to be limited.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number TB tests completed</th>
<th>Number of TB tests overdue</th>
<th>Overdue &lt; 60 Days</th>
<th>Overdue between 60-90 Days</th>
<th>Overdue &gt; 90 Days</th>
<th>Total number of TB reactors identified from overdue tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>3068</td>
<td>350 (11%)</td>
<td>328</td>
<td>11</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>2014</td>
<td>3404</td>
<td>331 (8%)</td>
<td>312</td>
<td>9</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>2015</td>
<td>3521</td>
<td>304 (9%)</td>
<td>260</td>
<td>9</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>2016</td>
<td>3244</td>
<td>271 (8%)</td>
<td>252</td>
<td>8</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>2017</td>
<td>2635</td>
<td>220 (8%)</td>
<td>175</td>
<td>7</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>15,872</td>
<td>1476 (9%)</td>
<td>1327</td>
<td>44</td>
<td>46</td>
<td>18</td>
</tr>
</tbody>
</table>

Change to rules for Post Movement Testing

Two options considered

- Statutory requirement that post movement test is completed on original destination holding before the animal is permitted to move again. (**Agreed Option**)
- Statutory obligation on seller to inform both purchaser and APHA where post movement test has not been completed prior to sale and on the purchaser to complete the test within the original 60-120 day testing window.

Cattle keepers who opt to purchase animals from high risk areas will now have to keep the animal on the original holding of destination for a minimum of 60 days before they can be moved or sold on. The possible additional costs associated with this would be those incurred from keeping these animals on farm for this set period of time i.e. feeding, housing, medicines etc.

The table below provides the number of Post Movement tests carried out on individual animals in the last five years. However it has not been possible to quantify exactly how many of these animals were sold on before the post movement test was completed at 60 -120 days and would therefore have been affected by this change although actual numbers affected are expected to be low.
Introduction of a Cap on compensation levels for individual animals

In Scotland we currently pay compensation at full market value to the owner of any animals which are disclosed as TB reactors with no fixed upper limit. This is not the case in other areas of GB where valuation and compensation arrangements differ significantly.

In order to protect our OTF status we want to ensure that compensation values in Scotland are relatively consistent with those in the rest of GB, and so we propose to introduce a £5,000 cap on the amount of compensation paid for individual animals. Owners of high value animals would instead be encouraged to explore insurance options to cover any animal valued in excess of £5,000, which if they opted to do so would be at an additional cost to the cattle owner.

We have used data provided by APHA to calculate the actual number of cattle valued over £5,000 in the last four years. The figures set out in the tables below show that there have been relatively few high value TB reactor cattle in Scotland in recent years and so the impact on Scottish cattle keepers from implementing this cap is likely to be limited.

In the years 2014-2017 there were 767 animals slaughtered with compensation paid at an average of £2,126 per animal. Only 18 (2%) of the animals slaughtered were valued at over £5,000 and therefore if this cap had been in place during these years we would have saved £72,650 from the total compensation bill of £1,630,661 (4.5%)

The savings are progressively less if the cap was raised to £10,000, £15,000 or £20,000.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Post Movement Animal tests done in Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>5531</td>
</tr>
<tr>
<td>2014</td>
<td>5482</td>
</tr>
<tr>
<td>2015</td>
<td>2292</td>
</tr>
<tr>
<td>2016</td>
<td>1414</td>
</tr>
<tr>
<td>2017 (Jan-Sep)</td>
<td>1017</td>
</tr>
<tr>
<td>Total</td>
<td>15,736</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Cattle value over £5k</th>
<th>Cattle value over £10k</th>
<th>Cattle value over £15k</th>
<th>Cattle value over £20k</th>
<th>Over 5k Saved £</th>
<th>Over 10k Saved £</th>
<th>Over 15k Saved £</th>
<th>Over 20k Saved £</th>
</tr>
</thead>
</table>
As our operational delivery partners, APHA have carried out a Change Management Assessment and have advised that they do not anticipate any significant additional costs as a result of the changes required to implement this cap.

**Cost recovery where removal of a reactor animal is refused by the owner**

This policy is already in place and the amendment is simply to provide clarification for the avoidance of doubt. There are no additional costs anticipated in making this change.

**Non-payment of compensation for NoR animals (£1 Nominal payment)**

This policy is already in place and the amendment is simply to provide clarification for the avoidance of doubt. There are no additional costs anticipated in making this change.

**Extended Prohibition on testing**

There are no additional costs anticipated in making this change.

**Scottish Firms Impact Test**

**Competition Assessment**

An initial competition assessment has been carried out as provided below, but no detrimental effects on competition are envisaged from these legislative amendments.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will the measures directly or indirectly limit the number or range of suppliers?</td>
<td>No</td>
</tr>
<tr>
<td>Will the measures limit the ability of suppliers to compete?</td>
<td>No</td>
</tr>
<tr>
<td>Will the measures limit suppliers’ incentives to compete vigorously?</td>
<td>No</td>
</tr>
<tr>
<td>Will the measure limit the choices and information available to consumers?</td>
<td>No</td>
</tr>
</tbody>
</table>
**Test run of business forms**

No new business forms are required to be completed by herd owners affected by these legislative amendments. Some amendments will be made to existing forms to reflect the changes and these will be actioned by the APHA as required.

**Legal Aid Impact Test** - It is not anticipated that these changes will give rise to any additional need for legal aid.

**Enforcement, sanctions and monitoring**

APHA as SG’s operational delivery partners are responsible for all aspects of disease control for bovine TB (inspections, test notifications, testing, reactor removal, valuation and payment of compensation) for reported or suspected cases of disease including any follow up in relation to non-compliance and all activity associated with the judicial process.

The Local Authority are responsible for enforcement of the Tuberculosis (Scotland) Order 2007 under the Animal Health Act 1981 (AHA) due to the potential health risk to both humans and animals as a result of non-compliance with the rules.

Scottish Ministers are required to pay compensation for any bovine animals slaughtered in relation to bovine TB under section 32 of the AHA. Under the proposed changes where a keeper has acted illegally or failed to comply with the statutory testing requirements for their herd, we would have the powers to either withhold (£1 nominal payment) or reduce the amount of compensation paid, depending on the circumstances. It is considered only fair and reasonable that where a keeper has knowingly broken the rules, they should not then be able to recover the full market value for animals that become diseased and are slaughtered as a result of their poor farming practices or non-compliance.

This TB Order is made under the AHA and so inspector powers of entry, testing, seizure and slaughter are all contained in that Act. Obstruction of inspectors in exercise of their duties and non-compliance with any requirements of the Order will be prosecuted under the AHA. A person guilty of an offence under the AHA is liable on summary conviction to a term not exceeding 6 months imprisonment or to a fine not exceeding level 5 on the standard scale or to both.

**Implementation and delivery plan**

*Implementation*

The legislation required to introduce these changes to TB policy in Scotland will come into force on 10 July 2018.

*Delivery Plan*

TB controls in Scotland are already well established and delivered by APHA as our operational delivery partners. APHA have carried out the required Change Management Assessment for all the proposed changes and which are now in the process of being adopted into “business as usual” by the APHA project delivery team.
As part of the agreed communications plan APHA will write to all private vets and active cattle keepers in Scotland to ensure they are made fully aware of the changes and implementation dates.

- **Post-implementation review**
  Disease Control measures for bovine TB are subject to continuous monitoring and review.

### Summary and recommendation

Scotland was recognised as being officially TB free (OTF) by the European Commission in September 2009. This status is a unique position within Great Britain and recognises the low and stable incidence of TB and the high standards of animal welfare achieved in Scottish herds.

Defra and the Welsh Government have both recently introduced substantial changes to their respective TB Programmes, which highlighted the need for us to also review Scottish TB controls and compensation arrangements. This will ensure that they continue to be fit for purpose, incentivise compliance and best practice and are financially sustainable in the future.

Maintaining Scotland’s OTF status and reputation for high quality produce is crucial to the continuing success of the Scottish cattle industry. For this reason the recommended option is;

- **Option 2** – Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007

Responses to the consultation provided useful feedback on the proposals and gave a clear indication that there is support among the various respondent groups for the changes proposed and the importance attached to maintaining the OTF status by the Scottish cattle industry.

### Summary costs and benefits table

<table>
<thead>
<tr>
<th>Option</th>
<th>Total benefit per annum: economic, environmental, social</th>
<th>Total cost per annum: economic, environmental, social, policy and administrative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option 1</strong> Do Nothing</td>
<td>The current system generally works well and livestock</td>
<td>No additional costs or savings are anticipated with this option.</td>
</tr>
<tr>
<td>(Status Quo)</td>
<td>keepers are familiar with the existing requirements for</td>
<td>Compensation would continue to be paid at full market value for all cattle that become diseased even as a result of poor farming practices or non-compliance.</td>
</tr>
<tr>
<td></td>
<td>TB testing and control.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>To do nothing would not be in the best interest of the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>cattle industry as that could potentially put Scotland’s OTF</td>
<td></td>
</tr>
<tr>
<td></td>
<td>status at risk</td>
<td></td>
</tr>
</tbody>
</table>
Option 2
Introduce changes to TB controls and compensation arrangements - amend the Tuberculosis (Scotland) Order 2007

This options provides the opportunity to:
• strengthen our existing TB controls in order to maintain current low levels of TB and to safeguard OTF status.
• provide a more financially sustainable compensation system that is fair to all and safeguarded from the potentially significant compensation costs associated with the highest value animals. OTF status.
• Reduction in numbers of overdue TB tests.
• Policy which is more consistent with the rest of GB.

As our operational delivery partners, APHA have carried out a Change Management Assessment for all proposals and do not anticipate any significant costs to implement any of the proposed changes.

The possible additional costs associated with the change to post movement testing requirements would be those incurred from keeping these animals on farm for this set period of time i.e. feeding, housing, medicines etc. It has not been possible to quantify the numbers of cattle likely to be affected by this change or the associated costs.

Compensation can be reduced or withheld (£1 nominal payment) where livestock keepers have broken the rules and illegally moved cattle onto restricted premises or allowed their statutory herd testing to go overdue. We know that the majority of farmers abide by the rules and continue to work with Government to maintain low levels of TB in Scotland. The proposed reductions in compensation related to non-compliance are entirely avoidable except for the imposed £5,000 cap which will have some impact on those with higher value animals. However only eighteen TB reactor animals would have breached this cap over the last five years and so we would anticipate that numbers affected are likely to be limited. (see table below)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cattle value over £5k</th>
<th>Cattle value over £10k</th>
<th>Cattle value over</th>
<th>Cattle value over</th>
<th>Over 5k Saved £</th>
<th>Over 10k Saved £</th>
<th>Over 15k Saved £</th>
<th>Over 20k Saved £</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Minister’s name - Fergus Ewing**  
Minister’s title – Cabinet Secretary for the Rural Economy and Connectivity

**Scottish Government Contact point:**

Angela McMorland  
Scottish Government  
Agriculture & Rural Economy  
Animal Health & Welfare Division  
Animal Disease Control Branch  
P Spur  
Saughton House  
Broomhouse Drive  
Edinburgh, EH11 3XD
Correspondence from NFU Scotland (NFUS)

NFU SCOTLAND COMMENT ON THE TUBERCULOSIS (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2018

1. NFU Scotland (NFUS) welcomes the opportunity to comment on The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018.

2. NFUS submitted a response to the Scottish Government consultation, Proposals to Introduce Changes to Compensation Arrangements in Scotland and Update the Tuberculosis (Scotland) Order 2007 on Other Disease Control Measures, in November 2017.

3. However, in June 2018 it came to light that despite the NFUS response to the consultation being submitted to the correct place within the specified timeframe, the NFUS response was not picked up by Scottish Government and therefore was not considered in the Scottish Government’s drafting of the SSI. Upon further investigation of this issue with Scottish Government, it appears that this omission has been made due to some form of technical fault with the Scottish Government’s consultation mailbox.

4. NFUS has reason to believe that it may not have been the only organisation whose response may have slipped through the net due to this error.

Comments on Draft SSI

5. In the consultation response which NFUS sent to Scottish Government in November 2017, the following points were made.
6. Bovine Tuberculosis (bTB) is a topic that is always at the forefront of NFUS members’ concerns. The incidence of bTB in Scotland is very low compared to that in some areas of England and Wales, and there is no sign of any increase. Scotland achieved Officially Tuberculosis Free Status (OTF) in September 2009. OTF is recognition of the low and stable incidence of TB found in Scottish herds and makes Scotland unique to the rest of the UK. It also reflects high standards of animal welfare. NFUS is aware that Scotland is in a fortunate place when it comes to bTB and most keepers are keen to do whatever is necessary to keep it that way.

7. bTB is a difficult disease and infection can be found in animals with no apparent explanation for how it may have been transmitted. It is important that Scotland continues with to test nationally and have support mechanisms in place to assist herds that have been affected even when best practice to avoid infection has been observed.

8. Measures are needed to discourage risky activities, to help protect the Scottish herd against introduction of disease. The NFUS response to Scottish Government’s 2017 consultation was very much focused on measures to discourage the introduction of disease into Scotland, by cattle moving from high risk areas.

9. One such discouragement put forward by NFUS was the suggestion that compensation should be reduced or withdrawn for animals coming from high-incidence areas. It is the view of NFUS that by not paying compensation on these animals, all the risk is placed on the buyer and makes ‘cheap’ cattle seem less of a bargain.

10. The justification of the proposal to cap the compensation payments made to TB reactors in Scotland was to bring maximum payments in line with those of England and Wales. It was suggested that capping the payment at a similar level to the rest of the UK would remove the temptation to bring high risk, high value cattle into Scotland where they would attract higher compensation.
11. The low incidence of bTB in Scotland means there is much less compensation paid out overall. NFUS believes the current valuation system for calculating compensation payments is fair and supports those keepers who have been affected by bTB through no fault of their own.

12. There is no compensation available to cover the stress and often significant incidental losses that occur when a herd is caught up in bTB restrictions and testing. Given that the losses incurred may well exceed the simple value of animals culled it only seems right that the compensation paid for those animals represents their actual value, with no cap in place. Capping payments would unfairly hit breeders of high value cattle with no impact or discouragement for more commercial herds.

13. **NFUS would prefer a far ‘blunter’ approach taken to removing the temptation of bringing high risk animals into Scotland and that is to either remove or reduce the compensation paid for high risk imported cattle. This approach would act as a deterrent to all high-risk cattle and not just target those of high value, having a far wider reaching effect of reducing risk to the Scottish herd.**

12 June 2018
Correspondence from the Scottish Beef Association

The Scottish Beef Association, after discussion with other stakeholder organisations, are concerned about the consultation process regarding the above. In our own case, while a Board member submitted two responses which contradicted one another his second response was after a board meeting and consultation with other industry groups. The SBA position is that we do NOT think there should be a limit on compensation and are surprised there was no attempt by the Scottish Government to seek clarity on our position. It is also clear to us that other organisations are also concerned about the consultation process and we would therefore request the SSI be revoked to give Scottish Government officials time to seek clarity from all interested organisations.

Neil A McCorkindale, chairman

15 June 2018
The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1), 28, 32(2) and (3), 34(7) and 83(2) of the Animal Health Act 1981(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 and comes into force on 10th July 2018.

Amendment of the Tuberculosis (Scotland) Order 2007

2.—(1) The Tuberculosis (Scotland) Order 2007(b) is amended as follows.

(2) In article 2(1) (interpretation), for the definition of ‘high incidence area’ substitute—

“high incidence area” means an area in Great Britain where bovine animals are required to be subject to routine tuberculin testing at intervals of no more than two years in accordance with the requirements of Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine(c);”.

(3) For article 9 (post movement testing) substitute—

“Post movement testing

9.—(1) Where a bovine animal has been moved to premises in Scotland (in this article “the receiving premises”) from premises in a high incidence area, the keeper of the bovine animal must ensure that a diagnostic test for tuberculosis is applied to it no fewer than 60...
days and no more than 120 days after the date on which it first arrives at the receiving premises.

(2) Unless paragraph (3) applies, the keeper of a bovine animal must not allow the animal to be moved from the receiving premises unless a diagnostic test has been applied to it in accordance with paragraph (1) and the results of the test of the animal as read by an inspector or an approved veterinary surgeon are negative for tuberculosis.

(3) This paragraph applies where the bovine animal is moved—

(a) directly to slaughter within 120 days of the animal’s first arrival at the receiving premises;
(b) solely for the purpose of veterinary treatment, provided that after the treatment the animal is returned directly to the receiving premises or is killed or goes directly to slaughter; or
(c) under the authority of a movement licence issued by a veterinary inspector.”.

(4) In article 10(1) (application of test), for “article 9” substitute “article 9(1)”.

(5) In article 12 (reporting test results), for “tested a bovine animal with tuberculin” substitute “diagnostically tested a bovine animal for tuberculosis”.

(6) For article 18 (compensation) substitute—

“Compensation – general provision

18. Subject to articles 19A, 19B and 19C, the Scottish Ministers must pay compensation reflecting the market value of the animal as ascertained in accordance with article 19 where—

(a) they cause a bovine animal to be slaughtered under section 32 of the Act in its application to tuberculosis; and
(b) the animal is identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007(a).”.

(7) After article 19 (ascertainment of market value) insert—

“Compensation for reactor animals

19A. Subject to article 19B or 19C, where a bovine animal which has been caused to be slaughtered under section 32 of the Act is a reactor, the maximum amount of compensation payable for the slaughtered animal is £5,000 irrespective of the market value of the animal as ascertained in accordance with article 19.

Compensation for animals subject to movement restrictions etc.

19B.—(1) Paragraph (3) applies where—

(a) a bovine animal is moved on to premises in breach of a relevant movement restriction or prohibition;
(b) a diagnostic test for tuberculosis has been applied to the animal and the test results reveal that the animal is a reactor;
(c) the keeper is informed of the test results by a person who has received consent to test under article 26(a); and
(d) the Scottish Ministers have caused the animal to be slaughtered under section 32 of the Act.

(2) Paragraph (3) also applies where the Scottish Ministers have caused to be slaughtered a bovine animal which is not identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007.

(3) Where this paragraph applies, the maximum amount of compensation payable for a slaughtered animal as mentioned in paragraph (1) or, as the case may be, paragraph (2) is £1.

(4) Where paragraph (3) applies, the Scottish Ministers must notify the keeper of any decision to pay compensation of £1—
   (a) giving the reasons for the decision; and
   (b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.

(5) In paragraph (1)(a), “a relevant movement restriction or prohibition” means a movement restriction or prohibition applicable in respect of premises by virtue of—
   (a) article 6(2)(c);
   (b) article 11A(2)(a);
   (c) article 22(1)(b);
   (d) article 24.

Reduced compensation for testing delays

19C.—(1) Paragraph (2) applies where—
   (a) the keeper of an animal has been served with a test notice under article 21(1);
   (b) the keeper has failed to carry out a test by the latest date specified in the notice (“the specified date”);
   (c) a diagnostic test for tuberculosis has been applied to the animal and the test results reveal that the animal is a reactor;
   (d) the keeper is informed of the test results by a person who has received consent to test under article 26(a);
   (e) the Scottish Ministers have caused the animal to be slaughtered under section 32 of the Act; and
   (f) the market value of the animal has been ascertained in accordance with article 19.

(2) Where this paragraph applies, the compensation payable to the keeper for a slaughtered animal as mentioned in paragraph (1) is—
   (a) where the interval between the specified date and the date of the test is more than 60 days but not more than 90 days, 50% of the market value of the animal as ascertained in accordance with article 19; or
   (b) where the interval between the specified date and the date of the test is more than 90 days, 5% of the market value of the animal as ascertained in accordance with article 19.

(3) Where paragraph (2) applies, the Scottish Ministers must notify the keeper of any decision to reduce compensation—
   (a) giving the reasons for the decision; and
   (b) explaining that the keeper has the right to make written representations to a person appointed by the Scottish Ministers in accordance with article 19D.

Review of decision to pay reduced compensation etc.

19D.—(1) Within a period of 21 days beginning with the date of receipt of a notification under article 19B(4) or 19C(3), the keeper may make written representations to a person
appointed by the Scottish Ministers for the purpose of having the decision to reduce the compensation payable to the keeper reviewed by that person (“the appointed person”).

(2) The appointed person must consider those representations together with any written representations made by the Scottish Ministers.

(3) Having considered representations in accordance with paragraph (2), the appointed person must then report in writing to the Scottish Ministers who must then make their final determination in relation to the amount of compensation payable in respect of the animal which has been caused to be slaughtered under section 32 of the Act.

(4) The Scottish Ministers must notify the keeper of their final determination under paragraph (3) and the reasons for it.”.

(8) For article 21 (facilitating examination etc) substitute—

“Tuberculosis testing and facilitating examinations etc.

21.—(1) The Scottish Ministers may serve on the keeper of any bovine animal a notice (“a test notice”) requiring the keeper to have applied to the animal a diagnostic test for tuberculosis before a date specified in the notice.

(2) The keeper of any bovine animal must comply with all reasonable requirements of an inspector or an approved veterinary surgeon with a view to facilitating—

(a) the examination of that animal by a veterinary inspector or an approved veterinary surgeon;

(b) the application to the animal of a diagnostic test for tuberculosis (following the service of a notice under paragraph (1)); and

(c) the valuation or slaughter of the animal when the Scottish Ministers intend to cause it to be slaughtered under section 32 of the Act in its application to tuberculosis.

(3) For the purposes of facilitating any examination, testing, valuation or slaughter as mentioned in paragraph (2), an inspector or an approved veterinary surgeon may require the keeper of the bovine animal to arrange—

(a) for the collection, penning and securing of the animal; and

(b) for the movement of the animal to and from any premises specified by the inspector or, as the case may be, the approved veterinary surgeon.”.

(9) For article 22 (default) substitute—

“Default

22.—(1) If any person fails to comply with a test notice under article 21(1) or any requirement as mentioned in article 21(2) or (3), the Scottish Ministers—

(a) may take or cause to be taken all such steps as may be necessary to facilitate the examination, testing, valuation or slaughter of the bovine animal including, subject to paragraph (3), the movement of the animal to other premises; and

(b) may by notice served on the keeper of the bovine animal prohibit the movement of any bovine animal on to or off the premises, except under the authority of a licence issued by an inspector.

(2) Paragraph (1) is without prejudice to any proceedings for an offence arising out of any failure to comply as mentioned in that paragraph.

(3) Where a bovine animal has been moved to other premises in accordance with sub-paragraph (1)(a), the Scottish Ministers must ensure the return of the animal to the premises from which it was moved within a reasonable time after the examination, testing or valuation has been carried out.

(4) Any expenses reasonably incurred by the Scottish Ministers for the purposes of making good any default are recoverable from the person in default.”.
(10) For article 26(a) (prohibition on testing, vaccination and therapeutic treatment), substitute—

“(a) apply a diagnostic test for tuberculosis to a bovine animal;”.

Amendment of the Tuberculosis in Specified Animals (Scotland) Order 2015

3. In article 2(1) of the Tuberculosis in Specified Animals (Scotland) Order 2015(a), omit the definition of “authorised veterinary inspector”.

FERGUS EWING
A member of the Scottish Government

St Andrew’s House,
Edinburgh
17th May 2018

(a) S.S.I. 2015/327.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Tuberculosis (Scotland) Order 2007 (“the 2007 Order”) and the Tuberculosis in Specified Animals (Scotland) Order 2015 (“the 2015 Order”).

Article 2(2) amends the definition of ‘high incidence area’ in article 2(1) of the 2007 Order to reflect routine tuberculin testing carried out at intervals of no more than two years in such an area.

Article 2(3) substitutes a new article 9 in the 2007 Order. This provides that where a bovine animal has been moved to premises in Scotland from premises in a high incidence area, the keeper of the bovine animal must ensure a diagnostic test for tuberculosis is applied to the animal within a specified period of time and must not allow the animal to be moved from the premises before such a test is completed unless the move is authorised under applicable exceptions. Article 2(4) makes a consequential amendment to article 10(1) of the 2007 Order.

Article 2(5) amends article 12 of the 2007 Order to extend the obligation to report tests results to include any test for tuberculosis.

Article 2(6) substitutes a new article 18 in the 2007 Order which makes general provision for compensation by the Scottish Ministers reflecting the market value of a bovine animal, where they cause a bovine animal to be slaughtered under section 32 of the Animal Health Act 1981, provided the animal is identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007. This is subject to the exceptions under the new articles 19A to 19C of the 2007 Order.

Article 2(7) inserts new articles 19A, 19B, 19C and 19D in the 2007 Order.

Article 19A establishes the maximum compensation payable for any slaughtered animals which are reactors (under article 2(1) of the 2007 Order, those are animals which produce a reaction consistent with their being affected with tuberculosis when tested for that disease) which have been slaughtered as £5,000, irrespective of the market value of the animal as ascertained in accordance with article 19 of the 2007 Order.

Article 19B provides for compensation of £1 for slaughtered animals which are reactors, where those animals were (a) moved on to premises in breach of a relevant movement restriction or prohibition under the 2007 Order, or (b) not identified by means of ear tags and a cattle passport in accordance with the requirements of the Cattle Identification (Scotland) Regulations 2007.

Article 19C provides for reduced compensation for slaughtered animals which are reactors where the keeper of those animals has failed to timeously comply with a notice to test under article 21(1) of the 2007 Order. The amount of any compensation payable as a proportion of the market value of the animals depends on the length of any delay in testing.

Article 19D provides a right of review to a person appointed by the Scottish Ministers in relation to any decision by the Scottish Ministers to pay £1 or reduced compensation under new articles 19B or 19C respectively.

Article 2(8) substitutes a new article 21 in the 2007 Order. This enables the Scottish Ministers to serve on the keeper a test notice requiring the keeper to apply a diagnostic test for tuberculosis on the bovine animal before a date specified in the notice. This article also requires a keeper to comply with all reasonable requirements of an inspector or approved veterinary surgeon for facilitating any examination, testing, valuation or slaughter of any bovine animals.

Article 2(9) substitutes a new article 22 in the 2007 Order. This provides that if the keeper fails to comply with a testing notice or any requirements under article 21 of the 2007 Order—

(a) the Scottish Ministers may take steps or arrange for steps to be taken to facilitate the examination, valuation, movement or slaughter of the bovine animal; or
(b) serve a notice on the keeper of the bovine animal prohibiting the movement of any bovine animal on to or off the premises.
The Scottish Ministers may recover any reasonable expenses from exercising powers under this provision.

Article 2(10) substitutes a new article 26(a) in the 2007 Order. The amended provision extends the prohibition on testing without the written consent of the Scottish Ministers to include the application of any diagnostic test for tuberculosis.

Article 3 revokes a redundant definition of ‘authorised veterinary inspector’ in article 2(1) of the 2015 Order.

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Animal Health and Welfare Division, Saughton House, Broomhouse Drive, Edinburgh EH11 3XG.
1. The Committee will consider the following negative SSIs:

- SSI 2018/175: Marketing of Fruit Plant and Propagating Material (Fees) (Scotland) Regulations 2018 (see Annex A).


- SSI 2018/177: Animal Health (Miscellaneous Fees) (Scotland) Regulations 2018 (see Annex C).

- SSI 2018/182: The Beef and Pig Carcase Classification (Scotland) Amendment Regulations 2018 (see Annex D).

2. The annexes contain, in respect of each instrument, the clerk’s note, the Scottish Government’s policy note, a full business and regulatory impact assessment (where provided), and the instrument itself.

Rural Economy and Connectivity Committee Clerks
15 June 2018
Annex A – SSI 2018/175: The Marketing of Fruit Plant and Propagating Material (Fees) (Scotland) Regulations 2018

Type of Instrument: Negative

Laid Date: 29 May 2018

Coming into force: 1 July 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Consideration by the Delegated Powers and Law Reform Committee

2. At its meeting on 5 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Policy Objectives and Background

3. The instrument prescribes fees payable in respect of official inspections and associated work relating to the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (“the 2017 Regulations”).

4. The 2017 Regulations transposed a statutory EU certification scheme for fruit plant propagating material and fruit plants intended for fruit production. From 1 July 2017, the statutory EU scheme replaced a voluntary Scottish scheme. The aim of the scheme is to provide fruit producers and propagators across the EU with planting material of a known health standard and purity and provide a means of preventing the spread of harmful pests and diseases.

5. Fees were charged to producers entering stock for certification under the voluntary soft fruit certification scheme. This instrument introduces a statutory fee structure for the EU certification scheme. The fee structure is similar to that of the previous voluntary fees.

Business and Regulatory Impact Assessment

6. The instrument has a very limited impact on businesses in Scotland as it simply transfers existing voluntary soft fruit certification scheme fees on to a statutory footing, therefore no impact assessment has been produced.
7. The policy note and instrument are attached and also available online at the below link:


Recommendation

8. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
June 2018
Introduction
1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by section 56(1) if the Finance Act 1973.

Policy Objective
2. The instrument prescribes fees payable in respect of official inspections and associated work relating to the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017.

Legislative Background
3. Council Directive 2008/90/EC, on the marketing of fruit plant propagating material and fruit plants intended for fruit production, aims to provide harmonised conditions across the EU to ensure that propagators and their customers within all Member States receive propagating material and fruit plants which are consistently healthy and of good quality.

   - **2014/96/EU** requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production
   - **2014/97/EU** regarding the registration of suppliers and of varieties and the common list of varieties
   - **2014/98/EU** specific requirements for the genus and species of fruit plants, specific requirements to be met by suppliers and detailed rules concerning official.


Policy Background
6. Scotland has a long history of soft fruit production, particularly of raspberries, and due to commercial demand the Scottish Plant Health Service introduced a voluntary certification scheme for soft fruit plants in the 1930s.

7. From 1 July 2017, the statutory EU scheme replaced the voluntary scheme that operated in Scotland. The aim of the scheme is to provide fruit producers and
propagators across the EU with planting material of a known health standard and purity and provide a means of preventing the spread of harmful pests and diseases. With the regular introduction of pathogen tested nuclear stock material, an unbroken history of certification and by limiting the time stocks can remain eligible for certification, the health of fruit stocks can be maintained.

8. Propagating material and fruit plants must be officially certified through the certification scheme before they can be marketed. Scottish Government inspectors carry out official inspections to ensure that the requirements of the scheme are met.

Fees

9. Fees were charged to producers entering stock for certification under the voluntary soft fruit certification scheme.

10. This instrument introduces a statutory fee structure for the EU certification scheme. The fee structure is similar to that of the previous voluntary fees.

Field Grown Stock

11. **Pre-basic**: Pre-basic mother plants and pre-basic material should be maintained by suppliers in designated facilities, which are insect proof and ensure freedom from infection through aerial vectors and any other possible sources. It is not produced in the field, therefore no fee is listed for pre-basic field-grown stock.

12. **Basic**: Basic material constitutes the next stage of the production process after pre-basic material. Basic material is permitted to be produced in open fields to facilitate its effective propagation into the next generations and categories. A fee of £95 for up to 0.5 hectares and £20 for each additional 0.1 hectare (or part thereof) of basic material will be charged.

13. **Certified**: Certified material may constitute the next stage of the production process after pre-basic material or basic material. A fee of £75 for up to 0.5 hectares plus £15 for each additional 0.1 hectare (or part thereof) of certified material will be charged.

Micropropogated Material

14. For plants and material produced by micropropagation (all grades), the fee is prescribed by the number of plants inspected. Up to the first 10,000 plants incurs a cost of £85. An additional fee of £35 is included for each additional unit of 5000 plants, up to a maximum of 8 full units of 5,000 and £15 for each additional unit of 20,000 plants thereafter.

Soil Sampling and Testing

15. The presence of certain pests, and in particular nematodes, in the soil may cause unacceptable damage to the health and usefulness of the plants concerned, those pests host viruses affecting the genera or species concerned. If the grower cannot demonstrate that a soil sample is not required (i.e. that no host plants have been grown in the soil for at least five years prior to planting), then sampling
and testing will show whether those pests or the relevant viruses are present. A fee of £95 will be charged for soil sampling and testing.

**Timing**

11. The instrument will come into force on 1\textsuperscript{st} July 2018.

**Business and Regulatory Impact Assessment**

12. The instrument has a very limited impact on businesses in Scotland as it simply transfers existing voluntary soft fruit certification scheme fees on to a statutory footing, therefore no impact assessment has been produced.

Scottish Government
Agriculture and Rural Economy Directorate
May 2018
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 56(1) of the Finance Act 1973(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Marketing of Fruit Plant and Propagating Material (Fees) (Scotland) Regulations 2018 and come into force on 1st July 2018.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations “the 2017 Regulations” means the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017(b).

(2) Other words and expressions used in these Regulations have the same meaning as in the 2017 Regulations.

Application of fees to matters set out in the schedule

3. Other than in relation to sampling and testing to which regulation 4 applies—

(a) in respect of the matters set out in column 1 of Table 1 in the schedule (fees: official inspection: material grown in the field or in pots) a supplier must pay to the Scottish Ministers the fee specified in column 2 (material grown in the field or in pots) of that Table; and

(b) in respect of the matters set out in column 1 of Table 2 in the schedule (fees: official inspection: material produced by micropropagation) a supplier must pay to the Scottish

---

(a) 1973 c.51. Section 56(1) was amended by S.I. 2011/1043. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of S.I. 1999/1820 and the functions of the Minister of the Crown under section 56, in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”). The requirement to obtain the consent of the Treasury was removed by section 55 of the 1998 Act.

(b) S.S.I. 2017/177.
Ministers the fee specified in column 2 (material produced by micropropagation) of that Table.

4.—(1) This regulation applies in respect of sampling and testing under and in accordance with paragraph 11(1), 18(1) or 24(1) of schedule 2 of the 2017 Regulations.

(2) In respect of the matters to which this regulation applies, a supplier must pay to the Scottish Ministers the fee specified in Table 3 in the schedule (fees: soil requirements: sampling and testing).

FERGUS EWING
A member of the Scottish Government

St Andrew’s House,
Edinburgh
24th May 2018
### Table 1
#### Fees

**Official inspection: material grown in the field or in pots**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matter in respect of which fee is payable</td>
<td>Fee payable: material grown in the field or in pots</td>
</tr>
</tbody>
</table>
| (a) an official inspection under and in accordance with paragraph 15 of schedule 2 of the 2017 Regulations (basic material other than basic mother plants or rootstocks which do not belong to a variety) | (i) up to 0.5 hectares - £95  
(ii) each additional 0.1 of a hectare or part thereof - £20 |
| (b) an official inspection under and in accordance with paragraph 21 of schedule 2 of the 2017 Regulations (certified material other than mother plants or a fruit plant) | (i) up to 0.5 hectares - £75  
(ii) each additional 0.1 of a hectare, or part thereof - £15 |

### Table 2
#### Fees

**Official inspection: material produced by micropropagation**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matter in respect of which fee is payable</td>
<td>Fee payable: material produced by micropropagation</td>
</tr>
</tbody>
</table>
| (a) an official inspection under and in accordance with paragraph 3 of schedule 2 of the 2017 Regulations (pre-basic material, other than mother plants and rootstocks not belonging to a variety) | (i) up to the first 10,000 plants - £85  
(ii) each additional unit of 5000 plants, or part thereof (up to a maximum of 8 additional units) - £35  
(iii) each additional unit of 20,000 plants thereafter, or part thereof - £15 |
| (b) an official inspection under and in accordance with paragraph 15 of schedule 2 of the 2017 Regulations (basic material other than basic mother plants or rootstocks not belonging to a variety) | (i) up to the first 10,000 plants - £85  
(ii) each additional unit of 5000 plants, or part thereof (up to a maximum of 8 full units of 5000 plants) - £35  
(iii) each additional unit of 20,000 plants thereafter, or part thereof - £15 |
| (c) an official inspection under and in accordance with paragraph 21 of schedule 2 of the 2017 Regulations (certified material other than mother plants or a fruit plant) | (i) up to the first 10,000 plants - £85  
(ii) each additional unit of 5000 plants, or part thereof (up to a maximum of 8 full units of 5000 plants) - £35  
(iii) each additional unit of 20,000 plants thereafter, or part thereof - £15 |
Table 3
Fees
Soil requirements: sampling and testing

<table>
<thead>
<tr>
<th>Fee payable</th>
<th>Material grown in the field</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) up to 2 hectares</td>
<td>£95</td>
</tr>
<tr>
<td>(ii) each additional 2 hectares, or part thereof</td>
<td>£95</td>
</tr>
</tbody>
</table>
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations specify fees payable by registered suppliers to the Scottish Ministers in respect of official inspections to enforce plant health and soil requirements those suppliers are required to meet under the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 in order to have their propagating material certified.

Regulation 3 and Tables 1 and 2 in the schedule specify fees payable to the Scottish Ministers in respect of official inspections, other than an element of sampling and testing of soil to which regulation 4 applies.

Regulation 4 and Table 3 in the schedule specify fees payable to the Scottish Ministers for soil sampling and testing which is required to be done prior to planting of field grown stocks to establish the soil is free or practically free from certain pests.

No business and regulatory impact assessment has been prepared for these Regulations as no impact or significant impact upon business, charities or voluntary bodies is foreseen.
Annex B – SSI 2018/176: The Animal By-Products and Pet Passport Fees (Scotland) Regulations 2018

Type of Instrument: Negative

Laid Date: 29 May 2018

Coming into force: 30 June 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Consideration by the Delegated Powers and Law Reform Committee

2. At its meeting on 5 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Policy Objectives

3. This instrument introduces new fees for certain statutory functions which are currently delivered by the Animal & Plant Health Agency (APHA) on behalf of Scottish Ministers.

4. Only a small number of the functions presently delivered by the APHA are paid for through fees. The APHA is an executive agency of the Department of Environment, Food and Rural Affairs. It is UK Government policy to charge for many publically provided services. In Scotland the standard approach to setting charges for such services is also full cost recovery. This instrument will therefore transfer the cost of delivering Animal By-product (ABP) and Pet Passport services from the taxpayer to those businesses that receive and benefit from the service.

Consultation

5. From October 2015 to December 2015 APHA ran a GB-wide public consultation on its proposals for new fees. 61 responses to the consultation were received. The APHA’s published consultation report can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699061/charging-second-consultation-report.pdf

6. Most respondents did not support the introduction of charges. A majority of Animal By-Products respondents supported a phased introduction. In response,
APHA agreed to a phased introduction of 50% full recovery charges in year 1, moving to 100% of full recovery charges in year 2 for animal by-product services.

7. The policy note and instrument are attached and also available online at the below link:

Recommendation

8. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

   Rural Economy and Connectivity Committee Clerks
   June 2018
POLICY NOTE

THE ANIMAL BY-PRODUCTS AND PET PASSPORT FEES (SCOTLAND) REGULATIONS 2018

SSI 2018/176

Introduction

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by paragraph 1A of schedule 2 to the European Communities Act 1972 and section 56(1) and (2) of the Finance Act 1973. The Instrument is subject to negative procedure.

Policy Objective

The purpose of this instrument is to introduce new fees for certain statutory functions delivered by the Scottish Ministers. Under an Agency Agreement made under section 93 of the Scotland Act 1998, these services are currently delivered by the Animal & Plant Health Agency (APHA) on behalf of the Scottish Ministers. APHA, as an Executive Agency of the Department of Environment, Food and Rural Affairs also has responsibility for delivering statutory functions in England and Wales.

Presently only a small number of the functions delivered by the APHA are charged for, with the remainder covered by the public purse. HM Treasury Guidance ‘Managing Public Money’ makes clear that it is UK Government policy to charge for many publically provided services. Charging for such services relieves the general taxpayer of those costs and ensures that they are properly borne by those that benefit from the service. The Fees and Charges section of the Scottish Public Finance Manual also makes clear that the standard approach to setting charges for such services is full cost recovery. This instrument will therefore transfer the cost of delivering Animal By-product (ABP) and Pet Passport services from the taxpayer to those businesses that receive and benefit from the service.

Relevant Legislation

Legislation setting out rules for collection, storage, transport, treatment, use and disposal of ABPs has been in place for some time. The Animal By-Products Regulation (EC) No. 1069/2009 requires Competent Authorities to carry out approval or registration of plants, establishments and other operators involved in the handling, use or disposal of ABPs; to undertake regular risk-based inspections of such operations and to enforce the requirements of the legislation. The requirements of Regulation (EC) 1069/2009 are implemented in Scotland by The Animal By-Products (Enforcement) (Scotland) Regulations 2013.

The sector affected by the introduction of charges for the production and provision of pet passports will be veterinary practices that prepare pet animals for international travel in accordance with article 22 of Commission Regulation 576/2013 on the non-commercial movement of pet animals. Pet passports (for dogs, cats and ferrets) are an integral part of the Regulation (EU) No 576/2013 (“the Pet Travel Regulations”) which are designed to keep the UK free of rabies and the tapeworm Echinococcus multilocularis (EM) which can infect animals and humans.
Consultation

From October 2015 to December 2015 the APHA ran a GB-wide public consultation on its proposals for new fees. This was a joint consultation between the UK Government and the devolved administrations. APHA’s consultation included proposals for charging for the licensing of animal gatherings in England and Wales. This fee will not apply in Scotland. APHA’s consultation paper can be found here: [https://consult.defra.gov.uk/apha/apha-seeks-views-on-new-fees-for-statutory-supporting_documents/Tranche%202%20Consultation%20Document.pdf](https://consult.defra.gov.uk/apha/apha-seeks-views-on-new-fees-for-statutory-supporting_documents/Tranche%202%20Consultation%20Document.pdf).

The consultation was open to all to respond to, but given that the new fees target specific sectors (ABP operators and veterinary practices) the APHA ensured, as far as practically possible, that these sectors in particular were consulted. Over 370 interested trade organisations and businesses were directly invited to respond and 61 responses to the consultation were received. The APHA’s published consultation report can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699061/charging-second-consultation-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699061/charging-second-consultation-report.pdf). Unsurprisingly, the majority of respondents don’t support the introduction of fees. When questioned about how any new charges should be introduced however, the majority of ABP respondents favoured a phased introduction.

In response to pre-consultation discussions with ABP sector organisations and having considered the responses to the formal consultation, the APHA agreed to the following:

- Introduction of a 90 minute cap on the travel time that can be charged for.
- A phased introduction of ABP charges- 50% Full Cost Recovery (“FCR”) in year 1, moving to 100% FCR in year 2.
- Commitment only to deploy staff from the APHA office nearest to the client to be visited. Where not possible travel costs still to be calculated from the clients nearest office.

Impact Assessments

A Business & Regulatory Impact Assessment (BRIA) has been prepared to support the introduction of this Instrument.

Financial Effects

*Animal By-products*

The APHA advise that as of 2017 there were 888 existing ABP related businesses in Scotland. Of this 888 some 54% will be exempt from charging as they have previously been registered for approval and are considered low risk. APHA advise that 346 businesses (39%) in Scotland can expect to be charged a maximum £283 p.a. for their annual inspection, raising a total of approx. £69K. APHA class these businesses as low risk. 56 businesses can expect their 4 annual visits to cost them a total of £1,065 p.a. raising a total of approx. £42K. 6 businesses in Scotland are on the APHA’s most stringent monthly regime. They can expect to pay a total of £3,170 p.a. raising a total of approx. £13K. APHA consider these operators to be the highest risk and therefore warranting of monthly inspection. The total annual cost to existing ABP businesses in Scotland, assuming no new applications and no additional visits or extension of visits, is anticipated to be £124K. More detailed information on the financial impact of these new charges is set out in the associated BRIA.
*Pet Passports*

The cost to be passed on to veterinary practices will be £56 for a batch of 20 blank pet passport identification documents. This equates to £2.80 per passport. This charge covers the cost to the APHA of purchasing blank pet passport identification documents from the central printer and administration and postage costs. According to the APHA, some 4,960 pet passports were issued to 193 Scottish veterinary practices in 2017. The total annual cost to Scottish veterinary practices is expected to be in the region of £14K per annum (this will no doubt be passed on to individual customers at a cost of £2.80/passport). As pet passports will generally last for the life of the pet, the cost to the individual client will be minimal.

**Post-implementation review**

The APHA propose to assess the impact of the new charges for ABPs and pet passports on an ongoing basis (by engaging with individual ABP operators during routine inspections and through meetings with trade bodies representing the sector). Given that these charges will need to be reviewed at some point in the future to ensure that the fees being charged continue to cover the cost of delivering the service, it is anticipated that any future formal consultation undertaken will also provide an opportunity to review the impact of these new charges.

Animal Health & Welfare Division
Directorate for Agriculture & Rural Economy
Scottish Government
Business and Regulatory Impact Assessment

Title of Proposal
The Animal By-Products and Pet Passports Fees (Scotland) Regulations 2018.

Purpose and intended effect

Background
The Animal and Plant Health Agency (APHA) is the body responsible for the delivery of a wide range of animal health and welfare statutory services on behalf of the Scottish Government, Defra and the Welsh Government. The APHA primarily works to prevent, control and identify endemic, exotic, new and emerging animal and plant disease across GB through inspection and surveillance work on farms, at markets, other livestock-related premises, and through specialist veterinary laboratory and scientific services.

Many of the APHA’s activities relate to the delivery of statutory functions. Presently only a small number of these functions are charged for, with the remainder covered by the public purse. Treasury Guidance ‘Managing Public Money’ makes clear that it is UK Government policy to charge for many of the publically provided services. Charging for such services relieves the general taxpayer of those costs and ensures that they are properly borne by those that benefit from the service. The Fees and Charges section of the Scottish Public Finance Manual also makes clear that the standard approach to setting charges for such services is full cost recovery.

The APHA now propose to introduce new charges for services provided in respect to Animal By-products and the provision of Pet Passports to veterinary practices. New charges are also being introduced in England and Wales for the licensing of Animal Gatherings. The charges associated with Animal Gatherings will not apply in Scotland.

Objective
The objective of these new Regulations is to transfer the cost of providing the aforementioned services from the taxpayer to those businesses that receive and benefit from the service, thereby reducing the cost burden on the taxpayer.

Rationale for Government intervention
HM Treasury Guidance ‘Managing Public Money’ makes clear that it is UK Government policy to charge for many publicly provided goods and services. Charging for services relieves the general taxpayer of costs and ensures that they are properly borne by those that benefit from a particular service. This allows for a more equitable distribution of public resources whilst contributing to lower public expenditure and borrowing. In order, therefore, to ensure that statutory services are being delivered in line with Government policy, it is necessary to introduce these new fees.
Consultation

Within Government

The APHA consulted and worked extensively with both the Scottish and Welsh Governments, DEFRA and the Treasury on the development of its proposals to introduce new fees for services provided in respect to ABPs and pet passports. The proposal to introduce charges for ABPs was subject to particular scrutiny in Scotland by both officials and the Cabinet Secretary for the Rural Economy and Connectivity. This resulted in lengthy and detailed engagement with APHA officials.

Public Consultation

From October 2015 to December 2015 the APHA ran a GB-wide public consultation on its proposals for new fees. The consultation paper can be found here: https://consult.defra.gov.uk/apha/apha-seeks-views-on-new-fees-for-statutory-servic/supporting_documents/Tranche%202%20%20%20Consultation%20Document.pdf. The consultation was open to all to respond to, but given that the new fees target specific sectors (ABP operators and veterinary practices) the APHA ensured, as far as practically possible, that these sectors in particular were consulted. 61 responses to the consultation were received. The APHA’s published consultation report can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699061/charging-second-consultation-report.pdf

Business

All affected businesses in Scotland had the opportunity to express their views during the formal consultation period. In addition to this the APHA had pre consultation discussions with several of the trade body organisations that represent the ABP sector, namely, the Foodchain and Biomass Renewables Association, the Anaerobic Digestion and Bioresource Association, the Renewable Energy Association and the Pet Food Manufacturers Association. APHA continues to engage with these industry bodies. APHA advise that this engagement, primarily, occurs through quarterly or 6 monthly meetings.

Options

The APHA presented 3 options in its consultation paper. These were:

Option 1 – do nothing

Under this option no new fees would be introduced. Given that this option would not deliver Government’s policy on FCR, this was not considered by the APHA to be a realistic option. It was however included as it acts as a baseline against which other feasible options can be assessed.

Option 2 – Introduce the new fees at 100% FCR in 2018-19

Under this option the new fees for ABPs and pet passports would be introduced at FCR from 2018-19.

Option 3 – Phased introduction of new fees: 50% in 2018-19, 100% from 2019-20
Under this option the fees for ABPs would initially be introduced at 50% FCR in year 1 (2018-19), moving to 100% FCR in year 2 (2019-20). The costs associated with the production and provision of pet passports would however be charged at 100% FCR in year 1 (2018-19).

Sectors and groups affected

**ANIMAL BY-PRODUCTS**

The APHA propose to charge businesses for ABP approvals and ABP routine risk-based inspections for both approved and registered businesses. ABPs means entire bodies or parts of animals, products of animal origin or other products obtained from animals, which are not intended for human consumption, including oocytes, embryos and semen.

ABPs are a potential source of risk to the public and animal health. For example, improper use of ABPs has resulted in outbreaks of serious diseases such as foot and mouth disease, classical swine fever, avian influenza and bovine spongiform encephalopathy (BSE). Incorrect use, handling, processing or disposal of ABPs can have a significant cost impact on society, both directly on farming communities and indirectly, for example, on trade.

Legislation setting out rules for collection, storage, transport, treatment, use and disposal of ABPs has been in place for some time. The Animal By-Products Regulation (EC) No. 1069/2009 requires Competent Authorities to carry out approval or registration of plants, establishments and other operators involved in the handling, use or disposal of ABPs; to undertake regular risk-based inspections of such operations and to enforce the requirements of the legislation. The requirements of Regulation (EC) 1069/2009 are implemented in Scotland by The Animal By-Products (Enforcement) (Scotland) Regulations 2013. The new charges for ABPs will be set out in a new Scottish Statutory Instrument to be made under section 56 of the Finance Act 1973.

A range of businesses handle, use and dispose of ABPs. New premises or operators are either ‘approved’ or ‘registered’ depending on the requirements of the EC ABP Regulations. Plants carrying out higher risk operations require approvals, for example, rendering plants, on-farm incinerators and composters. Lower risk activities may simply require registration, for example, transportation of ABPs or the manufacture of technical products using ABPs.

The approval process varies depending on the operation, but generally includes an authorised veterinarian or authorised technician assessment of the application. This may include discussing the application with the operator, undertaking a number of site visits to inspect the facility, taking samples if necessary, checking computer records, supervising validating exercises and issuing approval documentation.

For those ABP operators where registration rather than approval is required, plants or operators need only notify the competent authority that they are carrying out ABP activities without the need for prior authorisation. In such circumstances registration is a simple process, with operators simply being added to a list on the APHA’s website. Operators will not be charged for straightforward registrations. If, however, a
risk-based assessment of any notification received concludes that an inspection is warranted, that inspection will be chargeable to the operator.

**ABP Approved Facilities**

Plants using or disposing of ABPs must obtain approval before they begin to operate. Approved ABP plants vary considerably in size and complexity, and include rendering (processing) plants, composting and biogas plants, anaerobic digestion facilities, incineration plants, pet food plants, organic fertiliser plants and various intermediate ABP handling and storage plants.

Plants are approved on a one-off basis (re-approvals only take place if there is a substantive change in the material received, equipment used or treatment process). In 2017 there were 325 approved ABP plants in Scotland (2,062 in GB), and APHA estimate that about 40 new plants will seek approval/re-approval each year in GB.

**ABP Registered Facilities**

Although a registration fee will not be charged, for the reasons set out above, certain registered plants will still be subject to a chargeable risk-based inspection. Registered ABP plants vary considerably in size and complexity, and include game trophy producers, taxidermists, producers of medical devices, wool processors and tanneries, maggot farms, zoos and certain collection centres. In 2017 there were 563 registered plants and operators in Scotland (4,368 in GB).

**ABP routine risk-based inspections**

All approved and certain registered ABP plants are subject to a regime of risk-based inspections to ensure that operators are meeting the terms of their approval and the legislative requirements. A risk-based inspection typically includes a site visit, sampling if required, analysis of any results and associated admin tasks. Time taken varies considerably depending on the size and complexity of the plant.

Approved ABP facilities are risk assessed on initial application, and then inspected annually, quarterly or monthly depending on their risk rating. This is determined by the type of operation, material being handled and the compliance record of the operator concerned. In practice, although, on notification, all registered ABP facilities are subject to risk-based assessments, where the risk is assessed as minimal many are unlikely to require an inspection visit. In 2017 APHA carried out 624 (routine and follow-up) risk-based inspections of ABP premises, registered plants and operators in Scotland.

**Benefits**

**Option 1.** If this option were adopted then the benefactors would be ABP operators. The key benefit to this sector would of course be that they would continue to receive a service or services from the APHA free of charge. Adoption of this option would however necessitate this service continuing to be funded by the tax payer at a time when public finances are considerably stretched. As option 1 would not deliver Government policy on FCR it is not considered to be a viable option.
**Option 2.** The key benefit arising from the adoption of this option is the full transfer of cost from the tax payer to those businesses that benefit from the services provided by the APHA.

**Option 3.** There are two key benefits arising from the adoption of this option. Firstly, due to the phased introduction (50% FCR year 1; 100% year 2), it provides ABP operators some time to adjust to new charges. During this period of adjustment APHA will seek to work with operators to identify and implement measures, where appropriate, to reduce both the frequency and duration of inspections, thereby minimising the cost to businesses. The second key benefit is that it transfers the cost of providing ABP related services from the taxpayer to those businesses benefiting from the services provided by the APHA.

**Costs**

Charges for services provided in respect to Animal By-products will apply across GB. The costs presented in this impact assessment reflect the likely cost impact to businesses in Scotland.

The APHA advise that as of 2017 there were 888 existing ABP related businesses in Scotland. Of this 888 some 54% will be exempt from charging as they have previously been registered for approval and are considered low risk. APHA advise that 346 businesses (39%) in Scotland can expect to be charged a maximum £283 p.a. for their annual visit / inspection, raising a total of approx. £69K. APHA class these businesses as low risk. 56 businesses can expect their 4 annual visits to cost them a total of £1,065 p.a. raising a total of approx. £42K. 6 businesses in Scotland are on the APHA’s most stringent monthly visit regime. They can expect to pay a total of £3,170 p.a. raising a total of approx. £13K. APHA consider these operators to be the highest risk and therefore warranting of monthly visits / inspection.

APHA anticipate that additional income will be generated from an estimated 25 new ABP operator applications annually throughout the whole of GB, potentially raising income in the region of £20K. Additionally, based on historic activity levels, some £90K of income may be generated annually as a consequence of additional, unscheduled visits and extension of existing visits. The necessity for such visits is determined on a case-by-case basis, with the level of risk usually being the determining factor.

The total annual cost to existing ABP businesses in Scotland, assuming no new applications and no additional visits or extension of visits, is anticipated to be £124K (see table 3 below).

The new ABP charges being introduced by the APHA comprise of various chargeable elements. These are:

- **APHA staff costs**, namely, salary, national insurance and pension costs.
- **Travel & Subsistence** costs associated with delivering the ABP work. It should be noted that following APHA’s consultation it has been agreed that a 90 min cap on travel time will be introduced. This is to protect rurally based ABP businesses from excessive travel time charges. APHA has also confirmed that
travel time will always be calculated from the clients nearest APHA office, thereby keeping the travel time element of the charge to a minimum.

- **Hard charges** which relate to support costs for activities undertaken outside of the agency but which support the agency’s work and are recharged back to it. This includes certain IT functions (IBM), accommodation (Defra / SG estates), SSCL (shared service provider which supplies the invoicing, payment and payroll services for Government agencies), HR (Defra) Legal (Defra) and depreciation levied charges on capital equipment (where appropriate).

- **APHA central overheads** which include Health & Safety, Finance and internal IT systems.

- **APHA direct costs** which include office running costs such as consumables, telephone and postage.

The following table (table 1) sets out the various components that make up the hourly chargeable rate to be charged for each grade of staff and how it is calculated.

<table>
<thead>
<tr>
<th>Component</th>
<th>Admin Officer</th>
<th>Animal Health Officer</th>
<th>Veterinary Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic salary</td>
<td>£19,543</td>
<td>£27,226</td>
<td>£52,276</td>
</tr>
<tr>
<td>NI &amp; Pension</td>
<td>£4,105</td>
<td>£5,717</td>
<td>£10,978</td>
</tr>
<tr>
<td><strong>Total payroll cost</strong></td>
<td><strong>£23,648</strong></td>
<td><strong>£32,943</strong></td>
<td><strong>£63,254</strong></td>
</tr>
<tr>
<td><strong>Total hrs per annum</strong></td>
<td>1924 (37pw)</td>
<td>1924 (37)</td>
<td>1924 (37)</td>
</tr>
<tr>
<td>Paid days</td>
<td>260</td>
<td>260</td>
<td>260</td>
</tr>
<tr>
<td>Holidays</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Training</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Other activity</td>
<td>34</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>Balance of days to be charged for</td>
<td>186 (260 - 74)</td>
<td>186 (260 - 74)</td>
<td>186 (260 - 74)</td>
</tr>
<tr>
<td><strong>Total hrs (186 x 7.4)</strong></td>
<td>1377</td>
<td>1377</td>
<td>1377</td>
</tr>
<tr>
<td><strong>Chargeable rate</strong></td>
<td><strong>£17.17</strong></td>
<td><strong>£23.92</strong></td>
<td><strong>£45.91</strong></td>
</tr>
</tbody>
</table>

The following table (table 2) provides further detail on the various elements that make up the total hourly rate to be charged for each grade of staff.

<table>
<thead>
<tr>
<th>Per hour charge</th>
<th>Admin Officer</th>
<th>Animal Health Officer</th>
<th>Veterinary Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary</td>
<td>£17.17</td>
<td>£23.92</td>
<td>£45.91</td>
</tr>
<tr>
<td>Direct costs</td>
<td>£1.77</td>
<td>£2.46</td>
<td>£4.73</td>
</tr>
<tr>
<td>Hard charges / overheads</td>
<td>£5.52</td>
<td>£7.69</td>
<td>£14.76</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£24.46</strong></td>
<td><strong>£34.07</strong></td>
<td><strong>£65.40</strong></td>
</tr>
</tbody>
</table>

The following table (table 3) provides a breakdown of each cost element for each inspection regime (annually/quarterly/monthly) for existing businesses (at full FCR).
Table 3

<table>
<thead>
<tr>
<th>No of visits</th>
<th>Salary</th>
<th>Direct costs</th>
<th>APHA Central &amp; Hard charges</th>
<th>Invoice</th>
<th>Travel</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 visit per year, one invoice</td>
<td>£35,445</td>
<td>£3,649</td>
<td>£11,395</td>
<td>£2,332</td>
<td>£15,947</td>
<td>£68,768</td>
</tr>
<tr>
<td>4 visits per year, one invoice</td>
<td>£21,787</td>
<td>£2,243</td>
<td>£7,004</td>
<td>£387</td>
<td>£10,584</td>
<td>£42,005</td>
</tr>
<tr>
<td>12 visits per year, one invoice</td>
<td>£6,954</td>
<td>£716</td>
<td>£2,236</td>
<td>£41</td>
<td>£3,402</td>
<td>£13,349</td>
</tr>
<tr>
<td>Total</td>
<td>£64,185</td>
<td>£6,607</td>
<td>£20,635</td>
<td>£2,761</td>
<td>£29,933</td>
<td>£124,121</td>
</tr>
</tbody>
</table>

PET PASSPORTS

The sector affected by the introduction of charges for the production and provision of pet passports will be veterinary practices that prepare pet animals for international travel in accordance with article 22 of Commission Regulation 576/2013 on the non-commercial movement of pet animals. Pet passports (for dogs, cats and ferrets) are an integral part of the Pet Travel Regulations which are designed to keep the UK free of rabies and the tapeworm *Echinococcus multilocularis* (EM) which can infect animals and humans. Currently pet passports are provided free of charge by the APHA.

**Benefits**

The key benefit arising from the introduction of charges for the production and provision of pet passports is that it will remove a cost burden currently borne by the public purse. The introduction of this charge is likely to save the tax payer around £14K annually. It is likely that charging will also help to reduce wastage as veterinary practices will be much more inclined to order only the number of passports required as opposed to bulk ordering which can lead to wastage.

**Options**

Option 1 - If this option were adopted then the benefactors would be veterinary practices that prepare pets for international travel, as they would continue to receive blank passports from the APHA free of charge. The tax payer would need to continue to fund the production and provision of pet passports at a time when public finances are considerably stretched. As this option would not deliver Government policy on FCR it is not considered to be a viable option.

Option 2 – This would result in the full transfer of costs linked to the production and provision of pet passports from the tax payer to veterinary practices thereby freeing
up funds that can be directed to vital public services. It will also ensure that those who benefit from a service pay for it.

**Costs**

The cost to be passed on to veterinary practices will be £56 for a batch of 20 pet passports. This equates to £2.80 per passport. This charge covers the cost to the APHA of purchasing blank passport documents from the central printer and administration and postage costs. According to the APHA, some 4,960 pet passports were issued to 193 Scottish veterinary practices in 2017. The total annual cost to Scottish veterinary practices is expected to be in the region of £14K per annum (this will no doubt be passed on to individual customers at a cost of £2.80/passport). As pet passports will generally last for the life of the pet, the cost to the client will be minimal.

**Scottish Firms Impact Test**

The APHA had face to face discussion with a number of ABP operator umbrella bodies before, during and after the formal period of consultation. This engagement continues to date. In the course of their normal inspection activities the APHA also routinely engage with their customers on any number of issues including charging.

As a consequence of this engagement and having taken on board the views of ABP operators (the charge for pet passports is considered non contentious with minimal impact anticipated) the APHA has agreed to the following:

- **Introduction of a 90 min cap on the travel time that can be charged for.**
- **A phased introduction of ABP charges - 50% FCR in year 1, moving to 100% FCR in year 2.**
- **Commitment only to deploy staff from the APHA office nearest to the client to be visited. Where not possible travel costs still to be calculated from the clients nearest office.**

**Competition Assessment**

APHA do not anticipate any impact on competition. All ABP businesses that currently receive services from APHA will, in future, need to pay, unless of course they are exempt due to already being registered and/or being of such low risk as not to warrant inspection. Because the charges will apply equally to each category of operator of similar risk (unless there are compliance issues), no particular business will be unfairly disadvantaged.

Given that the fee to be applied to veterinary practices for the production and provision of pet passports is modest, and the fact that it will apply to all practices that provide pet passports to their clients, no impact on competition is anticipated.

**Will the measure directly or indirectly limit the number or range of suppliers?**

The APHA do not expect the introduction of charges to directly or indirectly limit the number or range of suppliers. The charges apply equally to all ABP operators and therefore no one operator (supplier) will be disadvantaged.

**Will the measure limit the ability of suppliers to compete?**
As the operators apply to all ABP operators, the APHA do not expect the introduction of charges to limit the ability of suppliers to compete.

**Will the measure limit suppliers’ incentives to compete vigorously?**
The APHA cannot foresee any reason why the introduction of charges would limit any suppliers incentive to compete.

**Will the measure limit the choices and information available to consumers?**
The APHA can see no reason why the introduction of charges for ABP operators would limit the choice and information available to consumers.

**Test run of business forms**
The introduction of charges by the APHA for ABPs and pet passports will not necessitate the introduction and/or use of new forms. The statutory services to be charged for are already delivered by the APHA and accordingly the necessary systems and processes already exist. The only difference is that businesses will now need to pay for the services being delivered.

**Legal Aid Impact Test**
As the APHA’s proposals only relate to the introduction of charges for statutory services currently provided free of charge, no impact on the legal aid fund or on individuals rights to access justice via legal aid is anticipated. Additionally, the APHA do not expect the introduction of charges to result in more people being taken to court. In fact, the APHA anticipate that the introduction of charges will indirectly drive improvements in ABP operator practices resulting in fewer infringements of ABP legislation. This is because ABP operators are likely to want to minimise the time that APHA staff need to spend on site as less time on site means lower charges.

The APHA’s consultation on proposals to introduce charges for services provided in relation to ABPs and the production and provision of pet passports can be found here: [https://consult.defra.gov.uk/apha/apha-seeks-views-on-new-fees-for-statutory-servic/supporting_documents/Tranche%202%20Consultation%20Document.pdf](https://consult.defra.gov.uk/apha/apha-seeks-views-on-new-fees-for-statutory-servic/supporting_documents/Tranche%202%20Consultation%20Document.pdf)

**Enforcement, sanctions and monitoring**

**ABPs**
No new sanctions or penalties are being introduced. The APHA, on behalf of the Scottish Ministers, are responsible for the enforcement of ABP statutory requirements. The APHA already ensure that the requirements of the Control Regulation are complied with and powers already exist under section 46 of that Regulation that enable the APHA to take enforcement action in the case of non-compliance. The APHA already has well-established systems in place that allow for the monitoring of ABP operator activities and this will continue regardless of the new fees.

**Implementation and delivery plan**

*Implementation*
The legislation required to introduce these charges in Scotland will come into force on 30 June 2018.

**Delivery Plan**

As the approvals and inspection regime delivered by the APHA is already established, no specific delivery plan is necessary. The services currently provided free of charge by APHA will simply become chargeable from 30 June 2018. To assist ABP operators to adjust to the new charges however, the APHA will phase in the new charges. In financial year 2018-19 charges will be set at 50% FCR, moving to 100% FCR in 2019-20. The APHA, through its established approvals and inspection regime, will continue to liaise with ABP operators in order to identify any difficulties arising as a consequence of charging.

**Post-implementation review**

Once implemented the APHA propose to assess the impact of the new charges for ABPs and pet passports on an ongoing basis. Given that these charges will need to be reviewed at some point in the future to ensure that the fees being charged still cover APHA’s costs, it is anticipated that any formal consultation undertaken will provide an opportunity to review the impact of charging.

**Summary and recommendation**

Having considered all relevant factors, including the formal stakeholder engagement and consultation and Government’s stated policy of charging for statutory services, the recommended approach for ABP charges is the adoption of option 3. In adopting this option, the APHA, in response to stakeholder comments, has agreed to the following:

- Introduction of a 90 min cap on the travel time that can be charged for.
- A phased introduction of ABP charges- 50% FCR in year 1, moving to 100% FCR in year 2.
- Commitment only to deploy staff from the APHA office nearest to the client to be visited. Where not possible travel costs still to be calculated from the clients nearest office.

For pet passports there are only 2 realistic options, either introduce the charge at 100% FCR or not. Having considered all relevant factors (not least the small sums involved) including the responses to the formal consultation and Government’s stated policy of charging for the provision of statutory services, we recommend adoption of option 2.

**Animal By-products**

<table>
<thead>
<tr>
<th>Option 1 (Do nothing)</th>
<th>Total benefit per annum-</th>
<th>Total cost per annum-</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Economic, environmental, social.</td>
<td>Economic, environmental, social, administrative.</td>
</tr>
<tr>
<td>No economic benefit to APHA, Government or, more importantly, the public purse would arise. Clearly, however,</td>
<td>Maintaining the status quo through the adoption of option 1 would, based on current levels of activity, cost the tax payer in the region of £124K per</td>
<td></td>
</tr>
</tbody>
</table>
ABP operators would continue to benefit from the provision of taxpayer funded services.

No environmental benefit would arise from the adoption of this option.

This option fails to deliver SG / UK Government policy on charging the end user for the delivery of statutory services.

- **Option 2**

  **(100%)**
  **FCR – no phased approach**

  This option delivers maximum economic benefit to the APHA and the public purse as it transfers the full cost of delivering ABP services to the industry from 30 June 2018.

  Potentially, in the mid to longer term this option may deliver some environmental benefits as a consequence of fewer visits being needed due to improved compliance levels in the ABP sector (with operators having to pay for APHA's time on site, they will be keen to do all they can to ensure that visit frequency and inspection duration are minimised as far as possible). This may then result in less journeys being undertaken by APHA staff with a corresponding drop in vehicle emissions.

  The tax payer will no doubt consider this to be the more socially acceptable option also, as it ensures that those that receive a service from APHA pay for it, thereby freeing up financial resources for vital public services.

  This option would see the transfer of annual costs from the tax payer to the ABP sector in the region of £124K annually.

  Potentially, in the mid to longer term this option may deliver some environmental benefits as a consequence of fewer visits being needed due to improved compliance levels in the ABP sector (with operators having to pay for APHA's time on site, they will be keen to do all they can to ensure that visit frequency and inspection duration are minimised as far as possible). This may then result in less journeys being undertaken by APHA staff with a corresponding drop in vehicle emissions.

  The ABP sector would be unlikely to favour this approach as it introduces charges at 100% FCR from day one. Their preference, not surprisingly, was for a phased introduction. It would however no doubt be the most socially acceptable option to the tax payer as it ensures that those that receive a service from APHA pay for it, thereby freeing up financial resources for vital public services.
| Option 3  
|__________|  
| (50% FCR year 1, 100% FCR year 2) | This option delivers economic benefits to the APHA, the ABP sector and the public purse. Whilst ABP operators would be required to pay APHA the new charges, it would be at 50% of FCR for the first year. This would not only provide operators with time to assess and where necessary amend business plans, but also to liaise with the APHA to identify new ways of working with a view to reducing inspection frequency and therefore costs where appropriate.

Potentially, in the mid to longer term this option may deliver some environmental benefits as a consequence of fewer visits being needed due to improved compliance levels in the ABP sector (with operators having to pay for APHA’s time on site, they will be keen to do all they can to ensure that visit frequency and inspection duration are minimised as far as possible). This may then result in less journeys being undertaken by APHA staff with a corresponding drop in vehicle emissions.

Overall, this option brings benefits to both the tax payer and the ABP sector. It provides businesses with time to adapt to new charges whilst also reducing some of the burden on the public purse. It also goes some way to delivering SG / UK Government policy on charging.

| This option delivers from day one SG / UK Government policy on charging. | This option would see the transfer of annual costs from the tax payer to the ABP sector in the region of £62K in year one rising to £124K in year two.

Potentially, in the mid to longer term this option may deliver some environmental benefits as a consequence of fewer visits being needed due to improved compliance levels in the ABP sector (with operators having to pay for APHA’s time on site, they will be keen to do all they can to ensure that visit frequency and inspection duration are minimised as far as possible). This may then result in less journeys being undertaken by APHA staff with a corresponding drop in vehicle emissions.

Overall, this option brings benefits to both the tax payer and the ABP sector. It provides businesses with time to adapt to new charges whilst also reducing some of the burden on the public purse. It also goes some way to delivering SG / UK Government policy on charging. |
**Pet Passports**

<table>
<thead>
<tr>
<th>Total benefit per annum-</th>
<th>Total cost per annum-</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic, environmental, social.</td>
<td>Economic, environmental, social, administrative.</td>
</tr>
</tbody>
</table>

**Option 1**
- No economic benefit to APHA, Government or, more importantly, the public purse would arise. Clearly, however, veterinary practices would continue to benefit from the provision of pet passports free of charge.
- No environmental benefit would arise from the adoption of this option.
- This option fails to deliver SG / UK Government policy on charging the end user for the delivery of statutory goods and services.
- Maintaining the status quo through the adoption of option 1 would, based on historical data, cost the tax payer in the region of £14K per annum.
- No measurable environmental cost would arise as this option essentially means business as usual.
- In light of ongoing fiscal pressures on operational budgets and wider demands on the public purse, this option is unlikely to be socially acceptable to the tax payer.
- This option fails to deliver SG / UK Government policy on charging the end user for the delivery of statutory goods and services.

**Option 2**
- This option delivers maximum economic benefit to the APHA and the public purse as it transfers the full cost of the production and provision of pet passports to veterinary practices from 30 June 2018.
- Environmental benefits are likely to be minimal. However, the introduction of a charge for pet passports may help to reduce both wastage and energy use due to veterinary practices moving from bulk ordering to only ordering enough to meet customer demand. Practices will also be much less inclined to discard surplus passports if they have had to pay for them.
- This option would transfer in the region of £14K from the public purse to veterinary practices, thereby ensuring that the cost is borne by those that benefit from the provision of a service.
- It is not possible to quantify the environmental cost arising from adoption of this option, but it is likely to be negligible.
- This option delivers from day one SG / UK Government policy on charging and therefore the taxpayer is likely to consider this to be the more socially acceptable option.
socially acceptable option as it ensures that those benefiting from the provision of goods and/or services pay for it, thereby freeing up financial resources for vital public services.

This option delivers from day one SG / UK Government policy on charging.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister’s name: Fergus Ewing MSP
Minister’s title: Cabinet Secretary for the Rural Economy & Connectivity

Scottish Government contact point: John Nicolson
Animal Health & Welfare Division
0300 244 9243
The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1A of schedule 2 of the European Communities Act 1972(a) and section 56(1) and (2) of the Finance Act 1973(b) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references in these Regulations to the EU Control Regulation and the EU Implementing Regulation (as those instruments are defined in regulation 2(1)) to be construed as references to those instruments as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Animal By-Products and Pet Passport Fees (Scotland) Regulations 2018 and come into force on 30th June 2018.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—


(a) 1972 c.68. Paragraph 1A of schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and amended by Part 1 of the schedule of the European Union (Amendment) Act 2008, (c.7).

(b) 1973 c.51. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of article 2(2) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820) and the functions of the Minister were, so far as exercisable within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain the consent of the Treasury was removed by section 55 of that Act. Section 56(1) of the Finance Act 1973 was amended by S.I. 2011/1043.

human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive, as amended from time to time(a);


“veterinary officer” means a veterinary surgeon employed as such by the Scottish Ministers or the Secretary of State(c).

(2) Expressions used in these Regulations that are also used in the EU Control Regulation or the EU Implementing Regulation have the same meaning in these Regulations as they have in the EU Control Regulation or as the case may be the EU Implementing Regulation, as the context may require.

Refund of fees

3. If any application for which a fee is payable under these Regulations is withdrawn before its determination, the Scottish Ministers must refund to the applicant such proportion of any fee paid in respect of that application as the Scottish Ministers think fit, having regard to any reasonable costs incurred by them in connection with the application.

Animal by-products and derived products: fees

4.—(1) This regulation and the schedule set out the fees payable to the Scottish Ministers on demand for the activities conducted by the Scottish Ministers for the purposes of the EU Control Regulation, the EU Implementing Regulation or the Animals By-Products (Enforcement) (Scotland) Regulations 2013(d).

(2) In the schedule—

(a) the fees payable by an operator of an establishment or plant in relation to an activity specified in column 1 of Table 1 are specified in the corresponding entries in column 2 and 3 of that Table; and

(b) the fees payable in respect of official controls, by an operator of an establishment or plant in relation to an activity specified in column 1 of Table 2 are specified in the corresponding entries in columns 2 and 3 of that Table.

(3) In the schedule, “approval” includes a conditional approval under Article 44(2) of the EU Control Regulation.

Pet Passports: fees

5.—(1) The fees payable by an authorised veterinarian to the Scottish Ministers for 20 blank pet passport identification documents is £56.

(2) The authorised veterinarian is to be charged for postage and packaging where—

(a) the blank pet passport identification documents are not collected in person; and

(b) the authorised veterinarian requests that the blank pet passport identification documents be sent by post.


(c) By virtue of an agreement under section 93 of the Scotland Act 1998 (c.46), the Secretary of State may exercise specific functions of the Scottish Ministers as listed in the schedule of the Scotland Act 1998 (Agency Arrangements) (Specification) Order 2013 (S.I. 2013/3157).

(d) S.S.I. 2013/307 as amended by S.S.I. 2015/393.
(3) In this regulation—

“authorised veterinarian” means a veterinary surgeon who has been authorised by the Scottish Ministers or the Secretary of State to carry out tasks in accordance with Regulation (EU) No. 576/2013; and

“identification documents” means documents for issue and completion by an authorised veterinarian pursuant to Article 22 of Regulation (EU) No 576/2013 in respect of the non-commercial movement of pet animals within the EU.

FERGUS EWING
A member of the Scottish Government

St Andrew’s House,
Edinburgh
24th May 2018
**SCHEDULE**

**ANIMAL BY-PRODUCTS AND DERIVED PRODUCTS: FEES**

Table 1

<table>
<thead>
<tr>
<th>Activity</th>
<th>Column 2 Fee (£) for applications received on or after 30th June 2018</th>
<th>Column 3 Fee (£) for applications received on or after 30th June 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises for the purpose of carrying out the activities specified in this Table and Table 2</td>
<td>21 per quarter hour or part quarter hour spent, up to a maximum of 126</td>
<td>21 per quarter hour or part quarter hour spent, up to a maximum of 126</td>
</tr>
<tr>
<td>Time spent by an officer employed by the Scottish Ministers or the Secretary of State other than a veterinary officer travelling to and from premises for the purposes of carrying out the activities specified in this Table and Table 2</td>
<td>14 per quarter hour or part quarter hour spent, up to a maximum of 84</td>
<td>14 per quarter hour or part quarter hour spent, up to a maximum of 84</td>
</tr>
<tr>
<td>Consideration of an application for approval of a rendering plant that includes a site visit of up to 60 minutes</td>
<td>892</td>
<td>1785</td>
</tr>
<tr>
<td>Consideration of an application for approval of an establishment or plant carrying out the transformation of animal by-products and/or derived products into compost that includes a site visit of up to 60 minutes</td>
<td>475</td>
<td>951</td>
</tr>
<tr>
<td>Consideration of an application for approval of an establishment or plant carrying out the transformation of animal by-products and/or derived products into biogas that includes a site visit of up to 60 minutes</td>
<td>475</td>
<td>951</td>
</tr>
<tr>
<td>Consideration of an application for approval of an establishment or plant carrying out the handling of animal by-products after their collection, by way of operations such as sorting, cutting, chilling, freezing, salting, removal of hides and skins, or removal of specified risk material, that includes a site visit of up to 60 minutes</td>
<td>242</td>
<td>485</td>
</tr>
<tr>
<td>Consideration of an application for approval of an establishment or plant carrying out the storage of animal by-products and/or derived products that includes a site visit of up to 60 minutes</td>
<td>242</td>
<td>485</td>
</tr>
<tr>
<td>Consideration of an application for approval of an incinerator plant that includes a site visit of up to 60 minutes</td>
<td>198</td>
<td>395</td>
</tr>
<tr>
<td>Consideration of an application for approval of an establishment or plant manufacturing pet food that includes a site visit of up to 60 minutes</td>
<td>198</td>
<td>395</td>
</tr>
<tr>
<td>Time spent by a veterinary officer for the purpose of carrying out activities specified in this Table</td>
<td>8 per quarter hour or part quarter hour</td>
<td>16 per quarter hour or part quarter hour</td>
</tr>
</tbody>
</table>
after the first 60 minutes of a site visit to assess suitability for approval | spent | spent
--- | --- | ---
Time spent by an officer employed by the Scottish Ministers or the Secretary of State (other than a veterinary officer) for the purpose of the administration of additional visits and connected activities | 3 per quarter hour or part quarter hour spent | 6 per quarter hour or part quarter hour spent
Additional administrative fee for production of invoices for additional visits and connected activities | 7 per invoice | 13 per invoice

Table 2

| Fees payable by the operator of an establishment or plant for official control inspection site visits undertaken under Article 45 of the EU Control Regulation |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| Activity | Fee (£) for inspection site visits undertaken on or after 30th June 2018 | Fee (£) for inspection site visits undertaken on or after 30th June 2019 |
| Time spent by a veterinary officer for the purpose of an inspection site visit that lasts longer than 30 minutes | 8 per quarter hour or part quarter hour spent | 16 per quarter hour or part quarter hour spent |
| Time spent by an officer employed by the Scottish Ministers or the Secretary of State (other than a veterinary officer) for the purpose of an inspection site visit that lasts longer than 30 minutes | 4 per quarter hour or part quarter hour spent | 8 per quarter hour or part quarter hour spent |
| Time spent organising an inspection site visit and dealing with any action points arising from the visit by an officer employed by the Scottish Ministers or the Secretary of State (other than a veterinary officer) | 3 per quarter hour spent or part quarter hour spent | 6 per quarter hour spent or part quarter hour spent |
| Fee for the carrying out of the first 30 minutes of an inspection site visit where either an annual or biennial inspection of an approved or registered establishment or plant is required under the EU Control Regulation | 78 per visit | 157 per visit |
| Annual fee for the carrying out of the first 30 minutes of each of four inspection site visits to inspect an approved or registered establishment or plant where quarterly inspections are required under the EU Control Regulation | 281 per year | 561 per year |
| Annual fee for the carrying out of the first 30 minutes of each of twelve inspection site visits of an approved or registered establishment where monthly inspections are required under the EU Control Regulation | 829 per year | 1658 per year |
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the introduction of fees payable for services provided by the Scottish Ministers.

The fees in regulation 4 and the schedule are fees payable by operators of establishments and plants that are required to be approved for the purposes of Regulation (EC) No 1069/2009 (OJ L 300, 14.11.2009, p.1) of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption.

The fees in regulation 5 are fees payable in respect of the delivery of blank pet passport identification documents to authorised veterinarians for the purpose of the issuing a pet passport in accordance with Regulation (EU) No 576/2013 (OJ L 178, 28.6.2013, p.1).

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Animal Health and Welfare Division, Saughton House, Broomhouse Drive, Edinburgh EH11 3XG.
Annex C – SSI 2018/177: Animal Health (Miscellaneous Fees) (Scotland) Regulations 2018

Type of Instrument: Negative

Laid Date: 29 May 2018

Coming into force: 30 June 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Consideration by the Delegated Powers and Law Reform Committee

2. At its meeting on 5 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Policy Objectives

3. The purpose of this instrument is to revise the fees, currently set out in the Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013, that apply to certain statutory functions delivered by the Scottish Ministers. Under an Agency Agreement made under section 93 of the Scotland Act 1998, these services are currently delivered by the Animal & Plant Health Agency (APHA) on behalf of the Scottish Ministers. APHA, as an Executive Agency of the Department of Environment, Food and Rural Affairs (DEFRA), also has responsibility for delivering statutory functions in England and Wales. The instrument also revokes the 2013 Fees Regulations, subject to savings.

Consultation

4. From October 2015 to December 2015, APHA ran a GB-wide public consultation on its proposal to revise existing fees. 20 responses were received to the consultation. APHA’s consultation report summarising the responses can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697798/charging-first-consultation-report.pdf

5. The policy note and instrument are attached and also available online at the below link:

Recommendation

6. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
June 2018
POLICY NOTE

THE ANIMAL HEALTH (MISCELLANEOUS FEES) (SCOTLAND) REGULATIONS 2018

SSI 2018/177

Introduction

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by paragraph 1A of schedule 2 to the European Communities Act 1972 and section 56(1) and (2) of the Finance Act 1973 and section 10(3)(c) of the Animal Health and Welfare Act 1984. The instrument is subject to negative procedure.

Policy Objective

The purpose of this instrument is to revise the fees, currently set out in The Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013, that apply to certain statutory functions delivered by the Scottish Ministers. Under an Agency Agreement made under section 93 of the Scotland Act 1998, these services are currently delivered by the Animal & Plant Health Agency (APHA) on behalf of the Scottish Ministers. APHA, as an Executive Agency of the Department of Environment, Food and Rural Affairs (DEFRA), also has responsibility for delivering statutory functions in England and Wales. The instrument also revokes the 2013 Fees Regulations, subject to savings.

Relevant Legislation

- Bovine Embryos

The Bovine Embryo (Collection, Production and Transfer) Regulations 1995 implement a raft of EC requirements pertaining to the collection, production and transfer of embryos. Collectively, these measures guard against the risk of disease which could arise from the collection and transfer of embryos and help to facilitate trade. The specific, chargeable services provided by the APHA to industry are the licensing of bovine embryo (collection, production and transfer) teams and storage centres.

- Bovine Semen

The Bovine Semen (Scotland) Regulations 2007 implement the requirements of Directive 2003/43/EC (amending Directive 88/407/EEC) and contain provisions to control the collection, processing and storage of bovine semen. They establish two regimes: one by which semen may be collected and processed for trade with other EU Member States, and one by which bovine semen may be collected for use in the UK.

Controls on bovine semen are necessary to prevent the spread of certain animal diseases transmitted through semen which could impact on the economic wellbeing of the livestock sector. The APHA licences artificial insemination centres, approves and samples donor animals and controls the conditions under which semen is collected, identified and traced. A fee is charged for the delivery of these services.
• Porcine Semen

The Artificial Insemination of Pigs (EEC) Regulations 1992 implement the provisions of Council Directive 90/429/EEC in relation to exports to Member States and the approval of semen collection centres which engage in intra-community trade in porcine semen. Controls on the collection, processing and movement of semen for the domestic only market is governed by The Artificial Insemination of Pigs (Scotland) Regulations 1964. The APHA licences Artificial Insemination Centres, approves and samples donor animals and controls the conditions under which semen is collected, identified and traced.

• The Poultry Health Scheme (PHS)

The PHS provides for a system of registration and approvals, for which the APHA charge a fee, which allows establishments to export live birds and hatching eggs whilst minimising the risk of spreading certain disease that would impact on the economic wellbeing of the poultry industry. The scheme was established under Council Directive 2009/158/EC and partially transposed by the Trade in Animals and Related Products Regulations 2012.

• Salmonella National Control Programmes (NCPs)

The Salmonella National Control Programmes (NCPs) safeguard public health by seeking to reduce the incidence of salmonella at the farm level in breeding chickens, laying hens, broiler chickens and turkeys and more widely across the food chain. Under the NCPs the APHA undertakes statutory inspection, official sampling and sample examination activities, as well as private laboratory proficiency testing. A fee is charged for these services.

• Border Inspection Posts (BIPs)

The controls on live animals imported from third countries are based on EU provisions. The requirements for the inspection of live animal consignments at border inspection posts arriving from third countries are implemented by and set out in The Trade in Animals and Related Products (Scotland) Regulations 2012. The APHA has responsibility for undertaking these inspections.

Consultation

From October 2015 to December 2015 the APHA ran a GB-wide public consultation on its proposal to revise existing fees. The consultation was open to all to respond to. APHA contacted some 350 organisations directly by letter and/or e-mail to alert them to the consultation. Only 20 responses were received to the consultation.

In 2014, prior to the formal consultation, the APHA invited stakeholders to share their views on proposals to revise existing fees through Defra’s Dialogue App tool and via a dedicated mailbox, with a presentation on the proposals placed on the now archived AHVLA website. The feedback from this pre-consultation engagement helped to inform APHA’s formal consultation paper which can be found here: https://consult.defra.gov.uk/apha/apha-seeks-views-on-revised-fees-for-statutory-se/supporting_documents/Tranche%201%20Consultation%20Document.pdf

Impact Assessments
A Business & Regulatory Impact Assessment (BRIA) has been prepared to support the introduction of this instrument.

Financial Effects
The annex to this note provides a more detailed breakdown of the chargeable activities and shows the new vs old fees. However, in summary, the changes are as follows.

**Bovine Embryos:** GB-wide, an overall increase in costs to the bovine embryo industry of approximately £5,000 a year relative to the baseline (approx. £1,000 in Scotland based on a 17% market share).

**Bovine Semen:** GB-wide, an overall increase in costs to the bovine semen industry of approximately £74,000 a year relative to the baseline (approx. £24,000 in Scotland based on a 32% market share).

**Porcine Semen:** GB-wide, an overall increase in costs to the porcine semen industry of £65,000 a year relative to the baseline (approx. £15,000 in Scotland based on a 23% market share).

**Poultry Health Scheme:** GB-wide, an overall reduction in costs to the poultry industry of approx. £6,000 a year relative to the baseline (approx. £2000 in Scotland based on a 33% market share).

**Salmonella National Control Programmes:** GB-wide, an overall increase in costs to the poultry industry of approx. £14,500 a year relative to the baseline (approx. £1,000 in Scotland based on a 6% market share).

**Border Inspection Posts:** GB-wide, an overall increase in costs to the imports sector of approx. £70,000 a year relative to the baseline (approx. £8,000 in Scotland based on an 11% market share).

Post-implementation review
An annual review of the impact of the revised fees on the various sectors will be undertaken by APHA. Additionally, APHA will be routinely engaging with stakeholders in the course of delivering the aforementioned services and will assess the impact of its revised fee structure on an ongoing basis. Additionally, given the need to ensure that the fees set continue to meet the cost of providing the services, it is anticipated that any future formal consultation on revising fees will provide opportunity to gather further evidence on the impact of charging.

Animal Health & Welfare Division
Directorate for Agriculture & Rural Economy
Scottish Government
### Bovine Embryos – Fees Comparison

#### Fees payable in connection with activities for the purpose of The Bovine Embryo (Collection, Production and Transfer) Regulations 1995

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee £</th>
<th>Current Fee (50% FCR) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer when carrying out activities listed in this Table (in addition to each of the fees listed below)</td>
<td>16 per quarter hour or part quarter hour spent ↑</td>
<td>23 per half hour or part half hour spent</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises for the purposes of the activities listed in this Table (in addition to each of the fees listed below)</td>
<td>21 per quarter hour or part quarter hour spent ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Considering an application for approval of or re-approval of:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) - a bovine embryo transfer team;</td>
<td>28 ↓</td>
<td>A – D was 60</td>
</tr>
<tr>
<td>(b) - a store under regulation 13 of the 1995 Regulations;</td>
<td></td>
<td>E – was 168</td>
</tr>
<tr>
<td>(c) - a store under regulation 16 of the 1995 Regulations;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) - a store and its supervisor under regulations 16 and 19, of the 1995 Regulations; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) - a single bovine embryo collection or production team (with or without an inspection of a laboratory)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Considering an application for approval of each additional laboratory or store from the same applicant where the inspection is completed on the same day</td>
<td>9 ↓</td>
<td>86</td>
</tr>
<tr>
<td>Considering an application for re-approval of a laboratory or a store following any alterations</td>
<td>25 ↓</td>
<td>71</td>
</tr>
<tr>
<td>Carrying out routine inspection of records of a single bovine embryo production, collection or transfer team, and re-inspection of a single laboratory or store</td>
<td>17 ↓</td>
<td>70</td>
</tr>
<tr>
<td>Carrying out routine inspection of records of each additional bovine embryo production, collection or transfer team, and re-inspection of each additional laboratory or store</td>
<td>4 for each additional team and laboratory or store ↓</td>
<td>41</td>
</tr>
</tbody>
</table>
## Bovine Semen – Fees Comparison

**Fees payable by applicants and operators in connection with activities for the purposes of the 2007 Regulations**

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee £</th>
<th>Current Fee (50% FCR) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer carrying out the licensing or approval activities in this Table (in addition to each of the fees listed in column 2 below)</td>
<td>16 per quarter hour or part quarter hour spent</td>
<td>23 per half hour or part half hour spent</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premise for the purposes of the activities specified in column 1 of this Table (in addition to the other fees listed below)</td>
<td>21 per quarter hour, or part quarter hour spent, up to a maximum of 126</td>
<td>Travel time not previously charged for</td>
</tr>
<tr>
<td>Considering an application under regulation 7 of the 2007 Regulations for approval of a bovine animal for use in a domestic collection centre or at unlicensed premises, or an application under regulation 10 of the 2007 Regulations for approval of the use of a bovine animal for collection of its semen or for use as a teaser animal at unlicensed premises</td>
<td>20 ↓</td>
<td>38</td>
</tr>
<tr>
<td>Considering an application under regulation 7 of the 2007 Regulations for approval of a bovine animal for use in an EC collection centre</td>
<td>26 ↓</td>
<td>Variable fee depending on animal age – either 187 or 368</td>
</tr>
<tr>
<td>Considering an application made under regulation 4 of the 2007 Regulations for a licence to operate an EC quarantine centre</td>
<td>29 ↓</td>
<td>114</td>
</tr>
<tr>
<td>Considering an application made under regulation 4 of the 2007 Regulations for a licence to operate: (a) an EC collection centre, (b) domestic collection centre, (c) an EC storage centre, or (d) a domestic storage centre</td>
<td>27 ↓</td>
<td>Collection centre was 146. Storage centre was 63.</td>
</tr>
<tr>
<td>Conducting an examination of a bovine semen centre under regulation 40 of the 2007 Regulations</td>
<td>17 ↑</td>
<td>14</td>
</tr>
<tr>
<td>Conducting a routine examination of an approved bovine animal for domestic or EC use</td>
<td>23 ↑</td>
<td>Not previously charged for</td>
</tr>
</tbody>
</table>
## Porcine Semen – Fees Comparison

Fees payable in connection with activities for the purposes of the 1964 Regulations and the 1992 Regulations

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee £</th>
<th>Current Fee (50% FCR) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer carrying out the licensing or approval activities in this Table, in addition to each of the fees listed in column 2 below (in this Table the “time fee”) unless otherwise specified</td>
<td>16 per quarter hour or part quarter hour spent. ↑</td>
<td>23 per half hour or part half hour spent.</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises for the purpose of the activities specified below (in addition to the other fees listed in column 2 of this Table)</td>
<td>21 per quarter hour or part quarter hour spent, up to a maximum of 126. ↑</td>
<td>Travel time not previously charged for.</td>
</tr>
<tr>
<td><strong>Application for approval of boars to provide semen for the purposes of artificial insemination</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Considering an application for the approval of a boar under regulation 2(1) of the 1964 Regulations for the purpose of the collection of semen</td>
<td>31 per boar ↓</td>
<td>92</td>
</tr>
<tr>
<td><strong>Routine testing of boars</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Routine testing of a boar at an artificial insemination centre</td>
<td>23 per boar ↑↑</td>
<td>140 for up to a max of 10 boars, then 19 per additional boar.</td>
</tr>
<tr>
<td><strong>Operation of an artificial insemination centre</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Considering an application from an operator for an artificial insemination centre licence or approval</td>
<td>27 ↓</td>
<td>29</td>
</tr>
<tr>
<td>Considering an application for approval of an alteration to licensed premises or approved premises (in accordance with conditions attached to the licence)</td>
<td>25 ↓</td>
<td>29</td>
</tr>
<tr>
<td>Routine examination of an artificial insemination centre</td>
<td>17 ↑</td>
<td>9</td>
</tr>
</tbody>
</table>
### Poultry Health Scheme – Fees Comparison

**Fees for registration and approval of an establishment for the purposes of the poultry health scheme**

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee £</th>
<th>Current Fee (50% FCR) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer carrying out the licensing or approval activities in this Table (in this table the “time fee”), in addition to the fees listed in column 2 below unless otherwise specified.</td>
<td>16 per quarter hour or part quarter hour spent. ↑</td>
<td>23 per half hour or part half hour spent.</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from the premises of a poultry health scheme member (in this Table a “scheme member”) for the purposes of the activities specified in column 1.</td>
<td>21 per quarter hour or part quarter hour spent, up to a max of 126. ↑</td>
<td>Travel time not previously charged for.</td>
</tr>
<tr>
<td>Annual registration as a poultry health scheme member.</td>
<td>55 (time fee does not apply) ↓</td>
<td>61</td>
</tr>
<tr>
<td>Approval for first year of a scheme member’s flock or hatchery, or combined flock and hatchery on one site, where the inspection is carried out by a veterinary officer.</td>
<td>27 ↓</td>
<td>233</td>
</tr>
<tr>
<td>Annual re-approval of a scheme member’s flock or hatchery, or combined flock and hatchery on one site, where the inspection is carried out by a veterinary officer.</td>
<td>56 ↓</td>
<td>183</td>
</tr>
<tr>
<td>Additional site re-approval where a scheme member applies at the same time for multiple sites, and the inspection is carried out by a veterinary officer.</td>
<td>31 ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Annual re-approval of a scheme member’s flock or hatchery, or combined flock and hatchery on one site, where the inspection is carried out by a veterinary surgeon who is not a veterinary officer.</td>
<td>54 (time fee does not apply) ↓</td>
<td>74</td>
</tr>
<tr>
<td>Additional site re-approval where a scheme member applies at the same time for multiple sites, and the inspection is carried out by a veterinary surgeon who is not a veterinary officer.</td>
<td>29 (time fee does not apply) ↑</td>
<td>Not previously charged for</td>
</tr>
</tbody>
</table>
Salmonella National Control Programmes – Fees Comparison

**Fees payable by the person in charge of a chicken or turkey holding from which an official control sample is taken, processed and examined for the purposes of Regulation (EC) No 2160/2003**

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee £</th>
<th>Current Fee (100% FCR) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent obtaining an official control sample for examination in a laboratory (in this table the “time fee”) (in addition to the fees specified in column 2 below, unless otherwise specified.)</td>
<td>9 per quarter hour or part quarter hour spent.  ↓</td>
<td>23 per half hour or part half hour spent. ↑</td>
</tr>
<tr>
<td>Time spent travelling to and from premises for the purpose of obtaining an official control sample (in addition to any other fees specified in column 2.)</td>
<td>14 per quarter hour or part quarter hour spent, up to a maximum fee of £84. ↑</td>
<td>Travel time not previously charged for.</td>
</tr>
<tr>
<td>Taking an official control sample from a chicken laying flock.</td>
<td>32 ↓</td>
<td>60</td>
</tr>
<tr>
<td>Taking an official control sample from a chicken or turkey breeding flock.</td>
<td>52 ↓</td>
<td>87 (turkey) 96 (chicken)</td>
</tr>
<tr>
<td>Taking an official control sample from a chicken broiler flock or turkey fattening flock.</td>
<td>72 ↓</td>
<td>87 (turkey) 89 (chicken)</td>
</tr>
<tr>
<td>Examination of an official control sample in a laboratory.</td>
<td>14 per sample examined (time fee does not apply). ↓</td>
<td>15 per sample examined.</td>
</tr>
</tbody>
</table>

**Fees payable by the operator of a laboratory in relation to approval under Article 12 of Regulation (EC) No 2160/2003**

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee £</th>
<th>Current Fee (100% FCR) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processing an application for an initial laboratory approval or a biennial renewal of a laboratory approval</td>
<td>73 ↑</td>
<td>43</td>
</tr>
<tr>
<td>Conducting inspections and quality assurance based upon the number of tests for which the laboratory is approved</td>
<td>one test 350 ↓</td>
<td>642</td>
</tr>
<tr>
<td></td>
<td>two tests 361 ↓</td>
<td>661</td>
</tr>
<tr>
<td></td>
<td>three tests 372 ↓</td>
<td>681</td>
</tr>
<tr>
<td></td>
<td>four tests 384 ↓</td>
<td>700</td>
</tr>
<tr>
<td>Conducting collaborative testing required to obtain and maintain approvals as a testing laboratory</td>
<td>for <em>salmonella</em> 34 per test ↓</td>
<td>37 per test</td>
</tr>
</tbody>
</table>
### Fees payable by the person in charge of poultry flocks for conducting tests under point 4(b) of Part D of Annex II of Regulation (EC) No 2160/2003

<table>
<thead>
<tr>
<th>Activity</th>
<th>New Fee (£)</th>
<th>Current Fee (100% FCR (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conducting tests on seven dust and faecal samples taken from each flock</td>
<td>15 per sample tested</td>
<td>15</td>
</tr>
<tr>
<td>Conducting bacteriological sampling and testing of the caeca and oviducts of 300 birds in each flock</td>
<td>2,470 ↓</td>
<td>3560</td>
</tr>
<tr>
<td>Conducting bacteriological sampling and testing of the shell and the content of 4,000 eggs of each flock</td>
<td>3,080 ↑</td>
<td>2310</td>
</tr>
</tbody>
</table>
### Border Inspection Posts – Fees Comparison

Fees for inspecting consignments of live animals from third countries and checking importation documentation at border inspection posts in accordance with regulation 13 of the 2012 Regulations

<table>
<thead>
<tr>
<th>Inspection of type of animal and checking documents</th>
<th>New Fee per consignment £</th>
<th>Old fee £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poultry and small game birds</td>
<td>65 ↑</td>
<td>44</td>
</tr>
<tr>
<td>Poultry eggs</td>
<td>38 ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Ratites</td>
<td>65 ↑</td>
<td>44</td>
</tr>
<tr>
<td>Captive birds</td>
<td>64 ↑</td>
<td>44</td>
</tr>
<tr>
<td>Live fish, aquatic animals and bees</td>
<td>32 ↓</td>
<td>40</td>
</tr>
<tr>
<td>Rabbits and rodents</td>
<td>29 ↓</td>
<td>44</td>
</tr>
<tr>
<td>Other insects, invertebrates, reptiles and amphibians</td>
<td>26 ↓</td>
<td>40</td>
</tr>
<tr>
<td>Pets unaccompanied by a declaration</td>
<td>57 ↑</td>
<td>44</td>
</tr>
<tr>
<td>Equidae</td>
<td>62 ↑</td>
<td>54</td>
</tr>
<tr>
<td>Farmed livestock including cattle, sheep, goats, camelids, pigs and wild boar</td>
<td>146 ↑</td>
<td>54</td>
</tr>
<tr>
<td>Animals not covered by any other category mentioned above</td>
<td>55 ↑</td>
<td>44</td>
</tr>
<tr>
<td>Transhipment check of documents</td>
<td>52 ↑</td>
<td>44</td>
</tr>
</tbody>
</table>

### Fees for extra inspection checks due to non-compliances or additional control measures

<table>
<thead>
<tr>
<th>Person undertaking extra inspection checks</th>
<th>Fee per quarter hour or per part hour spent £</th>
<th>Old Fee £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterinary Officer – out of hours checks</td>
<td>17 ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Veterinary officer - checks during a weekend or a public holiday</td>
<td>23 ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Veterinary officer – checks at all other times</td>
<td>11 ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises</td>
<td>16, up to a maximum of 64 per visit ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Period when inspection conducted</td>
<td>New Fee £</td>
<td>Old Fee £</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-----------</td>
<td>-----------</td>
</tr>
<tr>
<td>Out of hours inspection</td>
<td>140 per load ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Inspection during a weekend or a public holiday</td>
<td>185 per load ↑</td>
<td>Not previously charged for</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises</td>
<td>16 per quarter or part quarter hour spent, up to a maximum of 64 per visit ↑</td>
<td>Not previously charged for</td>
</tr>
</tbody>
</table>
The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1A of schedule 2 of the European Communities Act 1972(a), section 56(1) and (2) of the Finance Act 1973(b) and section 10(3)(c) of the Animal Health and Welfare Act 1984(c) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references in these Regulations to Regulation (EC) No 2160/2003(d) and Council Directive 2009/158/EC(e) (as those instruments are defined in regulation 2), to be construed as references to those instruments as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Animal Health (Miscellaneous Fees) (Scotland) Regulations 2018 and come into force on 30th June 2018.

(2) These Regulations extend to Scotland only.

(a) 1972 c.68. Paragraph 1A of schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and amended by Part 1 of the schedule of the European Union (Amendment) Act 2008, (c.7).

(b) 1973 c.51. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of article 2(2) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820) and the functions of the Minister were, so far as exercisable within devolved competence, transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain the consent of the Treasury was removed by section 55 of that Act. Section 56(1) of the Finance Act 1973 was amended by S.I. 2011/1043.

(c) 1984 c.40. The power in section 10(3)(c) is exercised in relation to regulation 6 and schedule 3, regulation 7 and schedule 4 and regulation 8 and schedule 5 of this instrument. See section 10(8) for the definition of “appropriate Minister”. The functions, so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain the consent of the Treasury was removed by section 55 of that Act.


Interpretation

2. In these Regulations—

“the 1964 Regulations” means the Artificial Insemination of Pigs (Scotland) Regulations 1964(a);
“the 1992 Regulations” means the Artificial Insemination of Pigs (EEC) Regulations 1992(b);
“the 1995 Regulations” means the Bovine Embryo (Collection, Production and Transfer) Regulations 1995(c);
“the 2007 Regulations” means the Bovine Semen (Scotland) Regulations 2007(d);
“the 2012 Regulations” means the Trade in Animals and Related Products (Scotland) Regulations 2012(e);

“artificial insemination centre” means premises—
(a) in respect of which a licence is in force under regulation 4(1) of the 1964 Regulations; or
(b) which are approved under regulation 2(2) or (3) of the 1992 Regulations;

“border inspection post” means a port or airport approved as such by the European Commission(f);

“consignment” means a quantity of animals of the same species, covered by the same veterinary certificate or document;

“Council Directive 2009/158/EC” means Council Directive 2009/158 EC on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs, as amended from time to time(g);

“load” means one or more consignments of animals of the same country of origin that have arrived on the same means of transport and which are presented by a person responsible for their importation for checking at the border inspection post at the same time;

“out of office hours” means before 0830 hours or after 1700 hours on a weekday;

“poultry health scheme” means the scheme for the approval of establishments and laboratories and the annual inspection of approved establishments under Articles 2 and 6 of, and Annex II to, Council Directive 2009/158/EC(h);

“public holiday” means New Year’s Day, 2nd January, Good Friday, the first Monday in May, the first Monday in August, Christmas Day and Boxing Day;


“third country” means a country other than a member State;

“veterinary officer” means a veterinary surgeon employed as such by the Scottish Ministers or the Secretary of State(j); and

(a) S.I. 1964/1171 as disapplied by S.I. 1992/3161.
(b) S.I. 1992/3161.
(c) S.I. 1995/2478 to which there is an amendment not relevant to these Regulations.
(d) S.S.I. 2007/330 to which there is an amendment not relevant to these Regulations.
(h) See paragraph 3 of Part 1 of schedule 2 of the 2012 Regulations.
(j) By virtue of an agreement under section 93 of the Scotland Act 1998 (c.46), the Secretary of State may exercise specific functions of the Scottish Ministers as listed in the schedule of the Scotland Act 1998 (Agency Agreements) (Specification) Order 2013 (S.I. 2013/3157).
“veterinary surgeon” means a person registered in the register of veterinary surgeons, or the supplementary veterinary register, kept under the Veterinary Surgeons Act 1966(a).

Refund of fees

3. If any application for which a fee is payable under these Regulations is withdrawn before its determination, the Scottish Ministers must refund to the applicant such proportion of any fee paid in respect of that application as Scottish Ministers think fit, having regard to any reasonable costs incurred by them in connection with the application.

Salmonella National Control Programmes (zoonoses): fees

4.—(1) This regulation and schedule 1 set out the fees payable to the Scottish Ministers on demand for activities conducted by the Scottish Ministers in relation to the control of salmonella in accordance with the relevant National Control Programme(b) established by or under Regulation (EC) No 2160/2003.

(2) In schedule 1—

(a) the fees payable by the person in charge of a chicken or turkey holding for the activities specified in column 1 of Table 1 are specified in the corresponding entries in column 2 of that Table;

(b) the fees payable by the operator of a laboratory for the activities specified in column 1 of Table 2 are specified in the corresponding entries in column 2 of that Table; and

(c) the fees payable by the person in charge of poultry flocks for the activities specified in column 1 of Table 3 are specified in the corresponding entries in column 2 of that Table.

(3) Words and expressions used in schedule 1 have the same meanings as they have in Regulation (EC) No 2160/2003.

Poultry health scheme: fees

5.—(1) This regulation and schedule 2 set out the fees payable to the Scottish Ministers on demand for activities conducted by the Scottish Ministers in relation to the poultry health scheme.

(2) In schedule 2—

(a) the fees payable by an applicant for approval and registration activities specified in column 1 of Table 1 are specified in the corresponding entries in column 2 of that Table; and

(b) the fees payable by the operator of a laboratory for activities specified in column 1 of Table 2 are specified in the corresponding entries in column 2 of that Table.

Bovine semen: fees

6.—(1) This regulation and schedule 3 set out the fees payable to the Scottish Ministers on demand by applicants and operators for activities conducted by the Scottish Ministers for the purposes of the 2007 Regulations.

(2) In schedule 3, the fees payable by applicants and operators for the activities specified in column 1 of that Table are specified in the corresponding entries in column 2 of that Table.

(3) Words and expressions used in schedule 3 have the same meanings as they have in the 2007 Regulations.

(a) 1966 c.36.
(b) There are salmonella National Control Programmes for egg layers, breeders, broiler chickens and turkeys that are designed to reduce the prevalence of different types of salmonella that are of public health significance in line with EU targets.
Porcine semen: fees

7.—(1) This regulation and schedule 4 set out the fees payable to the Scottish Ministers on demand in connection with the issue of licences or approvals and tests or examinations carried out by the Scottish Ministers under—

(a) the 1964 Regulations; or
(b) the 1992 Regulations.

(2) In schedule 4, the fees payable by the applicant for, or the holder of, the licence or approval for the activities specified in column 1 of the Table are specified in the corresponding entries in column 2 of that Table.

Bovine embryo (collection, production and transfer): fees

8.—(1) This regulation and schedule 5 set out the fees payable to the Scottish Ministers on demand for activities conducted by the Scottish Ministers in relation to an application for an approval or in relation to the holder of an approval for the purposes of the 1995 Regulations.

(2) In schedule 5, the fees payable by an applicant for, or the holder of, an approval under the 1995 Regulations for activities specified in column 1 of the Table are specified in the corresponding entries in column 2 of that Table.

(3) Words and expressions used in schedule 5 have the same meanings as they have in the 1995 Regulations.

Checking consignments of live animals from third countries at border inspection posts: fees

9.—(1) This regulation and schedule 6 set out the fees payable to the Scottish Ministers on demand where an inspection of a consignment of live animals from a third country is carried out at a border inspection post in accordance with regulation 13 (procedure on importation) of the 2012 Regulations.

(2) The fees payable in respect of the inspection of a consignment of live animals from third countries and checking importation documentation at a border inspection post specified in column 1 of Table 1 in schedule 6 are specified in the corresponding entry in column 2 of this Table.

(3) In addition to the fees payable in respect of an inspection by virtue of paragraph (2), the fees payable for carrying out an inspection during a period specified in column 1 of Table 2 in schedule 6 are specified in the corresponding entry in column 2 of that Table.

(4) In addition to the fees payable in respect of an inspection by virtue of paragraph (2), the fees payable in respect of an extra inspection check due to non-compliance or additional control measures carried out by a person specified in column 1 of Table 3 in schedule 6 are specified in the corresponding entry in column 2 of that Table.

Revocation and saving

10. The Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013(a) are revoked except regulations 1 and 5 (amendment of the Control of Salmonella in Poultry (Breeding, Laying and Broiler Flocks) (Scotland) Order 2009(b)).

FERGUS EWING
A member of the Scottish Government

St Andrew’s House,
Edinburgh
24th May 2018

(a) S.S.I. 2013/151.
(b) S.S.I. 2009/229, as last amended by S.S.I. 2013/151.
# SCHEDULE 1

## Regulation 4

### Salmonella National Control Programmes (zoonoses): fees

#### Table 1

<table>
<thead>
<tr>
<th>Activity</th>
<th>Column 2 Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent obtaining an official control sample for examination in a laboratory (in this Table the “time fee”) in addition to the fees specified in column 2 below unless otherwise specified</td>
<td>9 per quarter hour or part quarter hour spent</td>
</tr>
<tr>
<td>Time spent travelling to and from premises for the purpose of obtaining an official control sample (in addition to any other fees specified in column 2)</td>
<td>14 per quarter hour or part quarter hour spent, up to a maximum fee of 84</td>
</tr>
<tr>
<td>Taking an official control sample from a chicken laying flock</td>
<td>32</td>
</tr>
<tr>
<td>Taking an official control sample from a chicken or turkey breeding flock</td>
<td>52</td>
</tr>
<tr>
<td>Taking an official control sample from a chicken broiler flock or turkey fattening flock</td>
<td>72</td>
</tr>
<tr>
<td>Examination of an official control sample in a laboratory</td>
<td>14 per sample examined (time fee does not apply)</td>
</tr>
</tbody>
</table>

#### Table 2

<table>
<thead>
<tr>
<th>Activity</th>
<th>Column 2 Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processing an application for an initial laboratory approval or a biennial renewal of a laboratory approval</td>
<td>73</td>
</tr>
<tr>
<td>Conducting inspections and quality assurance based upon the number of tests for which the laboratory is approved</td>
<td>one test 350 two tests 361 three tests 372 four tests 384</td>
</tr>
<tr>
<td>Conducting collaborative testing required to obtain and maintain approvals as a testing laboratory for salmonella</td>
<td>34 per test</td>
</tr>
<tr>
<td>Activity</td>
<td>Fee (£)</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Conducting tests on seven dust and faecal samples taken from each flock</td>
<td>99</td>
</tr>
<tr>
<td>Conducting bacteriological sampling and testing of the caeca and oviducts of 300 birds in each flock</td>
<td>2,470</td>
</tr>
<tr>
<td>Conducting bacteriological sampling and testing of the shell and the content of 4,000 eggs of each flock</td>
<td>3,080</td>
</tr>
</tbody>
</table>
## SCHEDULE 2

### Regulation 5

**Poultry health scheme: fees**

### Table 1

| Fees for registration and approval of an establishment for the purposes of the poultry health scheme |
| --- | --- |
| **Column 1** Activity | **Column 2** Fee (£) |
| Time spent by a veterinary officer carrying out the registration or approval activities specified in this column of this Table below (in this Table the “time fee”), in addition to the fees specified in column 2 below unless otherwise specified | 16 per quarter hour or part quarter hour spent |
| Time spent by a veterinary officer travelling to and from the premises of a poultry health scheme member (in this Table a “scheme member”) for the purposes of carrying out the activities specified in this column below (in addition to any other fees specified in column 2) | 21 per quarter hour or part quarter hour spent, up to a maximum of 126 |
| Annual registration as a poultry health scheme member | 55 (time fee does not apply) |
| Approval for the first year of a scheme member’s flock or hatchery, or combined flock and hatchery on one site, where the inspection is carried out by a veterinary officer | 27 |
| Annual re-approval of a scheme member’s flock or hatchery, or combined flock and hatchery on one site, where the inspection is carried out by a veterinary officer | 56 |
| Additional site re-approval of a scheme member’s flock or hatchery, or combined flock or hatchery who applies at the same time for multiple sites, and the inspection is carried out by a veterinary officer | 31 |
| Annual re-approval of a scheme member’s flock or hatchery, or combined flock and hatchery on one site, where the inspection is carried out by a veterinary surgeon who is not a veterinary officer | 54 (time fee does not apply) |
| Additional site re-approval of a scheme member’s flock or hatchery, or combined flock or hatchery who applies at the same time for multiple sites, and the inspection is carried out by a veterinary surgeon who is not a veterinary officer | 29 (time fee does not apply) |

### Table 2

<p>| Fees payable by the operator of a laboratory in relation to an approval for the purposes of the poultry health scheme |
| --- | --- |
| <strong>Column 1</strong> Activity | <strong>Column 2</strong> Fee (£) |
| Processing an application for an initial laboratory approval or an annual renewal of a laboratory approval | 73 |
| Proficiency test in respect of <em>Salmonella</em> bacteriology (<em>pullorum, gallinarum</em> and <em>arizonae</em>) | 131 per test |
| Proficiency test in respect of <em>Salmonella</em> serology (<em>pullorum</em> and <em>gallinarum</em>) | 321 per test |
| Proficiency test in respect of <em>Mycoplasma</em> chicken serology (<em>gallisepticum</em>) | 321 per test |</p>
<table>
<thead>
<tr>
<th>Proficiency test in respect of <em>Mycoplasma</em> culture (<em>gallisepticum</em> and <em>meleagris</em>)</th>
<th>281 per test</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proficiency test in respect of <em>Mycoplasma</em> turkey serology (<em>gallisepticum</em> and <em>meleagris</em>)</td>
<td>336 per test</td>
</tr>
</tbody>
</table>
SCHEDULE 3
Bovine Semen: fees

<table>
<thead>
<tr>
<th>Column 1 Activity</th>
<th>Column 2 Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer carrying out the licensing or approval activities specified in this column of this Table (in addition to the fees specified in column 2 below)</td>
<td>16 per quarter hour or part quarter hour spent</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises for the purposes of carrying out the licensing approval activities specified in this column of this Table below (in addition to any other fees specified in column 2 below)</td>
<td>21 per quarter hour, or part quarter hour spent, up to a maximum of 126</td>
</tr>
<tr>
<td>Considering an application under regulation 7 of the 2007 Regulations for approval of a bovine animal for use in a domestic collection centre or at unlicensed premises, or an application under regulation 10 of the 2007 Regulations for approval of the use of a bovine animal for collection of its semen or for use as a teaser animal at unlicensed premises</td>
<td>20</td>
</tr>
<tr>
<td>Considering an application under regulation 7 of the 2007 Regulations for approval of a bovine animal for use in an EC collection centre</td>
<td>26</td>
</tr>
<tr>
<td>Considering an application under regulation 4 of the 2007 Regulations for a licence to operate an EC quarantine centre</td>
<td>29</td>
</tr>
<tr>
<td>Considering an application under regulation 4 of the 2007 Regulations for a licence to operate:</td>
<td>27</td>
</tr>
<tr>
<td>(a) an EC collection centre;</td>
<td></td>
</tr>
<tr>
<td>(b) domestic collection centre;</td>
<td></td>
</tr>
<tr>
<td>(c) an EC storage centre; or</td>
<td></td>
</tr>
<tr>
<td>(d) a domestic storage centre</td>
<td></td>
</tr>
<tr>
<td>Conducting an examination of a bovine semen centre under regulation 40 of the 2007 Regulations</td>
<td>17</td>
</tr>
<tr>
<td>Conducting a routine examination of an approved bovine animal for domestic or EC use</td>
<td>23</td>
</tr>
</tbody>
</table>
# SCHEDULE 4

Porcine semen: fees

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer carrying out the licensing or approval activities specified in this column of this Table below, in addition to the fees specified in column 2 below (in this Table the “time fee”) unless otherwise specified</td>
<td>16 per quarter hour or part quarter hour spent</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises for the purpose of carrying out the licensing or approval activities specified in this column of this Table below (in addition to any other fees specified in column 2 of this Table)</td>
<td>21 per quarter hour or part quarter hour spent, up to a maximum of 126</td>
</tr>
<tr>
<td>Application for approval of boars to provide semen for the purposes of artificial insemination</td>
<td></td>
</tr>
<tr>
<td>Considering an application for the approval of a boar under regulation 2(1) of the 1964 Regulations for the purpose of the collection of semen</td>
<td>31 per boar</td>
</tr>
<tr>
<td>Routine testing of boars</td>
<td></td>
</tr>
<tr>
<td>Routine testing of a boar at an artificial insemination centre</td>
<td>23 per boar</td>
</tr>
<tr>
<td>Operation of an artificial insemination centre</td>
<td></td>
</tr>
<tr>
<td>Considering an application from an operator for an artificial insemination centre licence or approval</td>
<td>27</td>
</tr>
<tr>
<td>Considering an application for approval of an alteration to licensed premises or approved premises (in accordance with conditions attached to the licence)</td>
<td>25</td>
</tr>
<tr>
<td>Routine examination of an artificial insemination centre</td>
<td>17</td>
</tr>
</tbody>
</table>
Bovine embryo (collection, production and transfer): fees

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time spent by a veterinary officer when carrying out activities</td>
<td>16 per quarter hour or part</td>
</tr>
<tr>
<td>specified in this column of this Table below (in addition to each</td>
<td>quarter hour spent</td>
</tr>
<tr>
<td>of the fees specified in column 2 below)</td>
<td></td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from</td>
<td>21 per quarter hour or part</td>
</tr>
<tr>
<td>premises for the purposes of the activities listed in this Table (in</td>
<td>quarter hour spent</td>
</tr>
<tr>
<td>addition to any other fees listed in column 2 below)</td>
<td></td>
</tr>
<tr>
<td>Considering an application for approval of or re-approval of:</td>
<td>28</td>
</tr>
<tr>
<td>(a) a bovine embryo transfer team;</td>
<td></td>
</tr>
<tr>
<td>(b) a store under regulation 13 of the 1995 Regulations;</td>
<td></td>
</tr>
<tr>
<td>(c) a store under regulation 16 of the 1995 Regulations;</td>
<td></td>
</tr>
<tr>
<td>(d) a store and its supervisor under regulations 16 and 19</td>
<td></td>
</tr>
<tr>
<td>of the 1995 Regulations; or</td>
<td></td>
</tr>
<tr>
<td>(e) a single bovine embryo collection or production team</td>
<td></td>
</tr>
<tr>
<td>(with or without an inspection of a laboratory)</td>
<td></td>
</tr>
<tr>
<td>Considering an application for approval of each additional laboratory</td>
<td>9</td>
</tr>
<tr>
<td>or store from the same applicant where the inspection is completed on</td>
<td></td>
</tr>
<tr>
<td>the same day</td>
<td></td>
</tr>
<tr>
<td>Considering an application for re-approval of a laboratory or a store</td>
<td>25</td>
</tr>
<tr>
<td>following any alterations</td>
<td></td>
</tr>
<tr>
<td>Carrying out a routine inspection of records of a single bovine</td>
<td>17</td>
</tr>
<tr>
<td>embryo production, collection or transfer team, and re-</td>
<td></td>
</tr>
<tr>
<td>inspection of a single laboratory or store</td>
<td></td>
</tr>
<tr>
<td>Carrying out a routine inspection of records of each additional</td>
<td>4 for each additional team and</td>
</tr>
<tr>
<td>bovine embryo production, collection or transfer team, and re-</td>
<td>laboratory or store</td>
</tr>
<tr>
<td>inspection of each additional laboratory or store</td>
<td></td>
</tr>
</tbody>
</table>
### Table 1

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Fee (£) per consignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspection of type of animal and checking documents</td>
<td></td>
</tr>
<tr>
<td>Poultry and small game birds</td>
<td>65</td>
</tr>
<tr>
<td>Poultry eggs</td>
<td>38</td>
</tr>
<tr>
<td>Ratites</td>
<td>65</td>
</tr>
<tr>
<td>Captive birds</td>
<td>64</td>
</tr>
<tr>
<td>Live fish, aquatic animals and bees</td>
<td>32</td>
</tr>
<tr>
<td>Rabbits and rodents</td>
<td>29</td>
</tr>
<tr>
<td>Other insects, invertebrates, reptiles and amphibians</td>
<td>26</td>
</tr>
<tr>
<td>Pets unaccompanied by a declaration</td>
<td>57</td>
</tr>
<tr>
<td>Equidae</td>
<td>62</td>
</tr>
<tr>
<td>Farmed livestock including cattle, sheep, goats, camelids, pigs and wild boar</td>
<td>146</td>
</tr>
<tr>
<td>Animals not covered by any other category mentioned above</td>
<td>55</td>
</tr>
<tr>
<td>Transhipment check of documents</td>
<td>52</td>
</tr>
</tbody>
</table>

### Table 2

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period when inspection and check conducted</td>
<td>Fee (£)</td>
</tr>
<tr>
<td>Out of hours inspection or check</td>
<td>140 per load</td>
</tr>
<tr>
<td>Inspection or check during a weekend or a public holiday</td>
<td>185 per load</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises</td>
<td>16 per quarter hour or part quarter hour spent, up to a maximum of 64</td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
</tr>
<tr>
<td>--------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>Person undertaking extra inspection checks</strong></td>
<td><strong>Fee (£) per quarter hour or per part quarter hour spent</strong></td>
</tr>
<tr>
<td>Veterinary Officer – out of hours checks</td>
<td>17</td>
</tr>
<tr>
<td>Veterinary officer – checks during a weekend or a public holiday</td>
<td>23</td>
</tr>
<tr>
<td>Veterinary officer – checks at all other times</td>
<td>11</td>
</tr>
<tr>
<td>Time spent by a veterinary officer travelling to and from premises</td>
<td>16, up to a maximum of 64</td>
</tr>
</tbody>
</table>
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations partially revoke and replace the Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013. They make provision for the fees payable to the Scottish Ministers in the field of animal health.

Regulation 3 sets out the circumstances in which the Scottish Ministers must refund the fees paid to the applicant on determination of their refund in relation to the application.

Regulation 4 and schedule 1 set out the fees payable in relation to activities under Regulation (EC) No 2160/2003 concerning Salmonella National Control Programmes.

Regulation 5 and schedule 2 set out the fees payable in relation to approvals for the purpose of the poultry health scheme established under Council Directive 2009/158/EEC, which is partially transposed by paragraph 3 of Part 1 of schedule 2 of the Trade in Animals and Related Products (Scotland) Regulations 2012.

Regulation 6 and schedule 3 set out the fees payable in relation to activities required under Regulation (EC) No 2160/2003 and in accordance with the Bovine Semen (Scotland) Regulations 2007.

Regulation 7 and schedule 4 set out the fees payable in relation to licences and approvals for the purpose of obtaining porcine semen in accordance with the Artificial Insemination of Pigs (Scotland) Regulations 1964 or the Artificial Inseminations of Pigs (EEC) Regulations 1992.

Regulation 8 and schedule 5 set out the fees payable in relation to approvals for the purposes of the collection, production and transfer of bovine embryos in accordance with the Bovine Embryo (Collection, Production and Transfer) Regulations 1995.

Regulation 9 and schedule 6 set out the fees payable in relation to inspections of consignments of live animals at border inspection posts in accordance with the Trade in Animals and Related Products (Scotland) Regulations 2012.

Regulation 10 revokes the Animal Health (Miscellaneous Fees and Amendments) (Scotland) Regulations 2013 (other than regulations 1 and 5).

A business and regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Directorate for Agriculture, Food and Rural Communities, Animal Health and Welfare Division, Saughton House, Broomhouse Drive, Edinburgh EH11 3XG.
Annex D – SSI 2018/182: Beef and Pig Carcase Classification (Scotland) Amendment Regulations 2018

Type of Instrument: Negative

Laid Date: 1 June 2018

Coming into force: 11 July 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Consideration by the Delegated Powers and Law Reform Committee

2. At its meeting on 12 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instruments on any grounds within its remit.

Policy Objectives

3. The main policy objective is to ensure compliance with the EU regime for beef and pig carcase classification and price reporting which assists in the marketing of beef and pigs. The existing EU regulations have recently been replaced so this SSI responds to that change. The SSI also makes some changes to the processes for beef and pig carcase handling which are detailed in the Policy Note.

Consultation

4. The Scottish Government held informal discussions with those plants that carry out carcase classification and those affected by the new mandatory requirement to price report for pigs. Particular issues which were brought to their attention are the change in throughput effects as to whether they have to classify on a mandatory basis, and the requirement to price report for pigs on a mandatory basis. There were no concerns from the plants who are involved.

5. The policy note and instrument are attached and also available online at the below link:

Recommendation

6. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

Rural Economy and Connectivity Committee Clerks
June 2018
POLICY NOTE

The Beef and Pig Carcase Classification (Scotland) Amendment Regulations 2018

SSI 2018/182

The above instrument was made in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

The main policy objective is to ensure compliance with the EU regime for beef and pig carcase classification and price reporting which assists in the marketing of beef and pigs.

The classification and price reporting of beef and pig carcases is done on a UK wide basis and is determined by an underlying EU regime. The EU regime for carcase classification and price reporting is currently laid down in Commission Regulation (EC) No 1249/2008 (the “Old EU Regulation”). The Old EU Regulation was implemented by the Beef and Pig Carcase Classification (Scotland) Regulations 2010. However on 11 July 2018 the Old EU Regulation will be repealed and replaced by two new EU instruments, the Commission Delegated Regulation (EU) 2017/1182 (the “Commission Delegated Regulation”) and the Commission Implementing Regulation (EU) No. 2017/1184 (the “Commission Implementing Regulation”). Following the change from the EU to their legislation it falls on the Scottish Government to implement the new EU law by making the necessary changes to our domestic regulations to ensure compliance with the new EU regime.

Given this background, this instrument implements specific changes to the Beef and Pig Carcase Classification (Scotland) Regulations 2010 arising from technical changes made by the EU in the Commission Delegated Regulation and the Commission Implementing Regulation.

Although there are a number of changes, made by this instrument, to reference new Articles of the Commission Delegated Regulation and the Commission Implementing Regulation, many of these references are in substance similar to the Old EU Regulation, even though the precise wording may have changed. There is a helpful correlation table in the Commission Delegated Regulation, which shows comparative provisions in the old and new EU regimes.

However there are some changes of substance made by this instrument which are highlighted below.

There is a new definition of adult bovine animal (regulation 3)

There are changes to the thought put of both beef and pigs as to when the abattoir has an exemption from classification and price reporting,

- beef is from not more than 75 to less than 150 (regulation 4) and
 pigs is from not more than 200 to less than 500 (regulation 9)

Pig price reporting is now mandatory, whereas before it was carried out by industry on a voluntary basis (regulation 2 and schedule 2).

There are technical changes to the permitted marking of carcases (regulation 6 and 11).

There is a new offence of incorrect classification of pig carcases (regulation 15, inserting new regulation 22A)

Consultation

Although there has been no formal consultation on the instrument we have had informal discussions with those plants who carry out carcase classification and those affected by the new mandatory requirement to price report for pigs. These discussions have informed them of the changes resulting from the new EU regime. Particular issues which were brought to their attention are the change in throughput effects on whether they have to classify on a mandatory basis and the requirement to price report for pigs on a mandatory basis. There was no concerns from the plants who are involved.

Impact Assessments

There are no equality/children's/privacy, etc. impact issues. A full BRIA was carried out for the Beef and Pig Carcase Classification (Scotland) Regulations 2010, but it is considered that a BRIA is unnecessary for this instrument (see below).

Financial Effects

After consideration, discussion with stakeholders and discussion within the Scottish Government, it has been concluded that a BRIA is not necessary as the instrument has no financial effects on the Scottish Government, local government or on business. This is due to the fact that the majority of the changes do not have any effect on the current practical operation of the plants in carrying out carcase classification. There is no real change required to current practices for carcase classification for pigs and beef, or for price reporting for beef.

Plants who will fall within the threshold for the throughput of pigs will newly have to price report on a mandatory basis. Some of industry are already doing this on a voluntary basis. In so far as the price reporting requirements are new, price reporting merely involves electronically sending prices to the Agriculture and Horticulture Development Board (AHDB). These prices are already held by industry and, after discussion with stakeholders, it is considered that there is no additional cost or burden for them to send this information on to AHDB, as this will be done on existing computer technologies.

Scottish Government
Directorate for International Trade and Investment
31 May 2018
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972(a) and all other powers enabling them to do so.

The Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for references to the following Regulations:—


(b) Commission Delegated Regulation (EU) 2017/1182 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals(c); and

(c) Commission Implementing Regulation (EU) 2017/1184 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals(d),

to be construed as references to those Regulations as amended from time to time.

---

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(4). Section 2(2) was also amended by the 2006 Act, section 27(1)(a) and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Part 1 of the schedule. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of schedule 2 was inserted by section 28 of the 2006 Act and was amended by Part 1 of the schedule of the 2008 Act.

(c) OJ L 171, 4.7.2017, p.74.
Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Beef and Pig Carcase Classification (Scotland) Amendment Regulations 2018 and come into force on 11th July 2018.

(2) In these Regulations the “2010 Regulations” means the Beef and Pig Carcase Classification (Scotland) Regulations 2010(a).

Amendment of the 2010 Regulations

2. The 2010 Regulations are amended in accordance with regulations 3 to 22.

Amendment of regulation 2

3. In regulation 2 (interpretation)—
   (a) in paragraph (1)—
      (i) in the definition of “adult bovine animal”, for “the live weight of which is more than 300 kilograms” substitute “aged eight months or more”;
      (ii) after the definition of “clean pig” insert—
      “‘Commission Delegated Regulation’ means Commission Delegated Regulation (EU) 2017/1182 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig, and sheep carcases and as regards the reporting of market prices of certain categories of carcases and live animals, as amended from time to time(b);”;
      (iii) for the definition “Commission Regulation” substitute—
      “‘Commission Implementing Regulation’ means Commission Implementing Regulation (EU) 2017/1184 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcases and as regards the reporting of market prices of certain categories of carcases and live animals, as amended from time to time(c);”;
      (iv) for the definition of “Council Regulation” substitute—
      (v) after the definition of “pig carcase” omit “and”;
      (vi) in the definition of “prescribed communication”, for “Article 7(1) of the Commission Regulation.” substitute “Article 1(1) of the Commission Implementing Regulation (communication of classification results); and”; and
      (vii) after the definition of “prescribed communication” insert—
      “‘qualified personnel’ means persons who are using a grading technique provided for in Article 11 of the Commission Delegated Regulation and who are proficient in the use of that grading technique.”;

   (b) in paragraph (2) for “Commission Regulation” substitute “Commission Delegated Regulation, the Commission Implementing Regulation”.

---

(a) S.S.I. 2010/330, as amended by S.I. 2013/3235.
(c) OJ L 171, 4.7.2017, p.103.
Amendment of regulation 5

4. In regulation 5 (application of the 2010 Regulations to small-small scale bovine operators), in paragraph (4), for “not more than 75” substitute “less than 150”.

Amendment of regulation 6

5. In regulation 6 (competent authority etc.: bovine carcases)—
   (a) in paragraph (1)—
      (i) after “competent authority” insert “, in relation to adult bovine animals,”;
      (ii) before sub-paragraph (a) insert—
         “(za) Article 4(1) of the Commission Implementing Regulation (reports);”;
      (iii) for sub-paragraph (a) substitute—
         “(a) Article 10 of the Commission Delegated Regulation (authorisation of automated grading methods for beef carcases);”;
      (iv) for sub-paragraph (b) substitute—
         “(b) Article 12(2)(b) of the Commission Delegated Regulation (additional provisions on classification by automated grading techniques);”;
      (v) for sub-paragraph (c) substitute—
         “(c) Articles 13 and 14 of the Commission Implementing Regulation and Article 14 of the Commission Delegated Regulation (calculation and reporting of market prices); and”;
      (vi) after sub-paragraph (c) insert—
         “(d) Article 17(2) of the Commission Delegated Regulation (notification of supplementary payments).”; and
   (b) in paragraph (2), for “as described in Article 11 of the Commission Regulation” substitute “, in relation to adult bovine animals, as described in Articles 2 and 3 of the Commission Implementing Regulation”.

Amendment of regulation 7

6. For regulation 7 (labelling instead of marking) substitute—

   “Marking

   7. Bovine carcases need not be marked in accordance with Article 8(1), (2)(a), (3)(a), (4) and (5) of the Commission Delegated Regulation if all such carcases are cut, as a continuous operation, in a cutting plant approved in accordance with Regulation (EC) No 853/2004 of the European Parliament and of the Council(a), and attached to the slaughterhouse where the classification is carried out.”.

Amendment of regulation 8

7. In regulation 8 (licence to carry out classification), in paragraph (3)(b), for “Article 12(2) of the Commission Regulation (incorrect classifications or identifications)” substitute “Article 4(2) of the Commission Implementing Regulation (revoking of licences and approvals)”.

Amendment of regulation 9

8. In regulation 9 (licence for automated grading)—
   (a) in paragraph (1) for “equipment” substitute “methods”;
   (b) in paragraph (3)(b) for “Article 12(2) of the Commission Regulation (incorrect classifications or identifications)” substitute “Article 4(2) of the Commission Implementing Regulation (revoking of licences and approvals)”;
   (c) in paragraph (3)(d)—
      (i) for “automated grading equipment” substitute “automated grading method”;
      (ii) for “Article 9 of, and Annex II to, the Commission Regulation” substitute “, in relation to bovine carcases, Article 10 of, and Annex IV to, the Commission Delegated Regulation (authorisation of automated grading methods for beef carcases)”;
   (iii) for “the equipment”, in each place where it occurs, substitute “the automated grading method”.

Amendment of regulation 13

9. In regulation 13 (exemption for small-scale pig operators), in paragraph (1), for “not more than 200” substitute “less than 500”.

Amendment of regulation 14

10. For regulation 14 (competent authority etc.: pig carcases) substitute—

   “Competent authority etc: pig carcases

14.—(1) The Scottish Ministers are the competent authority, in relation to pigs, for the purposes of—
   (a) Article 4(1) of the Commission Implementing Regulation (reports);
   (b) Article 7(4) of the Commission Delegated Regulation (classification and weighing);
   (c) Article 12(2)(b) of the Commission Delegated Regulation (additional provisions on classification by automated grading techniques);
   (d) Article 14 of the Commission Implementing Regulation and Article 14 of the Commission Delegated Regulation (calculation and reporting of market prices);
   and
   (e) Article 17(2) of the Commission Delegated Regulation (notification of supplementary payments).

   (2) The Scottish Ministers are responsible for on-the-spot checks, in relation to pigs, as described in Articles 2 and 3 of the Commission Implementing Regulation.”.

Amendment of regulation 15

11. For regulation 15 (records instead of marking) substitute—

   “Marking

15. Pig carcases need not be marked in accordance with Article 8(1), (2)(b), (3)(c), (4) and (5) of the Commission Delegated Regulation if an official record is drawn up and comprises for each carcase at least—
   (a) the individual identification of the carcase by any unalterable means;
(b) the warm weight of the carcase; and
(c) the result of the classification.”.

**Amendment of regulation 18**

12. In regulation 18 (powers of authorised officers), in paragraph (b), for “Commission Regulation” substitute “Commission Delegated Regulation and the Commission Implementing Regulation”.

**Amendment of regulation 19**

13. For regulation 19 (offences: European beef provisions) substitute—

“**Offences: European beef provisions**

19. Subject to regulation 7 (marking), any person who, in relation a bovine carcase—

(a) fails to comply with any requirement under a European beef provision; or
(b) contravenes any prohibition contained in a European beef provision,

commits an offence.”.

**Amendment of regulations 20 and 21**

14. In regulations 20 (offences: European pig provisions) and 21 (offences: notifications by operators), in each place where it occurs, for “is guilty of” substitute “commits”.

**Amendment of regulation 22**

15. In regulation 22 (offences: licences (bovine carcases))—

(a) in paragraph (1) for “the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence” substitute “both the person who carries out the classification and the operator of that slaughterhouse commit an offence”;

(b) in paragraph (2)—

(i) for “automated grading equipment” substitute “automated grading methods”;
(ii) in sub-paragraph (a) for “equipment” substitute “method”; and
(iii) for “the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence” substitute “both the person who carries out the classification and the operator of that slaughterhouse commit an offence”;

(c) in paragraph (3) for “is guilty of” substitute “commits”; and

(d) after regulation 22 insert—

“**Offences: authorised grading methods (pig carcases)**

22A. If classification of a pig carcase is carried out at an approved slaughterhouse—

(a) without using an authorised grading method provided for in Article 11 of the Commission Delegated Regulation; or

(b) without the operation of grading techniques, provided for in Article 11, by qualified personnel,

both the person who carries out the classification and the operator of that slaughterhouse commit an offence.”.
Amendment of regulation 23

16. In regulation 23 (offences: records and marks)—
   (a) in paragraph (1) for “is guilty of” substitute “commits”;
   (b) for paragraph (2) substitute—
   “(2) Any person who marks a bovine carcase, or part of such a carcase—
   (a) as prescribed by Article 8(1), (2)(a), (3)(a), (4) and (5) of the Commission
   Delegated Regulation; or
   (b) in a way closely resembling the marking prescribed by Article 8(1), (2)(a), (3)(a),
   (4) and (5) of the Commission Delegated Regulation,
   which is likely to mislead, commits an offence.”; and
   (c) after paragraph (2) insert—
   “(3) Any person who marks a pig carcase, or part of such a carcase—
   (a) as prescribed by Article 8(1), (2)(b), (3)(c), (4) and (5) of the Commission
   Delegated Regulation; or
   (b) in a way closely resembling the marking prescribed by Article 8(1), (2)(b), (3)(c),
   (4) and (5) of the Commission Delegated Regulation,
   which is likely to mislead, commits an offence.”.

Amendment of regulation 24

17. In regulation 24 (offences: obstruction etc.) for “is guilty of” substitute “commits”.

Amendment of regulation 25

18. In regulation 25 (period for bringing prosecution), in paragraph (1), after “22,” insert
   “22A,”.

Amendment of regulation 26

19. In regulation 26 (offences by bodies corporate), in paragraph (1)(b), for “is guilty of”
   substitute “commits”.

Amendment of regulation 28

20. In regulation 28 (offences: punishment)—
   (a) in paragraph (1)—
      (i) for “guilty of” substitute “who commits”; and
      (ii) after sub-paragraph (d) insert—
      “(da) regulation 22A (offences: authorised grading methods (pig carcases));”; and
   (b) in paragraph (2)—
      (i) for “guilty of” substitute “who commits”; and
      (ii) for “23(2)” substitute “23(2) and (3)”.
Amendment of schedule 1

21. For schedule 1 (European provisions: bovine carcases) substitute—

**“SCHEDULE 1**

European beef provisions: bovine carcases

<table>
<thead>
<tr>
<th>Regulations containing European provision</th>
<th>Subject matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 10 and Annex IV, point A(II), of the Council Regulation</td>
<td>Requirement to indicate the category of carcase</td>
</tr>
<tr>
<td>Article 10 and Annex IV, point A(III), of the Council Regulation</td>
<td>Requirement to indicate, in relation to a carcase, the class of conformation and fat cover</td>
</tr>
<tr>
<td>Article 10 and Annex IV, point A(IV), of the Council Regulation</td>
<td>Requirement to present carcases in the specified manner</td>
</tr>
<tr>
<td>Article 10 and Annex IV, point A(V), first sub-paragraph, of the Council Regulation</td>
<td>Requirement for approved slaughterhouses to classify carcases in accordance with the Union scale</td>
</tr>
<tr>
<td>Article 3(1) of, and Annex I to, the Commission Delegated Regulation</td>
<td>Requirement as to the class of conformation and fat cover in relation to bovine carcases</td>
</tr>
<tr>
<td>Article 6(1) of the Commission Delegated Regulation</td>
<td>Prohibition on removing fat, muscle or other tissue before weighing, classifying and marking</td>
</tr>
<tr>
<td>Article 6(3) of the Commission Delegated Regulation</td>
<td>Requirement to present carcase in specified manner, for the purpose of establishing market prices</td>
</tr>
<tr>
<td>Article 7(1) of the Commission Delegated Regulation</td>
<td>Requirement as to the place and time of classification</td>
</tr>
<tr>
<td>Article 7(3)(a) of the Commission Delegated Regulation</td>
<td>Requirements as to the time of weighing, relevant to classification</td>
</tr>
<tr>
<td>Article 7(5) of the Commission Delegated Regulation</td>
<td>Requirement as to time of classification in cases where automated grading method fails to classify carcase</td>
</tr>
<tr>
<td>Article 8(1) of the Commission Delegated Regulation</td>
<td>Requirements as to timing of marking of carcases</td>
</tr>
<tr>
<td>Article 8(2)(a) of the Commission Delegated Regulation</td>
<td>Requirements as to marking of carcases to indicate the category and class of conformation and fat cover</td>
</tr>
<tr>
<td>Article 8(3)(a) of the Commission Delegated Regulation</td>
<td>Requirements as to location of marking on carcase</td>
</tr>
<tr>
<td>Article 8(4) of the Commission Delegated Regulation</td>
<td>Requirement as to legibility of marking on carcase</td>
</tr>
</tbody>
</table>
Article 8(5) of the Commission Delegated Regulation
Requirements in relation to labelling of a carcase

Article 10(7) of the Commission Delegated Regulation
Prohibition on modifications of the technical specifications of licensed automatic grading methods without approval of the Scottish Ministers

Article 12 of the Commission Delegated Regulation
Requirements as to classification by automated grading techniques

Article 14(3) of the Commission Delegated Regulation
Requirement as to carcase weight to be taken into account for reporting market prices

Article 14(4) of the Commission Delegated Regulation
Requirement as to the reporting of market prices per each class

Article 17(2) of the Commission Delegated Regulation
Requirement as to notification of supplementary payments

Article 1 of the Commission Implementing Regulation
Requirements as to prescribed communication

Article 5(1), first and third subparagraphs, of and Annex to the Commission Implementing Regulation
Requirements concerning weighing of the carcase and adjustments to the weight in relation to bovine carcases aged eight months or more

Article 7 of the Commission Implementing Regulation
Requirement as to classes for recording of market prices for beef carcases

Article 8(1), (3), and (4) of the Commission Implementing Regulation
Requirement as to recording of market prices”.

Amendment of schedule 2

22. For schedule 2 (European provisions: pig carcases) substitute—

“SCHEDULE 2

European pig provisions: pig carcases

(1) Regulations containing European provision (2) Subject matter

<p>| Article 10 and Annex IV, point B(II) of the Council Regulation | Requirement to classify carcases into one of the specified classes |</p>
<table>
<thead>
<tr>
<th>Article</th>
<th>Requirement</th>
<th>Article</th>
<th>Requirement</th>
<th>Article</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 and Annex IV, point B(III), of the Council Regulation, and Articles 3 and 4 of Commission Decision 2004/370/EC authorising methods for grading pig carcases in the United Kingdom</td>
<td>Requirement to present carcases in a manner specified in these provisions</td>
<td>Article 10 and Annex IV, point B(IV), first subparagraph, of the Council Regulation, and Article 1 of, and Annex 1 to, Commission Decision 2004/370/EC authorising methods for grading pig carcases in the United Kingdom</td>
<td>Requirement to grade carcases by methods authorised by the Commission</td>
<td>Article 6(1) of the Commission Delegated Regulation</td>
<td>Prohibition on removing fat, muscle, or other tissue before weighing, classifying and marking</td>
</tr>
<tr>
<td>7(1) of the Commission Delegated Regulation</td>
<td>Requirements as to the place and time of classification</td>
<td>7(3)(b) of the Commission Delegated Regulation</td>
<td>Requirement as to timing of weighing of carcase</td>
<td>7(4)(a) of the Commission Delegated Regulation</td>
<td>Requirements as to weight adjustments</td>
</tr>
<tr>
<td>8(1) of the Commission Delegated Regulation</td>
<td>Requirements as to timing of marking of carcases</td>
<td>8(2)(b) of the Commission Delegated Regulation</td>
<td>Requirements as to marking of carcases to indicate the class of carcase or estimated lean meat percentage</td>
<td>8(3)(c) of the Commission Delegated Regulation</td>
<td>Requirement as to location of marking on carcase</td>
</tr>
<tr>
<td>8(4) of the Commission Delegated Regulation</td>
<td>Requirement as to legibility of marking on carcase</td>
<td>8(5) of the Commission Delegated Regulation</td>
<td>Requirements in relation to labelling of a carcase</td>
<td>12 of the Commission Delegated Regulation</td>
<td>Requirements as to classification by automated grading techniques</td>
</tr>
<tr>
<td>14(3) of the Commission Delegated Regulation</td>
<td>Requirement as to carcase weight to be taken into account for reporting market prices</td>
<td>14(4) of the Commission Delegated Regulation</td>
<td>Requirement as to the reporting of market prices per each class</td>
<td>17(2) of the Commission Delegated Regulation</td>
<td>Requirement as to notification of supplementary payments</td>
</tr>
<tr>
<td>Annex V, Part 2 of Part A, to the Commission Delegated Regulation</td>
<td>Requirements as to assessment of lean meat content of carcases</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a) OJ L 116, 22.4.2004, p.32 to which there are amendments not relevant to these Regulations.
| Article 1 of the Commission Implementing Regulation | Requirements as to prescribed communication |
| Article 9 of the Commission Implementing Regulation | Requirements as to classes and weights for recording of market prices for pig carcases |
| Article 10 of the Commission Implementing Regulation | Requirement to record market prices for pigs” |

**Transitional provision**

23.—(1) The amendments made by regulation 8 of these Regulations shall not affect the validity of any operator’s licence, issued prior to 11th July 2018 under regulation 9 of the 2010 Regulations.

(2) Any such licence is to be treated, on and after 11th July 2018, as if it were a licence granted under regulation 9 of the 2010 Regulations as amended by regulation 8 of these Regulations.

FERGUS EWING  
A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
31st May 2018
EXPLANATORY NOTE
(This note is not part of the Regulations)


Regulation 3 amends regulation 2 of the 2010 Regulations to update the necessary definitions which require updating as a result of the repeal and replacement of the Commission Regulation.

Regulation 4 amends regulation 5 of the 2010 Regulations to amend the definition of “small-scale bovine operator” in terms permitted by the Commission Delegated Regulation.

Regulation 5 amends regulation 6 to designate, where necessary, the Scottish Ministers as the competent authority for the purposes of bovine carcases under the Commission Implementing Regulation and the Commission Delegated Regulation.

Regulation 6 substitutes a new regulation 7 of the 2010 Regulations on marking, to make provision for the exercise of the derogation provided for in Article 8(6)(b) of the Commission Delegated Regulation in respect of marking of bovine carcases.

Regulations 7 and 8 amend regulations 8 and 9 of the 2010 Regulations to update references to the Commission Implementing Regulation and the Commission Delegated Regulation required as a result of the repeal and replacement of the Commission Regulation.

Regulation 9 amends regulation 13 of the 2010 Regulations to amend the definition of “small-scale pig operator” in terms permitted by the Commission Delegated Regulation.

Regulation 10 amends regulation 14 to designate, where necessary, the Scottish Ministers as the competent authority for the purposes of pig carcases under the Commission Implementing Regulation and Commission Delegated Regulation.

Regulation 11 substitutes a new regulation 15 of the 2010 Regulations on marking to make provision for the exercise of the derogation provided for in Article 8(6)(a) of the Commission Delegated Regulation, in relation to pig carcases.

Regulation 12 amends regulation 18 of the 2010 Regulations to update references to the Commission Implementing Regulation and the Commission Delegated Regulation.

Regulation 13 amends regulation 19 of the 2010 Regulations to make consequential changes to the offence provisions taking into account the new provisions on marking.

Regulation 14 amends regulations 20 and 21 of the 2010 Regulations to update the language on offences in line with current drafting practice.

Regulation 15 amends regulation 22 of the 2010 Regulations and inserts a new regulation 22A into the 2010 Regulations. It has the effect that it is an offence for classification of a pig carcase to be carried out without using an authorised grading method provided for in Article 9(b) and Article 11 of the Commission Delegated Regulation. The words “automated grading equipment” in regulation 22 of the 2010 Regulations, which relate to bovine carcases, are substituted by “automated grading method” to reflect the terms of Article 11 of the Commission Delegated Regulation. Regulation 15 also updates the language in regulation 22 of the 2010 Regulations on offences in line with current drafting practice.

Regulation 16 amends regulation 23 of the 2010 Regulations to update references to the Commission Delegated Regulation and also updates the language on offences in line with current drafting practice.
Regulations 17, 19 and 20 amend regulations 24, 26 and 28 of the 2010 Regulations to update the language on offences in line with current drafting practice and to reflect the introduction of regulation 23(3) of the 2010 Regulations by regulation 16 of these Regulations.

Regulation 18 amends regulation 25 of the 2010 Regulations to make consequential changes to the 2010 Regulations to include references to the new regulation 22A, as inserted by regulation 15 of these Regulations.

Regulation 23 makes transitional provision, the effect of which is that licences granted under the regulation 9 of the 2010 Regulations remain valid when these Regulations come into force, notwithstanding the amendments made by regulation 8 of these Regulations.

Schedules 1 and 2 of the 2010 Regulations are substituted by regulations 21 and 22 respectively, and provide for updated references to the Commission Implementing Regulation and the Commission Delegated Regulation.

Further minor amendments to the 2010 Regulations are made.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.