



**To: District Council Chief Environmental Health
Officers
Group Chief Environmental Health Officers
& NIFLG Members
12 December 2007**

Ref: NIP 0497

Dear Colleague

ENF/NI/07/053

**GUIDANCE NOTES ON EXPENSES ARISING FROM 'ADDITIONAL OFFICIAL
CONTROLS'**

I have attached for your information a copy of the above Guidance Notes which the Agency has prepared in relation to regulation 41 of the Official Feed and Food Controls Regulations (Northern Ireland) 2007. I should be grateful if you would bring the Guidance Notes to the attention of relevant colleagues.

Background

The Official Feed and Food Controls Regulations (Northern Ireland) 2007 (SR 2007 No. 482) were made on 23 November. These Regulations update and replace the Official Feed and Food Controls Regulations (Northern Ireland) 2006 (SR 2006 No.2). The principal purpose of replacing the 2006 Statutory Rule (SR) is to give effect to Article 28 of Regulation (EC) 882/2004 on official controls.¹ This requires that the competent authority charges feed/food business operators for expenses arising from 'additional official controls'. The relevant measure is provided at regulation 41 of the new SR which will come into operation on 21 December. Parallel legislation in England, Scotland and Wales has been prepared and will also come into operation in December. A copy of the SR can be found at:
http://www.opsi.gov.uk/sr/sr2007/nisr_20070482_en.pdf

Guidance Notes on expenses arising from 'additional official controls'

The Guidance Notes provide informal non-statutory advice and should be read in conjunction with the SR and with Regulation 882/2004. They have been prepared in the absence of the European Commission establishing any detailed implementing rules or any guidance to clarify application of the Article 28 provision.

¹ Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules. Official Journal L191, 28.5.2004, 1-52. (available at: http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_191/l_19120040528en00010052.pdf)

Liability to pay a charge (a fee) for 'additional official controls' under Article 28 arises only in cases where there is non-compliance and the necessary control activities carried out as a result exceed those required under Community or national law and, in particular, those described in the multi-annual national control plan of the Member State. In view of that, the Agency expects that charges will apply only infrequently (a small number of cases annually) and that they will arise only in cases where unless corrective action is taken there is an imminent and/or serious risk to public health or consumer interests and where the resources required to manage the control activities fall outside the competent authority's planned activities. The Guidance Notes have been prepared on that basis and with a view to explaining Article 28 and ensuring that charges are applied in a fair and consistent manner.

The Guidance Notes highlight that where district councils are considering applying charges, they should seek advice before doing so from their representative bodies LACORS or the Association of Port Health Authorities, as appropriate.

A full public consultation on the draft Guidance Notes was undertaken from April to July this year and we have tried, where appropriate, to reflect the comments that we received in the final document. The Guidance Notes have been published on the Agency's website at:

<http://www.food.gov.uk/northernireland/niregulation/niguidancenotes/offcreg41ni>

The Guidance Notes will be kept under review and will be updated as necessary to reflect, in particular, developments at EU level, the experience of the authorities across the UK in the application of the provision, and the establishment of relevant case law.

I hope that you and your colleagues will find these Notes to be helpful.

If you require any further information, please get in touch with me (my contact details at are the foot of the previous page) or with Annie Chambers (☎ 028 9041 7708, email: anne-marie.chambers@foodstandards.gsi.gov.uk).

Yours faithfully



Michael Jackson

Head of Audit and Monitoring Unit FSANI