

Consultation Information

Title: Consultation on the methods used to calculate mandatory fees for official controls provided for in Article 79(2) of Regulation (EU) 2017/625, for food businesses subject to official controls by the Health Service Executive.

Start date of consultation: 26th November 2019 **Closing date:** 10th December 2019

Consultation details

Background

[Regulation \(EU\) 2017/625](#) applies from 14th December 2019 and replaces the existing official controls legislation, [Regulation \(EC\) No 882/2004](#). This legislation is the EU legal framework for official controls on the agri-food sector. A public consultation was held in 2013 when the first draft of Regulation (EU) 2017/625 was published.

This consultation concerns specific elements related to the charges for official controls. There is a requirement in Regulation (EU) 2017/625 to collect fees or charges to recover the costs of certain types of official controls. Certain mandatory fees and charges already apply under current rules so the application of fees or charges is not a new provision but there are some differences in how fees are determined and applied.

The purpose of this consultation is to seek views on the proposed general methods used to calculate the mandatory fees or charges for food businesses/operators subject to official controls by the Health Service Executive (HSE). The food businesses/operators that are relevant for this consultation are food businesses operating in these areas:

- Third country importation of foods of non-animal origin subject to HSE controls;
- Food Retail;
- Food service and catering outlets including hotels, restaurants, hospitals, nursing homes and caterers;
- Food wholesalers or distributors;
- Manufacturers of foods of non-animal origin.

Note: The Department of Agriculture, Food and the Marine will consult separately with relevant stakeholders under its statutory official controls that are subject to fees and charges under Regulation (EU) 2017/625.

The purpose of the mandatory fees or charges is to recover the costs that the HSE and/or FSAI incur in relation to the following official controls under -

A. Certain Import Controls

Article 79(2)(a) of Regulation (EU) 2017/625, on consignments of certain specified food products of non-animal origin entering the State from third countries¹ (from outside the European Union). These controls are done at designated Border Control Posts. The HSE currently charges importers for these controls under existing legislation.

B. Additional Official controls carried out due to non-compliance

Article 79(2)(c) of Regulation (EU) 2017/625, which were not originally planned and which:

- have become necessary following the detection of non-compliance by the same operator, during an official control and
- are performed to assess the extent and impact of the non-compliance or to verify that the non-compliance has been remedied.

This means that where there are non-compliances with food legislation the food business will be charged for the extra controls that the HSE and/or FSAI must perform to deal with the non-compliance. Charges will only be applied to non-compliant food businesses.

There are currently no proposals to apply fees or charges in areas other than the mandatory ones required under Article 79 of Regulation (EU) 2017/625 as outlined in A. and B. above. This will be reviewed as part of the monitoring of implementation of Regulation (EU) 2017/625.

Regulation (EU) 2017/625² sets out the costs that fees or charges must be based on: salaries of inspection and support staff performing official controls, including their pension and insurance costs and the cost of training; cost of facilities and equipment and associated costs; cost of consumables and tools; cost of travel and subsistence for official controls and the costs of official laboratory sampling, testing and analysis as part of official controls. It also states that operators cannot be discriminated against on the basis of the distance of their premises from the control authorities.

Matters subject to the consultation

Views are being sought on the following proposed general methods to calculate fees or charges to recover the costs applied under A. and B.

A. Certain Import Controls

¹ These include products currently covered by Regulation 669/2009, as amended, (EU) No 884/2014, (EU) 2015/175, and (EU) 2017/186. From 14 December 2019, the products will be covered by Regulation (EU) 2019/1793. Note: This is not an exhaustive list of the EU legislation that requires fees/charges to be recovered.

² Article 81 Regulation (EU) 2017/625

Official controls on consignments of food products of non-animal origin entering the State from third countries (from outside the European Union)

Proposal:

Charges will be applied to recover the costs the HSE incurs at designated EU Border Control Posts for inspections of consignments of certain specified foods of non-animal origin entering the State from third countries (from outside the European Union).

For the specified consignments subject to a control, the HSE proposes to calculate the fees or charges using a combination of Article 82(1)(a) and (b) of Regulation 2017/625. This will mean the cost incurred by HSE for official controls on consignments subject to increased controls and safeguard measures will be averaged based on the costs of documentary and physical checks for the specific type of consignment and spread evenly across all such importers regardless of the type of control completed on their consignment.

The costs listed in Article 81 will be taken into account to determine the amount of the fee or charge and will include HSE staff time to carry out documentary and physical checks, cost of any non HSE labour required (e.g. specialist services such as forklift drivers for unloading consignments), costs associated with official laboratory sampling and analysis and, where necessary, the cost of storage for detained products. The cost of additional time to unload non-palletised consignments will also be included in the charges. Where relevant, charges will include the cost of time spent on official detention and refusal of entry of consignments for destruction.

*B. Additional Official controls carried out due to non-compliance
Official controls which were not originally planned, and which have become necessary following the detection of non-compliance*

Proposal:

Charges will be applied to recover the costs HSE and/or FSAI incur where on a scheduled inspection or investigation of a complaint the HSE and/or FSAI find non-compliances that are assessed as *significant, serious* and/or likely to pose a *grave and immediate danger to public health* and enforcement action is required³. In these cases, additional controls (typically, inspections and/or food sampling) will be carried out and the operator will be charged for subsequent official controls to assess the extent or the impact of the non-compliance or to verify that the non-compliance is remedied.

Most of these operators who will be charged will also be served an enforcement notice or be subject to legal action to address the serious nature of the non-compliance. This may include service of an Improvement Notice or Order, Closure Order or Prohibition Order under the FSAI Act, 1998 or other national official control legislation (currently S.I. No. 117

³ Inspection Outcome Assessment from [FSAI Guidance Note 1, Guidance for the Health Service Executive on the Inspection of Food Businesses \(Revision 2\)](#)

of 2010) or taking a prosecution or other enforcement action under food legislation. These types of enforcements could be served on any type of food business that is subject to HSE official controls.

In line with the requirements of Regulation (EU) 2017/625, no charge would be made for the initial, planned official control that led to the detection of non-compliance. In the case of unplanned official controls that are carried out following a complaint (e.g. a complaint from a consumer reported to the FSAI or the HSE about conditions in food establishment), no charge will be applied if the official control finds the complaint to be unfounded.

The HSE and FSAI propose to calculate the fees or charges based on the method in Article 82(1)(b) of Regulation (EU) 2017/625 i.e. on the cost of each individual official control. The costs listed in Article 81 will be taken into account in the amount of the charge as required. The staff salary costs will be based on bands of time taken for the additional official control(s) i.e. quarter day, half day, full day, etc. Under Article 81 the costs associated with any additional official laboratory sampling and analysis required will also be charged based on the costs of any laboratory analysis and testing. This charge will vary depending on the type of testing necessary.

Charges will also be applied to recover the costs HSE incurs on third country consignments where official controls were not originally planned but which have become necessary following detection of non-compliance.

Likely impact of the proposals

- A. For the control of consignments of certain specified food products of non-animal origin entering the State from third countries, charges are already applied but the proposal is a change to the current charging method.
- B. The proposal for charges for additional official controls is a change to current arrangements. The likely impact can be gauged from the relatively small number of food business operators that are currently subject to enforcement action of the type indicated above. The data in the table below show the numbers of enforcement actions taken in 2017 and 2018 for breaches of food legislation in relation to food businesses subject to HSE controls. Assuming that compliance with food legislation remains at similar levels, then in any given year it could be expected that some 350 food businesses, out of over 45,000 supervised by the HSE, would receive additional official controls and a charge to the official controls required. This could mean that over 99% of food businesses would continue to receive their normal level of official controls without a fee for additional controls.

Table - Number of enforcement notices and orders served, and prosecutions taken by the HSE due to serious breaches of food legislation in 2017 and 2018:

	2017	2018
Closure Order	64	92
Improvement Notice	262	229
Improvement Order	1	5
Prohibition Order	3	9
Prosecutions	11	7
Sum:	341	342

Submissions to the consultation

If you are making a submission, please state whether the views expressed are personal or are being made on behalf of an organisation. If the views submitted are on behalf of an organisation, the name of the organisation should be clearly stated.

Submissions may be e-mailed to: consultation@fsai.ie or may be posted to:

Consultations
Food Safety Authority of Ireland
The Exchange, George's Dock
IFSC
Dublin 1
D01 P2V6

By close of business on 10th December 2019.

Feedback:

A report on the responses will be prepared by the FSAI and it will be shared with the Department of Health.

Personal Data

Any personal data, within the meaning of the General Data Protection Regulations 2018, the Data Protection Act 2018, and any Regulations made under that Act, submitted as part of the consultation process, will be treated in line with the requirements of these Regulations/Acts.

Personal identifying information contained in submissions will not be published in accordance with the General Data Protection Regulations 2018, the Data Protection Act 2018, and any Regulations made under that Act, as well as the Freedom of Information Act 2014.