

EXPLANATORY MEMORANDUM TO

The Food and Feed Hygiene and Safety (Miscellaneous Amendments) Regulations (Northern Ireland) 2021

[Ref. ISBN: 9780-3380-16560.]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Food Standards Agency to accompany the Statutory Rule (details above) which is laid in draft before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under the powers conferred by sections 11 and 22 of, and paragraph 11M(1) of Part 1C of Schedule 2 and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018 and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1 This Statutory Rule seeks to amend the Official Feed and Food Controls Regulations (Northern Ireland) 2009 and the Food Hygiene Regulations (Northern Ireland) 2006 to provide for the execution and enforcement, in Northern Ireland, of the food and feed elements of:
 - Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products; and
 - several pieces of tertiary legislation made under Regulation (EU) 2017/625.
- 2.2 This Statutory Rule will also correct a minor drafting error in the Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2007 and a typographical error in the Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016.
- 2.3. The Statutory Rule will revoke provisions, which are no longer necessary, to the Food Hygiene Regulations (Northern Ireland) 2006 in relation to requirements placed on Northern Ireland food businesses on the form and application of health and identification marks for products of animal origin.

3. Background

The Official Control Regulation (EU) 2017/625

- 3.1 The Official Control Regulation (EU) 2017/625 sets out a framework of requirements for competent authorities organising and performing official controls and other official activities to verify compliance with agri-food chain legislation. Regulation (EU) 2017/625 has applied in Northern Ireland from 14th December 2019.

- 3.2 Most of the provisions of Regulation (EU) 2017/625, and the tertiary legislation made under it, clarify and simplify existing requirements and aim to introduce a more risk-based approach to controls. Therefore, existing enforcement arrangements in Northern Ireland are generally already in line with the new requirements.
- 3.2 This Statutory Rule will amend the Official Feed and Food Controls Regulations (Northern Ireland) 2009 and the Food Hygiene Regulations (Northern Ireland) 2006 to update references and to give effect to the relevant elements of EU Tertiary Regulations made under Regulation (EU) 2017/625 since November 2019. This ensures that competent authorities in Northern Ireland continue to have the powers to undertake checks required by this legislation to verify compliance with EU feed and food hygiene and safety law.
- 3.3 The amendments to the Official Feed and Food Controls Regulations (Northern Ireland) 2009 will also include:
- an update to references to recent tertiary legislation made under Regulation (EU) 2017/625 regarding existing offences in relation to certification arrangements for sprouts and seeds intended for the production of sprouts.
 - a proposed regulation 41A on fees or charges arising from unplanned official controls pursuant to Article 79(2)(c) of Regulation (EU) 2017/625 in respect of food and feed official controls. This provision will replace the revoked regulation 41, for charging for unplanned official controls pursuant to Article 28 of Regulation (EC) No 882/2004, in the 2009 Regulations. Regulation 41 was revoked in December 2019 when Regulation (EC) No 882/2004, on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, was repealed and replaced by the new Official Control Regulation (EU) 2017/625. Regulation 41A will permit fees or charges arising from unplanned official controls, following the detection of non-compliance in respect of food and feed official controls, to be collected by competent authorities, e.g., district councils in Northern Ireland.
- 3.4 This Rule will amend the Fishery Products (Official Controls Charges) Regulations (Northern Ireland) 2007 to correct a minor drafting error where a definition of tertiary legislation, Commission Delegated Regulation (EU) 2019/624, in the 2007 Regulations was not used in the body of the 2007 Regulations.
- 3.5 The Rule will also amend the Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016 to fix a typographical error in regulation 19 of the 2016 Regulations in reference to Regulation (EC) No 1829/2003.

Revocations to The Food Hygiene Regulations (Northern Ireland) 2006

- 3.6 The Statutory Rule will revoke provisions to the Food Hygiene Regulations (Northern Ireland) 2006. These provisions were made to the 2006 Regulations in November 2020 to ensure Northern Ireland food businesses continued to meet the necessary requirements on the form and application of health and identification marks for products of animal origin at the end of the Implementation Period and to reflect the application of the Ireland/Northern Ireland Protocol. Subsequent amendments in January 2021 to EU food law in relation to the form and application of health and identification marks, which came into force in January 2021, have resulted in these provisions being no longer necessary.

4. Consultation

- 4.1 A full consultation on the Official Control Regulation 2017/625 was undertaken by the FSA from the 29th August to 11th October 2019.
<https://www.food.gov.uk/news-alerts/consultations/implementation-of-the-official-controls-regulations-northern-ireland>
- 4.2 There were 8 responses from Northern Ireland stakeholders. These were mainly from district councils and were generally supportive of the proposals. There were no specific comments regarding Article 79 of Regulation (EU) 2017/625 on fees and charges arising from official controls. The main comments of note were that the familiarisation costs had been underestimated due to the comprehensive nature of Regulation (EU) 2017/625. These comments were reflected in the finalised published Impact Assessment. <https://www.legislation.gov.uk/nisr/2019/218/impacts>
- 4.3 A subsequent consultation on this proposed Statutory Rule has been undertaken by the FSA from 19th April to 23rd May 2021.
<https://www.food.gov.uk/news-alerts/consultations/consultation-on-the-food-and-feed-hygiene-and-safety-miscellaneous-amendments-regulations-northern-ireland-2021>
- 4.4 Two responses were received and were broadly in support of the proposals. Stakeholder feedback noted that it is vital that local authorities in Northern Ireland continue to have the powers to undertake necessary checks required by this legislation to verify compliance with food and feed hygiene and safety law to protect the supply chain and public health, and since the FSA in England and Wales, and Food Standards Scotland have implemented these changes to their national legislation, the FSA in Northern Ireland should do too, to remain aligned.

5. Equality Impact

- 5.1 This Rule applies equally across society and therefore has no implication under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1 A full impact assessment has been prepared and identifies very few direct impacts on business and enforcement authorities from the implementation of these proposed amendments in Northern Ireland, and those impacts that are identified are not considered to be significant. These changes supplement the overarching principles of conducting official controls which are already in place in Northern Ireland.

7. Financial Implications

7.1 None.

8. Section 24 of the Northern Ireland Act 1998

8.1 Consideration has been given to the human rights implications of these Regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 This Statutory Rule will reflect that EU law will continue to apply to Northern Ireland in respect to feed and food hygiene and safety under the terms of the Ireland/Northern Ireland Protocol.

10. Parity or Replicatory Measure

10.1 While the proposed legislation is exclusive to Northern Ireland, it parallels equivalent legislation in England, Scotland and Wales.

11. Additional Information

11.1 Not applicable.