EXPLANATORY MEMORANDUM TO

THE FEED (SAMPLING AND ANALYSIS AND SPECIFIED UNDESIRABLE SUBSTANCES) REGULATIONS (NORTHERN IRELAND) 2010

2010 No. 323

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Foods Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly

1.2 The Statutory Rule is made under powers conferred by sections 66(1), 74A, 79(9) and 84 of the Agriculture Act 1970 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 11th October 2010.

2. Purpose

2.1 The Regulations will provide for the administration in Northern Ireland of Commision Regulation (EC) No. 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of animal feed ("Regulation 152/2009"). They will also transpose into law in Northern Ireland Commission Directive 2009/141 of 23 November 2009 amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum permitted levels for arsenic, theobromine, *Datura* sp., *Ricinus communis* L., *Croton tiglium* L. and *Abrus precatorius* L. ("Directive 2009/141").

3. Matters of special interest to the Health Committee

3.1 None.

4. Legislative Background

4.1 Methods and procedures for the sampling and analysis of feed were laid down in a number of Commission Directives which date back over thirty years and which had been amended and extended on numerous occasions. This had led to increasingly complex and fragmented legislation which the Commission had been under pressure to rationalise. These older Directives have therefore been replaced by a measure which brings their provisions together in a single, comprehensive instrument in the form of Regulation 152/2009. This consolidation has also been taken as an opportunity to delete a number of methods of analysis which are considered to be no longer valid or fit for purpose, or because it is restrictive to specify the analytical method to be used when there is a range of satisfactory alternatives available.

4.2 Directive 2009/141 is the latest in a series of amendments to various of the entries in Annex I to Directive 2002/32 on undesirable substances in animal feed.

This Annex lays down statutory upper limits for a range of contaminants from various sources (chiefly naturally occurring environmental contaminants which cannot be wholly avoided and contaminants which can potentially be introduced during the storage, transport or processing of feed).

5. Position in Great Britain

5.1 This Statutory Rule applies to Northern Ireland. Separate but parallel legislation is being made in England, Scotland and Wales.

6. Policy background

- What is being done and why

6.1 EU Regulations apply directly in Member States and their provisions cannot be repeated in national legislation. It is therefore necessary to repeal existing secondary legislation which implements the now-replaced Commission Directives, and to introduce a new measure to provide for the administration and application of Regulation 152/2009 by linking its provisions to the powers already granted to local authority enforcement officers. It is also necessary to modify primary legislation, the Agriculture Act 1970, to bring certain of its provisions into line with those in the Regulation and to disapply those of the Act's provisions which repeat or conflict with those of the Regulation.

6.2 Directive 2009/141 extends and in some cases tightens the current range of statutory upper limits -- known as maximum permitted levels, or MPLs -- for the undesirable substances arsenic, theobromine and certain alkaloid-containing or toxic weed seeds. The amendments are being made following the issue of an Opinion by a panel of the European Food Safety Authority, which has been undertaking a review of the MPLs in the light of advances in scientific knowledge and experience of the presence of these undesirable substances in feed and their effects on animal health.

- Consolidation

6.3 Regulation 152/2009 is itself a consolidatory measure, which will be furthered by the revocation of the various national measures which implement the Directives which the Regulation replaces.

6.4 Directive 2009/141 is the latest in a series of amendments to the Annex to Directive 2002/32, all of which have required corresponding amendments to be made to Schedule 5 to the Feeding Stuffs Regulations (Northern Ireland) 2005. These Regulations are not being consolidated on this occasion because five of the Directives they implement have been consolidated into a single European Regulation which will apply in Member States from September 2010. The Feeding Stuffs Regulations (Northern Ireland) 2005 will be revoked and remade later this year in a considerably altered form to give effect to this development.

7. Consultation outcome

7.1 The Food Standards Agency kept key stakeholders apprised of the content of both Regulation 152/2009 and Directive 2009/141 while, in draft form, they were

under discussion in the Standing Committee on the Food Chain and Animal Health in Brussels. A formal public consultation on the draft Feed (Sampling and Analysis and Specified Undesirable Substances) Regulations (Northern Ireland) 2010 ran from 22 February 2010 to 19 April 2010, and attracted eight responses.

7.2 Three of these were either non-committal or generally welcomed the implementation of the two EC measures. One raised a series of questions about sampling procedures and the application and interpretation of MPLs for undesirable substances, but did not comment directly on the draft Regulations to implement the two EC measures. The remaining four responses, from four professional associations, were more substantive, commenting chiefly on the potential costs of familiarisation, the qualifications of analysts, and the methods of taking samples. The arguments put forward were considered to require some minor amendments to the draft Regulations on which the Food Standards Agency consulted, although the cost calculations in the Impact Assessment are unaffected.

8. Guidance

8.1 The Food Standards Agency does not currently consider that any guidance in respect of the interpretation of the provisions of the two EU measures is necessary, as their provisions are self-explanatory. However, the Agency will keep under review question of whether guidance may be required in future.

9. Equality Impact

9.1 These regulations will apply in equal measure to all section 75 groups. It is not expected that any of these changes will impact differently across any of the section 75 groups.

10. Impact

10.1 The likely impacts associated with Regulation 152/2009 will be limited. There will be one-off reading and familiarisation costs for enforcement authorities, analytical laboratories and feed business operators, although these are expected to be small because of the primarily consolidatory nature of the measure. The potential benefits are similarly likely to be small, although the deletion of some Community methods of analysis could have some benefits for feed businesses, analytical laboratories and enforcement authorities which will be free to use other procedures which they consider will be equally effective.

10.2 The likely impacts associated with Directive 2009/141 will similarly be limited. There will be one-off familiarisation costs for enforcement authorities, analytical laboratories and feed business operators. There may also be some benefits for feed businesses, particularly the increased limits for arsenic in products of marine origin and in feed for fish, which could allow feed businesses to use ingredients from sources which are currently excluded from the supply chain because their arsenic loading exceeds the statutory maxima.

10.3 An Impact Assessment was carried out by FSA colleagues in London and is believed to representative of the position in Northern Ireland.

11. Regulating small business

11.1 The legislation will apply to small businesses, which will not be exempted from the measure because it is not introducing any new burdens for business.

11.2 No steps have therefore been taken to minimise the potential impact of the legislation on firms employing up to 20 people.

12. Monitoring & review

12.1 There is no requirement in either of the two EU measures for a review to be undertaken within a fixed period of either the procedures for sampling and analysis or the MPLs for the undesirable substances in question. However, procedures for sampling and analysis are revisited from time to time by the Standing Committee on the Food Chain and Animal Health, while MPLs for undesirable substances are kept under review by the European Food Safety Authority; both of these bodies will make recommendations for further amendments as considered appropriate. The Food Standards Agency would then lead for the UK in the negotiations on any proposed changes to the existing measures.

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