

**EXPLANATORY MEMORANDUM TO THE
BOVINE PRODUCTS (RESTRICTION ON PLACING ON THE
MARKET) (ENGLAND) REGULATIONS 2005**

2005 No. 2719

1. This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Command of Her Majesty.

2. **Description**
 - 2.1 With limited exceptions, the over thirty months (OTM) rule prohibits the sale for human consumption of meat from cattle aged over thirty months at slaughter. This instrument replaces the OTM rule by a prohibition on the placing on the market of products derived from bovine animals born or reared within the UK before 1st August 1996. The effect is to allow UK OTM cattle born on or after 1st August 1996 into the human food supply, provided they have received a negative test result for BSE.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Background**
 - 4.1 The OTM rule legislation (the Fresh Meat (Beef Controls) (No. 2) Regulations 1996) is national legislation made under the Food Safety Act 1990. Subsequent Community legislation - Regulation 999/2001 - provides for EU-wide rules for controlling BSE. Because of its comprehensive nature, Regulation 999/2001 constitutes fully harmonised rules in the field of control and eradication of BSE, including consumer protection.
 - 4.2 There is no provision in Regulation 999/2001 for the UK to operate an OTM rule in the form of a ban on the sale for human consumption of meat from OTM cattle. Under the EU rules, such meat may legally be sold provided it is from an animal that had tested negative for BSE (and the specified risk material had been removed). The OTM rule is therefore inconsistent with the applicable EU law.
 - 4.3 The new policy of prohibiting UK cattle born before August 1996 from the food supply was subject to the same difficulty. The UK therefore requested action at EU level to legitimise a continued ban on such cattle.

- 4.4 In response, within the powers delegated to it under Regulation 999/2001, the Commission adopted Decision 2005/598/EC of 2 August 2005. The instrument gives effect to Article 1.1 of that Decision, which prohibits the placing on the market of products derived from bovine animals born or reared within the UK before 1st August 1996.

5. Extent

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

Not applicable

7. Policy background

- 7.1 The OTM rule was introduced in the UK in 1996 to strengthen the protection of public health from BSE. Other EU Member States have not operated a ban on OTM cattle, but since January 2001, and in line with Regulation 999/2001, have required OTM cattle slaughtered for human consumption to be tested for BSE, allowing only those receiving a negative result into the food supply.
- 7.2 In the light of the decline in BSE and the introduction of BSE testing, the FSA began a review of the OTM rule in July 2002. The review was informed by a detailed risk assessment overseen by a FSA/SEAC Risk Assessment Group (SEAC is the Government's BSE scientific advisory committee) chaired by Professor Peter Smith (SEAC Chairman at that time). The FSA was advised on whether replacing the OTM rule by testing would be acceptable and the options for doing so by a core stakeholder group (which included representatives from consumers, industry and enforcers, and observers from all relevant Government Departments and the Human BSE Foundation). Two public meetings were held; one at the start and one to give the opportunity for public discussion of the core stakeholder group's recommendations before they were finalised and issued for public consultation.
- 7.3 On the basis of the advice from the core stakeholder group and the results of public consultation, the FSA Board, at an open meeting on 10 July 2003, advised Ministers that a move to replace the OTM rule by testing would be justified on the grounds of public health risk and proportionality.
- 7.4 Following that advice, the FSA was asked by Health Ministers to reconsider the risk assessment in view of certain new information that had started to emerge, in particular about vCJD prevalence in the human population. The FSA/SEAC Risk Assessment Group was reconvened to undertake a fresh analysis, and SEAC was consulted.

- 7.5 Meanwhile, a failure by the Meat Hygiene Service (the body responsible for enforcing the testing requirements) to ensure that all 24 – 30 months casualty cattle were tested for BSE, as required under EU law, was uncovered in 2004. This failure was put to the Board, who commissioned an independent investigation. Professor Patrick Wall led a group to undertake this assignment, which reported in October 2004.
- 7.6 At its meeting in July 2004, a summary of the updated SEAC advice was put to the Board, who also took into account the casualty testing failures. The Board concluded that the updated risk assessment continued to provide a basis on which to recommend that a move to replace the OTM rule by BSE testing of cattle born after 1 August 1996 would be justified. This recommendation was however subject to the putting in place of a robust BSE testing system.
- 7.7 The Board also took the view that appointing an independent group to oversee the implementation of testing would secure public confidence and ensure that a robust system was put in place. To that end, the FSA set up a new independent advisory group (IAG), again chaired by Professor Wall, which began its work in November 2004.
- 7.8 In the light of the FSA advice, the Government announced to Parliament on 1 December 2004 the start of a managed transition towards lifting the OTM rule and its replacement with a robust system for BSE testing for cattle born on or after 1st August 1996. The announcement made clear that the switch from the OTM rule to testing should happen only when the FSA has advised Ministers that the testing system is robust.
- 7.9 The IAG, having scrutinised the proposed testing system and overseen a number of trials of it, reported back to the FSA Board at its open meeting in August 2005. The Board agreed to advise Ministers that
- a reliable BSE testing regime for OTM cattle has been successfully designed and trialled
 - arrangements are in place to ensure that, should the BSE testing regime be implemented, it would be able to operate across the UK to the highest standards.
- 7.10 The Government announced on 15 September that the FSA's advice had been accepted and that new legislation to replace the OTM rule by BSE testing could be introduced.
- 7.11 Formal written consultation on both the process for implementing a move from the OTM rule to BSE testing of OTM cattle and the proposed legislation to effect the change was held between February and May 2005. In addition, the FSA held open meetings in London, Edinburgh, Belfast and Cardiff in July 2005, with presentations on the background to the OTM rule review, including the Government's announcement last year to accept the case in principle for rule change, and the advice on the testing system being developed by the independent group.

- 7.12 The responses indicate wide support for the Government's approach to managing the transition to testing and agreement that a robust testing system needs to be in place before a change is implemented. Wide support was also expressed for the policy of rule change by the farming and meat industries and retailers, though concerns were identified about the need to maintain consumer confidence in the change. Consumer groups were more wary. Some oppose rule change while others can accept the case for such a change on grounds of proportionality. All consumer groups argue that – if rule change were to happen – demonstrable reliability of the testing system would be all important. They too stress the need for effective communications. The Human BSE Foundation, while recognising the proportionality argument, continues to oppose rule change.
- 7.13 The consultation did not bring to light any need to amend the proposed legislation to implement OTM rule change.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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