

**EXPLANATORY MEMORANDUM TO**  
**THE ANIMAL HEALTH ACT 1981 (AMENDMENT) REGULATIONS 2005**

**2005 No. 3475**

1. This explanatory memorandum has been prepared by The Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The Regulations will change the Secretary of State's current discretion to slaughter any animals affected with Foot and Mouth Disease (FMD) to a duty to slaughter all FMD susceptible animals *but only those kept on premises which have been confirmed as infected with FMD*. The Regulations also set out various exemptions to this duty where the animals involved have particular value and where we retain the discretion to slaughter. These include laboratories, zoos, wildlife parks, other similar places which keep animals principally for display and education of the public, places keeping rare breeds or keeping animals for scientific research and separate production units (those separated from the rest of an infected premises to such an extent as to pose no risk of spreading the disease). Susceptible animals kept on these infected premises would only be spared slaughter in exceptional veterinary circumstances where there was minimal risk of disease spread, eg good biosecurity conditions separating those animals from infected animals.

**3. Matters of special interest to the Joint Committee on Statutory Instruments.**

3.1 None

**4. Legislative Background**

4.1 The Regulations are being made to comply with some of the UK's legal obligations in Council Directive 2003/85/EC on the control of FMD ("the Directive").

4.2 The Directive requires all member states to slaughter susceptible animals (including cattle, sheep, pigs and goats) kept on infected premises, subject to exceptions for certain classes of premises as set out in paragraph 2.1 above. This new duty ensures a common approach to disease control across the European Union.

4.3 The power to slaughter animals to prevent the spread of FMD is in paragraph 3 of Schedule 3 of the Animal Health Act 1981, read with section 31 of that Act. The power is discretionary.

4.4 The Regulations are empowered by section 2(2) of the European Communities Act 1972. They amend Schedule 3 to require the exercise of the power of slaughter in respect of susceptible animals kept on premises where FMD is confirmed, but retain the discretion where those premises are within the exceptions allowed by the Directive, and on premises where FMD has not been confirmed.

4.5 The Regulations deal with only a small part of the Directive. To fully implement the Directive, it is intended that two other instruments will be brought into force at the same time as the Regulations (that is, two for England and two for Wales). The first will deal with vaccination against FMD and the second will deal with all other aspects of the Directive.

4.6 It is intended that the second of these instruments will define the term “infected premises” as premises where FMD has been confirmed in accordance with the criteria set out in Annex I of the Directive. It is also intended that the same instrument will deal with requirements related to slaughter, such as when and where it is to take place.

4.7 A Transposition Note is attached, setting out how the main elements of the Directive are implemented in these Regulations.

## **5. Extent**

5.1 This instrument applies to England and Wales. Separate Instruments intended to achieve the same result are being made in Scotland and Northern Ireland.

## **6. European Convention on Human Rights**

6.1 The Minister of Local Environment, Marine and Animal Welfare, Mr Ben Bradshaw, has made the following statement regarding Human Rights

“In my view the provisions of the Animal Health Act (Amendment) Regulations 2005 are compatible with the Convention rights.”

## **7. Policy background**

7.1 The common European rules on FMD control were reviewed in the wake of the 2001 outbreak and a new European Directive was proposed. A full consultation on the proposed Directive was carried out between February and May 2003. Following this consultation, the Directive was adopted in September 2003.

7.2 Defra carried out a full 12 week public consultation on the principle behind the draft Regulations between June and September 2005. A link to the consultation can be found on the Departmental website at [www.defra.gov.uk/corporate/consult/fmd-directive/index.htm](http://www.defra.gov.uk/corporate/consult/fmd-directive/index.htm). Stakeholders from all parts of the food chain were represented in a number of consultation meetings. We received 35 written responses to the consultation (copies of which are available from the Defra departmental library). A detailed analysis of these responses is also available at the above link.

7.3 Only 4 respondents (11%) questioned the need to change the Secretary of State’s discretion to slaughter susceptible animals kept on infected premises to a duty to do so. All these four responses were based on the belief that this would represent a change to Government policy in the extent of animals slaughtered. However, the change is necessary as a requirement of the Directive, and does not alter Government policy which has always been and remains to slaughter susceptible animals kept on infected premises to stop disease spread.

7.4 The proposed amendment is limited in scope and is an enabling amendment. Therefore, no new burdens are created by the Regulations.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. This new duty does not represent a change to the existing policy and it does not create any new burdens.

## **9. Contact**

Andrew Jones at the Department for Environment, Food and Rural Affairs Tel: 0207 904 8296 or e-mail: [Andrew.jones@defra.gsi.gov.uk](mailto:Andrew.jones@defra.gsi.gov.uk) can answer any queries regarding the instrument.

## Transposition Note

Memorandum showing how the main elements of **Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC** have been implemented in the **draft Animal Health Act (Amendment) Regulations** (“the Regulations”).

### The Directive

The Directive sets down the minimum measures to be applied by Member States in the event of an outbreak of foot-and-mouth disease (“the disease”).

### Implementation of main elements in the Regulations

The Regulations implement only the provisions of the Directive which impose a duty on the Member State to slaughter animals susceptible to the disease. They extend to England and Wales.

It is intended that the rest of the Directive will be implemented by Foot-and-Mouth Disease (Control of Vaccination) Regulations and a Foot-and-Mouth Disease Order (“the Order”). It is intended that each of these will be made separately for England and Wales and, in England, will come into force simultaneously with the Regulations. A further transposition note will be prepared for the English instruments, which will incorporate the substance of this note.

Regulation 2 of the Regulations inserts a new paragraph 2A into Schedule 3 to the Animal Health Act 1981.

The new paragraph 2A(1), read with 2A(2) partially implements articles 10(1)(a) and 16(1)(a) of the Directive. The duty applies in relation to “infected premises”. It is intended that the Order will contain a provision giving the Secretary of State or the National Assembly for Wales, as the case may be, power to declare premises to be infected premises if a confirmed case of the disease is detected there.

New paragraphs 2A(3) and 2A(4) allow an exception from the duty to slaughter at the premises mentioned in article 15(1) of the Directive. This implements article 15(2) of the Directive.

New paragraphs 2A(5), 2A(6), 2A(7), 2A(8) and 2A(9) allow an exception from the duty to slaughter at premises which are organised as separate epidemiological production units, within the Directive’s meaning. This implements articles 18(1) and 18(2) of the Directive.

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS