

EXPLANATORY MEMORANDUM TO

THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2006

2006 No. 15

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument provides for the execution and enforcement of the feed and food elements of EU Regulation 882/2004 on official feed and food, animal health and animal welfare controls. It designates the competent authorities and enforcement authorities and creates relevant offences and penalties. In particular, it provides for the enforcement of new rules on official controls of feed and food of non-animal origin imported from outside the Community. It revokes and replaces the Official Feed and Food Controls (England) Regulations 2005 (SI 2005/2626).

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

- 3.1 The instrument will breach the 21 day rule. This has been caused by late publication by the European Commission of Commission Regulations (laying down implementing and transitional rules) which must be reflected in the definitions of Community legislation used in the SI and as such has been unavoidable. The last two of the four relevant Commission Regulations were adopted formally on 5 December 2005 and three out of the four Commission Regulations were not published in the Official Journal of the European Communities until 22 December and apply from 11 January 2006. Inevitably, therefore, the delay has been compounded by the intervening holiday period.
- 3.2 The instrument addresses defective drafting in the Official Feed and Food Controls Regulations 2005 (SI 2005/2626) reported by the Joint Committee on Statutory Instruments in its Tenth Report for the Session 2005-06.

4. **Legislative Background**

- 4.1 The instrument is being made to give effect to the feed and food elements of a new EU Regulation on official controls. This EU Regulation sets out a framework of requirements for the authorities in Member States (the competent authorities) that are responsible for monitoring and enforcing compliance of businesses with feed and food law as well as for checking that animal health and animal welfare rules are adhered to (i.e. for undertaking official controls). This framework includes the principles that should be adopted e.g. a risk-based and 'farm to fork' approach, and specifies operational criteria with which the authorities must comply, e.g. they must be audited to assess the effectiveness of their performance. The Regulation also includes new harmonised rules for official controls of feed and food of non-animal origin imported from third countries.

- 4.2 The provisions of the EU Regulation apply directly in the Member States. Most of these consolidate existing requirements such that enforcement arrangements in the UK for feed and food are generally already consistent with these. However, some updating is needed. In particular, national legislation is needed to extend the Food Standards Agency's existing function (set out in the Food Standards Act 1999) to monitor and audit enforcement authorities. Additionally, the requirements for checks of third country imports of feed and food of non-animal origin are new and national legislation is needed to provide for their enforcement.
- 4.3 The instrument will be made under the powers given in Section 2(2) of the European Communities Act 1972. The enforcement powers and the offences and penalties in the instrument mirror those already provided in the Food Safety Act 1990 or the Food Standards Act 1999.
- 4.4 The instrument revokes and replaces the Official Feed and Food Controls (England) Regulations 2005 (SI 2005/2626). In doing so it amends the definitions of Community legislation in Schedule 1 which is required as a consequence of the adoption of a number of new Commission Regulations on transitional and implementing measures made under EU Regulation 882/2004 and also under new Community legislation relating to food hygiene. The remade Regulations also reflect changes in other domestic legislation that is referred to in the Official Feed and Food Controls (England) Regulations 2005.
- 4.5. In addition to the above, two policy issues that were raised after SI 2005/2626 was made have been addressed. Firstly, the right of food business operators to continue to use establishments pending appeal at regulation 12(5) has been extended to decisions to refuse approval as well as to decisions to withdraw approval. Secondly, the definition of 'relevant feed law' in Schedule 2 has been corrected to include the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005.

5. Extent

- 5.1 This instrument applies in England. Parallel legislation is being developed in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The objective of the EU Regulation is to create a more comprehensive and integrated, risk-based, 'farm to fork' approach to official controls. It does so by consolidating and extending existing legislative requirements. The aim is to improve the consistency and effectiveness of controls across the EU and, as a consequence, raise standards of food safety and consumer protection. The EU Regulation also aims to provide a greater degree of transparency for consumers about enforcement arrangements. The national legislation will provide the enforcement powers required in relation to provisions in the EU Regulation and will contribute to the anticipated benefits of a more consistent and effective control system.

7.2 Around 950 interested parties plus all local authorities in England (these authorities are responsible for enforcement of the majority of feed and food law) were consulted on the revisions to the Official Feed and Food Controls (England) Regulations 2005. No substantive responses were received. This was not unexpected as the revisions represent minor technical and legal points.

8. Impact

8.1 As the revisions to the Official Feed and Food Controls (England) Regulations 2005 made in this instrument are not substantive and do not have any financial or other impact, it was not necessary to update the Regulatory Impact Assessment for SI 2005/2626. This is attached at Annex 1.

9. Contact

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