

**EXPLANATORY MEMORANDUM TO  
THE FOOD SAFETY AND HYGIENE (ENGLAND) REGULATIONS 2013**

**2013 No. 2996**

1. This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The proposed Regulations revoke the Food Hygiene (England) Regulations 2006 and its amending instruments, and certain regulations (3, 4, 5, 6, 6A and 7) of the General Food Regulations 2004 and replace them with a single statutory instrument (SI).
  - 2.2 The proposed Regulations also provide for the enforcement of recent EU provisions regulating the production, import and supply of seeds intended for sprouting.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 European Regulations controlling the safety and hygiene of food are directly applicable in all European Member States.
  - 4.2 Member States are obliged to provide for the enforcement of European Regulations and for food safety and hygiene this is covered in England by, national legislation in the form of an SI.
  - 4.3 Schedules to the SI provide the national rules for the bulk transport in sea-going vessels of liquid oils or fats and raw sugar, temperature control requirements, raw milk for direct human consumption, the derogations relating to low throughput establishments and the special health mark.
  - 4.4 The consolidation is part of the FSA's programme to introduce a simplified system of food safety legislation, being delivered under the UK Government's Red Tape Challenge initiative.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England.
  - 5.2 Food safety is a devolved policy area and the Red Tape Challenge initiative applies to England only. Decisions have been made in Scotland, Wales and Northern Ireland not to consolidate their equivalent Regulations at this time.

- 5.3 The General Food Regulations 2004 cover England, Scotland and Wales. This SI will decouple England from its coverage, with provisions instead transferring to this SI.
- 5.4 National SIs in Scotland, Wales and Northern Ireland to provide enforcement provisions for the EU Regulations on seeds intended for sprouting are expected to be introduced at the same time as the Statutory Instrument in England.

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

- 6.1 Jane Ellison, Under Secretary of State for Public Health, has made the following statement concerning Human Rights:

In my view the provisions of the Food Safety and Hygiene (England) Regulations 2013 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 The SI will consolidate and revoke other SIs to continue to provide enforcement provisions for: (i) Regulation (EC) No 178/2002, which sets out the general principles of EU food law, including the overriding requirements for food businesses to supply safe food, for the traceability of food and for appropriate information on food for consumers; and (ii) the package of EU food hygiene regulations, which place requirements on food businesses for the safe microbiological production, manufacture and handling of food.
- 7.2 A reduction in the overall number of regulatory instruments was a recommendation of the Government's Red Tape Challenge and this exercise supports that.
- 7.3 The SI will also provide the necessary provisions to enforce the four EU Regulations introducing tighter controls on the seeds and seeds intended for sprouting sector. Three of the four Regulations came into effect on 1 July 2013 and include measures covering approval of establishments, traceability, microbiological testing. The measures relating to import certification came into force on 1 April 2013 but there was a transitional period which ended on 1 July 2013. These measures were in response to the large outbreaks of food poisoning in Germany and France in 2011 which were linked to sprouts and seeds intended for sprouting.

## **8. Consultation outcome**

- 8.1 The draft SI and the two IAs were issued for a six-week consultation which ended on 14 October. As the SI is for the most part a simple consolidation of existing rules, and due to the commitment to introduce the SI by the end of this calendar year, a shorter consultation period was agreed. Enforcement authorities, industry and consumer groups and trade

bodies were directly consulted and the consultation package was available on the FSA website. 15 responses were received. A summary of all of the consultation responses and the FSA's view on the issues raised was published on the FSA website on 13 December 2013 (<http://food.gov.uk/news-updates/consultations/consultations-england/2013/food-safety-hygiene-regs-2013>).

- 8.2 Generally consultation responses were supportive of the consolidation. A concern was raised that consolidating the regulations only in England could lead to confusion as Scotland, Northern Ireland and Wales are not undertaking the same process causing inconsistency across countries. However, this will not affect the general approach taken by enforcers, which remains the same. A concern was also raised about the potential costs to enforcers of referring cases to the Crown Court that previously would have been heard by magistrates. However, a harmonisation of the treatment of serious food safety and food hygiene offences and a rationalisation of fines was the preferred option as there does not appear to be a good reason for maintaining a difference in the treatment of these offences. Moreover, the prosecutor can apply for costs of the sentencing hearing, which in most cases are likely to be granted. Familiarisation costs to enforcers from the consolidation were disputed by one local authority; however, the hourly cost of local authority officers is prescribed and calculated using the Annual Survey of Household Earnings.
- 8.3 The SI also introduces the enforcement powers that are required for the introduction of European legislation on sprouts and seeds intended for sprouting, which will require, for the first time, businesses producing such products to be approved to do so by the competent authority. These measures also introduce a microbiological testing regime and the need for an import certificate for seeds arriving from third countries (i.e. non-EU Member States). The majority of the responses raised issues relating to these points. The FSA have addressed these points by revising the relevant IA to ensure costs and benefits reflect the most up-to-date data provided by stakeholders.

## **9. Guidance**

- 9.1 No specific guidance has been prepared to accompany the consolidation aspect of this SI; however, the FSA will be producing guidance for enforcement officers and food business operators on the sprouted seeds measures.

## **10. Impact**

- 10.1 Impact Assessments have been prepared for both the consolidation and the sprouted seeds requirements.

## **11. Regulating small business**

- 11.1 The legislation applies to all relevant food businesses. However, the consolidation of existing requirements should have minimal impact. The impacts on small business of the new EU legislation for seeds and seeds for sprouting are estimated in the relevant Impact Assessment.

## **12. Monitoring & review**

- 12.1 The FSA will work with local authorities and Port Health Authorities where problems arise or suspected infringements of the instrument arise. The effectiveness of the instrument will be also be monitored via general feedback from industry and enforcement authorities.

### ***Statutory Review***

- 12.2 The FSA is required to carry out a review of this instrument every five years. The first review will take place five years from when this instrument comes into force.
- 12.3 In carrying out the review, the FSA is required to produce a report that sets out the objectives of this instrument, the extent to which they have been achieved and whether they could be achieved by means that impose less regulation. Information gathered via the activities described in paragraph 12.1 above will inform the review.

## **13. Contact**

- 13.1 David Gray at the Food Standards Agency, Tel 0207 276 8940; email: [david.gray@foodstandards.gsi.gov.uk](mailto:david.gray@foodstandards.gsi.gov.uk) can answer any questions on the consolidation aspect of this instrument.

Liz Stretton at the Food Standards Agency, Tel: 0207 276 8357; email: [liz.stretton@foodstandards.gsi.gov.uk](mailto:liz.stretton@foodstandards.gsi.gov.uk) can answer any questions relating to the sprouted seeds aspect.