

EXPLANATORY MEMORANDUM TO
THE ANIMAL BY-PRODUCTS (ENFORCEMENT) (AMENDMENT) (ENGLAND)
REGULATIONS 2015

2015 No. 1980

1. Introduction

- 1.1 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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Animal By-Products (Enforcement) (England) Regulations 2013 (“2013 Regulations”), to make permanent the transitional provision that permits operators to dispose of small quantities of former foodstuffs without the normal controls that apply to other animal by-products (ABPs). This is required following an amendment to EU legislation on ABP controls which makes permanent the temporary derogation (now expired) for Member States to permit other disposal routes for small quantities of low risk ABPs.
- 2.2 The instrument also corrects minor drafting errors identified and reported on by the Joint Committee on Statutory Instruments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes amendments to correct errors reported on by the Joint Committee on Statutory Instruments in its 22nd Report of the 2013/14 session in relation to the 2013 Regulations.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations amend the 2013 Regulations using powers under section 2(2) of the European Communities Act 1972.
- 4.2 The 2013 Regulations enforce, in England, the directly applicable requirements of Regulation (EC) No. 1069/2009, which lays down health rules as regards ABPs and derived products not intended for human consumption, and the accompanying implementing Regulation (EU) No. 142/2011. Earlier this year Commission Regulation (EU) No. 2015/9 amended Regulation (EU) No 142/2011 to make permanent the derogation on disposal methods for small quantities of ABPs.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.
- 5.3 Policy on ABP controls and implementation of the EU legislation is a devolved issue for which the Devolved Administrations for Wales, Scotland and Northern Ireland have enacted legislation in respect of their own territories.

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

What is being done and why

- 7.1 Regulation (EC) No. 1069/2009 and its implementing Commission Regulation (EU) No. 142/2011 (“EU Regulations”) set down strict controls on the use, handling and disposal of ABPs to protect public and animal health. There are specific requirements for collection and subsequent disposal by rendering, incineration, composting or biogas of ABPs. However, where risks to public and animal health are considered to be low the EU Regulations provide certain derogations from the usual controls, for Member States to use at their own discretion. Since 2011 the EU Regulations have provided transitional arrangements for Member States to authorise alternative disposal methods for small quantities (up to 20 kg/week) of low risk (Category 3) former foodstuffs. Former foodstuffs are waste from retail establishments and food factories that are no longer intended for human consumption.
- 7.2 Defra has made this derogation available to operators since 2011 under the Animal By-Products (Enforcement) (England) Regulations 2011 (“2011 Regulations”) which were revoked and replaced by the 2013 Regulations. The Impact Assessment prepared for the 2011 Regulations cited evidence provided by the British Retail Consortium and the Association of Convenience Stores that the derogation would give a cost saving to the sector of around £30m to £40m a year, based on a cost saving of about £1,000 a year per shop across the sector. It was also estimated that within the sector there were around 20,000 non-affiliated independent convenience stores falling within the definition of ‘small business’.
- 7.3 From January this year Commission Regulation (EU) 2015/9 amending Regulation (EU) No 142/2011, implementing Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption, amongst other things made the transitional measure on former foodstuffs permanent. This derogation has benefitted small retailers and others in England who generate small amounts of food waste, by allowing them to dispose of this more economically rather than disposal under the more onerous general controls under EU Regulations. Such waste may be disposed of via approved establishments such as composting/biogas plants but may also go to landfill. In order to make this derogation available on a permanent basis to reflect the change in EU legislation the 2013 Regulations must be amended accordingly.

Consolidation

- 7.4 Defra decided not to consolidate the Regulations as the amendment only makes small technical changes.

8. Consultation outcome

- 8.1 Consultation is not required as this amendment falls into the “trivial and mechanical” category. However, Defra wrote to stakeholders in March 2014 to inform them of the Commission’s proposal to make the “small quantities” derogation permanent.

9. Guidance

- 9.1 Defra will write to stakeholders again to inform them once the “small quantities” derogation has been made permanent in domestic legislation.

10. Impact

- 10.1 There is no new impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector.
10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
11.2 This legislation will be of benefit to small and micro businesses as it enables them to continue to use lower-cost disposal routes for small quantities of former foodstuffs.

12. Monitoring & review

- 12.1 The Animal By-Products (Enforcement) (England) Regulations require the Secretary of State to review and report on the regulations before 30 November 2016.

13. Contact

- 13.1 Debbie Bailey at the Department for Environment, Food and Rural Affairs, Telephone: 02080263031 or email: Debbie.Bailey@defra.gsi.gov.uk can answer any queries regarding the instrument.