EXPLANATORY MEMORANDUM TO

THE ANIMAL FEED REGULATIONS (NORTHERN IRELAND) 2010

2010 No. 355

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Foods Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly

1.2 The Statutory Rule is made under powers conferred by sections 66(1), 68(1), 70(1), 74(1), 74A(1), (2) and (4) and 84 of the Agriculture Act 1970 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 23rd November 2010.

2. Purpose

2.1 The Regulations will provide for the enforcement in Northern Ireland of European Parliament and Council Regulation (EC) No. 767/2009 of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No (1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directive 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC.

3. Matters of special interest to the Health Committee

3.1 None.

4. Legislative Background

4.1 Regulation (EC) No. 767/2009 is part of the Commission's modernisation and simplification programme, which replaces five separate Directives in this area and brings their provisions together in one comprehensive document. It is intended to ensure the harmonised application of feed labelling provisions throughout the EU and facilitate the functioning of the internal market by simplifying certain technical requirements. The EU Regulation also removes a number of burdens on the feed industry, in particular an existing requirement for a dossier assessment of new bioprotein products before they are brought to market and the compulsory percentage declaration of the ingredients of compound feed. The Regulation also introduces two voluntary measures, a Catalogue of feed materials and Codes of Practice for good labelling, which are expected to achieve the same harmonised results as at present but without the need for prescriptive legislation.

5. Position in Northern Ireland

5.1 This Statutory Rule applies to Northern Ireland. Equivalent Statutory Instruments have been proposed in England, Scotland and Wales.

6. Policy background

- What is being done and why

6.1 EU Regulations apply directly in Member States and their provisions cannot be repeated in national legislation. However, it is necessary to repeal existing secondary legislation which implements the now-replaced Commission Directives and to introduce a new measure to provide for the enforcement of Regulation 767/2009 by linking its provisions to the powers already granted to enforcement officers under Part 4 of the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005.

6.2 The Animal Feed Regulations (Northern Ireland) 2010 (the new measure) will (a) repeal the existing secondary legislation -- the Feeding Stuffs Regulations (Northern Ireland) 2005 -- which transposes the Directives the Regulation has replaced; (b) re-enact those EU feed measures which remain outside the Regulation's scope and make the references to the Annexes to them ambulatory so that amendments to those Annexes will take effect without having to be transposed into national law; (c) designate competent authorities for the enforcement of the Regulation's provisions; (d) increase the penalties for breaches of feed labelling and composition; and (e) amend primary legislation (the Agriculture Act 1970) where it repeats, conflicts or overlaps with the Regulation.

- Consolidation

6.3 Regulation 767/2009 is itself a consolidatory measure. The changes to national feed legislation introduced as a consequence of the Regulation -- the repeal of one Statutory Rule and the various amendments to it, and its replacement by another Statutory Rule -- are considered by the Food Standards Agency to amount to a consolidation of the legislation. The consolidation extends to a number of amendments to the Feeding Stuffs Regulations (Northern Ireland) 2005, which chiefly concerned undesirable substances in animal feed.

7. Consultation outcome

7.1 The Food Standards Agency undertook a public consultation on the draft text of the EU Regulation in April 2008, to gather views in advance of the negotiations commencing in Brussels. There were further discussions and meetings with key stakeholder groups both throughout the negotiations and subsequent to the measure's formal adoption. Apart from queries over points of detail, the UK feed industry -- the stakeholder group most affected -- has consistently indicated its broad support for the principles of Regulation 767/2009.

7.2 A formal public consultation on the draft Animal Feed Regulations (Northern Ireland) 2010 ran from 31 March 2010 to 18 June 2010, and attracted one substantive

response from the Department of Agriculture and Rural Development. The response made comment on the designation of competent authorities for the purposes of Regulation 767/2009 on which clarification and further information was sought. An issue was also raised on undesirable substances of feed which was not considered to warrant any changes to the draft Animal Feed Regulations (Northern Ireland) 2010. Further details on the consultation response are available on the FSA website.

8. Guidance

8.1 The Food Standards Agency is drawing up guidance to the interpretation and enforcement of Regulation 767/2009, to assist both the feed industry and enforcement authorities, and has requested input from these and other stakeholder groups on issues they would like to see covered. It is currently expected that the guidance will be available (on the Agency's website) this autumn.

9. Equality Impact

9.1 These regulations will apply in equal measure to all section 75 groups. It is not expected that any of these changes will impact differently across any of the section 75 groups.

10. Impact

10.1 The EU Regulation will have mainly positive impacts on industry. The major positive impacts include the removal of the mandatory percentage declaration of compound feed ingredients, which the UK feed industry considers has revealed commercially sensitive information, compromised future investment in new feed formulations, and costs it over £43 million per year. Other positive impacts include the introduction of a procedure for the authorisation of new nutritional purposes, which will help the development and marketing of new dietetic feed products, and the removal of the current requirement for the prior authorisation of new bioproteins (a type of high protein feed material). A negative impact for industry includes a requirement for the more detailed labelling of additives (e.g., vitamins, trace elements) incorporated in compound feeds. The positive impacts are considered to outweigh the negative ones.

10.2 An Impact Assessment was carried out by FSA colleagues in London and is believed to representative of the position in Northern Ireland.

11. Regulating small business

11.1 The legislation will apply equally to small businesses -- although it introduces some new burdens, these are outweighed by the burdens which are being removed. Further, while the general approach to enforcement is to treat small businesses in a proportionate fashion, to exempt them would be a breach of Regulation 767/2009 and could potentially compromise the safety of the feed chain.

11.2 No steps have therefore been taken to minimise the potential impact of the legislation on firms employing up to 20 people.

12. Monitoring & review

12.1 There is no requirement in the EU Regulation for a review to be undertaken within a fixed period. However, the Food Standards Agency will seek feedback from the UK feed industry and enforcement bodies on the application of the Regulation to help inform future discussions in the Standing Committee on the Food Chain and Animal Health on the appropriateness and proportionality of the Regulation and any proposed amendments to it. Continuing stakeholder engagement (from formal and informal feedback and meetings with key stakeholder groups, including annual feed stakeholder meetings) will be the main means of obtaining this feedback.

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