

**EXPLANATORY MEMORANDUM TO
THE FEED (HYGIENE AND ENFORCEMENT) AND THE ANIMAL FEED
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2013**

2013 No. 294

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Health Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule (SR) is made under the powers conferred on it by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
- 1.3 The rule is due to come into operation on 12th January 2014.

2. Purpose

- 2.1 The Regulations will provide for the enforcement in Northern Ireland of Commission Regulation (EU) No 225/2012 of 15 March 2012 amending Annex II to Regulation (EC) 183/2005 of the European Parliament and of the Council as regards the approval of establishments placing on the market, for feed use, products derived from vegetable oils and blended fats and as regards the specific requirements for production, storage, transport and dioxin testing of oils, fats and products derived thereof.
- 2.2 The Regulations will also make two amendments to the Animal Feed Regulations (Northern Ireland) 2010, which provide for the enforcement of Regulation 767/2009 on the placing on the market and the use of feed. These amendments will (a) remove reference, in the context of ambulatory references, to an EU instrument that has now been repealed and (b) replace Schedule 1 to those Regulations, setting out the applicable provisions of Regulation 767/2009

3. Legislative Background

- 3.1 Commission Regulation (EU) No 225/2012 amends Regulation (EC) 183/2005 to (a) require that the producers and processors of fats and oils of vegetable origin for use in animal feed be approved to undertake these activities rather than merely registered with competent authorities; and to (b) introduce a programme of risk-based monitoring of these fats and oils, and oils of marine origin, for the presence of dioxins and dioxin-like PCBs.

4. Policy Background

- What is being done and why
- 4.1 Regulation (EU) 225/2012 was adopted following a contamination incident in Germany in December 2010 to January 2011 in which fatty acids of vegetable origin for use in pig and poultry feed were mixed with fats derived from industrial use containing high levels of dioxins. The Commission considered that this exposed a need for enhanced controls in this sector.
 - 4.2 The producers and processors of fats and oils were previously required only to be registered under Regulation (EC) 183/2005 -- i.e., to be placed on a list maintained by the competent authority (in Northern Ireland, this is the Department of Agriculture and Rural Development and in Great Britain the local authority's trading standards department) with risk-based follow-up checks. Approval requires the prior inspection of the business to ensure that it has the procedures and equipment in place to undertake its activities to the requisite standards. Approval also requires the one-off payment of a fee to the local authority to cover the costs of the inspection work.
 - 4.3 Regulation (EU) 225/2012 also introduces a requirement for the animal feed industry to undertake risk-based monitoring (i.e., sampling and analysis) of vegetable-derived fats and oils, and oils of marine origin, for the potential presence of dioxins and dioxin-like PCBs. The Annex to the Regulation specifies the particular fats and oils to be tested, the stages of their use at which they are to be tested, and the size of the consignments from which the samples are to be taken.
 - 4.4 EU Regulations apply directly in Member States and their provisions cannot be repeated in national legislation. However, it is necessary to provide for the enforcement of Commission Regulation (EU) No 225/2012 by linking its provisions to the powers already available to the Department of Agriculture and Rural Development enforcement officers under Part 4 of the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005.
 - 4.5 The Feed (Hygiene and Enforcement) and the Animal Feed (Amendment) Regulations (Northern Ireland) 2013 will therefore:
 - re-set the definition of Regulation (EC) 183/2005 in regulation 2(1) of the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005 so that it captures the amendments introduced by Regulation (EU) 225/2012;
 - insert an ambulatory reference to the Annexes of Regulation (EC) 183/2005, so that future amendments to them have effect from the application date given in the relevant EU amending Regulation and do not require to be individually referenced in domestic provisions;
 - amend the designations of the competent authorities in regulation 4 of the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005 to cover the references to the competent authority in the new section on dioxin monitoring in Annex II of Regulation (EC) 183/2005 (inserted by Regulation (EU) 225/2012); and
 - extend the requirement to pay a fee for approval under the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005 to the categories of

establishments listed in the facilities and equipment section of Annex II of Regulation (EC) 183/2005 (amended by Regulation (EU) 225/2012).

4.6 The Feed (Hygiene and Enforcement) and the Animal Feed (Amendment) Regulations (Northern Ireland) 2013 will also:

- substitute in Schedule 2 to the Feed (Hygiene and Enforcement) Regulations (Northern Ireland) 2005 the term "substances" for "additives", to confirm that operators using bioproteins formerly covered by Council Directive 82/471/EEC are still required to be approved. This amendment is necessary following the revocation of Council Directive 82/471/EEC on certain products (bioproteins) used in animal nutrition by European Parliament and Council Regulation (EC) No. 767/2009 of 13 July 2009 on the placing on the market and use of feed, which has created a legal uncertainty over whether establishments using or manufacturing the bioproteins formerly covered by the Directive are subject to approval; and provide a clarified regulation 4(1) and Schedule 1 to the Animal Feed Regulations (Northern Ireland) 2010.

5. Matters of special interest to the Health Committee

5.1 None.

6. Consultation

6.1 The Food Standards Agency consulted informally with the feed industry during the negotiations in Brussels on what became Regulation (EU) 225/2012, and in response to industry representations successfully intervened in those negotiations to persuade the Commission to withdraw its original proposal for 100% monitoring of fats and oils at all stages of their use (even where they had been previously tested and found to be compliant) and instead focus on the testing of higher-risk fats and oils.

6.2 A formal public consultation on the draft Feed (Hygiene and Enforcement) and the Animal Feed (Amendment) Regulations (Northern Ireland) 2013 ran from 5 July 2013 to 27 September 2013, but attracted only three responses. One indicated general support for the legislation; the second made general comments about the potential for monitoring to raise the costs of the material being monitored; the third claimed that the Regulation was an over-reaction by the Commission to an incident in another Member State which would not have occurred had the existing rules been followed, but endorsed the figures for costs given in the consultation-stage Impact Assessment. More details of these consultation responses are provided in the attached final Impact Assessment.

7. Position in Great Britain

7.1 England, Scotland and Wales will introduce equivalent Statutory Instruments.

8. Equality Impact

8.1 There is no impact on equality of opportunity in relation to enforcement of this Statutory Rule.

9. Guidance

9.1 The consultation package for the draft Feed (Hygiene and Enforcement) and the Animal Feed (Amendment) Regulations (Northern Ireland) 2013 included two draft guidance documents, on the application by industry of the sampling requirements and the procedures to be followed by laboratories in reporting breaches of dioxin thresholds to competent authorities. Industry was invited to suggest additional issues which these documents could cover. The guidance has been revised to include the additional points raised, and is to be published on the Food Standards Agency's website.

10. Impact

10.1 The Impact Assessment was prepared by FSA colleagues in London and is believed to be representative of the position in Northern Ireland and is attached to this Explanatory Memorandum.

11. Monitoring and Review

11.1 The Annex to Regulation (EU) 225/2012 states that the dioxin-monitoring requirements are to be reviewed by 16 March 2014. The Food Standards Agency will seek feedback from the UK feed industry and enforcement bodies on the application of the Regulation to help inform its future contribution to these reviews. 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.

12. Contact

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