

EXPLANATORY MEMORANDUM TO THE FOOD HYGIENE (ENGLAND) REGULATIONS 2005

2005 No. 2059

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument provides enforcement powers in respect of the EU Food Hygiene Regulations. In particular, it designates competent authorities and enforcement authorities and makes provision for offences and penalties. It also addresses aspects where the EU Regulations either require or allow Member States to adopt certain provisions in their national law.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The new EU legislation has as its primary objective the optimisation of public health protection by improving and modernising the previous sector specific EU legislation. The new EU legislation establishes the conditions under which food is produced to prevent, eliminate or acceptably control pathogen contamination of food. More risk based and flexible procedures are introduced that are better matched to the needs of individual businesses and to enforcement. The legislation introduces a "farm to fork" approach to food safety, by including primary production in food hygiene legislation for the first time in the majority of cases.
 - 4.2 The EU Food Hygiene Regulations will be directly applicable in each Member State of the EU. National legislation is neither required nor allowed, to give effect to the EU Regulations, beyond providing for their enforcement in England. However, there are a number of areas where the EU Regulations either require or allow member states to adopt certain provisions in their national law and these Regulations address those aspects too.
 - 4.3 The SI is made under the powers given by section 2 (2) of the European Communities Act (ECA) 1972. As the subject matter of the SI is food hygiene it has been developed to mirror the provisions of the Food Safety Act 1990. It creates penalties and offences, powers of entry and other administrative measures based in the main on existing requirements. Where the EU Regulations do not apply and no more specific national provisions have been

made, the provisions of the Food Safety Act 1990 will apply to ensure the supply of food in such circumstances is fit for human consumption.

5. **Extent**

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

6. **European Convention on Human Rights**

- 6.1 The Parliamentary Under Secretary for Public Health has made the following statement regarding Human Rights:

“In my view the provisions of the Food Hygiene (England) Regulations 2005 are compatible with the Convention rights”.

7. **Policy Background**

- 7.1 The Regulations designate the Food Standards Agency as the competent authority and designate food authorities and the Food Standards Agency as enforcement authorities. The division of responsibility is set out in regulation 5.
- 7.2 There are a number of areas where the EU Regulations either require or allow Member States to adopt certain provisions in their national law. These areas cover the bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea of raw sugar, temperature control requirements for foodstuffs, the direct supply of small quantities of meat from poultry and lagomorphs (rabbits and hares) slaughtered on-farm, and restrictions on the sale of raw milk intended for human consumption.
- 7.3 The SI introduces new enforcement powers in relation to the requirements of the EU Regulations that apply on 1 January 2006. It applies the required penalties and offences, powers of entry and other administrative measures. A full consultation and RIA have been completed for the EU Regulations and the Food Hygiene (England) Regulations 2005.
- 7.4 An initial consultation with stakeholders on the policy content of these measures was undertaken and concluded on 9 June 2004. A further consultation was carried out on this statutory instrument and associated guidance giving effect to the EU legislation which concluded on 31 January 2005. The responses of stakeholders to the initial policy consultation were generally in favour of the FSA preferred options. Stakeholders overwhelmingly called for practical and flexible application of the EU legislation in the UK and for national measures that respected existing practice and did not add to the burden on business. This approach has been respected in developing the SI and associated guidance to give effect to the legislation. The FSA Board reviewed the results of the consultation at its open meeting in March 2005 and endorsed the approach being taken.

7.5 Responding to the consultation on the draft SI, certain sectors of the meat industry objected to the continued use of Remedial Action Notices (RANs) as a mechanism to secure compliance with the legislation as it applies to fresh meat. Officials have discussed their concerns with them. We have concluded that the RAN remains a valid enforcement tool and should be retained. Clear guidance on the use of the provision will be needed to ensure that it contributes to an effective and proportionate enforcement regime. The industry is currently being consulted on the guidance and instructions to enforcers (the FSA's Meat Hygiene Service in the case of fresh meat plants) and will be able to comment further on the practical application of the provision.

8. **Impact**

8.1 A Regulatory Impact Assessment (RIA) has been prepared for this instrument and is attached at Annex D.

9. **Contact**

Catherine Bowles at the Food Standards Agency (Tel: 020 7276 8952 or e-mail: catherine.bowles@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.