

EXPLANATORY MEMORANDUM TO
THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) REGULATIONS 2005
2005 No. 2626

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 for the execution and enforcement of the feed and food elements of EU Regulation 882/2004 on official feed and food, animal health and animal welfare controls. It designates the competent authorities and enforcement authorities and creates relevant offences and penalties. In particular, it provides for the enforcement of new rules on official controls of feed and food of non-animal origin imported from outside the Community.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The instrument is being made to give effect to the feed and food elements of a new EU Regulation on official controls. This EU Regulation sets out a framework of requirements for the authorities in Member States (the competent authorities) that are responsible for monitoring and enforcing compliance of businesses with feed and food law as well as for checking that animal health and animal welfare rules are adhered to (i.e. for undertaking official controls). This framework includes the principles that should be adopted e.g. a risk-based and 'farm to fork' approach, and specifies operational criteria with which the authorities must comply, e.g. they must be audited to assess the effectiveness of their performance. The Regulation also includes new harmonised rules for official controls of feed and food of non-animal origin imported from third countries.

4.2 The provisions of the EU Regulation apply directly in the Member States. Most of these consolidate existing requirements such that enforcement arrangements in the UK for feed and food are generally already consistent with these. However, some updating is needed. In particular, national legislation is needed to extend the Food Standards Agency's existing function (set out in the Food Standards Act 1999) to monitor and audit enforcement authorities. Additionally, the requirements for checks of third country imports of feed and food of non-animal origin are new and national legislation is needed to provide for their enforcement.

4.3 The instrument will be made under the powers given in Section 2(2) of the European Communities Act 1972 and certain sections of the Food Safety Act 1990. The enforcement powers and the offences and penalties in the instrument mirror those already provided in the Food Safety Act 1990 or the Food Standards Act 1999.

5. Extent

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

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

- 7.1 The objective of the EU Regulation is to create a more comprehensive and integrated, risk-based, 'farm to fork' approach to official controls. It does so by consolidating and extending existing legislative requirements. The aim is to improve the consistency and effectiveness of controls across the EU and, as a consequence, raise standards of food safety and consumer protection. The EU Regulation also aims to provide a greater degree of transparency for consumers about enforcement arrangements. The national legislation will provide the enforcement powers required in relation to provisions in the EU Regulation that apply from 1 January 2006 and will contribute to the anticipated benefits of a more consistent and effective control system.
- 7.2 Around 950 interested parties plus all local authorities in England (these authorities are responsible for enforcement of the majority of feed and food law) were consulted on the draft instrument as well as the Regulatory Impact Assessment and associated guidance material. A total of 21 responses were received. The majority of comments related to the provisions in the statutory instrument on import controls for feed and food of non-animal origin from third countries.
- 7.3 The only significant objection from stakeholders was with regard to the role envisaged for Her Majesty's Revenue and Customs (HMRC) in import controls. Following initial discussions, it had been envisaged that HMRC would be involved in undertaking documentary checks of consignments (examination of commercial documents and documents required under feed and food law). However, on further consideration, HMRC concluded that customs officers do not have the necessary technical expertise to undertake this function. This view was strongly supported by enforcement stakeholders and has been accepted by the Food Standards Agency. These checks will instead continue to be undertaken as now by local and port health authorities. This approach also acknowledges concerns expressed by industry stakeholders regarding potential for duplication of effort and confusion about the role of HMRC and that of local and port health authorities.
- 7.4 The other major concern of stakeholders was the need generally for co-operation and co-ordination between enforcement authorities to avoid duplication and to ensure consistency of approach, particularly with respect to import controls. This is acknowledged and the need for partnership working to achieve this is recognised. In this respect, the Food Standards Agency will continue to work with local authorities and their representative and professional bodies. In particular, the Agency will continue to work closely with HMRC, the UK Agriculture Departments and with local and port health authorities to ensure that imported food controls are in place at borders and inland. This will build on and aim to strengthen existing avenues of communication and co-operation which are already well developed.

7.5 An analysis of the consultation responses is included in the Regulatory Impact Assessment. The Food Standards Agency Board has reviewed this and has endorsed the approach being taken.

8. Impact

8.1 A Regulatory Impact Assessment for this instrument is attached at Annex 1.

9. Contact

Catriona Stewart at the Food Standards Agency (Tel: 020 7276 8498 or email: catriona.stewart@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.