

EXPLANATORY MEMORANDUM TO
THE AGRICULTURE, ANIMALS, ENVIRONMENT AND FOOD ETC.
(MISCELLANEOUS AMENDMENTS) ORDER 2012.

2012 No. 2897

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.
 - 1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - 2.1 This instrument makes amendments to a number of statutory instruments which are the policy responsibility of the Department for Environment, Food and Rural Affairs. The purpose of the majority of the amendments is to clarify that the Director of Public Prosecutions (DPP) is able to exercise all functions assigned to him in relation to the prosecution of offences under those enactments. The instrument contains a number of amendments which serve other purposes, for example to update references to EU instruments, to modify powers of entry or to correct errors identified by the Joint Committee on Statutory Instruments (JCSI).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The instrument corrects errors identified by the JCSI as follows:
 - (a) the Poultry Compartments (England) Order 2010 (S.I. 2010/108) (JCSI 10th Report/2009-10);
 - (b) the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 (S.I. 2011/1543) (JCSI 29th Report/2010-12);
 - (c) the Wine Regulations 2011 (S.I. 2011/2936) (JCSI 41st Report/2010-12);
 - (d) the Agriculture (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/66) (JCSI 42nd Report/2010-12) as they amend the Agriculture (Cross compliance) (No. 2) Regulations 2009 (S.I. 2009/3365); and
 - (e) the Bluetongue (Amendment) Regulations 2012 (S.I. 2012/1977) (JCSI 10th Report/2012-13) as they amend the Bluetongue Regulations 2008 (S.I. 2008/962).
4. **Legislative Context**

- 4.1 The majority of the amendments clarify that the DPP may prosecute offences under the enactments. This follows the transfer of prosecutors from Defra to the Crown Prosecution Service (CPS) in 2011. It was thought possible that where a Defra SI contains wording which imposes a duty on the Secretary of State to enforce its provisions, that might prevent delegation of the prosecution function of instituting proceedings to the CPS. The amendments contained in this instrument make it clear that all prosecution functions assigned to the DPP by the Attorney General may be delegated to the DPP.
- 4.2 The Disease Control (England) Order 2003 (S.I. 2003/1729) is amended to clarify the position with regard to recognition of Scottish and Welsh animal movement licences.
- 4.3 The Control of Salmonella in Poultry Order 2007 (S.I. 2007/3574), the Control of Salmonella in Broiler Flocks Order 2009 (S.I. 2009/260) and the Control of Salmonella in Turkey Flocks Order 2009 (S.I. 2009/3271) are amended to update or correct references to EU legislation. The Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 (S.I. 2006/2821) are revoked. The Cattle Identification Regulations 2007 (S.I. 2007/529) are amended to update references to EU legislation on rules on the application of minimum administrative sanctions in the framework of the system for the identification and registration of bovine animals.
- 4.4 The Poultrymeat (England) Regulations 2011 (S.I. 2011/452) are amended to modify the powers of entry for inspectors to enforce those Regulations.
- 4.5 The Bluetongue Regulations 2008, the Agriculture (Cross compliance) (No. 2) Regulations 2009, the Poultry Compartments (England) Order 2010, the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 and the Wine Regulations 2011 are amended to correct errors identified by the JCSI, as mentioned in paragraph 3.
- 4.6 All of the enactments amended, except for certain enactments under the Animal Health Act 1981, implement EU obligations.

5. Territorial Extent and Application

- 5.1 The instrument very largely extends to England and Wales.
- 5.2 The amendments of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 which correct errors mentioned by the JCSI extend to Great Britain and also to Northern Ireland in so far as they relate to import and export (article 43(a) and (c)). In addition, the amendment of the Wine Regulations 2011 which corrects an error mentioned by the JCSI extends to the United Kingdom (article 46(b)).

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 Amendments relating to prosecution of the enactments (articles 2 to 12, 14 to 34 and 36 to 46 of this instrument). In 2011, DEFRA prosecutors transferred to the CPS, and an assignment was made under section 3(2)(g) of the Prosecution of Offences Act 1985 giving the CPS powers in relation to the prosecution of offences investigated by Defra bodies such as Defra Investigation Services. However there were concerns that certain wording in Defra Statutory Instruments, which appeared to give the Secretary of State a duty to enforce, might mean that the assignment could not be considered to have delegated all prosecution functions under those instruments to the CPS – i.e. the Secretary of State’s duty to institute proceedings might be considered to be non-delegable. Therefore the decision was made to put the matter beyond doubt by amending those Defra instruments which contain or might be thought to contain a non-delegable duty to enforce, so that it is clear that the Secretary of State may delegate all prosecution functions in relation to those instruments to the CPS, including the function of instituting proceedings.
- 7.2 Disease Control (article 5 of this instrument). To aid disease control, the Disease Control (England) Order 2003 introduced licensing of all livestock movements. To minimise the burden on farmers and other keepers of livestock, “General Licences” were published avoiding the need for livestock keepers to obtain a licence every time stock is moved. Farmers and other keepers of livestock who have been forbidden to move animals under the “General Licence” must apply for a specific licence detailing which animals are to move and their destination. Similar rules operate in Scotland and Wales. The 2003 Order recognises the validity of movements, relying on the general licence, which begin in Scotland or Wales and end in England and this avoids the need to issue separate licences for cross–border movements. This amendment to the 2003 Order clarifies that, where someone has been notified of the revocation of the right to move animals under an English general licence, the person cannot move animals from Scotland or Wales into England under a Scottish or Welsh general licence.
- 7.3 Cattle Identification/Salmonella (articles 13, 18, 22, 28 and 33 of this instrument). The Cattle Identification Regulations 2007 implement EU Regulations on the identification and registration of bovine animals. The EU Regulations placed a number of obligations on keepers of bovine animals, including requirements to identify animals individually (with two ear tags and a passport), to report the birth, death and movements onto and off the holding, and to keep a register. The Commission Regulation (EC) No 494/98 laid down detailed rules for the application of minimum administrative sanctions for failures in the identification and registration of bovine animals. This instrument amends the Cattle Identification Regulations 2007 to update the references to the Commission Regulation No 494/98, following its amendment. The Control of Salmonella Orders relating to poultry, broiler and turkey flocks are amended to update references to EU legislation on salmonella control, which have been amended/replaced. This instrument also revokes the Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 as the baseline surveys this Regulation legislated for have since been completed.

- 7.4 Bluetongue (article 25 of this instrument). The Bluetongue Regulations 2008 implement Council Directive 2000/75/EC laying down specific provisions for the control and eradication of bluetongue and enforce Commission Regulation (EC) No 1266/2007. The review provisions in the Regulations are amended to bring them into line with Government policy. The amendment is to the latest date by which the Secretary of State must publish the first report setting out the conclusions of the first review of the Regulations.
- 7.5 Agriculture Cross compliance (article 34 of this instrument). The Agriculture (Cross compliance) (No. 2) Regulations 2009 implement Commission Regulation (EC) No 1122/2009 which establishes cross-compliance requirements under Council Regulation (EC) No 73/2009. The latter Regulation establishes common rules for direct support schemes for farmers under the common agricultural policy and certain support schemes for farmers. The Agriculture (Cross compliance) (No 2) Regulations 2009 set out requirements for claimants of subsidy under the single payment scheme. Schedule 1 to those Regulations is amended to clarify provisions relating to the exemptions the Secretary of State may give from the rules on overgrazing and unsuitable supplementary feeding, the management of land not in agricultural production and the control of weeds.
- 7.6 Poultry Compartments (article 35 of this instrument). The Poultry Compartments (England) Order 2010 implements Commission Regulation (EC) No 616/2009, which makes provision for the recognition of poultry compartments which meet high standards of biosecurity. Article 2 of the Order designates the Secretary of State as the competent authority as regards the approval of compartments. Article 4 of the Order confers power on an inspector to enter premises “certified” as a compartment and any site which contains records relevant to the “certification” of a site as a compartment. The refusal to allow entry to an inspector exercising powers conferred by the Order is an offence under section 66 of the Animal Health Act 1981, as is obstructing or impeding an inspector when exercising those powers. The Order did not state what was meant by the references to certification. This instrument amends the Order by substituting references to certification with references to approval.
- 7.7 Poultrymeat (article 39 of this instrument). The Poultrymeat (England) Regulations 2011 implement EU Regulation 543/2008 on the standards applicable to poultrymeat marketed in the EU. The EU Regulation sets out a requirement for registration of slaughterhouses and producers, and defines terminology used on whole carcasses and cuts, storage temperature for fresh poultrymeat, method of chilling and associated maximum water content, criteria for grading of meat and use of marketing terms (e.g. free range). The England Regulations identify the enforcers and their powers, the list of contraventions that are deemed offences or justify issuing of compliance notices, and the procedure for prosecuting offenders. This instrument amends the powers of entry to bring them into line with Government policy by ensuring they are not unduly intrusive while enabling effective enforcement. In particular the Regulations are amended to provide that entry to private dwellings is permitted only with an entry warrant.

7.8 Ozone-Depleting Substances (article 43 of this instrument). The Environmental Protection (Ozone-Depleting Substances) Regulations 2011 provide for the enforcement of EU controls on the production, placing on the market and use of substances that deplete the ozone layer. This instrument amends those Regulations to clarify the geographical extent of the powers of enforcing authorities and persons authorised by them. This is necessary because the current provision provides that the powers are extended to the “offshore area”, a term which is not defined in the Regulations.

7.9 Wine (article 46 of this instrument). The Wine Regulations 2011 enforce several EU Regulations which set out detailed rules as regards the definitions, descriptions, marketing etc. of wine. Regulation 3 describes the bodies (“enforcement authorities”) which are to enforce those Regulations, and those authorities may appoint “authorised officers” on whom powers of enforcement are conferred. This instrument amends regulation 9 of those Regulations to clarify which officer may enter premises to enforce those Regulations under a warrant.

8. Consultation outcome

8.1 In line with Cabinet Office guidance, this instrument has not been subject to a public consultation as it makes only minor amendments to regulation and policy. With respect to the CPS amendments, the Attorney-General’s Office has been consulted on the approach taken in the instrument.

9. Guidance

9.1 No guidance will be produced on this instrument.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An impact assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

10.4 The instrument is subject to the free issue procedure in so far as relating to recipients of the five instruments in relation to which amendments are made to correct errors identified by the JCSI (see paragraph 3).

11. Regulating small business

11.1 This instrument does not apply directly to small business. The majority of the amendments serve to clarify that the CPS may prosecute offences under the enactments, and do not impose any burden on business.

12. Monitoring & review

12.1 Given the nature of this instrument, this is not applicable.

13. Contact

13.1 Rob Peters at the Department for Environment, Food and Rural Affairs. Tel: 020 7238 5901 or email: rob.peters@defra.gsi.gov.uk can answer any queries regarding the instrument.