

EXPLANATORY MEMORANDUM TO
THE ANIMAL FEED (HYGIENE, SAMPLING, AND ENFORCEMENT)
(ENGLAND) REGULATIONS 2015

2015 No. 454

1. This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Animal Feed (Hygiene, Sampling, etc., and Enforcement) (England) Regulations 2015 (“the new Regulations”) will combine the provisions of two national Regulations and remake them as one consolidated Statutory Instrument (SI). The new Regulations will also introduce additional safeguards for officers exercising certain powers under the Regulations, as well as increasing the penalty for offences to be applied on summary conviction.
 - 2.2 A separate instrument, namely *The Animal Feed (Composition, Marketing and Use) (England) Regulations 2015* will revoke, remake and consolidate the remaining national rules on the composition, marketing and use of animal feed.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 As part of the Government-wide review of the powers and sanction, the powers of entry in this instrument has been updated, introducing additional safeguards in relation to officers exercising their powers entry and inspection.
 - 4.2 The consolidation provides the opportunity to condense into two SIs the legal requirements on animal feed composition, marketing and labelling on the one hand, and feed hygiene and enforcement (including sampling and analysis) on the other. The proposals will reduce the number of animal feed SI’s resulting in legislation that is more accessible and designed to be more logically structured, providing more clarity and ease of reference for enforcement bodies and businesses alike. The proposals provide relevant information in a reduced number of SI’s, thus, reducing the regulatory burden of having to cross-refer to several pieces of national legislation. The latter part is one element of the Food Standards Agency’s (FSA) commitment under the Red Tape Challenge to reduce the regulatory burden on business.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England only.
 - 5.2 National SIs in Wales and Northern to introduce these measures are being made. The equivalent legislation in Scotland is due to be reviewed following the establishment of Food Standards Scotland on 1 April 2015.

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

- What is being done and why

7.1 Legislation on animal feed is harmonised at European level; it applies principally to feed for farmed livestock, but also covers feed for horses, pets, farmed fish, zoo and circus animals and creatures living in the wild.

7.2 At present the legal requirement on animal feeds legislation is contained in five separate Statutory Instruments, of which two are being revoked and remade in the new Regulations. The current arrangements, which necessitate cross-reference between two SIs are perceived as difficult and costly to business operators and enforcement bodies alike, and constitutes a regulatory burden. The consolidation aims to rectify this.

7.3 The new Regulations also introduce additional safeguards for officers exercising certain powers of entry and seizure. Officers will be required to produce identification on request in addition to evidence of their authority, as at present. For entry other than on warrant and where circumstances require prior notice of entry, this must be of at least 48 hours. Officers will also be required to leave the premises in a condition as near as possible to the way in which they were found on entry, and the occupier of the premises must be provided with a description of any records seized and a statement that those records will be kept only until they are no longer needed as evidence in legal proceedings

7.4 The two existing national Regulations being revoked by the new Regulations are:

- a) The Feed (Sampling and Analysis and Specified Undesirable Substances) (England) Regulations 2010 (SI 2010 No. 2280); and
- b) The Feed (Hygiene and Enforcement) (England) Regulations 2005 (SI 2005 No. 3280) as amended.

8. Consultation outcome

Formal Public Consultation

8.1 The FSA has kept the feed sector informed prior to the formal consultation, through stakeholder engagement.

8.2 The FSA conducted a formal consultation from 24 September 2014 to 10 December 2014 the purpose of which was to seek stakeholder views on the draft consolidated instrument and to provide stakeholders with the opportunity to comment on the draft new Regulations and the associated Impact Assessment.

- 8.3 Eleven responses were received; these were from Trading Standards Institute (TSI), Sunderland City Council (SCC), National Farmers Union (NFU), Which, British Egg Industry Council (BEIC), a private Consultant), the Pet Food Manufacturers Association (PFMA), the British Association of Feed Supplement and Additive Manufacturers (BAFSAM), the Public Analyst Scientific Services, a consumer and the Agricultural Industries Confederation (AIC).
- 8.4 There was a general consensus amongst industry and enforcement bodies that they supported the proposed consolidation. Where there were specific comments on the draft new Regulations, which the FSA considered would improve them without adding a regulatory burden, these have been reflected in the final SI
- 8.5 A full summary of the comments received in response to the consultation will be published on the FSA's website link below, within three months of the close of the consultation.
<http://www.food.gov.uk/news-updates/consultations/2014/the-official-feed-and-food-controls-england-and-the-food-safety-and>
- 8.6 A paper copy of the summary of the responses is available on request, from the consultation co-ordinator by email at:
consultationcoordinator@foodstandards.gsi.gov.uk , Tel: 202 7276 8308

9. Guidance

- 9.1 No specific guidance has been prepared to accompany the new Regulations.

10. Impact

- 10.1 As set out in the Impact Assessment, the proposed consolidated Regulations will affect all feed businesses in England, including; businesses placing feed products on the market, mixers, farms and businesses involved in the growing, production, storage, transport and import of feed products. However, in terms of financial costs and benefits, the FSA believes that these are negligible, as the consolidation does not change the content of the Regulations; the only change is that the requirements of 2 separate SI's will be located in one SI.
- 10.2 Enforcement bodies involved in the enforcing of feed law will also be affected by the consolidated Regulations; however, in terms of financial costs, the FSA believes that these are negligible.
- 10.3 The FSA believes that industry there may be benefits in terms of simplification as a result of consolidation. Any new entrants into the sector would only need to familiarise themselves with one instrument as opposed to two at present.
- 10.3 There is no particular impact on charities or voluntary bodies, rural areas or on members of the ethnic communities of any particular racial group that can be identified. No comments were received from such bodies on the effects of the proposal on them.

10.4 As regards the public sector, there may be an impact on Enforcement Authorities and the FSA in the form of administrative costs associated with intervention in support of businesses achieving compliance with the consolidated Regulations.

10.5 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11 Regulating small business

11.1 The instrument will apply to all businesses, small and large.

12 Monitoring & review

Monitoring

12.1 The effectiveness of the instrument will be also be monitored via general feedback from industry and Enforcement Authorities.

Statutory Review

12.2 The FSA is required to carry out a review of this instrument every five years. The review period begins when this instrument comes into force.

12.3 In carrying out the review, the FSA is required to produce a report that sets out the objectives of this instrument, the extent to which they have been achieved and whether they could be achieved by means that impose less regulation. Information gathered via the activities described in paragraphs 12.1 above will inform the review.

13 Contact

13.1 Nasreen Shah at the Food Standards Agency, Tel: 020 7276 8538, Email: nasreen.shah@foodstandards.gsi.gov.uk, can deal with any queries regarding the instrument.