

EXPLANATORY MEMORANDUM TO
THE AVIAN INFLUENZA (PREVENTIVE MEASURES) (No 2) REGULATIONS
2005

2005 No. 3394

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Avian Influenza (Preventive Measures) Regulations 2005 and The Avian Influenza (Preventive Measures In Zoos) Regulations 2005 implemented the recent Commission Decisions providing for preventive biosecurity measure to be introduced on the basis of a Member State's risk assessment and banning bird gatherings.

- 2.2 The new regulations do four things:

- i) they update the reference in the main Regulations to the original Commission Decision (2005/734/EC) to include reference to the amending Commission Decision 2005/855 of 30 November (no other changes are required as a result of this Decision),
- ii) they specify February 28, 2006 as the date by which information on commercial poultry premises must be notified to the Secretary of State for the Poultry Register,
- iii) they correct the penalties for committing an offence under the Regulations. It provides for imprisonment up to 3 months on summary conviction. Regulation 10(1)(h) of the main Regulations and regulation 7(1)(h) of the Zoos Regulations incorrectly applied the offence provision in section 75 of the Act, which provides for imprisonment for up to six months, and
- iv) they amalgamate the two original Regulations into a single document.

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

- 3.1 The Department intends to break the 21 day rule on this occasion.

- 3.2 There is a need to have these Regulations in place on 9 December so that registration of poultry at commercial poultry premises starts as soon as possible. The poultry register is an important tool which will enable us better to comply with the Commission Decisions referred to in the Regulations and which require member States to introduce preventive measures immediately. The register will significantly aid effective risk assessment, prevention and control of this disease and assist communication with poultry keepers to help manage any outbreak of the disease.

3.3 We also need to ensure that the Regulations refer to the correct legal base: the latest Commission Decision referred to in our Regulations amended an earlier Commission Decision which, but for the amendment, would now be spent.

4. Legislative Background

4.1 The Regulations implement Commission Decisions 2005/744/EC and 2005/734/EC on preventive measures to prevent the spread of avian influenza, as amended by Commission Decisions 2005/745/EC and 2005/855/EC.

5. Extent

5.1 This instrument applies to England

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 Commission Decisions were introduced as a matter of urgency by the Commission in the light of the spread of avian influenza H5N1 for example into Romania and Turkey. The majority of the protective measures proposed are to be introduced only after a risk assessment is undertaken by the Member State and that risk assessment indicates that protective action needs to be taken. The risk assessment for the UK is kept under review and there is no immediate intention to take action.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument because it was brought into force in a very short timescale in order to implement our obligations under Commission Decision 2005/734/EC laying down the biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza A virus subtype H5N1 from birds living in the wild to poultry and other captive birds. It is considered that the poultry register has a minimal impact on business, charities or voluntary bodies, other than the time taken to comply with the requirement to register. The benefits to the wider industry are likely to outweigh the costs in the event of an outbreak of this disease.

8.2 The impact on the public sector is the cost of implementing and maintaining the Poultry Register.

9. Contact

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