EXPLANATORY MEMORANDUM TO

THE ANIMAL FEED (BASIC SAFETY STANDARDS) (ENGLAND) REGULATIONS 2019

2019 No. 683

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for the transposition of Council Directive 2013/59/EURATOM, which lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation, as it relates to animal feedingstuffs in England.

2.2 It creates new offences in respect of the intentional addition of radioactive substances in the production of animal feedingstuffs; prohibits the import or export of animal feedingstuffs to which radioactive substances have been intentionally added during production; and provides enforcement powers to deal with non-compliance by reference to existing enforcement mechanisms and provisions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 This instrument applies in England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Council Directive 2013/59/EURATOM (2013 BSSD) consolidated and updated existing Euratom radiation safety legislation, taking into account developments in the recommendations and standards issued by the International Commission on Radiological Protection and the International Atomic Energy Agency. Its scope includes medical, occupational and public radiation exposures.

6.2 The Directive requires transposition into law in England to provide legal effect. Different aspects of the Directive provisions are being taken forward by different pieces of legislation. In this case it is the provision at Article 21.1 relating to animal feedingstuffs as they apply in England which are being transposed.

6.3 This Instrument makes provision to implement Article 21.1 by creating a new offence in respect of the intentional addition of radioactive substances in the production of animal feedingstuffs and the import or export of such products. The Instrument therefore reflects the requirements of Article 21.1 and does not go beyond them.

6.4 Criminal sanctions for food and feed offences are always an action of last resort by local authority food enforcement officers. Authorised officers are required to have regard to a hierarchy of enforcement when dealing with non-compliance and, subject the severity of the offence etc., their first course of action is to seek compliance through education and information, moving to issuing a compliance notice where this approach does not lead to a change in business behaviour. A prosecution is therefore the last stage approach to gain compliance or where an immediate public health risk is presented.

6.5 The FSA is considering how to reduce reliance on criminal sanctions and will be consulting on moving towards civil sanctions in existing regulations at the next appropriate moment.

7. Policy background

What is being done and why?

7.1 Council Directive 2013/59/EURATOM (2013 BSSD) consolidated and updated existing Euratom radiation safety legislation. The new Directive took account of developments in the recommendations and standards issued by the International Commission on Radiological Protection and the International Atomic Energy Agency. Its scope includes medical, occupational and public radiation exposures and it provided for three different types of exposure situation:

- Existing public exposure situations, including the management of legacy radioactive contaminated land and exposure to naturally occurring radon gas in homes;
- Planned exposure situations, in relation to authorised activities involving radioactive substances, for example for power generation or healthcare; and
- Emergency exposure situations that could arise for example following an accident.

7.2 Within these sections the Directive also included a requirement specifically prohibiting the intentional addition of radioactive substances in the production of foodstuffs, animal feedingstuffs and cosmetics. The provision relating to animal feed is Article 21(1) which states: "*Member States shall prohibit the deliberate addition of radioactive substances in the production of foodstuffs, animal feedingstuffs, and cosmetics, and shall prohibit the import or export of such products*."

7.3 Consideration of the need to amend food law to implement this Article concluded that there was already adequate protection afforded by the Food Safety Act 1990 - in particular sections 7 (rendering food injurious to health) and 14 (selling food not of the nature or substance or quality demanded). However, it was considered that a transposition of the Directive was required for animal feedingstuffs where

requirements relating to the safety of feed applied only to the placing of feed on the market or feeding it to an animal and not to the initial intentional addition of a radioactive substance to the feed.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not appropriate.

10. Consultation outcome

10.1 The FSA consulted with trade association representatives of animal feed manufacturers, in advance of the public consultation, to identify possible costs and / or other impacts, positive/negative associated with the changes regarding animal feedingstuffs. No significant impacts were identified by these stakeholders.

10.2 The FSA carried out a public consultation from 27 September 2017 to 8 November 2017 on the proposals for England. The purpose of the consultation was to give stakeholders the opportunity to comment on the draft Regulations and to further evidence our assessment of the impact. Details of the consultation are published on the FSA's website at: https://www.food.gov.uk/sites/default/files/consultation/pack/bssdconsultation27september2017_0.pdf

10.3 Three responses were received which mostly raised technical queries on implementation which will be clarified in the responses. One comment raised a possible very minor cost for local authorities, but the FSA does not agree this cost should necessarily be incurred and in any event would not be significant. The FSA addressed this in the response.

11. Guidance

11.1 No specific guidance has been prepared to accompany the new Regulations as it is clear from the text of the Regulation that the deliberate addition of radioactive substances to feed is prohibited and it is unlikely that any legitimate business would consider doing this. If necessary reference to the regulations will be made within existing Guidance to local authorities such as the Practice Guidance.

12. Impact

12.1 The FSA did not identify any significant impacts on business, charities or voluntary bodies resulting from this instrument.

12.2 The FSA did not identify any significant impacts on the public sector resulting from this instrument

12.3 An Impact Assessment has not been prepared for this instrument because the FSA is not aware that currently the feed industry intentionally adds radioactive materials to animal feedingstuffs at any stage and therefore no significant impacts should be incurred in the implementation of the Regulations by Government, enforcement authorities or the feed industry. The impact of this measure is therefore judged to be

trivial in nature and the FSA does not consider it proportionate to produce an Impact Assessment. Responses to the consultation support this approach.

12.4 Enforcement sanctions are consistent with those provided to enforcement authorities under existing animal feed Regulations and reflect the serious harm that could be caused by offences under this instrument.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The UK food industry sector is comprised of mainly small and micro businesses (greater than 90%) and EU legislation generally, applies to food and feed businesses regardless of size, as requirements are intended to be risk based to reflect the activities undertaken by business. Due to the high ratio of small and micro food businesses in the UK, it is often not feasible to exempt smaller businesses from new food measures, as this would fail to achieve the intended effect of reducing risks to public health. The FSA makes every effort to identify and minimise burdens on small and micro businesses where possible.

13.3 No specific action is proposed to minimise regulatory burdens on small business, in relation to this Regulation, as no significant impacts were identified.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through analysis of routine official control monitoring data submitted to the FSA by Enforcement Authorities and feedback received from industry and Enforcement Authorities.

14.2 A statutory review clause is included in the Regulation, requiring a review of this instrument every five years. The review period begins when this instrument comes into force.

14.3 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.

15. Contact

15.1 Mandy Jumnoodoo at the Food Standards Agency Telephone: 020 7276 8468 or email: mandy.jumnoodoo@food.gov.uk can be contacted with any queries regarding the instrument.

15.2 Stuart Armstrong, Acting Deputy Director for Food Policy, at the Food Standards Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Steve Brine MP at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.