EXPLANATORY MEMORANDUM TO

THE ANIMAL FEED (COMPOSITION MARKETING AND USE) (ENGLAND) (AMENDMENT) REGULATIONS 2019

2019 No. 675

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument provides for the execution and enforcement, in England, of the provisions of Commission Regulations (EU) No. 2015/327[1] and (EU) No. 2015/2294[2] ("the new EU Regulations"). These amend Regulation (EC) No. 1831/2003[3] of the European Parliament and of the Council as regards requirements for the new labelling and placing on the market and conditions of use of feed additives.

2.2 This instrument will also amend the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015[4] to provide for the enforcement of the new EU Regulations.

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 The territorial application of this instrument is 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.

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[1] OJ L 58, 3.3.2015, pg. 46.
[2] OJ L 324, 10.12.2015, pg 3.
[3] OJ L 268, 18.10.2003, pg 29, Commission Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition.
[4] SI 2015/255.

6. Legislative Context

6.1 Regulation (EC) No. 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition sets out a Community procedure for authorising the placing on the market and use of feed additives. It lays down rules governing the supervision and labelling of feed additives and pre-mixtures in order to provide the basis for the assurance of a high level of protection of human health, animal health and welfare, environment and users' and consumers' interests in relation to feed additives, whilst ensuring the effective functioning of the internal market.

6.2 Two new EU Regulations have been introduced which amend Regulation (EC) 1831/2003 -

- Commission Regulation 2015/327 amends requirements for the placing on the market (labelling) and conditions of use of additives consisting of preparations; and
- Commission Regulation 2015/2294 which introduces a new functional group within the category technical additives 'Hygiene condition enhancers':

The new EU Regulations were published in the Official Journal of the European Union on 3 March 2015 and 10 December 2015 respectively and came into force on 22 March 2015 and 29 December 2015 respectively.

6.3 Amendment to the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015 is necessary in order to extend enforcement powers in England to apply to the new EU Regulations.

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 New EU Regulations have been introduced -

- in the case of Commission Regulation 2015/327, it amends requirements for the placing on the market (labelling) and conditions of use of additives consisting of preparations. This was introduced as some additives authorised under Regulation 1831/ 2003 are 'preparations', which means they are used with technological additives or other substances but are not themselves intended to have a function in the final feed product. For example, they may assist stability for functionality of the active additive by improving homogeneity. It was considered appropriate to bring more transparency and clarity when placing additive preparations on the market. The new labelling

requirements allow verification that technological additives are authorised for the intended purpose but also that they exert a function only on the active substance contained in the preparation; and

- in the case of Commission Regulation 2015/2294 it introduces a new functional group in the category 'technical additives. As a result of technological and scientific development, some feed additives may improve the hygienic condition of a feed by reducing microbiological contamination and thereby mitigating the possible adverse effects of microorganisms on animal health. A separate functional category is provided for to reflect this.

7.2 While the changes introduced by the new EU Regulations had direct application in all EU Member States, Government intervention is necessary to ensure that enforcement authorities in England have the necessary powers to enforce the provisions. At present, in England offenders cannot be prosecuted and penalties cannot be imposed on those in breach of the new EU Regulations.

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 The Regulations being amended (the Animal Feed (Composition, Marketing and Use) (England) Regulations 2015) are themselves the result of a consolidation exercise. As this is the first amendment to them no further consolidation is anticipated at this stage.

10. Consultation outcome

10.1 The FSA engaged directly with two key trade association representatives of animal feed manufacturers to gather evidence on the possible costs and / or other impacts, positive or negative associated with the changes to the requirements set out in the new EU Regulations. The feedback provided informed the FSA draft Impact Assessment.

10.2 The FSA carried out a public consultation from 25 February 2016 to 1 April 2016to seek stakeholder views on the practical application of the proposed labelling changes and to determine whether the FSA's assumptions were a fair reflection of the costs, benefits and wider impacts on those affected by the provisions of the new EU Regulations.

10.3 Comments were also requested on the proposed amendment and the draft Impact Assessment. Details of the consultation are published on the FSA's website at: http://webarchive.nationalarchives.gov.uk/20171207160410/https://www.food.gov.uk/news-updates/consultations/2016/the-animal-feed-composition-marketing-and-use-england-amendment-regulations

10.4 Four responses were received. Two respondents had no substantial comments; whilst the other two respondents only confirmed what they had already said during the informal consultation, which comments had already been taken into account by the FSA.

11. Guidance

11.1 No specific guidance has been prepared to accompany the new Regulations asthe changes are relatively minor, and the FSA worked with industry during the

negotiations to ensure industry are fully aware of the requirements and able to implement them.

12. Impact

12.1 The FSA did not identify any significant impacts on business, charities or voluntary bodies resulting from the amended regulations.

12.2 The impact on the public sector is small. Many producers already provide the required labelling information in the form of data sheets. Furthermore, there are also potential savings, where some information will no longer be required on labelling products.

12.3 As set out in the Impact Assessment, information provided during the informal consultation indicated that there would be a small one-off cost associated with the additional mandatory requirements for the labelling provisions of the new EU Regulations. It was not possible to ascertain the number of producers of additives preparations in England, as many additive preparations were produced by European and / or global manufacturers across the market. However, an initial estimate provided by the trade association, advised that there were 6 companies in England producing additive preparations.

12.4 In addition, although there were a small number of premixture companies in England which may be affected, most if not all, will be trading in the UK or throughout Europe, and it is envisaged that the work and costs will be centralised.

12.5 There will also be a one-off familiarisation and dissemination cost for both industry and enforcement bodies associated with the EU Regulations.

12.6 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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. Information gathered via relevant businesses outlined in paragraphs 12.3 above will help to inform the review.

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.