EXPLANATORY MEMORANDUM TO THE

THE FEED (CORN GLUTEN FEED AND BREWERS GRAINS) (EMERGENCY CONTROL) (ENGLAND) (REGULATIONS) 2005

2005 No. 1265

1. This explanatory memorandum has been prepared by the Food Standards Agency 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 These Regulations implement the emergency control measures set out in Commission Decision 2005/317/EC (the Commission Decision) to deal with the import from the US of two maize-derived animal feed materials which contain the unauthorised genetically modified organism Bt10.

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

3.1 The Regulations will be made on 29 April 2005 and will come into force on 30 April 2005. They will therefore breach the 21-day rule. The reason for the breach is that the Commission Decision was notified to Member States on 19 April and comes into force on notification. Implementation of the Comission Decision requires the Regulations to be brought into force as soon as possible.

4. Legislative Background

4.1 The instrument is made and laid under section 2(2) of the European Communities Act 1972.

4.2 These Regulations implement Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt10 in maize products. The Decision is to be reviewed by 31 October 2005 at the latest.

5. Extent

5.1 This instrument applies to England.

5.2 There will be separate but parallel legislation is Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister, Melanie Johnson, has made the following statement regarding human rights:

In my view the provisions of the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) (Regulations) 2005 are compatible with the Convention rights.

7. Policy Background

7.1 The Commission Decision requires Member States to permit corn gluten feed and brewers grains originating in the US which either contain or are produced from genetically modified maize to be first placed on the market only where they are accompanied by an original analytical report to demonstrate the absence of Bt10 maize. Consignments which test positive for Bt10 maize are not to be placed on the market. The costs incurred are to be borne by the feed business operators responsible for their first placing on the market.

7.2 The Bt10 variety of GM maize has not been authorised for use anywhere in the world. However, the US authorities advised the European Commission in late March this year that, for the past four years, some exports of GM corn gluten containing Bt11 -- which is authorised for import and use in food and feed in the EU -- will have contained adventitious quantities of Bt10.

7.3 It subsequently transpired that the US authorities had known of this potential contamination since December 2004, when it had first been informed by Syngenta, the producer and owner of the Bt10 and Bt11 lines. Syngenta informed the European Commission that the Bt10 variety contains a gene conferring resistance to the antibiotic ampicillin. The US authorities stated that in view of the small quantities involved -- approximately 800 tonnes of GM animal feed out of total maize exports to the EU per annum of 3.5 to 4.0 million tonnes -- they did not consider there to be any food, feed or environmental safety issues associated with this contamination, although they did not address the antibiotic issue.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it concerns emergency controls. However, there could be additional costs to some traders importing the affected feed materials from the USA, as they will be responsible for providing an analytical report to demonstrate the absence of the Bt10 gene from consignments, and thus for the cost of the sampling and analysis work. There could also be additional costs to local authority trading standards departments, which are responsible for enforcement of the measure, but these will depend on the levels of sampling undertaken of material which is already in circulation. It is not known what any of these costs might be.

9. Contact

9.1 Joseph Nicholas at the Food Standards Agency, telephone 020 7276 8462 or e-mail joseph.nicholas@foodstandartds.gsi.gov.uk, can answer queries regarding the instrument.