EXPLANATORY MEMORANDUM TO

THE FEEDING STUFFS (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 28

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 transposes into national law in England two EC measures relating to animal feedingstuffs. Commission Directive 2008/76/EC of 25 July 2008 makes amendments to existing maximum permitted levels (MPLs) for certain undesirable substances (fluorine, weed seeds and DDT) in animal feed. Commission Directive 2008/82/EC of 30 July 2008 concerns an amendment to an existing entry for feedingstuffs for particular nutritional purposes (also known as dietetic feeds) for the support of renal function in case of chronic renal insufficiency for adult cats.

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

3.1 None.

4. Legislative Context

4.1 These Regulations amend both Schedule 5 and Schedule 7 to the Feeding Stuffs (England) Regulations 2005.

Commission Directive 2008/76/EC

4.2 Commission Directive 2008/76/EC amends Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed. This measure introduces the following amendments:

a) a new MPL of 350mg per kg for fluorine in feed for fish. Currently, there is a range of levels for fluorine in different feed products for a variety of animal species, but no specified level for feed for fish. This additional MPL will allow the use of a greater range of feed materials without compromising consumer safety and animal welfare;

b) deletion of the entries for apricot and bitter almond and Camelina (a botanical impurity), from the existing list of undesirable substances, as these controls are regarded as disproportionate to the risk to livestock or consumers, following an EFSA assessment;

c) deletion of the entries for two named plant species (Lolium temulentum L and Lolium remotum), from the existing list of undesirable substances, as they are already controlled by other more general measures; and

d) a minor change to the existing entry for DDT to reflect an alternative means of expressing one of the possible components in DDT. This is a procedural change and has no impact on consumer or animal safety, and it is in line with current chemical nomenclature usage.

Commission Directive 2008/82/EC

4.3 Commission Directive 2008/82/EC amends Commission Directive 2008/38/EC which established a list of intended uses for animal feedingstuffs for particular nutritional purposes. Feedingstuffs for particular nutritional purposes are non-medicinal feeds intended to meet the nutritional requirements of animals whose metabolism may be permanently or temporarily impaired. Examples of particular nutritional purposes include reduction of the risk of milk fever in dairy cows and compensation for malabsorption of nutrients in poultry.

4.4 This measure amends an existing entry in the list of nutritional purposes, which includes feed with a low level of phosphorus for the support of renal function in case of chronic renal insufficiency for adult cats.

5. Territorial Extent and Application

5.1 This instrument applies to England. Separate but parallel legislation will be made for Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, a statement is not required.

7. Policy background

Policy

7.1 The amendments to existing MPLs, proposed by Directive 2008/76/EC, are based upon the advice of a scientific panel of the European Food Safety Authority (EFSA). The amendment proposed by Directive 2008/82/EC, which concerns the inclusion of a new essential nutritional characteristic, is also made following advice from EFSA.

7.2 It is considered that the amendments made by Directive 2008/76/EC will be of benefit to (a) the manufacturers of fish feed, who will be assured that their products meet the new, scientifically verified limits; and (b) those growing arable crops for feed use and feed manufacturers, who will no longer be required to undertake testing for the possible presence of the named species of weeds. These amendments should also benefit the purchasers and users of feed, who will be assured that the products they use are formulated in line with current scientific knowledge.

7.3 Chronic renal insufficiency results from deterioration of the kidneys resulting in a partial loss of the ability to remove waste products from the blood stream. The amendment introduced by Directive 2008/82/EC concerns the inclusion of a new essential nutritional characteristic and permits certain compound feeds containing the

specific authorised feed additive, lanthanum carbonate octahydrate, to claim a use in the support of renal function in the case of renal insufficiency for adult cats. This will be of benefit to pet food manufacturers, who will be able to market an increased range of products making appropriate claims for the management of renal insufficiency, and pet owners who will have access to new products containing an authorised feed additive. In addition, pet owners may benefit because they may not have to use more expensive veterinary products and/or veterinary procedures for the management of renal insufficiency.

8. Consultation outcome

8.1 The public consultation in England ran for a period of six weeks from 20 October to 28 November 2008 and involved a range of stakeholders including industry trade associations, enforcement bodies, professional associations, consumer groups and others. This relatively short deadline for comments had been specified so that businesses could take advantage of both the revised provisions as soon as possible and in order to meet the EC deadline for transposition of Directive 2008/82 of no later than 20 February 2009. Three responses were received and these generally expressed approval of the draft Regulations.

8.2 Two respondents specifically commented on Directive 2008/76/EC, particularly the revised MPL for fluorine in fish feed. One of those respondents, representing the feed manufacturing industry, said that the revised limit reflected an increase in the use of marine crustaceans (such as marine krill in fish feed) and therefore welcomed this development. The other of these two respondents, a professional association representing Trading Standards professionals in the UK, said that it welcomed the revised level as it reflected current practice and controls used by feed businesses.

8.3 A third body, responsible for overseeing local authority enforcement and related services in the UK, confirmed that the measures would not create a significant increase in enforcement costs.

8.4 In the public consultation, stakeholders were asked to comment on the potential impact of the proposed measures, although it was considered that the Regulations are unlikely to impose any new or additional costs on business or on those responsible for the enforcement of feed legislation. Also, as described in paragraphs 7.1 and 7.3, it is considered that the measures will be of benefit to pet food manufactures and pet owners. These considerations were confirmed by the outcome of the public consultation. Therefore an impact assessment has not been drawn up.

9. Guidance

9.1 The Food Standards Agency does not consider that guidance on the new measures is necessary as these provisions are self-explanatory and have already been subject to public consultation. However, for clarification purposes, the Food Standards Agency will provide guidance to feed businesses and other organisations on request. Key stakeholders will be advised by the Food Standards Agency once the Regulations come into force.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument (as explained in paragraph 8.4). No impact on the private, public and voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation applies to small businesses. These businesses will be assured that their products meet new scientifically verified standards and will be able to market an increased range of products making appropriate claims for the management of renal insufficiency in adult cats.

11.2 It is considered that the Regulations are unlikely to impose any new or additional costs to small businesses, for the reasons explained in paragraphs 7.2 and 7.3.

12. Monitoring and review

12.1 There are no current plans for the legislation to be reviewed in the foreseeable future.

13. Contact

Joseph Nicholas or Ned Mazhar at the Food Standards Agency (telephone: 020-7276-8462 or 020-7276-8609, or e-mail: joseph.nicholas@foodstandards.gsi.gov.uk or nader.mazhar@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.