EXPLANATORY MEMORANDUM TO THE

THE FEEDING STUFFS, THE FEEDING STUFFS (SAMPLING AND ANALYSIS) AND THE FEEDING STUFFS (ENFORCEMENT) (AMENDMENT) (ENGLAND) (No.2) REGULATIONS 2004

2004 No.2688

1. This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 This instrument implements a number of EC measures concerning animal feedingstuffs:

- maximum permitted levels (MPLs) for certain undesirable substances (contaminants) in animal feed;
- a list of ingredients the use of which in feed in prohibited; and
- eight EC Regulations authorising enzyme and micro-organism products for use as feed additives.

2.2 The first measure amends the existing MPLs for the contaminants arsenic, lead and fluorine; rationalises the existing levels for aflatoxin B1 (where there had previously been a range of different levels for various ingredients, these levels have now been unified); introduces a new MPL for free gossypol in whole cottonseed (free gossypol is a cardiotoxin and naturally occurs in whole cottonseed); and aligns the MPLs for endosulfan (a pesticide) in feed materials to those applying to by-products of such materials.

2.3 The second measure repeals and replaces the existing list of prohibited ingredients, both to bring it into line with restrictions enacted by other feed-related legislation and to extend it to cover the use of these ingredients as feed materials (i.e. fed singly) as well as their incorporation in compound feed.

2.4 The eight EC Regulations authorise a number of new substances for use in animal feed.

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

3.1 None.

4. **Legislative Background**

4.1 The Feeding Stuffs Regulations 2000 (as amended) principally implement harmonised EC measures on aspects of the marketing, labelling and composition of animal feed. They include a list of additives which can be used in feed, maximum

permitted levels for certain contaminants, and rules on the labelling of feed. These controls also apply to pet food. The legislation reflects a consolidation of earlier measures, and covers England. There are separate but parallel Regulations covering Scotland, Wales and Northern Ireland.

4.2 Commission Directive 2002/32/EC prohibited the blending down (dilution by mixing) of consignments of animal feed with levels of contamination above the specified MPLs. It was considered that one consequence of this prohibition would be an increase in the number of rejected consignments with levels of environmental background contamination above the permitted maxima. It was therefore agreed that there should be temporary upwards revisions in the levels for some contaminants pending completion of a formal risk assessment. The changes described at paragraph 2.2 above are set out in Commission Directive 2003/100/EC.

4.3 Commission Decision 91/516/EEC first established a list of ingredients the incorporation of which in compound (i.e. manufactured) animal feed was prohibited. The list has been amended a number of times but, as described in paragraph 2.3 above, now needs to be brought into line with restrictions on the use of certain ingredients imposed by other feed-related legislation. The scope of the list also needs to be extended to cover the single feeding of these ingredients, closing a theoretical loophole. Decision 2004/217/EC therefore repeals and replaces Decision 91/516/EEC.

4.4 The eight EC Regulations are directly applicable, but amendments to the Feeding Stuffs Regulations are necessary to link them to national enforcement powers.

4.5 As a consequence of the EC measures, amendments to the Feeding Stuffs Regulations 2000 are necessary.

5. Extent

5.1 This instrument applies to England. Separate but parallel legislation is expected for Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 The setting of MPLs for undesirable substances (i.e. contaminants) such as heavy metals, nitrates, aflatoxin, dioxins and certain pesticides is an important safeguard for the protection of animal and human health. However, the current maximum permitted levels were established some time ago and never subject to a risk assessment. The Commission therefore agreed to a review of these levels during the negotiations on the prohibition on blending down, which is now being taken forward by the European Food Safety Authority (EFSA).

7.2 The Commission had also received representations from some Member States and feed industry interests that the prohibition would restrict supplies of some feed materials from regions of the world where the natural background levels of contamination are above the MPLs. The Commission therefore agreed to temporary upward revisions in the levels for arsenic, lead and fluorine pending completion of risk assessments. The new levels are thought to pose little risk to animal and human health.

7.3 Materials which are unsuitable for animal feeding should clearly be excluded from the feed chain, and the list of such ingredients updated from time to time. However, the current list of prohibited ingredients has been partly superseded by controls on the use of certain materials imposed under other feed-related legislation, in particular EC Regulation 1774/2002 covering animal by-products. It is therefore appropriate to amend it by removing items subject to other legislation, and to extend its scope to cover animal nutrition in general.

8. Impact

8.1 A Regulatory Impact Assessment, which provides more details of the measures, is attached to this memorandum.

8.2 The Food Standards Agency consulted stakeholders on the draft Regulations. This indicated that the measures would have little effect on feed businesses (feed manufacturers, merchants and importers). However, the change in the MPLs for arsenic and lead should permit the continued use of certain materials.

9. Contact

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