EXPLANATORY MEMORANDUM

The Food and Feed Hygiene and Safety (Miscellaneous Amendments) Regulations (Northern Ireland) 2020
S.R. No. 291

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Food Standards Agency to accompany the Statutory Rule (SR) (details above) which is laid before the Northern Ireland Assembly.

1.2. The SR is made under powers conferred by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1 This Statutory Rule seeks to:

- enforce Regulation (EU) 2020/354 on establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC in Northern Ireland by amending the Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016 and the Animal Feed (Hygiene, Sampling etc. and Enforcement) Regulations (Northern Ireland) 2016, and
- substitute references to the repealed Regulation (EC) 882/2004 for references to the new Official Controls Regulation (EU) 2017/625 in the Animal Feed (Hygiene, Sampling etc. and Enforcement) Regulations (Northern Ireland) 2016, and
- correct an omission in The Official Feed and Food Controls Regulations (Northern Ireland) 2009 and make other minor consequential amendments relating to Part 3 of the 2009 Regulations.

3. Legislative background

Uses of animal feed intended for particular nutritional purposes

3.1. Animal feed intended for particular nutritional purposes, also known as dietetic feed, is feed with a specific nutritional purpose that animals receive for their health. For example, to support the kidneys in the case of chronic kidney problems.

3.2. The placing on the market and use of feed is regulated by Regulation (EC) No 767/2009. In accordance with Article 9 of that Regulation, feed intended for particular nutritional purposes (dietetic feed) may only be marketed if its intended use is included in a list of intended uses established in accordance with Article 10

of Regulation 767/2009. Examples of intended uses include ‘reducing copper in the liver’ and ‘reduction of excessive bodyweight’.

3.3. The list of intended uses of feed intended for particular nutritional purposes is currently contained in Commission Directive 2008/38/EC which also established the general provisions for feed intended for particular nutritional purposes.

3.4. Articles 11 to 17 of Regulation (EC) No 767/2009 established new principles and rules for the placing on the market of feed, including labelling. As a consequence, several entries in the list of intended uses of feed intended for particular nutritional purposes contained in Directive 2008/38/EC became outdated, partially because of poor and overly general descriptions in the column ‘Essential nutritional characteristics’. For such entries, it has been very difficult for the enforcement authorities to verify compliance with the provisions of Regulation (EC) No 767/2009, including whether the specific composition of the feed concerned fulfils the respective particular intended nutritional purpose.

3.5. Commission Regulation (EU) 2020/354 repeals and replaces Directive 2008/38 and establishes a clearer list of intended uses of animal feeding stuffs for particular nutritional purposes by providing the necessary amendments to the provisions concerning the essential nutritional characteristics.

3.6. The Animal Feed (Hygiene, Sampling etc. and Enforcement) Regulations (Northern Ireland) 2016 will also be amended to update references to the repealed Regulation (EC) 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules with references to the new Official Controls Regulation (EU) 2017/625.

Official Feed and Food Controls Regulations (Northern Ireland) 2009

3.6. The Official Feed and Food Controls Regulations (Northern Ireland) 2009 (the 2009 Regulations) executed and enforced Regulation (EC) 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules and Commission Regulation (EC) 669/2009 on the increased level of official controls on imports of certain high-risk food and feed of non-animal origin.

3.7. Regulation (EC) 882/2004 and Commission Regulation (EC) 669/2009 were repealed and replaced by a new Official Control Regulation (EU) 2017/625 in December 2019. The Official Control Regulation (EU) 2017/625 introduced changes to the import controls regime which were required to be enacted in UK law including in NI.

3.8. However, the new The Official Control Regulation (EU) 2017/625 did not change the requirement to collect mandatory fees for checks on certain imported high-risk food and feed not of animal origin. This requirement was carried forward from Commission Regulation (EC) 669/2009. The Official Feed and Food Controls (Miscellaneous Amendments) Regulations (Northern Ireland) 2019

were introduced to provide for the execution and enforcement of the relevant food and feed provisions of Regulation (EU) 2017/625.

3.9. However, it omitted provision which would give domestic effect in Northern Ireland to Article 79(2)(a) and (c) of Regulation (EU) 2017/625 in respect of import controls. Article 79 provides that charges for the official controls of certain imported high-risk food and feed not of animal origin (including unplanned controls) shall be collected by competent authorities i.e. District Councils in Northern Ireland.

3.10. This SR amends the Official Feed and Food Controls Regulations (Northern Ireland) 2009 to correct this omission to include Article 79(2)(a) and (c) of Regulation (EU) 2017/625. It amends Regulation 34 of the 2009 Regulations on costs and fees to make provision for the payment of costs of official controls under Article 79(2)(a) and (c) of Regulation 2017/625 in respect of Part 3 of the 2009 Regulations. It also makes some minor and consequential amendments to the 2009 Regulations to clarify that imported high-risk food and feed not of animal origin is included in its scope.

4. Consultation

4.1. FSA in NI launched a six-week public consultation on the proposal to draft legislation to enforce Regulation (EU) 2020/354 on establishing a list of intended uses of feed intended for particular nutritional purposes from 02 October to 13 November 2020. https://www.food.gov.uk/news-alerts/consultations/the-proposed-animal-feed-miscellaneous-amendments-regulations-northern-ireland-2020.

4.2. One response was received, from the National Office of Animal Health (NOAH). NOAH is supportive of the assessment of the impact of the Regulation and the proposals outlined by the Food Standards Agency. They also confirmed that NOAH members believe that implementation and enforcement of Regulation (EU) 2020/354 across the UK is necessary and appropriate.

4.3. A full consultation on the Official Control Regulation 2017/625 was undertaken by the FSA from the 29 August to 11 October 2019. https://www.food.gov.uk/news-alerts/consultations/implementation-of-the-official-controls-regulations-0

4.4. There was a total of 8 responses from Northern Ireland stakeholders. These were mainly from District Councils and were generally supportive of the proposals. There were no specific comments regarding Article 79 of Regulation (EU) 2017/625. The main comments of note were that the familiarisation costs had been under-estimated due to the comprehensive nature of Regulation (EU) 2017/625.

5. Equality Impact

5.1. This rule applies equally across society and therefore has no implications under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. A full impact assessment has not been prepared as it is not foreseen that the provisions and amendments proposed in this SR will lead to additional costs to industry or enforcement.

7. Financial Implications

7.1. None

8. Section 24 of the Northern Ireland Act 1998

8.1. Consideration has been given to the human rights implications of these Regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. This SR will reflect that EU law will continue to apply to NI in respect to feed and food hygiene and safety after the transition period under the terms of the Ireland/Northern Ireland Protocol.

10. Parity or Replicatory Measure

10.1. While the proposed legislation is exclusive to Northern Ireland, it will parallel equivalent legislation in England, Scotland and Wales.

11. Additional information

11.1. Not applicable