EXPLANATORY MEMORANDUM TO

THE FOOD HYGIENE (ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No. 1742

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 The Instrument provides for enforcement in England of certain directly applicable European Union (EU) Food Hygiene Regulations.

2.2 The Instrument also provides for any reference to the Annexes to the EU Food Hygiene Regulations to be ambulatory. It also contains provisions for the form of a special health mark for meat from animals subject to emergency slaughter.

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

3.1 None.

4. Legislative Context

4.1 The Instrument provides for the enforcement in England of a number of directly applicable EU Food Hygiene Regulations which provide amendments to the Annexes of existing EU Food Hygiene Regulations, which largely provide specific rules for the production and handling of food of animal origin or for its importation.

4.2 The existing EU Food Hygiene Regulations are directly applicable and have been in force since 1 January 2006. The Regulations apply to all food business operators (i.e. businesses or organisations supplying, handling, producing, transporting or manufacturing food on a regular basis) and to foodstuffs imported into and exported from EU Member States.

4.3 EU Member States are required to provide enforcement of directly applicable EU Regulations. The Food Hygiene (England) Regulations 2006 give effect to the EU Regulations in England. Failure to provide enforcement could mean the European Commission raising infraction proceedings against the Member State concerned.

4.4 In order that amendments to EU Regulations can also be enforced, amendments to the Food Hygiene (England) Regulations 2006 are required by the provision of amending national instruments at appropriate times. This Instrument amends the 2006 Regulations and the coming into force of the ambulatory reference will mean that such amendments will no longer be necessary in the majority of cases.

4.5 The Instrument also introduces the form of the special health mark for meat from emergency slaughtered animals which is provided for in Annex III, Section I, of Chapter VI, (9) of Regulation (EC) 853/2004, which lays down specific rules for the handling of food of animal origin, and Regulation (EC) 854/2004 which lays down the required official controls of such foods.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 A separate national instrument containing similar provisions has recently been made in Scotland[1] and similar national instruments are in the process of being made in Wales and Northern Ireland to a parallel timetable to that in England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Instrument brings enforcement powers in England up to date with amendments made to the EU Food Hygiene Regulations since 2006.

7.2 The EU Regulations referred to in 4.1 (above) amend EU Food Hygiene Regulations in the following ways:

- exempting marine gastropods from the need to be harvested from designated shellfish areas;
- that the wrapping of live bivalve molluscs must remain closed after leaving the dispatch centre;
- setting out that when farmed hares and poultry are cut they must be chilled to no more than four Celsius;
- setting out and amending the raw materials going into the production of gelatine and collagen;
- allowing a chemical method as well as a biological method for detecting marine biotoxins in live bivalve molluscs;
- clarifying what veterinary inspection activities must take place both ante-mortem and post-mortem on products of animal origin intended for human consumption;
- setting out microbiological criteria as regards salmonella in fresh poultry meat;
- setting out the equivalent methods for Trichinella testing in domestic swine; and
- setting out what information must travel with frozen food of animal origin intended for human consumption.

7.3 The Instrument also provides for the form and size of the special health mark for the meat from 'emergency slaughtered' animals and products made from such meat.

7.4 EU Regulations require animals, the meat of which is intended as human food, to be slaughtered in establishments approved for that purpose by competent authorities. However, in certain circumstances (such as when moving the animal may cause it distress) animals are slaughtered outside of approved slaughterhouses (i.e. 'emergency slaughter'). Approved slaughtering establishments, along with all other establishments manufacturing or producing products of animal origin for human food,

[1] SSI 2012 No 75 was made 29 February 2012 and included provisions for the enforcement of EU hygiene regulations, the special health mark and the ambulatory reference in Scotland (the SSI also included provisions for the extension of Remedial Action Notices in Scotland). It came into force on 1 April 2012.

have a unique approval number which is applied to the establishment's products for purposes of traceability; such foodstuffs may be traded freely inside the EU.

7.5 However, meat from animals subject to emergency slaughter and food products made from that meat may only be traded nationally; for the purposes of identification, the meat from such animals, and products made from such meat must carry a special health mark and the instrument describes and provides for the form and size of that mark in England.

- Consolidation

7.6 The Instrument does not consolidate existing Regulations.

8. Consultation outcome

8.1 The Instrument has been subject to two formal public consultations. The first, from 31 March to 23 June 2010, was in an earlier form as the Food Hygiene (England) (Amendment) (No. 2) Regulations 2010. The ambulatory reference and special health mark provisions were included in that version (an IA on the special health mark was provided and is attached) and no objections were raised on either of these issues by respondents to the consultation.

8.2 A number of other IAs relating to various (generally minor) amendments to EU regulations which were also put out to consultation in 2010 have now been transferred to the new IA format, finalised and included with this package. Two IAs are also included which were consulted on later in 2010 and 2012.

8.3 A formal public consultation on a draft of the proposed Instrument and two of the associated draft Impact Assessments was held between 9 December 2011 and 2 March 2012. Concerns were received from two industry bodies in regard to the revised wording of the proposed special health mark provisions, objecting that the provisions now required the use of the mark on various meat products (or their packaging) derived from emergency slaughtered meat and that EU regulations did not require this. However, the FSA does not consider this to be a new issue as the EU Regulations anyway required the use of a national mark the UK has chosen however to amend the national provisions to make this clear. The European Commission has made it clear that national special marks must be introduced and used for the carcases, meat and other products derived from animals slaughtered under the emergency slaughter arrangements. Failure to provide for such provisions could lead to infraction proceedings against the UK raised by the European Commission.

9. Guidance

9.1 Guidance will be produced covering requirements introduced by Regulation (EU) 28/2012 necessitating changes to Import Certificates for 'composite products'[2].

9.2 A wide range of guidance is already in existence for industry sectors (and enforcers) including guidance produced by industry.

[2] 'Composite products' are foodstuffs assembled from already processed food of animal origin (i.e. foodstuffs of animal origin processed in an approved establishment or equivalent in terms of imports) and vegetable matter.

10. Impact

10.1 The impacts on business, charities and voluntary bodies where applicable, are set out in the accompanying IAs.

10.2 The impact on the public sector is also set out in the IAs where applicable.

10.3 Impact Assessments are attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The EU Regulations introduced on 1 January 2006 apply to all food businesses, but the legislation is structured so that it applies proportionately according to the nature and size and risk of the activities. The UK takes the view that amendments to the EU legislation and its consequent enforcement must remain in accordance with these principles.

12. Monitoring & review

12.1 The Regulations will be reviewed as set out in the Instrument's Regulation 3.

13. Contact

David Gray at the Food Standards Agency, Hygiene and Microbiology Division. Tel: 020 7276 8940 or email: david.gray@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.

If David Gray is not available the contact is **Dr Linden Jack** in the same Division. Tel: 0202 7276 8941 or email: linden.jack@foodstandards.gsi.gov.uk