# EXPLANATORY MEMORANDUM TO

# THE FOOD PROTECTION (EMERGENCY PROHIBITIONS) (RADIOACTIVITY IN SHEEP) (ENGLAND) (REVOCATION) ORDER 2012

## 2012 No. 2658

**1.** This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 The Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (England) Order 1991, as amended, imposed emergency restrictions on the movement of sheep from designated areas of Cumbria that were affected by radioactive contamination deposited on the land following the Chernobyl nuclear accident in 1986.

2.2 This instrument revokes the Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (England) Order 1991 and all subsequent amendments in their entirety.

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

3.1 None

## 4. Legislative Context

4.1 Widespread monitoring following the Chernobyl nuclear accident in 1986 identified potential food safety concerns due to levels of radioactivity (in the form of radiocaesium) in the meat of sheep grazing certain upland areas of the UK.

4.2 The Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (England) Order 1991 (which this order revokes) amended and consolidated earlier emergency orders put in place to protect consumers from consuming meat from sheep which may present a food safety risk.

4.3 A review has been carried out by the FSA to assess whether these protective measures are still required to maintain food safety. The conclusion was that:

- the current controls were no longer proportionate to the very low risk;
- they did not further minimise the already low doses consumers would otherwise receive; and
- removing the existing controls would not compromise consumer safety.

4.4 Based on this conclusion, the FSA issued Consents (using powers under the Food and Environment Protection Act 1985) on the 1 June 2012 which released the remaining farms within the designated areas in Cumbria from controls and had the effect of rendering the Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (England) Order 1991 redundant.

4.5 This instrument revokes the now redundant legislation.

## 5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Parallel legislation to the Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) (England) Order 1991 exists in Wales and Scotland; the order revoking legislation in Scotland came into force on the 1 October and the revocation order for Wales is expected to be laid shortly.

## 6. European Convention on Human Rights

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

## 7. Policy background

- *What is being done and why*

7.1 As of January 2011, there were only 327 farms in North Wales and 8 farms in Cumbria, England still remaining under some form of restriction. This compares to the 9,800 UK holdings, and more than 4 million sheep, originally placed under restriction following the Chernobyl accident.

7.2 The FSA had responsibility for maintaining the controls placed on the movement of sheep in designated areas through a scheme known as *Mark and Release*. Under this scheme, sheep were monitored to assess the level of radiocaesium contamination using a live-monitoring technique. Sheep assessed to be above a level of 1,000 becquerels per kilogram (Bq/kg) were prevented from entering the food chain for a minimum of three-months, during which time contamination levels are reduced through clean feeding.

7.3 During 2011, an updated risk assessment was carried out which considered the radiological dose which could be received by consumers of sheep meat. This provides a more realistic measure of risk instead of relying purely on a fixed level of contamination within individual sheep. The independently peer-reviewed assessment demonstrated that the levels of radiocaesium in sheep present a very low consumer risk, even to those who are high consumers of sheep. It further demonstrated that the *Mark and Release* programme was now having a negligible impact on further reducing the already very low consumer doses and in the rare situation where a sheep over 1,000 Bq/kg could enter the food chain, this would not be a food safety concern.

7.4 The *Mark and Release* controls in England and Wales ceased as of the 1 June 2012. There FSA is not aware of any adverse consequences following the cessation of controls and so it is appropriate to revoke the now redundant legislation.

## 8. Consultation outcome

8.1 A UK-wide 12-week consultation was undertaken between 17 November 2011 and 8 February 2012 prior to the issuing of Consents.

8.2 The FSA received 15 responses from a variety of organisations, including the farming unions, meat industry, the Health Protection Agency and Cumbria County Council. Individuals responding included the Shadow Minister for Rural Affairs of the Welsh Assembly and four farmers from within the restricted area.

8.3 The responses were generally supportive of the risk assessment and agreed with the conclusions that there was a very low risk to consumers and that controls were no longer required to protect consumer safety.

8.4 However, a number of farmers, predominantly in Wales, had concerns over the removal of controls. Their main argument was that there remains a small number of sheep above the previous criteria of 1,000 Bq/kg that could enter the food chain. Although accepting that this is not a food safety issue, the farmers were concerned that consumers may not understand this and so the reputation of their lamb products could be damaged. These concerns have so far proved to be unfounded and the FSA is not aware of any adverse impacts following the removal of controls on the 1 June.

## 9. Guidance

9.1 As this instrument revokes legislation which is already redundant, no guidance is required.

## 10. Impact

10.1 An Impact Assessment has been prepared which considered the impact of lifting the movement controls as well as revoking the redundant legislation. There will be no impact on charities or voluntary bodies. The impact on business has been estimated to be a net annual cost of £7,359 in England due to the loss of headage payments which farmers received as part of the controls. However, those who commented on this during the consultation agreed that the increased freedom to farmers from lifting controls (included as non-monetised benefits in the Impact Assessment) is likely to outweigh any costs due to the loss of headage payments. The impact on the public sector in England is estimated to be an annual saving of £31,668.

10.2 These impacts were related to the lifting of movement controls by the issuing of Consents which took place on the 1 June 2012.

10.3 Following the lifting of controls, there will be no further impact on business, charities or voluntary bodies related to revocation of redundant legislation as enacted by this instrument.

10.4 An Impact Assessment is attached to this memorandum.

## 11. Regulating small business

11.1 The legislation applies to small business. However, as this legislation is now redundant, there will be no impact as a result of this revocation order.

## 12. Monitoring & review

12.1 This policy will be reviewed by June 2017 to :

- review whether the objectives of the review (that removal of controls is risk based, proportionate and that consumer safety is not compromised) are still relevant and valid
- review any new evidence and the latest radiological guidance to assess whether this may have altered our approach to removing controls
- assess whether the removal of controls had any unintended consequences, for example loss of trade or additional burden on business or the public sector.

## 13. Contact

Christopher Thomas at the Food Standards Agency, Tel: 020 7276 8728 or email: christopher.thomas@foodstandards.gsi.gov.uk, can answer any queries regarding the instrument.