EXPLANATORY MEMORANDUM TO

THE OFFICIAL FEED AND FOOD CONTROLS (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2011

2011 No. 48

1. Introduction

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

1.2 The Statutory Rule is made under powers conferred by section 2(2) of the European Communities Act 1972.

1.3 The rule is due to come into operation on 1st April 2011.

2. Purpose of the Statutory Rule

2.1 This rule amends the Official Feed and Food Controls Regulations (Northern Ireland) 2009 (S.R. 2009 No. 427), which provides for the execution and enforcement in Northern Ireland of Regulation (EC) 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules.

2.2 This rule will specifically remove the food business operator's right to continue to operate pending the determination of the appeal against decisions by the FSA, or District Councils where appropriate, to refuse or withdraw the approval of those establishments handling products of animal origins for which approval is required under EU legislation.

3. Matters of special interest to the Examiner of Statutory Rules

3.1 None

4. Legislative Context

4.1 Regulation (EC) 853/2004 of the European Parliament and of the Council, laying down specific hygiene rules for food of animal origin[1], specifies hygiene rules for businesses that produce products of animal origin which must either be registered or, where appropriate, approved by the competent authority before they can sell food. The FSA is the competent authority under Regulation (EC) 853/2004 for the approval of slaughterhouses, cutting plants and game handling establishments where official controls are carried out by official veterinarians and liquid milk processing and egg packing establishments. District Councils are the competent authorities for the approval of those meat

[1] Official Journal L 226, 25.6.2004, p.22

establishments where official controls are not the responsibility of an official veterinarian and fish, dairy and egg product establishments.

4.2 Regulation (EC) 882/2004[2] of the European Parliament and of the Council, on official controls performed to ensure verification of compliance with feed and food law, requires the competent authorities (DARD on behalf of the FSA or District Council) to visit an establishment on receipt of an application for approval. The FSA/District Council grants full approval if the establishment infrastructure, equipment and operational requirements comply with the relevant food law. A conditional approval, up to six months, can be given if the establishment does not fully meet the requirements. After that six-month period, following a further assessment, either a full approval or a refusal must be given.

4.3 Regulation 12 of the Official Feed and Food Controls Regulations (Northern Ireland) 2009, which provides for the execution and enforcement of Regulation (EC) 882/2004 in Northern Ireland, allows a food business operator to appeal to a court of summary jurisdiction against a decision not to grant approval, and to continue to operate pending the determination of the appeal. Similar rules apply in England, Scotland and Wales. The right to continue to operate was originally provided by domestic legislation and was retained when the new EU food hygiene legislation and the Food Hygiene Regulations (Northern Ireland) 2006 came into operation in January 2006.

4.4 This rule removes the right of a food business operator who is not in compliance with food law to continue to operate pending the outcome of the appeal against the refusal or withdrawal of approval.

5. Territorial Extent and Application

5.1 This rule applies in relation to Northern Ireland only. Separate but parallel legislation is being enacted for England, Scotland and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The FSA has come to the view that the right of the food business operator to continue with its activities, pending the outcome of the appeal, is undesirable in terms of public health protection and not consistent with EU food law.

[2] Official Journal L 165 of 30.4.2004

7.2 The principal aim of EU food legislation is to ensure the safety of the food and to protect consumer health. In particular, the legislation makes no provision for any form of relief for food business operators, pending the determination of the appeal. Such inconsistency with EU legislation possibly leaves the UK open to the risk of infraction proceedings by the European Commission.

7.3 Refusal or withdrawal of approval is a last resort enforcement action that would only be taken after all other options have been exhausted and serious deficiencies on the part of the food business operator remain. It is therefore undesirable in terms of maximising public health protection that food business operators, not in compliance with food legislation, can continue to operate until appeals are dealt with. Moreover, the appeal process can be lengthy and during this time, if the food business operator can continue to operate, continuous supervision and enforcement actions may be required to safeguard food safety. This is not the most effective use of finite enforcement resources in the provision of public health, especially since it is the responsibility of the food business operator to ensure food safety.

7.4 The purpose of making this rule is to remove the right of food business operators who are not compliant with food law to continue operating pending the resolution of an appeal against refusal or withdrawal of an establishment approval. The amendment would adequately address the associated public health risk, bring national legislation in line with EU law and remove the possibility of the Commission taking infraction proceedings against the UK.

7.5 As this is the first amendment to the Official Feed and Food Controls Regulations (Northern Ireland) 2009 and changes are relatively minor, consolidation is not considered appropriate at this time.

8. Consultation outcome

8.1 The FSA held a twelve week consultation in September 2010 on the draft Regulations 2011. Approximately twelve hundred stakeholders, including food industry organisations, consumer representatives, enforcement authorities and other government departments were consulted on the draft Regulations and associated Impact Assessment. Separate consultations were undertaken in England, Scotland and Wales.

8.2 One response was received in Northern Ireland, fourteen in England, six in Scotland and two in Wales. A number of respondents supported the removal of the right to operate under appeal, although several meat industry representatives expressed concerns over the proposal, in particular with regard to possible financial losses caused by ceasing operations pending determination of the appeal.

8.3 A more detailed analysis of the consultation outcome is contained in the Impact Assessment. The Impact Assessment was carried out by FSA colleagues in London and is believed to representative of the position in Northern Ireland

9. Guidance

9.1 The Agency has developed guidance to assist UK food business operators whose premises require approval. The guidance, which can be found at: http://www.food.gov.uk/foodindustry/meat/guidehygienemeat, will be updated to reflect the legislative changes.

10. Equality Impact

10.1 These regulations will apply in equal measure to all section 75 groups. It is not expected that any of these changes will impact differently across any of the section 75 groups.

11. Impact

11.1 Any impact on businesses from these regulatory proposals is likely to be for familiarisation costs for reading and familiarise themselves with the Regulations. The business sector that will be affected by the regulatory proposals will be food business operators, handling products of animal origin, whose establishments require approval. These proposals have no particular impact on charities or voluntary bodies, rural areas nor on members of the ethnic communities of any particular racial group.

11.2 An Impact Assessment was carried out by FSA colleagues in London and is believed to representative of the position in Northern Ireland. The Impact Assessment is attached to this memorandum.

12. Regulating small business

12.1 The legislation applies to small businesses, but any additional burden imposed will fall only on non-compliant businesses.

13. Monitoring & review

13.1 The Agency envisages reviewing this policy as part of a proposed EU review regarding the implementation of EU law in 2013. The effectiveness of the Regulations will be also be monitored via feedback from stakeholders as part of the ongoing policy process.

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