EXPLANATORY MEMORANDUM TO

THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 No. 738

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

2.1 The instrument is being made to correct an omission in The Official Feed and Food Controls (England) Regulations 2009/3255 ("the 2009 Regulations"), and make other minor consequential amendments relating to Part 3 of the 2009 Regulations.

2.2 The mandatory charging provisions contained within Article 79 of Regulation (EU) 2017/625 ("the Official Controls Regulation") have not been adequately implemented into UK law.

2.3 As a result, competent authorities do not have sufficient powers to enable them to levy the required charges for import controls that are carried out on certain consignments of high risk food and feed not of animal origin (HRFNAO).

2.4 Competent authorities levy a fee on importers to recover the costs incurred from the official controls undertaken on consignments of HRFNAO. No profit is made. The fees cover the costs of staff, office space, inspection vehicles and consumables such as paper and computers. To date, the FSA would approximate that between the 14th December and 15th July, PHAs and LAs will have collected £450,000 in fees associated with import controls of HRFNAO, delivering 6,350 documentary checks, 902 identity checks and 849 physical examinations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument corrects an error identified by the JSCI in relation to S.I. 2019/1476. The amendment is contained in regulation 2(2) of these Regulations.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is to England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations are being made under section 2(2) of the European Communities Act 1972 ("the 1972 Act"). The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals (S.I. 2003/2901) the common agricultural policy of the European Community (S.I. 1972/1811) and measures in the veterinary and phytosanitary fields for the protection of public health (S.I. 1999/2027).

6.2 The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 ("the 2018 Act") with effect from exit day. "Exit day" is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal, the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 ("the 2020 Act"). "IP completion day" is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act).

6.3 Regulation (EU) 2017/625 sets out a framework of requirements for the competent authorities in the UK which have responsibilities for organising and performing official controls to verify compliance with agri-food chain legislation. The Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 amended the Official Feed and Food Controls (England) Regulations 2009 to execute and enforce Regulation (EU) 2017/625 and tertiary legislation introduced as part of the official controls package. These changes came into force on 14 December 2019.

6.4 These Regulations will amend the 2009 Regulations to give domestic effect to the mandatory charges in Article 79(2)(a) and (c) of Regulation (EU) 2017/625 in respect of import controls on certain HRFNAO. The Regulations will also make some minor amendments to Part 3 of the 2009 Regulations to provide that HRFNAO is included in its scope.

7. Policy background

What is being done and why?

7.1 The Official Feed and Food Controls (England) Regulations 2009 executed and enforced Regulation 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 669/2009 on the increased level of official controls on imports of certain food and feed of non-animal origin. Regulation 882/2004 and Commission Regulation 669/2009 were repealed and replaced by the Official Control Regulation, 2017/625 in December 2019. The Official Control Regulation 2017/625 introduced changes to the import controls regime which were required to be enacted in UK law. Importantly though, it did not change the requirement to collect mandatory fees for checks on certain imported HRFNAO. This requirement was carried forward from Commission Regulation (EC) 669/2009.

7.2 The Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 were introduced to provide for the execution and enforcement of the relevant food and feed provisions of Regulation (EU) 2017/625. However, it omitted provision which would give domestic effect 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 HRFNAO (including unplanned controls) shall be collected by competent authorities.

7.3 This SI corrects this omission and also makes some minor amendments to Part 3 to clarify that HRFNAO is included in its scope.

7.4 It also corrects an error identified by the Joint Committee on Statutory Instruments ("JCSI") in relation to an omitted reference made by the Official Feed and Food Controls (England) (Miscellaneous Provisions) Regulations 2019.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 These Regulations make minor amendments to the 2009 Regulations and there are currently no plans to consolidate the legislation.

10. Consultation outcome

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

10.2 Due to the urgent and technical nature of this amendment it was not considered practical or necessary to consult further on this amendment.

11. Guidance

11.1 It is considered that guidance is not required for this instrument as it maintains current practice and does not introduce new requirements.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies as the instrument does not introduce any material changes in the way official controls take place, are currently delivered, or the collection of fees for controls.

12.2 There is no significant impact on the public sector. The instrument does not change the daily operations carried out by PHAs but ensures their ability to fund official controls for certain imported HRFNAO by collecting fees from operators as they have been able to under the previous official controls regime. The impact on Local Authorities will therefore be minimal one-off costs to familiarise themselves with the new legislation.

12.3 An impact assessment has not been produced for this instrument as impacts will be below the *de minimis* threshold of +/- £5m equivalent annual net direct cost to

business. The legislation provides continuity for stakeholders and the FSA has not identified any significant impact on stakeholders other than in relation to a negligible one-off familiarisation cost from the legislative change. A full Impact Assessment for the Official Control Regulation 2017/625 was published as part of the consultation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Over 90% of the UK food industry sector comprises small and micro businesses and EU legislation generally applies to food and feed businesses regardless of size, as requirements are intended to be risk based to reflect the activities undertaken by business. Due to the high ratio of small and micro food businesses in the UK, it is often not feasible to exempt smaller businesses from new food measures, as this would fail to achieve the intended effect of reducing risks to public health. The FSA makes every effort to identify the impacts and minimise burdens on small and micro businesses where possible and advises a proportionate approach in its guidance for local authority enforcers.

13.3 No specific action is proposed to minimise regulatory burdens on small businesses from this legislation, for which no significant burdens on business have been identified or are expected to have any disproportionate negative impact on small business. The changes made to the legislation will provide continuity for business and should not impact on the day-to-day workload of small and micro businesses as all food and feed safety standards and legal definitions are maintained.

14. Monitoring & review

14.1 A statutory review clause is included in the 2009 Regulations.

15. Contact

15.1 Sarah Green Senior Imports Strategy Manager or David Lowe Head of Imports and Exports Strategy Team at the Food Standards Agency, Telephone: 07342068183/07881857759 or email: sarah.green@food.gov.uk/david.lowe@food.gov.uk can be contacted with any queries regarding the instrument.

15.2 Catherine Bowles, Director for Strategy, Legal and Governance, at the Food Standards Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jo Churchill MP, Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.