EXPLANATORY MEMORANDUM TO

THE OFFICIAL FEED AND FOOD CONTROLS (ENGLAND) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2019

2019 No. 1476

1. Introduction

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

2. Purpose of the instrument

2.1 The Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 provides for the execution and enforcement, in England, of the feed and food elements of Regulation (EC) No.2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/ EC and Council Decision 92/438/EEC ("Official Controls Regulation").

2.2 The Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 amends the Official Feed and Food Controls (England) Regulations 2009 (SI 2009 No.3255), the Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011, The Food Safety and Hygiene (England) Regulations 2013 and the Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015.

2.3 The Official Feed and Food Controls (England) Regulations 2009 provided for the execution and enforcement, in England, of the feed and food elements of Regulation (EC) No.882/2004 on official feed and food, animal health and animal welfare controls ("Regulation 882/2004") and Regulation (EC) No.669/2009 implementing Regulation (EC) No.882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504 ("Regulation 669/2009").

2.4 The Statutory Instrument makes no significant changes to current official control practices other than the areas highlighted in section 7 of this document and consolidates and amends legislative references to take account of the new EU legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The urgent timescale of this instrument and the dissolution of Parliament for the General Election has meant that it has not been possible to lay these instruments in Parliament before they come into force.

3.2 The Official Controls Regulation (Regulation (EU) 2017/625) comes fully into force across the EU on 14 December 2019 and revokes the existing framework legislation for official controls across the agri-food chain. The consequences of delaying this legislation in order to lay it in Parliament would be severe.

3.3 Not having the Statutory Instrument to enforce the Official Controls Regulation in force on 14th December 2019 would leave England without a legal framework to enforce food and feed safety laws. This would put public health at risk, undermine business and consumer confidence, and risk market access to the EU.

3.4 Furthermore, not having the Statutory Instrument in force would be a failure to meet our legal obligations as an EU Member State.

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)

3.5 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 limited to England only. Separate, parallel legislation is being prepared in Northern Ireland, Scotland and Wales.

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 Regulation (EU) 2017/625 sets out a framework of requirements for the competent authorities in Member States which have responsibilities for organising and performing official controls and other official activities to verify compliance with agri-food chain legislation. The Regulation broadens the scope of the original official food and feed controls Regulation (EC) 882/2004 to cover plant health and animal by-products legislation (and other agricultural areas such as plant protection products and organic production) in order to introduce a more consistent approach to official controls along the entire agri-food chain and to that effect it repeals and amends a number of pieces of EU legislation. In addition, the Regulation provides for a number of empowerments to set out in Commission tertiary legislation more detailed rules for the performance of official controls and other official activities.

6.2 Most of the provisions of Regulation (EU) 2017/625 clarify and simplify existing requirements and aim to introduce a more risk-based approach to controls. Therefore, existing enforcement arrangements in the UK are generally already in line with the new requirements.

6.3 The Food Standards Agency (FSA) is the Central Competent Authority (CCA) responsible for checks carried out on compliance with feed and food law, including imported feed and food in England. The new EU Regulation will apply across the European Union from 14 December 2019. This is part of a wider initiative to harmonise and simplify existing EU legislation and to establish a more integrated approach to official controls in all areas across the agri-food chain.

6.4 The Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 will amend the existing UK legislation which gives powers to feed and food authorities to carry out checks on compliance with EU feed and food law, including imported feed and food and certain types of plastic kitchenware from China and Hong Kong. The new Regulations also provide sanctions for any identified non-compliance.

6.5 The amendments to the existing legislation are not significant and update existing references to reflect the new EU Regulation. Further details are provided in Section 7 below.

7. Policy background

What is being done and why?

7.1 This Statutory Instrument amends four existing SIs in England:

- The Official Feed and Food Controls (England) Regulations 2009
- Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011,
- The Food Safety and Hygiene (England) Regulations 2013
- The Animal Feed (Hygiene, Sampling etc and Enforcement) (England) Regulations 2015.

7.2 The principal purpose of the SI is to amend references and to give effect to the relevant elements of Regulation (EC) 2017/625 including Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No 669/2009, (EU) No 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660. This ensures that the competent authorities continue to have the powers to undertake checks required by the new EU Regulation and that sanctions for non-compliance with food and feed law are in place and operable in England from the 14 December 2019.

7.2 This will also ensure that the UK is compliant with EU law and avoids delays at the UK border and the disruption of trade with other Member States.

7.3 The main changes include:

- It amends references in the four existing SIs listed, to legislation or terminology which has been repealed and replaced by Regulation (EC) 2017/625.
- It amends references to legislation and terminology associated with the Official Controls Regulation tertiary legislation, in particular on imported feed and food of non-animal origin.

- In line with Ministry of Justice (MoJ) guidance to reduce reliance on criminal offences, the tariffs in respect of two criminal sanctions are amended to remove the existing custodial sentences (retaining the existing penalty fine), within the Official Feed and Food Controls (England) Regulations 2009:
    - Offence 1: Regulation 41(1)(a) Any person who — (a) contravenes or fails to comply with any of the specified import provisions.
    - Offence 2: Regulation 41(1)(b): contravenes or fails to comply with paragraph (3) of regulation 26 [Disclosure of information].
- It provides for the sharing of information between competent authorities and other Member States for the purpose of applying these Regulations and the EU Regulation.
- It provides for the right of an operator whose animals and goods are subject to sampling and analysis, test or diagnosis to a second expert opinion at the operator's own expense; under Regulation (EU) 2017/625.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consultation outcome

9.1 The FSA held a six-week consultation on the overarching Regulations and draft Impact Assessment between 28 August to 11 October 2019. The consultation response document will be published in January 2020.

9.2 37 consultation responses were received in England (7 from businesses and associations, 25 from individuals or consumer groups, 5 from public bodies). Most respondents acknowledged the need for government intervention. Some respondents raised concerns that the identified familiarisation costs for Enforcement Authorities had been underestimated as well as concerns over the time permitted for consultation. The FSA acknowledges these concerns and has taken account of stakeholder views on the familiarisation cost in the Final Impact Assessment.

9.3 Although generally in support of the Regulations, stakeholders raised concerns about the timing of implementation and the amount of consultation. Concerns were also raised concerns over insufficient consultation on the charges element in relation to meat plants, the potential flexibilities for Official Veterinarians and that not all of the potential impacts have been identified. The FSA acknowledges these concerns, however, more meaningful consultation was constrained due to a number of factors, including ongoing EU negotiations on the tertiary legislation and uncertainty in relation to implications for EU Exit. The FSA plans to have discussions with stakeholders on the charges element.

10. Guidance

10.1 The legislation largely affects the authorities responsible for enforcing food and feed law. Arrangements are in place to update existing guidance, but this will not be completed until after the legislation comes into effect on 14 December 2019. This is not expected to cause a problem for feed and food authorities as the FSA have plans in place to issue bridging advice which will suffice until the guidance is updated.

11. Impact

11.1 There is no significant impact on business, charities or voluntary bodies as most businesses will not experience any material changes in the way official controls take place and/or are currently delivered. The only expected impact on business is a one-off familiarisation cost (such as reading and understanding the legislation) for affected food and feed business operators in the amount of £0.1m (or a one-off cost of £40 for each affected business). Over a 10-year appraisal period this translates to an Equivalent Annual Net Direct Cost to Business (EANDCB) of £0.02m.

11.2 The only expected impact on the public sector is a one-off transition cost of £0.05m, which is the cost of familiarisation to enforcement authorities involved in carrying out official controls and enforcement under the new EU Regulations.

11.3 A full Impact Assessment assessing the impacts on England, Wales and Northern Ireland is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12. Regulating small business

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

12.2 Small and micro businesses comprise more than 90% of the UK food industry sector. EU legislation applies to food businesses regardless of size but can be applied in a risk-based and proportionate manner to reflect the activities undertaken by businesses of different sizes and natures. The FSA makes every effort to identify the impacts on and to minimise burdens on small and micro businesses where possible and advises a proportionate approach in its guidance for local authority enforcers.

12.3 No significant burdens on business have been identified and this regulation is not expected to have any disproportionate negative impact on small business. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses from this legislation.

12.4 The changes made to the legislation will provide continuity in the official controls for all food and feed businesses.

13. Monitoring & review

13.1 A statutory review clause is included in the Regulation.

14. Contact

14.1 Liz Stretton at the Food Standards Agency email: liz.stretton@food.gov.uk can be contacted with any queries regarding the instrument.

14.2 Catherine Bowles Deputy Director for EU and International Strategy at the Food Standards Agency can confirm that this Explanatory Memorandum meets the required standard.

14.3 Jo Churchill at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.