

EXPLANATORY MEMORANDUM TO THE GENERAL FOOD REGULATIONS 2004

2004 No. 3279

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

2. Description

2.1 This instrument provides enforcement powers in respect of Articles 14, 16 (in so far as it relates to food), 18 (in so far as it concerns food business operators) and 19 of the EU General Food Law Regulation 178/2002. In particular, it designates competent authorities and enforcement authorities; makes provision for offences and penalties; and makes some consequential amendments to the Food Safety Act 1990, in particular sections 7 and 8.

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

3.1 None.

4. Legislative Background

4.1 Regulation 178/2002 lays down the general principles and requirements of food law, establishes the European Safety Authority and lays down procedures in matters of food safety.

4.2 Although Regulation 178/2002 is directly applicable in Member States, there is a need to ensure that domestic legislation does not duplicate or conflict with the Regulation, or put a gloss on it. There is also a need to introduce new enforcement powers and penalties in relation to the new obligations on food and feed businesses in Articles 14 – 20. These come into force on 1 January 2005.

4.3 These Regulations are being made under the Food Safety Act 1990 in so far as they provide for the enforcement of the EC Regulation. The Regulations are also made under the European Communities Act 1972 in so far as they make consequential amendments to primary legislation. Their main purpose is to provide new enforcement powers in respect of the new obligations relating to food and food businesses, to apply from 1 January 2005 under Regulation 178/2002. These are:-

(a) Article 14 – Food Safety Requirements. This prohibits food being placed on the market if it is unsafe, and specifies what this means.

(b) Article 16 – Presentation. This stipulates that the labelling, advertising and presentation of food shall not mislead consumers.

- (c) Article 18 – Traceability. This requires food businesses to keep records of their suppliers and businesses they supply to, and to make such records available to competent authorities on demand.
- (d) Article 19 – Product Recall/Withdrawal. This places obligations on food businesses to recall, and/or withdraw, food from the market if it is not in compliance with food safety requirements, and to notify competent authorities.

4.3 This instrument is the second of two instruments “implementing” Regulation 178/2002 in so far as it relates to food. The first instrument brought domestic legislation into conformity with the general principles and requirements of the Regulation, primarily by aligning the definition of “food” in the Food Safety Act 1990 with that in Regulation 178/2002.

5. **Extent**

5.1. This instrument applies to Great Britain. This is being done at the request of the Scottish and Welsh devolved administrations because of difficulties in giving effect to the “food” elements of Regulation 178/2002 by means of separate legislation across Great Britain. Parallel legislation is being developed in Northern Ireland.

6. **European Convention on Human Rights**

6.1 The Parliamentary Under Secretary for Public Health has made the following statement regarding Human Rights:

In my view the provisions of the General Food Regulations 2004 are compatible with the Convention rights.

7. **Policy Background**

7.1 The Regulations designate food authorities, port health authorities and the Food Standards Agency as the relevant competent authorities and enforcement bodies. The proposed division of responsibility is set out in regulations 3 and 6. The Food Standards Agency has been included as an additional enforcement body in respect of Articles 14 (Food Safety Requirements) and 19 (Product Recall/Withdrawal/Notification) to allow, for example, for the flexibility of the Meat Hygiene Service enforcing Regulation 178/2002 requirements in meat plants, where this would be more effective.

7.2 As a result of the new requirements of Regulation 178/2002, it has been necessary to make a number of consequential changes to the Food Safety Act 1990, as set out in regulations 9 - 15. These include changes to sections 7 and 8 of the Act, which concern the rendering of food injurious to health and sales of food not complying with food safety requirements respectively. This has been done in order to take account of new provisions in Article 14 of Regulation 178/2002 which cover the same areas. The new provisions are, however, broadly analogous to the existing ones in the Act.

7.3 The SI introduces new enforcement powers in relation to the requirements of Regulation 178/2002 that come into effect on 1 January 2005. A full consultation and RIA was completed for Regulation 178/2002 in 2001.

7.4 The consultation went out to 2500 food businesses in Great Britain, and was available from the Agency Website. One hundred responses were received, of which 45 were “no comment” and 42 either had no specific comment on this SI or supported the propositions. Of the other responses, three commented on potential cost implications, and five requested clear guidance on the new requirements of 178/202. One considered that the suggested penalties were not strong enough, and one considered there might also be duplication of Article 16 in the Food Safety Act 1990. The other responses made comments on the wording of the SI, including possible implications for the “deemed due diligence” defence. These responses have been taken into account in the drafting of the Regulations.

8. **Impact**

8.1 A Regulatory Impact Assessment (RIA) has been placed in the Library

9. **Contact**

Anthony Flower at the Food Standards Agency (Tel: 020 7276 8137 or e-mail: a.flower@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.