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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations, which apply in relation to England only, provide for the execution and enforcement there of Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ No. L165, 30.4.2004, p.1) in relation to “relevant feed law” and “relevant food law”, each defined in regulation 2(1) thereof. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1).

2. These Regulations also impose prohibitions on the introduction of certain feed and food into England in the light of Article 11 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ No. L31, 1.2.2002, p.1), as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4) and as read with Article 10 of Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L139, 30.4.2004, p.1; the revised text of that Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.3).

3. These Regulations also amend the General Food Regulations 2004 (S.I.2004/3279) in so far as they apply in relation to England, to provide for the execution and enforcement there of Article 12 of Regulation (EC) No. 178/2002, which imposes conditions on the export and re-export of food and feed from the Community for placing on the market of third countries, in so far as that Article relates to food. These Regulations also insert a new regulation, 6A, into the General Food Regulations 2004 in so far as they apply in relation to England. That new regulation provides a defence in relation to exports in the case of prosecutions for contravening or failing to comply with food law. The defence applies both in relation to items intended for export to a third country and to items intended for export to a member State.

4. These Regulations cite as enabling powers both section 2(2) of the European Communities Act 1972 (1972 c. 68) and certain sections of the Food Safety Act 1990 (1990 c. 16). The Food Safety Act powers have been exercised to enact regulation 41(2) of these Regulations, which inserts a revised regulation 4 into the General Food Regulations 2004 to provide for the execution and enforcement of Article 12 of Regulation (EC) No. 178/2002 in so far as it relates to food, as described in paragraph 3 above.

5. These Regulations —

- (a) provide for the designation of specified bodies as competent authorities for the purposes of the provisions of Regulation (EC) No. 882/2004 (*regulation 3*);
- (b) provide for the exchange and provision of information by competent authorities (*regulation 4*);
- (c) enable a competent authority to require a control body to provide information and make records available and provide that a person who —
  - (i) fails to comply with a requirement to provide information or make records available, or
  - (ii) in purported compliance with such a requirement furnishes false or misleading information,

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- is guilty of an offence (*regulation 5*);
- (d) enable the Secretary of State to issue codes of recommended practice to feed authorities and food authorities (*regulation 6*);
  - (e) give the Food Standards Agency the function of monitoring the performance of enforcement authorities in enforcing certain legislation (*regulation 7*);
  - (f) give the Food Standards Agency the power, for the purpose of carrying out the function referred to in sub-paragraph (e) of this paragraph —
    - (i) to require information to be provided and records to be made available (*regulation 8*), and
    - (ii) to authorise individuals (who may thereby exercise certain powers, including a power of entry) (*regulation 9*);
  - (g) define certain terms used in regulations 7 to 9 thereof (*regulation 10*);
  - (h) provide that a person who —
    - (i) obstructs a person exercising a power to enter premises, take samples or inspect and copy records,
    - (ii) fails to comply with a requirement to provide information, make records available or provide facilities, records, information or other assistance, or
    - (iii) in purported compliance with such a requirement furnishes false or misleading information,is guilty of an offence (*regulation 11*);
  - (i) provide a right of appeal in respect of a decision of the competent authority concerning the approval of certain establishments taken under Article 31 of Regulation (EC) No. 882/2004 (*regulations 12 and 13*);
  - (j) provide that an authorised officer of a competent authority may take with him the staff of the competent authority of another member State for the purpose of conducting an administrative enquiry under Article 36 of Regulation (EC) No. 882/2004 (*regulation 14*);
  - (k) provide that when an “enforcing officer”, defined in regulation 15(2) thereof, enters premises for the purpose of executing and enforcing official controls he may take with him a Commission expert to enable that expert to carry out functions under Article 45 of Regulation (EC) No. 882/2004 (*regulation 15*);
  - (l) provide that a person who enters premises under the powers referred to in sub-paragraph (j) or (k) of this paragraph and discloses any information obtained on the premises with regard to any trade secret is guilty of an offence unless he does so in the performance of his duty (*regulation 16*);
  - (m) specify which authorities are responsible for executing and enforcing regulations 5(3), 9(8), 11 and 16 thereof (*regulation 17*);
  - (n) give powers of entry to authorised officers of the authorities referred to in sub-paragraph (m) of this paragraph (*regulation 18*);
  - (o) create the offence of obstructing an officer acting in the execution of Part 2 thereof (*regulation 19*);
  - (p) provide penalties for offences under that Part (*regulation 20*);
  - (q) provide a time limit for bringing prosecutions for offences under that Part (*regulation 21*);
  - (r) make provision for the execution and enforcement of Part 3 of these Regulations (*regulations 23 and 24*);

- (s) provide that the Commissioners for Her Majesty's Revenue and Customs are to carry out the functions given to customs services under Article 24 of Regulation (EC) No. 882/2004 (regulation 25).
- (t) make provision for the execution and enforcement thereof to be deferred until a product reaches its destination (regulation 26);
- (u) in the light of Article 11 of Regulation (EC) No. 178/2002 as read with Article 10 of Regulation (EC) No. 852/2004 (as described in paragraph 2 above) prohibit the introduction into England of certain feed and food unless specified conditions are met (regulation 27);
- (v) provide for the checking of products that are introduced into England (regulation 28);
- (w) provide that an enforcement authority, first, has the power to do anything that a competent authority may do under Articles 18 to 21 and 24(3) of Regulation (EC) No. 882/2004 and, second, is the competent authority for the purposes of Article 22 of that Regulation (regulation 29);
- (x) provide for the service of notices by an authorised officer of an enforcement authority when he wishes to take certain measures or exercise certain powers under Article 19 of Regulation (EC) No. 882/2004 (imports of feed and food from third countries) (regulation 30);
- (y) provide a right of appeal in respect of the service of notices under regulation 30 (regulations 31 and 32);
- (z) enable the Secretary of State or the Agency by written declaration to suspend, or impose conditions on, the introduction into England of any product from a third country where she or it learns or reasonably suspects that any food or feed that has been or may be introduced into England from that third country is likely to constitute a serious risk to animal or public health (regulation 33);
- (aa) provide for charges to be payable in relation to controls carried out on consignments (regulation 34);
- (bb) provide for the procurement and analysis of samples of food for the purposes of the execution and enforcement of "the Import Provisions", defined in regulation 22 thereof (regulations 35 and 36);
- (cc) provide powers of entry for authorised officers of food authorities in relation to the execution and enforcement of the Import Provisions (regulation 37);
- (dd) create the offence of obstructing an officer acting in the execution of the Import Provisions (regulation 38);
- (ee) create offences consisting of contravening or failing to comply with specified regulations and failing to comply with a notice served under the Import Provisions and provide penalties for offences under Part 3 thereof (regulation 39);
- (ff) provide a time limit for bringing prosecutions for offences under Part 3 thereof (regulation 40);
- (gg) amend the General Food Regulations 2004 in so far as they apply in relation to England, as described in paragraph 3 above (regulation 41);
- (hh) provide that where the commission of an offence thereunder is due to the act or default of some other person that other person is guilty of the offence (regulation 42);
- (ii) provide that in proceedings for an offence thereunder it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (regulation 43);

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- (jj) provide that where an offence thereunder which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or a person purporting to act as such he as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 44*);
- (kk) provide that where an offence thereunder which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner he as well as the partnership is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 45*);
- (ll) provide for the protection of officers acting in good faith (*regulation 46*);
- (mm) provide for the service of documents (*regulation 47*); and
- (nn) provide for the revocation of specified instruments to the extent specified (*regulation 48*).

**6.** A full Regulatory Impact Assessment on the effect that these Regulations will have on the costs of business has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Food Hygiene Implementation Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.