

To: Business Committee

From: Dr Brian Gibbons AM

Minister for Health and Social Services

EXPLANATORY MEMORANDUM

AGRICULTURE, WALES

FOOD, WALES

THE OFFICIAL FEED AND FOOD CONTROLS (WALES) REGULATIONS 2006

Summary

The purpose of these Regulations is to give effect to a number of new Commission transitional and implementing measures made under EC Regulation 882/2004. The Official Feed and Food Controls (Wales) Regulations 2006 will revoke and replace the Official Feed and Food Controls (Wales) Regulations 2005. The remade Regulations will also reflect changes in other domestic legislation that are referred to in the Official Feed and Food Controls (Wales) Regulations 2005.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Official Feed and Food Controls (Wales) Regulations 2006, in accordance with Standing Order 24.6.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The powers enabling this Instrument to be made are contained in section 2(2) of the European Communities Act 1972, and sections 16(1), 17(2) and 48(1) of the Food Safety Act 1990. The Assembly has been designated under section 2(2) of the 1972 Act to make Regulations in relation to measures relating to food (including drink), including the primary production of food, and the common agricultural policy, in exercise of the powers conferred by that section, by virtue of the European Communities (Designation) (No.2) Order 2005 (SI 2005/1971) and in relation to measures in the veterinary field for the protection of public health, in exercise of the powers conferred by that section, by virtue of the European Communities (Designation) (No.2) Order 2003 (S.I. 2003/1246). The powers under the 1990 Act have been transferred to the National Assembly for Wales. Responsibility for issues relating to these Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect

4. The purpose of these Regulations is to give effect to a number of new Commission transitional and implementing measures made under EC Regulation 882/2004. The Regulations will revoke and replace the Official Feed and Food Controls (Wales) Regulations 2005. The remade Regulations will also reflect changes in other domestic legislation that are referred to in the Official Feed and Food Controls (Wales) Regulations 2005.

5. EC Regulation 882/2004 on official feed and food, animal health and animal welfare controls was adopted in April 2004. It is concerned with the arrangements within the European Community for the enforcement of feed and food law and animal health and animal welfare rules. It specifies the general approach that must be taken, and the principles that must be adopted, by the competent authorities in Member States that have responsibility for monitoring and enforcing feed and food law and animal health and welfare rules. Most of the provisions in 882/2004 apply across the EU from 1 January 2006, with the remainder applying from 1 January 2007.

6. The Official Feed and Food Controls (Wales) Regulations 2005 (No.3254 (W.247), which came into force on 1 January 2006, gave effect to those provisions of 882/2004, which applied from 1 January 2006. It is intended that the Official Feed and Food Controls (Wales) Regulations 2006 will revoke and replace the 2005 Regulations, so that all the legal measures are contained in a single consolidated text. It was not possible to include all these measures in a single text because the Commission transitional and implementing measures were not published in the Official Journal of the European Communities until 22 December.

7. In addition to the above, two policy issues that were raised after the first set of Regulations were made, needed to be corrected by the new set of Regulations.

8. These are as follows:

- the right of food business operators to continue to use establishments pending appeal is extended to decisions by the enforcement authority to refuse approval as well as decisions to withdraw approval; and
- the definition of 'relevant feed law' in Schedule 2 is corrected to include the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Wales) Regulations 2005.

Target Implementation

9. It is intended that this Instrument be made on 7 March 2006 and come into force on 8 March 2006. Parallel legislation came into force in the rest of the UK on 11 January 2006. The main implication of a delay in the coming into force date would be that the extension of the appeal rights of food businesses,

which has already been implemented in the rest of the UK, would be delayed. The necessary amendments could not have been included in the 2005 Regulations because as indicated above, the policy issue in relation to appeal was raised after the 2005 Regulations were made, whilst the Commission implementing and transitional measures were not published until 22 December 2005.

Financial Implications

10. There are no additional financial implications for the Assembly arising out of the making of these Regulations.

11. The changes made by the Official Feed and Food Control (Wales) Regulations 2006 represent minor technical and legal points, which have little or no practical effect. The Regulations do not introduce any new costs for businesses, for enforcers, or for the voluntary sector.

Regulatory Appraisal

12. A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

Consultation

With Stakeholders

13. Full public consultation on the revisions to the Official Feed and Food Controls Regulations began on 20 September and concluded on 13 December 2005. The consultation package was sent to around 100 interested parties in Wales (a list of consultees is attached at Annex A to the Regulatory Appraisal), and over 1000 across the UK as a whole. No substantive responses were received in any part of the UK.

With Subject Committee

14. The Regulations were notified to the Health and Social Services Committee on 19 January 2006 via the list of forthcoming legislation (HSS(2)-01-06 (p3b): FSA 8 (06)). The Regulations were not identified for detailed scrutiny.

Recommended Procedure

15. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Accelerated procedure, as they represent minor and technical changes necessary to reflect new Commission implementing and transitional measures in domestic legislation.

Compliance

16. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

17. The information in this Memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

18. Drafting lawyer: Neil Buffin (2082 1561).

19. Head of division: Phil Morgan (2067 8914).

20. Drafting Policy Official: Owen Davies (2067 8915).

BRIAN GIBBONS AM JANUARY 2006

MINISTER FOR HEALTH AND SOCIAL SERVICES