

**EXPLANATORY MEMORANDUM TO THE
POULTRY MEAT, FARMED GAME BIRD MEAT AND RABBIT MEAT
(HYGIENE AND INSPECTION) (AMENDMENT) (ENGLAND)
REGULATIONS 2005**

2005 No. 209

1. This explanatory memorandum is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

Department responsible

- 1.1 The Secretary of State for Health on the advice of the Food Standards Agency is responsible for this measure.

2 Description

The Statutory Instrument amends the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995 (PMRs) and corrects an under-implementation of the EU Poultry Meat Directive 71/118.

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

There are no matters of special interest.

4 Legislative Background

General

- 4.1 The Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) (Amendment) (England) Regulations 2005 are being made to implement the provisions of Article 5(1)(b) of Council Directive 71/118, which prohibits the placing on the market of fresh poultry meat where water retention agents have been used. This prohibition was not transposed into national legislation, namely the PMRs.
- 4.2 A transposition note is attached at Annex A.

5 Extent

The Regulations apply to England only. Devolved administrations in Scotland, Wales and Northern Ireland are implementing parallel legislation.

6 European Convention on Human Rights

It is the view of Melanie Johnson, Parliamentary Under Secretary for Public Health, that the instrument is compatible with Convention Rights.

7 Policy Background

7.1 Council Directive 71/118, which lays down the requirements for the hygienic production of fresh poultry meat, is implemented in England by the PMRs. Article 5(1)(b) of the Directive prohibits the placing on the market of fresh poultry meat where water retention agents have been used. This prohibition was not transposed into the PMRs by the then MAFF who were formerly responsible for these Regulations.

7.2 The key aspects for correcting the under-implementation of Article 5 (1)(b) are:

- the Government would fulfil its Community obligations, and thus avoid infraction proceedings;
- it would ensure consumer protection measures are in place in relation to water retention agents in fresh poultry meat;
- it would reinforce the Government's position in its objective to persuade the Commission to extend the water retention agents prohibition to poultry products in general and to introduce a maximum limit on added water. This objective follows the discovery in the UK of certain poultry meat preparations (i.e. unprocessed fresh meat to which ingredients have been added) imported from the Netherlands and Belgium containing pork and beef proteins used as water retention agents and also containing excessive amounts of added water.

7.3 These Regulations do not impose any additional compliance burdens on business.

7.4 A public consultation was carried out on the proposal to amend the PMRs. Five responses were received, all of which supported the proposal.

8 Impact

A Regulatory Impact Assessment is attached at Annex B. Copies can be obtained from Donatella Howe¹. There are no additional compliance costs on business.

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ANNEX A

**THE POULTRY MEAT, FARMED GAME BIRD MEAT AND RABBIT MEAT
(HYGIENE AND INSPECTION) (AMENDMENT) (ENGLAND)
REGULATIONS 2005 TRANSPOSING ARTICLE 5(1)(b) OF COUNCIL
DIRECTIVE 71/118 ON THE PROHIBITION TO USE WATER RETENTION
AGENTS IN FRESH POULTRY MEAT**

| Directive 71/118 laying down the requirements for the hygienic production of poultry meat. | | | |
|---|--|---|---|
| Articles | Objectives | Implementation | Responsibility |
| Article 5(1)(b) | Prohibits the use of water retention agents in fresh poultry meat. | Regulation 14(2)(b) of the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) (Amendment) (England) Regulations 2005, which will come into force on 25 February 2005. | The Secretary of State for Health on the advice of the Food Standards Agency is responsible for the measures taken to implement the Directive in England. |

FINAL REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSED REGULATION

The Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) (Amendment) (England) Regulations 2005.

2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

(i) Objective

To amend the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995 (PMRs), in order to prohibit the use of water retention agents in fresh poultry meat and thereby correct under-implementation of the EC Poultry Meat Directive 71/118.

(ii) Devolution

Separate national legislation is being introduced for each of the four countries of the UK.

(iii) Background

Council Directive 71/118, which lays down the requirements for the hygienic production of poultry meat, is implemented in England by the PMRs. Article 5(1)(b) of the Directive, in addition to laying down hygienic conditions for the production and marketing of poultry meat, prohibits the placing on the market of fresh poultry meat where agents have been used specifically to promote water retention. This prohibition was not transposed into the PMRs by the then MAFF who were formerly responsible for the Regulations.

Following the discovery in the UK of certain poultry meat preparations² imported from the Netherlands and Belgium containing pork and beef proteins used as water retention agents, and also containing excessive amounts (over 30%) of added water, the Food Standards Agency has been putting pressure on the European Commission to adopt a variety of measures. Such a practice was clearly unacceptable on religious / ethical grounds, and unacceptable to consumers generally. Although the Commission has not yet agreed to take the measures the UK has suggested, it has recently called on Member States to enforce the prohibition in article 5(1)(b) mentioned above. It has also said that it will ask its Food and Veterinary Office (FVO) to carry out inspections in the Member States in order to verify that this provision is being enforced. The FVO's mission in the UK on poultry meat has now been scheduled for the first half of 2005 and the water retention agents provision is going to be looked at. In addition to

² A meat preparation is essentially unprocessed fresh meat to which ingredients have been added.

this, although the Directive is to be repealed on 1 January 2006, there is provision for the prohibition to be rolled forward by the Commission into the successor legislation.

The products in question from the Netherlands and Belgium are mainly frozen chicken breasts with added water and other water holding ingredients i.e. poultry meat preparations. The trade in this type of frozen chicken product represents less than 5% of the overall UK chicken market. The frozen chicken breast products are sold mainly to the catering sector and compete with fresh poultry meat (i.e. chicken with no added ingredients), much of which is home produced. There is thought to be only one UK producer of this type of product.

Enforcement of the prohibition at article 5(1)(b) of the Directive, however, will not of itself solve the problem of the use of water retention agents and the addition of excessive amounts of water in poultry meat products. This is because the prohibition relates only to the use of water retention agents in *fresh* poultry meat, not in poultry meat preparations. As a result the UK has asked the Commission additionally to act (i) to extend the prohibition to preparations as well as to fresh meat and (ii) to impose a maximum limit on the amount of added water in poultry meat products generally.

(iv) Risk Assessment

Article 5(1)(b) of the Directive addresses the risk of the fraudulent practice of adding water retention agents, and thus excessive added water, to fresh poultry meat. A prolonged failure to implement this prohibition would potentially bring food quality risks to consumers. This is because a failure to transpose this prohibition properly into national legislation would undermine the Food Standards Agency's efforts to persuade the Commission to take appropriate additional action against excessive added water and the use of water retention agents such as beef and pork proteins in poultry meat products. The UK is not in a strong position to argue for extension of the prohibition to preparations if we have not yet taken steps to implement even the existing prohibition.

Failure to implement the Directive fully and correctly would also be a risk to Government in that it would be a breach of the UK's obligations under the EC treaty. More specifically, it could attract infraction proceedings by the Commission under Article 226 of the EC Treaty with the possibility of fines. As mentioned above, the Commission has recently drawn attention to the prohibition in article 5(1)(b) and has called on Member States to step up their enforcement of it. The UK will receive an FVO mission on poultry meat scheduled for the first half of 2005, where enforcement of the prohibition will be verified.

A failure in the long term to persuade the Commission to take the appropriate additional action the Food Standards Agency is proposing could also result in the loss of consumer confidence in chicken. With a total UK market value of around £2 billion, even a modest 5% reduction in consumption of chicken would cost the industry around £100 million. The proposed additional action would address a practice which is clearly unacceptable on religious / ethical grounds, and unacceptable to consumers generally. The practice does not, however, give rise to any food safety concerns.

3. Options

Identify options

Option 1 – Do nothing.

Option 2 – Transpose the provisions of article 5(1)(b) of the Directive into national law.

4. Benefits

Option 1 – Do nothing.

Although UK industry is thought to comply with the requirements of the Directive already (see section 5 below), this option is contrary to the Government's commitment to meeting its EU obligations and its policy on consumer protection in this area. It would leave the Government open to infraction proceedings until the measures had been implemented in full. It would also undermine the Government's efforts to persuade the Commission to take appropriate action against the use of beef and pork proteins and addition of excessive water in all poultry meat products. The "do nothing" option is not, therefore, attractive.

Option 2 – Transpose the provisions of article 5(1)(b) of the Directive into national law.

This option has five principal benefits:

- (a) it would fulfil the UK's Community obligations, and thus remove the possibility of infraction proceedings against us;
- (b) it would give legal effect to part of the Food Standards Agency's overall objective, namely to prohibit the use of water retention agents in fresh poultry meat;
- (c) it would remove a potentially serious obstacle to the Agency's achieving the remaining part of its objective, namely to persuade the Commission to extend the prohibition to poultry products generally and to introduce a maximum limit on added water;
- (d) it would give legal effect to reinforced consumer protection in this area, thus improving consumer confidence; and
- (e) it would further the objective of putting an end to a practice which is clearly unacceptable on religious / ethical grounds, and unacceptable to consumers generally.

5. Costs

(i) Economic

Both large and small businesses in the UK are thought already to comply with the requirements of article 5(1)(b) of the Directive. This is because the use of water retention agents in fresh poultry meat would lead to a breach of the limits for water content in fresh poultry meat under the separate EU Poultrymeat Marketing Regulations. These Regulations, among other things, control the maximum amount of water that is absorbed by fresh poultry meat during its preparation and chilling. There are therefore no compliance costs associated with the legislative amendment at option 2, nor with the status quo at option 1. Equally there are no costs to consumers under either option.

(ii) Social

The objective of the amendment is to assist the Food Standards Agency's efforts to put an end to a practice which is clearly unacceptable on religious / ethical grounds, and unacceptable to consumers generally. The use of water retention agents containing pork protein is clearly unacceptable to Muslim and Jewish consumers. There would therefore be social benefits associated with option 2 and potential social costs associated with option 1.

(iii) Environmental

There are no significant environmental costs or benefits associated with either option 1 or option 2.

6. Equity and Fairness

The addition of water retention agents of non-poultry origin to poultry products, and the addition of excessive amounts of water, is unacceptable to consumers generally. The former practice is, however, particularly unacceptable on religious / ethical grounds. The use of water retention agents containing pork protein is clearly unacceptable to Muslim and Jewish consumers. It is therefore important, not least in the interests of equitable respect of religious rights, to put an end to the practice. Although the amendment to the PMRs will not prohibit the practice in poultry meat preparations, it will do so in respect of fresh poultry meat. Enactment of the amendment will also remove a potential barrier to the Food Standards Agency's achievement of its objective of persuading the Commission to extend the prohibition to poultry meat preparations.

7. Consultation with small business – the Small Firms' Impact Test

The Food Standards Agency has discussed the impact of the proposed amendment with the principal organisation that represents the poultry industry, the majority of whose members are small businesses. Their advice is that reflected in section 5 above, namely that there are no compliance costs associated with this amendment. The Small Business Service therefore concurs with our initial view that these proposals will not

have a significant impact on small businesses. As part of the consultation process, we received representations from one organisation representing small businesses, which was supportive.

8. Competition Assessment

Given that there is no cost impact on industry under Option 2, there is no negative impact on competition within the market as a consequence of the amendment itself. In the longer term, however, if the Commission takes the measures that the Food Standards Agency is proposing this would allow domestic producers of fresh poultry meat to compete on more equitable terms with current importers of poultry meat preparations.

9. Enforcement, Sanctions, Monitoring and Review

The Meat Hygiene Service, which is an executive agency of the Food Standards Agency, will enforce the Poultry Meat, Farmed Game Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995, as amended, in licensed slaughterhouses and cutting premises. Unlicensed premises will be subject to enforcement by local food authorities. These current enforcement and sanctions arrangements will therefore remain unchanged. The Food Standards Agency will monitor the impact of these proposals through its existing licensing and audit arrangements. Directive 71/118 does not provide for any specific review date and will in any case be repealed by the coming into force in January 2006 of the new EU Hygiene Regulations. In these latter regulations there is nevertheless provision for the prohibition on the use of water retention agents in fresh poultry meat to be rolled forward.

10. Consultation

The draft implementing S.I. was subject to a full 12 weeks consultation period. Five consultees responded to the consultation. No objections to the proposal were made, as it was acknowledged that the amendment was necessary and did not involve a new financial burden on industry.

11. Summary and Recommendation

Option 2 is recommended. This will allow the Government to fulfil its Community obligation to implement the provision of article 5(1)(b) of Directive 71/118 in full, following a 12 weeks consultation period, and will bring benefits to consumers at no extra costs for industry, enforcement authorities or Government.

| Option | Total cost per annum: economic, social, environmental | Total benefit per annum: Economic, environmental, social |
|---------------|--|---|
| 1 | No compliance or | No economic, social or |

| | | |
|---|--|--|
| | environmental costs. Does not help to put an end to a practice which is unacceptable on ethical / religious grounds. | environmental benefits. |
| 2 | No compliance, social or environmental costs. | Helps to put an end to a practice which is unacceptable on ethical / religious grounds. No economic or environmental benefits. |

12. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed

Date

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