

EXPLANATORY MEMORANDUM TO THE
FOOD (CHILLI, CHILLI PRODUCTS, CURCUMA AND PALM OIL)
(EMERGENCY CONTROL) (ENGLAND) REGULATIONS 2005

2005 No. 1442

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty. Its purpose is to assist the reader in understanding the Regulations it accompanies.

2. Description

2.1. This Statutory Instrument maintains and extends in England the existing import controls on the presence of specific Sudan dyes in foods to include palm oil and turmeric (curcuma). The Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003 (S.I. 2003/1940) (as amended) implement all existing European legislation in this area. These Regulations revoke and remake the 2003 Regulations with modifications.

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

3.1. These Regulations were made on 31 May 2005, laid before Parliament on 1 June and come into force on 2 June. They therefore breach the 21 day rule. The Food Standards Agency considers this necessary under the circumstances, because the Commission Decision implemented by the Regulations (as to which see further below) contains emergency controls and, notwithstanding that it has yet to be published in the Official Journal of the European Communities, came into effect immediately upon notification of it to Member States on 23 May 2005.

4. Legislative Background

4.1. The Food (Chilli, Chilli products, Curcuma and Palm oil) (Emergency Control) (England) Regulations 2005 are being made to implement the Commission Decision of 23 May 2005 on emergency measures regarding chilli, chilli products, curcuma and palm oil, which itself repeals and extends Commission Decision 2004/92/EC on emergency measures regarding hot chilli and hot chilli products (OJ L 27, 30.1.2004, p. 52).

4.2. The Ministerial powers under which the Regulations are made are Sections 2 (2) of the European Communities Act 1972.

4.3. The Decision of 23 May 2005 was adopted on 4 April 2005 and notified to Member States on 23 May 2005. It has not yet been published in the Official Journal of the European Communities.

4.4. The Decision of 23 May 2005 extends the measures established by Commission Decision 2004/92/EC. In particular consignments of dried and crushed or ground turmeric intended for human consumption and palm oil intended for direct human consumption imported into the EU now have to be tested and accompanied by a certificate stating they are free of specified Sudan dyes. Consignments of palm oil that

are destined for further processing are exempt from these requirements, however. An additional requirement has also been introduced that will require all certificates of analysis accompanying consignments of any products controlled by the Decision to be endorsed by the competent authority in the exporting country.

5. Extent

5.1. The Regulations apply to England only.

6. European Convention on Human Rights

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

6.2. In my view the provisions of the Food (Chilli, Chilli products, Curcuma and Palm oil) (Emergency Control) (England) Regulations 2005 are compatible with the Convention Rights.

7. Policy Background

7.1. Decision 2004/92/EC requires that imports of consignments of chilli, chilli products and curry powder imported into the European must be accompanied by a certificate showing that they have been tested and are free from the industrial dyes Sudan I – IV. The Sudan dyes are considered genotoxic carcinogens and their presence in food at any level is unacceptable. Should the product be found to contain any of the dyes, or the importer is unwilling for it to be tested, it must be destroyed.

7.2. At a meeting the Standing Committee on the Food Chain and Animal Health on 4 April, Member States adopted a Commission Decision that would extend the existing controls on the presence of Sudan dyes to two further foodstuffs – palm oil and turmeric. Sudan IV has recently been found in the UK and other Member States in consignments of raw palm oil from certain West African countries. These oils are intended to be used, for example, in West African cuisine. The controls on tumeric were introduced following the discovery of two contaminated batches, in Spain and Cyprus, in November 2004.

7.3 Due to the need to implement these emergency provisions urgently, given the seriousness of the health threat to consumers, no formal consultation has been carried out on the new legislation, although relevant industry contacts were notified and their views taken into account in developing the provisions of the Decision.

8. Impact

8.1. The measures contained in the new SI are consistent with the need to ensure consumers are being protected, whilst recognising the need for proportionality.

8.2. All companies operating in the EU will be required to meet the restrictions set out in the new Decision – this is not just an issue for the UK.

8.3. No Regulatory Impact Assessment has been prepared. There are no identifiable costs to the public or the Exchequer.

9. Contact Point

Alison Asquith at the Food Standards Agency (Tel: 0207 276 8000 or E-mail: alison.asquith@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.