

To: Heads of Environmental Health Services (England)  
Directors of Trading Standards (England)  
Chief Port Health Officers (England)

Copies: LACORS  
CIEH  
TSI  
APHA

22 December 2005

Reference: ENF/E/05/057

Dear Colleagues,

**APPLICATION OF THE NEW EU FOOD HYGIENE, OFFICIAL FEED AND FOOD CONTROLS AND MICROBIOLOGICAL CRITERIA REGULATIONS: UPDATE / GUIDANCE**

1. The European Commission Implementing Measures<sup>1</sup> and Transitional Arrangements<sup>2</sup> Regulations which were adopted earlier this year (and assist with the implementation of Regulations (EC) Nos. 882/2004, 853/2004, 854/2004 and amend Regulations (EC) Nos. 853/2004 and 854/2004), and the Commission Microbiological Criteria Regulation<sup>3</sup>, were published in the Official Journal of the European Union today, and can be found at the following internet address:

<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:L:2005:338:SOM:EN:HTML>

2. The length of time it has taken for the above Regulations to be published has resulted in a delay to the submission of the Food Hygiene (England) (No. 2) Regulations 2005 and the Official Feed and Food Controls (England) (No. 2) Regulations 2005 for Ministerial signature. As a consequence of this:

a) The Food Hygiene (England) Regulations 2005 (SI 2005 No. 2059) and the Official Feed and Food Controls (England) Regulations 2005 (SI 2005 No. 2626) which are currently on the statute book will come into force on 1 January 2006 and will remain in force until further legislation revokes and

<sup>1</sup> Commission Regulation (EC) No 2074/2005 of 5 December 2005 laying down implementing measures for certain products under Regulation (EC) No 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No 854/2004 of the European Parliament and of the Council and Regulation (EC) 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004

<sup>2</sup> Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004

<sup>3</sup> Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs



replaces them, which is expected to happen around mid-January 2006, subject to Ministerial signature.

- b) The submission, for Ministerial approval, of the final draft of the Food Law Code of Practice (made under the Food Safety Act 1990 and the implementing legislation relating to England as mentioned above) and the issue of the accompanying Practice Guidance, will be delayed.
3. Until such time as the Code of Practice has received Ministerial approval and has been published, officers are requested to use the draft Code of Practice and Practice Guidance (October 2005) issued on 4 November 2005 as **guidance**. The forms in Annex 7 of the draft Code should **not**, however, be used. We will shortly be making the final versions of these forms, for use from 1 January 2006, available on the Agency's website in Microsoft Word format. Any queries on the draft Code of Practice and/or Practice Guidance should be directed to either Colin Clifford ([colin.clifford@foodstandards.gsi.gov.uk](mailto:colin.clifford@foodstandards.gsi.gov.uk) / 020 7276 8455) or (Mrs) Bola Nathan ([abimbola.nathan@foodstandards.gsi.gov.uk](mailto:abimbola.nathan@foodstandards.gsi.gov.uk) / 020 7276 8454) in the Agency's Hygiene Technical Support Branch.
4. You will wish to be aware that further to the public consultation on the draft Food Hygiene (England) (No. 2) Regulations 2005 which ended on 13 December, the Agency has decided that, given the restricted time available to consider the consultation responses, it will need to give further consideration to its proposal to extend the use of Remedial Action Notices (RANs) from establishments subject to approval under Regulation 853/2004 to all food establishments. The proposed extension will **not**, therefore, be reflected in the further legislation to be submitted for Ministerial signature. **Hence, from 1 January 2006, RANs may only be used in respect of establishments subject to approval under Regulation 853/2004<sup>4</sup>, in accordance with the provisions of the Food Hygiene (England) Regulations 2005.**
5. I would draw your attention to the subject of "Liaison with other Member States" which is currently undertaken by LACORS. As implied in the two drafts of the Code of Practice issued during the course of 2005, the Agency had agreed with LACORS that this work would transfer to the Agency from 1 January 2006. Due to the issues outlined above and the delays stemming from these, it will now not be possible to proceed with the transfer as planned. The Agency has agreed with LACORS that they will retain responsibility until 31 March 2006 and that the Agency will take over from 1 April 2006. The Agency is grateful to LACORS for their co-operation in this regard.
6. I would take this opportunity to highlight some provisions of the Commission Transitional Arrangements Regulation on which Food Authorities have expressed interest, and on Industry Guides to Good Hygiene Practice, as below (references to legislation are given in square brackets) and to provide Agency guidance on a number of other issues:

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<sup>4</sup> Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin

### ***Regulation (EC) No. 2076/2005 (Transitional Arrangements)***

- a) Food of animal origin produced before 1 January 2006 and health marked in accordance with the relevant requirements at the time of manufacture may be placed on the market after 1 January 2006 [Regulation 2076/2005, Article 2].
- b) Establishments which are currently approved and will continue to be subject to approval from 1 January 2006 under Regulation 853/2004 may use, until 31 December 2007, existing stocks of wrapping, packaging and labelling materials bearing pre-printed health or identification marks purchased by them before 1 January 2006 [Regulation 2076/2005, Article 5].
- c) Food business operators may continue to use marking equipment on 31 December 2005 until its replacement or until the end of the transitional period (31 December 2009) at the latest, provided that the approval number of the establishment concerned remains unchanged. (This would apply in premises coming under the remit of the Meat Hygiene Service, however you may come across meat so marked) [Regulation 2076/2005, Article 6].

### ***Existing Industry Guides to Good Hygiene Practice***

- d) Industry Guides to Good Hygiene Practice that have been produced pursuant to Directive 93/43/EEC shall continue to apply after 1 January 2006, provided they are compatible with the requirements of Regulation (EC) No. 852/2004 [Regulation 852/2004<sup>5</sup>, Article 8(5)].

### ***Agency Guidance***

#### ***Approved Establishments***

- e) In respect of establishments which are currently approved and continue to be subject to approval under Regulation 853/2004 from 1 January 2006, the existing approval may continue. Food produced in such establishments may, subject to food safety requirements, continue to be placed on the market until the establishment is reassessed, at the next programmed inspection visit, against the requirements of the new legislation and approved (if appropriate) under Regulation 853/2004.
- f) Establishments which are not currently approved which will be subject to approval under Regulation 853/2004 from 1 January 2006, should be subjected to a primary inspection as soon as possible after that date. This should be at least within 28 days of either the application being received from the food business operator, or it coming to the attention of your

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<sup>5</sup> Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs

authority. In the meantime, food produced in such establishments may, subject to food safety requirements, continue to be placed on the market.

g) In respect of establishments which are currently approved but are not subject to approval under Regulation 853/2004 from 1 January 2006, the establishment's approval may be removed at the next programmed inspection visit. In the meantime, food produced in such establishments may, subject to food safety requirements, continue to be placed on the market.

7. Finally, you will wish to be aware that additional Guidance on the new food hygiene law for both food businesses and food law enforcers was published by the Agency and can be found on the website at:

<http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/fhlguidance/>

Yours sincerely,

A handwritten signature in purple ink that reads "Colin J Houston". The signature is written in a cursive style.

Colin Houston  
Deputy Head of Enforcement Division