EXPLANATORY MEMORANDUM TO

THE FOOD LABELLING (AMENDMENT) (ENGLAND) (NO2) REGULATIONS 2004

2004 NO.2824

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The SI provides for the administration and enforcement (including penalties and offences) of Directive 2003/89/EC of the European Parliament and of the Council of 10 November 2003 on the indication of ingredients in pre-packed food including alcoholic drinks. It contains two main provisions for pre-packed foods. First, it abolishes the '25% rule', under which ingredients of a compound ingredient of a food do not have to be declared if the compound ingredient makes up less than 25% of the finished product. Second, it introduces a requirement to declare major food allergens.

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

3.1 None

4. Legislative Background

4.1 The ministerial powers under which this SI is made are sections 16(1)(e) and (f), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990, as amended.

4.2 This SI amends the Food Labelling Regulations 1996 (SI 1996 No1499), as amended in relation to England only. It implements Directive 2003/89/EC, amending Directive 2000/13/EC of the European Parliament and of the Council as regards the indication of ingredients present in foodstuffs.

4.3 The SI also extends the allergen labelling requirements in Directive 2003/89/EC to certain small packages and indelibly marked glass bottles as a national measure. Accordingly, the SI was notified in draft to the European Commission both under Directive 98/34/EC of the European Parliament and of the Council dealing with technical standards and under Article 19 of Directive 2000/13/EC.

4.4 A transposition note is attached at Annex I.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Public Health, Melanie Johnson, has made the following statement regarding Human Rights:

'In my view the provisions of the Food Labelling (Amendment) (England) (No. 2) Regulations 2004 are compatible with the Convention rights.'

7. Policy background

7.1 Food allergy and food intolerance is thought to affect about 2 million people in the UK. Symptoms range from relatively mild to life-threatening (anaphylactic shock). Although most children grow out of it, there is no cure for food allergy or food intolerance, and the only way to avoid symptoms is to avoid the food in question.

7.2 Under the Food Labelling Regulations 1996, and the EU Directive (Directive 2000/13/EC) which it implements, certain exemptions mean that some ingredients do not have to be declared on the list of ingredients of pre-packed foods. Consequently, ingredients that consumers may need or wish to avoid, in particular, those that can cause allergy or intolerance, may not always be identified on food labels.

7.3 Examples of such exemptions include the 25% compound ingredient listing exemption (under which ingredients of a compound ingredient do not have to be declared if the compound ingredient makes up less than 25% of the finished product), drinks containing over 1.2% by volume alcohol and certain additives. In addition, there is currently no requirement to specifically identify potentially allergenic ingredients in pre-packed food.

7.4 The purpose of Directive 2003/89/EC (amending Directive 2000/13/EC) is to ensure that consumers are provided with comprehensive ingredient information and that those with food allergies or food intolerance are able to identify products they may need or wish to avoid. It does this by abolishing the '25% rule', so that with the exception of a few specific and minor derogations, all ingredients will need to be indicated on the label. It also establishes a list of major food allergens in the EU, which will have to be indicated whenever they or their derived ingredients are used in pre-packed foods, including alcoholic drinks.

7.5 Over 1000 interested parties were consulted on the draft statutory instrument, Partial Regulatory Impact Assessment (RIA) and Guidance Notes, of which 60 responded. A brief analysis of the responses is provided in the final RIA. The legislation is not likely to be politically or legally significant.

8. Impact

8.1 The Full Regulatory Impact Assessment is attached at Annex II.

8.2 The impact on the public sector is estimated to amount to £100,000 per annum.

9. Contact

9.1 Dr Theresa Ekong, Food Standards Agency, Room 115B, Aviation House, 125 Kingsway, London WC2B 6NH. Tel: 0207-276-8192; E-mail: theresa.ekong@foodstandards.gsi.gov.uk.