EXPLANATORY MEMORANDUM TO

THE FOOD ADDITIVES, FLAVOURINGS, ENZYMES AND EXTRACTION SOLVENTS (ENGLAND) REGULATIONS 2013

2013 No. 2210

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

2. Purpose of the instrument

2.1 The proposed Regulation revokes the current statutory instruments on food additives, flavourings, food enzymes, smoke flavourings and extraction solvents and replaces them with a single statutory instrument (SI).

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

3.1 None.

4. Legislative Context

4.1 Harmonised European legislation controls the use of food additives, flavourings, smoke flavourings, food enzymes and extraction solvents in the European Union. In general, all the above substances are controlled by way of positive lists e.g. only authorised substances can be used in food and substances must meet specific conditions of use. For food enzymes and for certain categories of flavourings, work is underway to establish the positive lists.

4.2 The controls on food additives, flavourings (including smoke flavourings) and food enzymes are set out in European Regulations, which are directly applicable in all European Member States. Therefore, the national legislation in these areas only cover enforcement provisions for the relevant European Regulations, for example designating enforcement authorities, identifying which provisions of those Regulations should, if breached, constitute an offence or attract a compliance notice and specifying penalties on conviction for offences. The controls on extraction solvents are specified in European Directives and all requirements were originally transposed into national law in the Extraction solvents in Foods Regulations 1993.

4.3 The consolidation is part of the FSA's intention to introduce a simplified system of food safety legislation, being delivered under the UK Government's Red Tape Challenge initiative.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Although for devolved issues, such as food safety, the UK Government's Red Tape Challenge initiative applies to England only, separate but parallel legislation will be made in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 For the food enzymes, smoke flavourings and extraction solvent provisions no changes are required to the current measures. However, in the proposed regulations the extraction solvents provisions have been simplified and will refer directly to Annex I of the European Directive (as amended) with the effect that any changes to the list of permitted extraction solvents or their conditions of use will directly apply. Therefore enabling businesses to use newly authorised solvents more quickly without having to wait for UK implementing legislation.

7.2 Currently the Food Additives (England) Regulations 2009 (SI 2009/ 3238) have a dual function - as well as enforcing Regulation (EC) No. 1333/2008 on food additives, they also enable the Annexes and associated Articles of the three previous Directives on sweeteners, colours and miscellaneous additives to continue to apply by way of transitional provisions. This dual function was required until 1 June 2013 when the relevant provisions in the three Directives were transferred to Annexes II and III of Regulation (EC) No. 1333/2008 and will cease to apply.

7.3 An amendment is required to the Flavourings in Food (England) Regulations 2010 (SI 2010/ 2817 to reflect the different dates of application of the Union (positive) list of flavourings and the transitional periods as set out in Commission Regulation (EU) No. 873/2012. The existing SI simply refers to the transitional measures as set out in Article 30 of Regulation (EC) No. 1334/2008 on food flavourings and therefore does not take into account the different dates of application of the Union list as set out in Regulation (EU) 873/2012.

8. Consultation outcome

8.1 An 8 week consultation was conducted which ended on 5 June 2013. As the SI was a simple consolidation of existing rules, a shorter consultation period was agreed. A wide range of enforcement authorities, consumer groups and industry were consulted and the consultation was available on the FSA website. Eleven responses were received from Trading Standards Groups, Industry Trade Associations, a member of the public and a professional body. Generally the respondents supported the consolidation as this reduces the amount of legislation needed to be referred to and the majority supported the use of compliance notices (civil sanctions) for non-safety related offences. However, two respondents objected to the use of civil sanctions preferring the existing criminal approach. A summary of the consultation responses and the FSA's view on the issues raised will be available on the FSA's website during September 2013.

9. Guidance

9.1 No specific guidance has been prepared to accompany this SI, however separate guidance has been prepared by the FSA covering the specific rules of the European food additives legislation – Regulation 1333/2008. Guidance will be issued to enforcement officers on the use of compliance notices.

10. Impact

An Impact Assessment has not been prepared for this instrument as there are no new requirements on businesses/enforcement authorities as existing legislation is being revoked and remade into a single SI. Therefore there is no additional impact on the private or voluntary sector.

11. Regulating small business

11.1 The legislation applies to all business. However, as this is a consolidation of existing requirements there are no new impacts on businesses.

12. Monitoring & review

12.1 The FSA will work with Local Authorities and Port Health Authorities where problems or suspected infringements of the instrument arise. The effectiveness of the instrument will be also be monitored via general feedback from industry and Enforcement Authorities.

Statutory Review

12.2 The FSA is required to carry out a review of this instrument every five years. The review period begins when this instrument comes into force.

12.3 In carrying out the review, the FSA is required to produce a report that sets out the objectives of this instrument, the extent to which they have been achieved and whether they could be achieved by means that impose less regulation. Information gathered via the activities described in paragraphs 12.1 above will inform the review.

13. Contact

13.1 Wendy Dixon at the Food Standards Agency, Tel: 020 7276 8587, Email: wendy.dixon@foodstandards.gsi.gov.uk, can answer any queries regarding the instrument.