EXPLANATORY MEMORANDUM TO THE

CONTAMINANTS IN FOOD (ENGLAND) (AMENDMENT) REGULATIONS 2005

2005 No. 775

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Regulations make provision for the implementation of EU measures setting maximum levels for certain contaminants, namely nitrate, aflatoxins and ochratoxin A, in foods for infants and young children.

2.2 The Regulations will amend The Contaminants in Food (England) Regulations 2004 (SI 2004 No 3062) ("the principal Regulations") to provide for enforcement of the EU measures.

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

3.1 The Regulations also amend the principal Regulations in order to correct certain typographical errors, including one which was noted by the Joint Committee on Statutory Instruments in its fifth report of session 2004-05 and which the Agency in a memorandum dated 17th December 2004 to the Committee undertook to correct at the next opportunity.

4. Legislative Background

4.1 The Instrument is made under The Food Safety Act 1990. The new Regulations make provision for the enforcement of two European Commission Regulations which set limits for aflatoxins, ochratoxin A and nitrate in foods for infants and young children.

4.2 The Commission Regulations amend Commission Regulation EC No 466/2001 of 8 March 2001, which sets maximum limits for certain contaminants in foodstuffs and has applied since 2002. Commission Regulation 466/2001 is supported by a number of enforcement Commission Directives, which lay down the methods for sampling and analysis for the official control of those contaminants specified in the legislation. In England, provision for the enforcement of Regulation 466/2001 and the implementation

of the supporting Directives is currently to be found in the principal Regulations.

5. Extent

5.1 This Instrument applies in relation to England only. Corresponding Regulations will apply in relation to Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The food contaminants framework Regulations, Council Regulation (EEC) No 315/93 of 8 February 1993 lay down Community procedures for contaminants in food. Article 2 to the Regulation provides that food containing a contaminant in an amount that is unacceptable from the public health viewpoint, and in particular at a toxicological level, shall not be placed on the market. Paragraph 3 to the Article requires that maximum levels must be set for specific contaminants and that these limits must be adopted in the form of a non-exhaustive Community list. In view of disparities between the laws of Member States in regard to the maximum levels for contaminants in certain foodstuffs and the consequent risk of distortion of competition, detailed Community measures (Commission Regulation (EC) No 466/2001 of 8 March 2001) were introduced.

7.2 The intention of Commission Regulation 466/2001 is to provide consumers with an increased measure of protection by setting EC maximum levels for a number of specified contaminants in those foodstuffs that are significant contributors to the total dietary exposure of consumers to those contaminants. The Regulation, which has undergone a number of amendments, aims to minimise the contamination of food entering the food chain and to harmonises Member States' existing measures, thus facilitating trade.

7.3 Maximum limits for lead, cadmium, mercury, dioxins and nitrate (environmental chemical contaminants), 3-monochloropropane-1,2-diol (3-MCPD - a process contaminant), aflatoxins, ochratoxin A and patulin (mycotoxins) in relation to certain specified categories of food have already been set under this legislation, and have applied since 2002. The Regulation is supported by a number of allied Commission Directives, (98/53/EC, 2001/22/EC, 2002/26/EC, 2002/69/EC, 2003/78/EC and 2004/16/EC) which lay down the sampling methods and the methods of analysis for the official control of those contaminants specified in the legislation.

7.4 In view of the requirement to protect public health by keeping contaminants at levels that are toxicologically acceptable, the European Commission investigates whether limits should be set for additional contaminants or for additional categories of food in relation to a given

contaminant, and also reviews the maximum limits of those contaminants currently in the legislation. As a result, the following Commission measures, which amend Commission Regulation 466/2001, have been adopted and must now be implemented:

(i) Commission Regulation (EC) No 655/2004 of 7 April 2004, setting maximum levels for nitrate in foods for infants and young children.

(ii) Commission Regulation (EC) No 683/2004 of 13 April 2004 setting maximum levels for aflatoxins and ochratoxin A in foods for infants and young children.

7.5 Informal and formal consultations have been carried out on the measures, and information on the benefits and costs of the legislation to public health and businesses including enforcement authorities are included in the attached Regulatory Impact Assessments. Consultation in England of nearly 200 interested parties including consumer groups, industry, enforcement authorities and other government departments, in the 12 weeks from 13 September 2004 produced 5 responses. The only substantive comments raised were from the Local Authorities Co-ordinators of Regulatory Services (LACORS) who stated that additional costs relating to sampling and analysis of products are not expected to be significant. Other responses were either not in direct relation to the Regulations or simply acknowledged the consultation.

8. Impact

8.1 Two Regulatory Impact Assessments are attached to this memorandum (annex 1A and 1B).

8.2 The impact on the public sector is believed to be minimal. However, some costs to the Exchequer may arise from the costs to local authorities and port health authorities in carrying out additional sampling and analysis to check for the levels of aflatoxins, ochratoxin A and nitrate in foods for infants and young children.

9. Contact

9.1 Jonathan Briggs at the Food Standards Agency Tel: 020 7276 8716 or e-mail: jonathan.briggs@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.