EXPLANATORY MEMORANDUM TO

THE FOOD ADDITIVES (ENGLAND) (AMENDMENT) AND THE EXTRACTION SOLVENTS IN FOOD (AMENDMENT) (ENGLAND) REGULATIONS 2012

2012 No. 1155

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

2. Purpose of the Instrument

2.1 This instrument will provide for the execution and enforcement of three European Commission Regulations which, a) establish an EU list of food additives, b) establish an EU list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients; and c) set down specifications for the food additives in those lists. The instrument will also rectify an omission from the Extraction Solvents in Food (Amendment) (England) Regulations 2011 to complete the references to *Dimethyl ether* as a permitted extraction solvent in the Schedules to the Extraction Solvents in Food Regulations 1993.

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

3.1 None.

4. Legislative Context

4.1 This instrument will provide for the execution and enforcement of three Commission Regulations and will also rectify a minor omission from the Extraction Solvents in Food (England) (Amendment) Regulations 2011 by making an amendment to the Extraction Solvents in Food Regulations 1993.

5. Territorial Extent and Application

5.1 This Instrument applies to England only. Separate but parallel legislation is being enacted for Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The Instrument is necessary to clarify and update the enforcement provisions in the Food Additives (England) Regulations 2009 and to provide for the execution and enforcement of three directly applicable EU Regulations, which will amend Regulation (EC) No. 1333/2008 ("Regulation 1333/2008") on food additives and for the associated transitional arrangements.

7.2 Commission Regulation (EU) No. 1129/2011 ("Regulation 1129/2011") will amend Annex ll to Regulation 1333/2008, establishing an EU list of food additives. Commission Regulation (EU) No. 1130/2011 ("Regulation 1130/2011") will amend Annex lll to Regulation 1333/2008 establishing an EU list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients. Regulation (EU) No. 231/2012 will set down specifications for food additives in the EU lists at Annex ll and Annex lll to Regulation 1333/2008 established by Regulations 1129/2011 and 1130/2011.

7.3 This instrument will also amend The Extraction Solvents in Food Regulations 1993 as amended, in order to rectify an omission from the Extraction Solvents in Food (Amendment) (England) Regulations 2011, which implemented the provisions of Commission Directive 2010/59/EU, on extraction solvents used in foodstuffs and food ingredients so as to include reference to *Dimethyl ether*, in the list of permitted extraction solvents in Part 1 of Schedule 1 to the 1993 Regulations. *Dimethyl ether is already indicated in Schedule 2 of those Regulations for preparation of defatted animal protein products.*

7.4 The Commission's proposals were adopted in the EU Standing Committee on the Food Chain and Animal Health (SCoFCAH) and were published in the Official Journal (OJ) of the EU as Commission Regulations 1129/2011[1], 1130/2011[2] and 231/2012[3]. The Regulations can be downloaded from the European Commission website at the link below:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:225:0010:0012:EN:PDF

8. Consultation outcome

8.1 The FSA consulted UK industry and enforcement authorities during extensive EU negotiations on all three Regulations. The European Commission also consulted on the measures widely. UK industry's comments were noted on any concerns raised and largely resolved by the UK delegation during the EU negotiations. The provisions of Annex ll, parts of Annex lll and the new Regulation on specifications are largely a consolidation of existing legislation, which industry is familiar with. The

[1] OJ Ref L295, 12.11.2011, page 1-177
[2] OJ Ref L295, 12.11.2011, page 178-204
[3] OJ Ref L83, 22.03.2012, page 1-295

new restrictions on lycopene and additives in additives, enzymes and nutrients have been the subject of extensive discussions with industry and account has been taken as far as possible of industry's requirements. Lengthy transitional arrangements have been negotiated and as far as we are aware, the incremental impact that would arise from these EU Regulations would be negligible.

8.2 A nine week consultation was carried out on the draft enforcement Regulations. A full 12 week consultation was not considered necessary as no impact was identified through earlier consultation and the intention to implement fully the provisions proposed by the Commission which formed the subject of that earlier consultation.

8.3 One comment was received from a government laboratory; the comment largely centred on the style and layout in which the information is presented in the Annexes in the amending Regulations, The Laboratory of the Government Chemist expressed the view that some guidance and training might be required at individual and laboratory level.

9. Guidance

9.1 The FSA intends to issue informal guidance to industry and enforcement authorities on the new additives legislation

10. Impact

10.1 As it is anticipated that only negligible incremental impact on UK industry will arise from these Regulations, the FSA has not prepared an Impact Assessment (IA), on this occasion.

10.2 There is no impact on the public sector as there are no identifiable costs.

10.3 The consultation did not bring to light any new impacts.

11. Regulating small business

11.1 The legislation on food additives and extraction solvents will apply to all businesses small and large.

11.2 The consultation did not identify any disproportionate impacts on business or enforcement authorities.

12. Monitoring & review

12.1 Central and local authorities in England routinely monitor foodstuffs on sale to the public to ensure compliance with the new Regulations. Review of the legislation must be undertaken by the Food Standards Agency in accordance with regulation 4 of these Regulations.

13. Contact

13.1 Glynis Griffiths at the Food Standards Agency, Tel: 020 7276 8556, Email: glynis.griffiths@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.