EXPLANATORY MEMORANDUM TO

THE FOOD FOR PARTICULAR NUTRITIONAL USES (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2010

2010 No. 295

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 The Food for Particular Nutritional Uses (Miscellaneous Amendments) (England) Regulations 2010 ('the Regulations'), which apply in relation to England, provide that the references to Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses in domestic legislation are replaced with references to Directive 2009/39/EC on foodstuffs intended for particular nutritional uses. The main purpose of the Regulations is to align domestic law with EC law.

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

3.1 None

4. Legislative Context

4.1 Directive 2009/39/EC is a recast of Directive 89/398/EEC incorporating its subsequent amendments. There is no significant difference between the text of these Directives other than those which introduce a regulatory procedure with scrutiny; these new provision do not need to be transposed. This EC measure repeals Directive 89/398/EEC and its amendments.

5. Territorial Extent and Application

5.1 The Regulations apply to England. Separate but parallel legislation is being enacted for Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (the Parnuts Framework Directive) has been amended by Directives 96/84/EC, 1999/41/EC and Regulation (EC) 1882/2003. In 1987, the European Commission decided that legislative measures should be codified after no more than ten amendments, and preferably at shorter intervals, to ensure that they are clear and readily understandable; therefore, in 2004 the Commission began the process of codifying Directive 89/398/EEC.

7.2 In 2006, Council Decision 1999/468/EC laying down procedures for the exercise of implementing powers conferred on the Commission was amended by Decision 2006/512/EC which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty. In accordance with a joint statement of the European Parliament, the Council and the Commission (OJ C 255, 21.10.2006, p1), for this new procedure to be applicable to such instruments already in force, they must be amended. Directive 2009/39/EC incorporates those new procedures.

7.3 In order to reflect the repeal and replacement of Directive 89/398/EEC by Directive 2009/39/EC, references to Directive 89/398/EEC need to be replaced with references to Directive 2009/39/EC in domestic law. To avoid the need for future statutory instruments to implement amendments to Directive 2009/39/EC, an ambulatory reference has been inserted.

7.4 The effect of the ambulatory reference should be restricted. The reference to Directive 2009/39/EC in the Food Labelling Regulations 1996 operates in relation to a paragraph which provides that the Food Labelling Regulations 1996 do not apply to certain products provided specified conditions are met and provided the requirements of certain Directives are met (Directive 2009/39/EC is one of those Directives). The references to Directive 2009/39/EC in the Notification of Marketing of Food for Particular Nutritional Uses (England) Regulations 2007 relate to specified provisions of that Directive and so any future amendments to the Directive would only have effect in relation to that restricted area.

- ***Consolidation***

7.5 It is anticipated that the use of this power in the Regulations will reduce the need for minor amending SIs and is not regarded as likely to give rise to unintended consequences due to future amendments of the Directive. If however the operation of this ambulatory reference appears likely to give rise to unintended consequences as a result of a forthcoming amendment to Directive 2009/39/EC, the matter would be consulted upon and, if necessary, the ambulatory provisions would be removed.

8. Consultation outcome

8.1 The Food Standards Agency conducted a 12-week consultation, which ran from 10 August to 2 November 2009 with parallel consultations undertaken in Scotland, Wales and Northern Ireland.

8.2 Over 400 interested parties throughout the UK, including consumer and health professional groups, manufacturers and industry bodies, enforcement bodies, individuals and other government departments, have been consulted on these draft Regulations. No responses were received. Meetings with interested parties confirmed the new regulation will not place additional burdens on industry and is welcomed by all stakeholders.

9. Guidance

9.1 As this is a recast of existing legislation, no guidance has been produced to accompany this legislation.

10. Impact

10.1 An Impact Assessment has not been prepared to accompany these Regulations as no costs have been identified.

10.2 The Regulations would not impose any significant new burden on Government or enforcement officers. Rural areas and members of the ethnic communities, or of any particular racial group are unaffected by these proposals. Charities and voluntary organisations are unaffected by these proposals.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 It is not thought that the proposed legislation will disproportionately impact small businesses as no costs were identified.

12. Monitoring & review

12.1 The new rules will come into force on 15 March 2010. The Regulations will be reviewed three years after implementation.

13. Contact

13.1 Stephen Knight at the Food Standards Agency (Tel: 020 7276 8173 or e-mail: Stephen.knight@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.