EXPLANATORY MEMORANDUM TO

THE FOOD LABELLING (AMENDMENT) (ENGLAND) (NO.2) (AMENDMENT) REGULATIONS 2005

2005 NO. 2969

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 Statutory Instrument provides for the implementation of Commission Directive 2005/63/EC of 3 October 2005, correcting Directive 2005/26/EC concerning the list of food ingredients or substances provisionally excluded from Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council. Directive 2005/63/EC makes a minor amendment to the list of provisional exemptions from the requirement to be listed as allergens on food labels, for ingredients derived from allergens that are no longer allergenic. The entry under 'Fish' now reads 'Fish gelatine used as a carrier for vitamin or carotenoid preparations and flavours'. It previously did not cover fish gelatine used as a carrier for carotenoid preparations.

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 The existing Statutory Instrument on exemptions from the allergen labelling requirements (the Food Labelling (Amendment) (England) (No. 2) Regulations 2005 – S.I. 2005/2057) which amends the Food Labelling Regulations 1996 in implementation of Directive 2005/26/EC, is not yet in force. In accordance with the timetable in that Directive, S.I. 2005/2057 will bite on 25 November 2005. Its provisions have therefore not yet been incorporated into the Food Labelling Regulations 1996 (that will happen on 25 November 2005): and for this reason the new Statutory Instrument amends S.I. 2005/2057 rather than directly amending the 1996 Regulations.

4.3 A transposition note is attached at Annex I.

5. Extent

5.1 This instrument applies in relation to England only.

5.2 Devolved administrations in Scotland, Wales and Northern Ireland are producing parallel legislation.

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

7.1 New food labelling rules in England will require food labels to be more comprehensive from 25 November 2005, so that consumers can identify those ingredients they may need or wish to avoid. Any of 12 specified allergens and their derived ingredients will have to be labelled whenever they are present in prepacked food, including alcoholic drinks. However, Directive 2005/26/EC exempts from labelling the derivatives of food allergens that are not allergenic, provided there is sufficient scientific justification. This will reduce the burdens on industry and improve information given to consumers.

7.2 Directive 2005/63/EC, makes a minor amendment to this list of exemptions, under 'Fish': 'Fish gelatine used as a carrier for vitamins and flavours' has been replaced with 'Fish gelatine used as a carrier for vitamin **or carotenoid preparations** and flavours.

7.3 This exemption should have been included on the original list and had certainly been referred to in the opinion of the European Food Safety Authority, who evaluated the scientific evidence submitted in support of exemption of a number of products. Therefore its omission from the original list was a drafting error on the part of the Commission.

7.4 The draft statutory instrument and the corresponding amendment to the current guidance notes, were subject to a 1 week consultation period. Around a 1000 interested parties were consulted. A full 12 week consultation was not held as the Directive allows only a short time for implementation.

7.5 11 responses have been received and none disagreed with this amendment. The legislation is not likely to be politically or legally significant.

7.6 When consultation took place on the implementation of Directive 2005/26/EC, two of our stakeholders pointed out in their comments that the list of provisional exemptions contained an omission. The full Regulatory Impact Assessment and the final guidance notes indicated that a correction to Directive 2005/26/EC would be published. The final guidance notes are published on the Agency's website.

8. Impact

8.1 A Regulatory Impact Assessment was produced for the implementation of the Food Labelling (Amendment) (England) (No.2) Regulations 2005 (signed 14 July 2005 – See

Annex A). That full RIA reflected that the Commission had indicated that a correction to Directive 2005/26/EC would be published to include fish gelatine used as a carrier for carotenoids. A further RIA is therefore not required for the implementation of this amendment.

8.2 As this legislation will exempt ingredients that would have had to be labelled from the requirement to be labelled, there are no identifiable costs to the public.

9. Contact

9.1 Sue Hattersley, Food Standards Agency, Room 507C, Aviation House, 125 Kingsway, London WC2B 6NH. Tel: 0207-276-8509; E-mail: sue.hattersley@foodstandards.gsi.gov.uk , can answer any queries regarding the instrument.