EXPLANATORY MEMORANDUM TO

THE FOOD LABELLING (DECLARATION OF ALLERGENS) (ENGLAND) REGULATIONS 2011

2011 No. 402

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 amends the Food Labelling Regulations 1996 to further extend a temporary exemption from certain labelling requirements for wine. This temporary exemption applies to the declaration on label of lysozyme[1] and of albumin (produced from egg) or milk products (in the form of casein) used as treatment agents ("fining agents") in wine. These are all ingredients which may cause an allergic reaction in some people.

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

3.1 None.

4. Legislative Context

4.1 This instrument implements Commission Regulation (EU) No 1266/2010 of 22 December 2010 amending Directive 2007/68/EC amending Annex IIIa to Directive 2000/13/EC of the European Parliament and of the Council as regards certain food ingredients.

5. Territorial Extent and Application

5.1 This instrument applies to England only. Separate, but parallel instruments apply to Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

As this 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

[1] Lysozyme can be used to treat the must prior to fermentation to inhibit naturally present bacteria that might interfere with the alcoholic fermentation carried out by the yeast and thus produce an unpleasant wine. It may also be used after fermentation to inhibit the bacteria that cause a malolactic fermentation in wine. This is usually a desirable reaction in cool, northern wine-making regions but is normally undesirable in warmer or hot regions.

7.1 The Food Labelling Regulations 1996 (as amended) aim to ensure that consumers are properly informed about the nature and substance of the foods they buy and are protected from false or misleading descriptions. The Regulations include a list of 14 allergens that have to be indicated on the label whenever they, or their derivatives, are used as deliberate ingredients in pre-packed food including alcoholic drinks.

7.2 European Union (EU) food labelling legislation was amended in 2008 to temporarily exempt the fining agents mentioned in paragraph 2.1 above from the requirement to be declared on wine labels until 31 May 2009. This was to give the wine industry time to provide the European Commission ("the Commission") with the information needed to support a permanent exemption. However, due to difficulties encountered by the wine industry in meeting this deadline, the EU legislation was amended again to extend the temporary exemption until 31 December 2010.

7.3 Commission Regulation (EU) No 1266/2010 further extended the temporary exemption until 30 June 2012. This instrument implements the extension to the temporary exemption in relation to England by means of an amendment to national food labelling Regulations.

- Consolidation

7.4 A review of EU Food Labelling legislation is ongoing at European level with a view to its revocation in favour of a directly applicable EU 'Food Information Regulation'. When the EU Regulation is enacted national legislation will be amended accordingly.

8. Consultation outcome

8.1 On 22 July 2010, the Food Standards Agency consulted approximately 850 Interested Parties including trade organisations, local enforcement authorities, allergy support groups and individuals who had requested to be notified of changes to food labelling legislation, to inform discussions on a draft Commission proposal to extend the temporary allergen labelling exemption mentioned at paragraph 7.2 above until 30 June 2012.

8.2 Two responses to the consultation were received. The first response was from an allergy support group suggesting that fining agents should be listed on wine labels where they are found to be allergenic. The second response was from Local Government Regulation, which provides advice and guidance to regulatory services in the United Kingdom, indicating that they did not envisage any difficulty in terms of enforcement.

9. Guidance

9.1 The Food Standards Agency's guidance on the allergen labelling rules that are available on its website will be revised to reflect this change in the legislation.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. Wine producers can continue to use current labels on their wine and will not be required to make changes to these until 30 June 2012.

10.2 There is no impact on the public sector as Local Government Regulation agreed that no additional costs would arise from enforcing this instrument.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to both small and large businesses.

11.2 The intention of the extension to the temporary exemption period implemented by this instrument is to give wine producers additional time to supply the necessary information to the Commission to support a permanent exemption from allergen labelling which, if enacted, would benefit both small and large businesses.

12. Monitoring & review

12.1 This instrument does not introduce any changes until 30 June 2012 at which time wine producers will be required to reflect the fining agents mentioned in paragraph 2.1 above on their wine labels, where appropriate. As such, it is not possible to measure its success until after 30 June 2012.

12.2 Any review of the legislation, with particular regard to the date of the temporary exemption's expiry and any possibility of the exemption becoming permanent, would be undertaken by the European Commission, in liaison with the European Food Safety Authority (EFSA) and Member States. The UK will participate in any such review.

13. Contact

13.1 Sue Hattersley at the Food Standards Agency, Tel: 020 7276 8509 or Email: sue.hattersley@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.