EXPLANATORY MEMORANDUM TO

THE FOOD PROTECTION (EMERGENCY PROHIBITIONS) (SCALLOPS) (IRISH SEA) (REVOCATION) ORDER 2004

2004 No. 2686

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

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

This Order revokes the Food Protection (Emergency Prohibitions)(Scallops)(Irish Sea) Order 2004(S.I. 2004/2040 as amended by S.I. 2004/2123) made on 29 July 2004 under the Food and Environment Protection Act 1985. The original Order prohibits the taking of scallops or preparing or processing food or feeding stuffs derived from scallops from a certain area. This is because they were affected by the toxin that causes amnesic shellfish poisoning in humans if consumed. This current Order is being made because the sampling described in paragraph 7.2 below indicates that the area may be reopened.

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

3.1 This Order was made at 15.10 on 15th October and came into force the same day.

3.2 The Order, when brought into force, will breach the 21 days rule. The original emergency Order restricted the livelihoods of fishermen mainly in Scotland who have not been allowed to harvest, sell or move shellfish from the affected area. There is no longer any need for the restrictions and they are being removed as a matter of urgency

4. Legislative Background

The original Order was made under Part I of the Food and Environment Protection Act 1985. This Act allows for the making of emergency orders where there exists or may exist circumstances which are likely to create a hazard to human health through human consumption of food.

5. Extent

This revocation applies to England only. A similar Order is being made for the other part of the affected area in Scottish waters.

6. European Convention on Human Rights

The Health Minister has made the following statement regarding Human Rights:

"In my view, the provisions of The Food Protection (Emergency Prohibitions) (Scallops) (Irish Sea) (Revocation) Order 2004 are compatible with the Convention rights."

7. Policy background

7.1 Amnesic Shellfish Poison (ASP) is caused by toxins produced from naturally occurring algal blooms. Council Directive 97/61/EC of 20 October 1997 requires a monitoring programme for ASP to be in place. Member States are required to carry out periodic monitoring for the presence of ASP toxins in live bivalve molluscs. The Directive lays down a limit of 20 μg domoic acid/gram of edible parts of the shellfish. The Food Standards Agency has responsibility for managing an algal toxin monitoring programme.

7.2 If levels above the statutory limit are found, then the Agency is required under the Directive to close the bed. In accordance with the Agency's monitoring programme, a bed will remain closed until such time as two consecutive samples collected at least seven days apart achieve negative results. The area may then be opened and the Order revoked.

8. Impact

A Regulatory Impact Assessment has not been prepared for this Order as it will lift current restrictions in place in the affected area.

9. Contact

Mike Glavin at the Food Standards Agency Tel: 020 7276 8944 or e-mail: mike.glavin@foodstandards.gsi.gov.uk for further details regarding the instrument.