EXPLANATORY MEMORANDUM TO

THE MATERIALS AND ARTICLES IN CONTACT WITH FOOD (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 2938

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, by amending the Materials and Articles in Contact with Food (England) Regulations 2007, provides for the enforcement in England of certain provisions contained in Commission Regulation (EC) No 450/2009 ("the AIM Regulation") on active and intelligent materials and articles intended to come into contact with food.

2.2 Active materials are those that are designed to react with the food or its immediate environment with which they are in contact so as to alter it in some way (eg improve keeping qualities), and intelligent materials react in such a way as to provide information about the food.

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

3.1 None

4. Legislative Context

4.1 The general principles on all food contact materials and articles intended to come into contact with foodstuffs are established in Regulation (EC) No. 1935/2004[1]. This lays down the framework of regulation for all materials and articles intended to come into contact with food, including those classed as 'active; and 'intelligent'. The enforcement of provisions for that Regulation are implemented in England by The Materials and Articles in Contact with Food (England) Regulations 2007. This instrument will amend the 2007 Regulations to take into account certain provisions of the AIM Regulation.

4.2 These provisions relate to particular labelling and declarations requirements for goods placed on the market. They specifically concern the labelling of parts of the packaging that could be wrongly taken by some consumers to be edible, the written declaration of legal compliance to accompany active and intelligent materials and articles prior to retail sale, and the production, to enforcement authorities on request, of supporting documentation to substantiate the declaration of compliance.

[1] OJ L338, 13.11.2004

4.3 These provisions need to be in place by 19th December 2009 to ensure that enforcement authorities have the necessary powers to act under the AIM Regulation at the time they become applicable throughout the European Community. The requirements of the remainder of the AIM Regulation become applicable following adoption of the Community list of substances approved for use in active and intelligent materials, anticipated to be in July 2010.

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only. 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 The purpose of making this instrument is to ensure that the provisions outlined above are in place by the deadline set out in the AIM Regulation and provide the necessary powers to enforcement authorities for the effective enforcement of the AIM Regulation.

7.2 The intention is to protect the consumer through adequate labelling and to protect them against accidentally eating non-consumable parts of packaging and, through requirements to declare the compliance of the material or article business to business along the supply chain, against food contamination by chemicals whose ingestion would carry serious long term and unacceptable risk to consumer health, in particular among vulnerable people.

8. Consultation outcome

8.1 The Food Standards Agency ("the Agency") held two informal consultations with stakeholders in 2006 and later in 2008. Neither consultation raised any pertinent issues about the cost implications in relation to the AIM Regulation from businesses or enforcement authorities. Several comments were raised in the 2008 consultation on points of detail that were noted and where they did not affect overall UK negotiating lines, were raised in discussions with the Commission and other EU Member States resulting in small changes being made to the text of the AIM Regulation.

8.2 The Agency fully consulted all stakeholders on the Regulations for England. One hundred and thirty two stakeholders were consulted on these proposals. These included food industry organisations, those manufacturing food contact materials, consumer organisations, as well as those with other interests in food contact materials. We also consulted local enforcement and port health

authorities, the Department for Business, Innovation and Skills, the Department of Environment, Food and Rural Affairs, the Office of Fair Trading and other non-governmental organisations.

8.3 In total 4 responses were received; one from the Local Authority Coordinators of Regulatory Services (LACORS), one from British Glass, one from the Food and Drink Federation and one from Suffolk Coastal Port Health Authority (PHA).

8.4 LACORS were in agreement with the Agency's assessment that the only new or additional costs for local authorities will be those associated with enforcement officers familiarising themselves with the requirements of the proposed Regulations. They also agreed that it was unlikely that there would be any new or additional administrative burdens associated with the proposed Regulations, but assumed that if this was not the cases, businesses would advise accordingly. LACORS also agreed that it was appropriate to designate the Agency as the competent authority together with local authorities in relation to the power to request supporting documentation.

8.5 The PHA commented that there would be new or additional costs for enforcement authorities in familiarising themselves with the proposed Regulations and that there may also be additional costs for enforcement authorities in establishing if an offence had been committed. The PHA felt that there would also be additional costs in terms of staff resources associated with examining goods to confirm that they were active and intelligent materials and for the identification of consignments falling within the scope of the AIM Regulation in relation to the checking of declarations of compliance and supporting documentation.

8.6 The PHA also commented that businesses whose goods are within the scope of the AIM Regulation would incur additional costs through enforcement work. These costs are as a direct result of goods being detained by the PHA, until the appropriate documentation has been produced; such detention of goods can result in additional costs for the importers/agents. The PHA provided an example of the charges for containers held by the Port of Felixstowe, depending on the size of the container and the length of time held it is held. In addition, the PHA provided costs charged by the Port operator (£81.20) for every consignment which they examine.

	Charges from 6th day from commencement of discharge of the vessel to the 12th day	Charges from 13th day onwards
Containers, flats, platforms, semi-trailers Up to 20 foot Over 20 foot	 £11.00 £22.00	 £33.00 £66.00

8.7 The PHA believes that the proposed Regulations will have a greater cost implication than just familiarisation for enforcement authorities. However, they neither quantified nor provided a breakdown of these costs.

8.8 The PHA also commented that there will be an additional administrative burden for businesses where enforcement activity is undertaken in the detention of their goods and the presentation of commercial and statutory documentation, as required by the legislation.

8.9 Given that there were no comments from businesses on the proposed Regulations, and the view expressed is from just one PHA, it would be difficult to estimate the level of any additional or new administrative burden for businesses, other than those outlined by the PHA.

8.10 The PHA also commented that it would be appropriate for the Agency to have powers to request supporting documentation, as there are an increasing number of food incidents attributed to food contact materials and the Agency's input into such incidents was crucial.

8.11 The Food and Drink Federation commented that they circulated the consultation documents to their members, and they had no substantive comments on the proposed Regulations.

8.12 British Glass thanked the Agency for consulting them on the proposed Regulations, and commented it's member's products did not fall within the scope of the provisions of these Regulations.

9. Guidance

9.1 Guidance for business has not been developed as this is a temporary measure as the requirements on them arise from the European regulation and not this SI. However, full guidance for all parties on the entirety of the EU and National regulations will be issued when the other provisions of the European Regulation are addressed by a full SI that will replace the current 2007 regulations and this amending SI by the middle of next year.

10. Impact

10.1 The Food Standards Agency held a four week consultation with stakeholders and enforcement authorities as well as the informal consultation conducted in 2006 and 2008. The AIM regulation applies to all businesses as the provisions relate specifically to labelling of parts of the package, as well as the written declaration of legal compliance which should be shown to enforcement authorities upon request. The Regulation would also give local authorities and port health authorities' responsibility for enforcing these provisions.

10.2 The primary business sector that will be affected by the regulatory proposals will be manufacturers, importers, converters and fillers of food contact materials and in particular, those manufacturers that use active and intelligent systems in their products. No comments were received from businesses in this

instance. European representative bodies of industry sectors and consumers were routinely involved throughout the European negotiations.

10.3 All respondents were thanked for their comments and where required, responses were sent.

10.4 These proposals have no particular impact on, charities or voluntary organisations; rural areas nor on members of the ethnic communities or any particular racial group.

10.5 The PHA has indicated that there may be some impact other than reading and familiarising with the new Regulations. However they were unable to be more specific about this. There may also be an impact on the Agency in its role as the competent authority as defined by the proposed Regulations and as and when it carries out compliance surveys on goods on the market. This impact may involve having to carry out more research into the migration of substances from food contact materials, including work to establish methodologies for determining such migration and to ensure compliance with the legislation.

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

11. Regulating small business

11.1 The impact on small and medium sized businesses is unlikely to be significant. This view has been supported by industry following earlier consultations, when they indicated that the proposals would not disproportionately affect them, nor would they hinder competitiveness. Such businesses are also encouraged to respond to issues which they feel may have an impact on their ability to compete in the wider market. To date no comments have been received from small businesses.

12. Monitoring & review

12.1 Central and local authorities in England routinely monitor foodstuffs on sale to the public to ensure compliance with the Regulations. The results of this work carried out by the Agency are published and are openly available on the agency's website at:

http://www.food.gov.uk/science/research/researchinfo/contaminantsresearch/

12.2 We shall therefore, routinely survey materials and articles on the market to ensure compliance with the Regulations. The Agency will work with enforcement authorities where problems arise or suspected infringements of the Regulations arise. The effectiveness of the Regulations will be also be monitored via feedback from stakeholders as part of the ongoing policy process and will be reviewed in March 2011.

13. Contact

Richard Sinclair at the Food Standards Agency, Tel: 020 7276 8538,
Email: Richard.sinclair@foodstandards.gsi.gov.uk or

Nasreen Shah, Tel: 020 7276 8553, Email: nasreen.a.shah@foodstandards.gsi.gov.uk
Email: Nasreen.a.shah@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.