EXPLANATORY MEMORANDUM TO

THE NOVEL FOOD (AUTHORISATIONS) AND SMOKE FLAVOURINGS (MODIFICATION OF AUTHORISATIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2022

2022 No. 619

1. Introduction

1.1 This explanatory memorandum has been prepared by The Food Standards Agency (FSA) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument is being made to correct minor errors in the Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022, before the relevant provisions come into force on 30th June 2022.

2.2 The procedure for free issue of this instrument has been applied and they are being issued free of charge to all known recipients of the Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022.

2.3 The FSA has complied with the requirement to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 Novel foods must be authorised before they can be placed on the market. Novel foods are a regulated product and require authorisation in legislation to be available on the market.

6.2 The legislative framework around the authorisation of novel foods is largely contained in the Retained Regulations (EU) 2015/2283, (EU) 2017/2469 and (EU) 2017/2470.

6.3 This instrument will make some minor amendments to the Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022.

7. Policy background

What is being done and why?

7.1 The Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022 were laid on 20th May 2022. Those Regulations added four novel foods and amended one novel food on the list of authorised novel foods in Retained Regulation (EU) 2017/2470. These updates to the list come into force on 30th June 2022.

7.2 Following the publication of the Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022, an omission in the column headers of a table relating to 3'-Sialyllactose and 6'-Sialyllactose was identified. This omission reduced the maximum levels of the novel foods that could be added to foods, effectively reducing the maximum levels of those novel foods that can be present in food products by approximately 3%.

7.3 This instrument also corrects a minor typographical error.

7.4 The Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022 also made amendments to the list of authorised smoke flavouring primary products in Retained Regulation (EU) 1321/2013. No amendments are required to the Smoke Flavouring measures.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 Following EU exit previously authorised novel food products by the EU continued to be authorised in GB under retained EU law. Directly applicable EU legislation for novel food products has been retained in the UK as retained EU law.

7.6 The required amendments were identified after the legislation was published, but before it came into force. The novel foods were not previously authorised for the Great British market.

Why is it being changed?

7.7 The amendments are being made to eliminate any potential divergence within the UK, without these amendments the allowed maximum levels of the novels foods in England would differ, causing potential complications to business.

What will it now do?

7.8 This will ensure that the novel foods are authorised at the correct maximum levels, bring continuity across the devolved administrations, and correct a typographical error.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument makes minor amendments to the Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (England) Regulations 2022 and there are currently no plans to consolidate the legislation.

10. Consultation outcome

10.1 The original consultation on the novel food products being authorised was launched by the FSA and Food Standards Scotland (FSS) on 17th December 2021 and ran for eight weeks.

10.2 The consultation included the correct headings and without the typographical error, it was not considered practical or necessary to consult on these amendments.

11. Guidance

11.1 It is considered that guidance is not required for this instrument as they do not introduce new requirements.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on business.

12.3 There is no, or no significant, impact on the public sector.

12.4 A full Impact Assessment has not been prepared for this instrument as impacts will be below the de minimis threshold and this instrument is to correct minor errors.

13. Regulating small business

13.1 This instrument will apply to all businesses, small and large.

13.2 This instrument applies equally to all business as principal compliance with agri-food chain legislation does not depend on the size of the business.

14. Monitoring & review

14.1 No monitoring or review requirements for this instrument.

14.2 This instrument does not include a statutory review clause. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, a review clause is not deemed appropriate considering the legislation is expected to have an economic impact of less than +/- £5 million (net annualised).

15. Contact

15.1 Chris Stockdale at the Food Standards Agency email: Chris.Stockdale@food.gov.uk can be contacted with any queries regarding this instrument.

15.2 Sam Faulkner, Deputy Director for Strategy, at the Food Standards Agency can confirm that this explanatory memorandum meets the required standard.

15.3 Maggie Throup MP, Parliamentary Under-Secretary of State for Vaccines and Public Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.