EXPLANATORY MEMORANDUM TO

THE NUTRITION AND HEALTH CLAIMS (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. 1768

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 The instrument amends national Regulations, which provide for the execution and enforcement of a European Union (EU) Regulation on nutrition and health claims made on foods, to make an ambulatory reference to the Annex to the EU Regulation which lists permitted nutrition claims and conditions relating to their use.

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

3.1 None.

4. Legislative Context

4.1 Nutrition claims that can be made for foods (e.g. “low fat”, “high fibre” etc.) are regulated in the EU under Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (‘Regulation 1924/2006’) which is directly applicable in EU Member States. Permitted nutrition claims and conditions for their use are set out in the Annex to Regulation 1924/2006.

4.2 The Nutrition and Health Claims (England) Regulations 2007 (SI 2007/2080) (‘the national Regulations’) provide for the execution and enforcement of Regulation 1924/2006 in England.

4.3 The instrument amends the national Regulations to provide for the execution and enforcement, in England, of the revised Annex to Regulation 1924/2006 (to which a further five claims have been added), and for any future amendments to the Annex.

5. Territorial Extent and Application

5.1 The instrument applies in England. Separate but parallel legislation is being made in 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 A draft European Commission Regulation intended to add five nutrition claims ("source of omega-3 fatty acids"; "high omega-3 fatty acids"; "high monounsaturated fat"; "high polyunsaturated fat" and "high unsaturated fat") to the list of permitted nutrition claims set out in the Annex to Regulation 1924/2006 was considered by the General Food Law Section of the European Standing Committee on the Food Chain and Animal Health (SCoFCAH) at its meeting on 1 October 2009.

7.2 Member States voted in favour of the draft Commission Regulation which then went forward, under the European 'regulatory procedure with scrutiny', for consideration by the European Parliament and the Council. The draft Commission Regulation completed the scrutiny process, was published on 10 February 2010 as Regulation (EU) No. 116/2010 amending Regulation (EC) No. 1924/2006 of the European Parliament and of the Council with regard to the list of nutrition claims (OJ No. L37, 10.02.2010, p.16) ('Regulation 116/2010') and came into force on 1 March 2010.

7.3 An amendment to the national Regulations is necessary to provide for the execution and enforcement of Regulation 1924/2006 as amended by Regulation 116/2010. However, in the interests of simplification and better regulation, it is desirable to avoid the need to make national legislation each time further amendments are made to the list of nutrition claims in the Annex to Regulation 1924/2006, simply to provide for the execution and enforcement of the Regulation in its amended form.

7.4 The instrument therefore amends the national Regulations to make an ambulatory reference to the Annex to Regulation 1924/2006, in exercise of the power to make ambulatory references provided by paragraph 1A of Schedule 2 to the European Communities Act 1972. This provides for the execution and enforcement of Regulation 1924/2006 as amended by Regulation 116/2010 and any future amendments to the list of nutrition claims in the Annex to Regulation 1924/2006, without the need for further national legislation.

- ***Consolidation***

7.5 The instrument amends the national Regulations for the first time. The national Regulations are not being consolidated on this occasion.

8. Consultation

8.1 The Food Standards Agency maintains a database of interested parties who have asked to be consulted whenever any changes to legislation relating to nutrition and health claims made on food are being considered, or there are other developments in these areas. This database includes trade organisations, bodies which represent local authority enforcement authorities, professional bodies, consumer bodies and other interested parties.

8.2 A public consultation on a draft of the instrument was carried out by the Food Standards Agency for a period of 12 weeks from 4 January to 29 March 2010.

8.3 The preferred option set out in the consultation was to make an ambulatory reference to the nutrition claims in the Annex to Regulation 1924/2006 via an amendment to the national Regulations that referred to Regulation 1924/2006 in its entirety. Although no consultee commented adversely on this proposal, it was considered on further reflection that a more precise reference to the Annex to Regulation 1924/2006 would be preferable as this would achieve the desired policy objective whilst providing greater legal certainty.

8.4 A summary of consultation responses, which includes a description of the modification made to the instrument detailed in paragraph 8.3 above, will be published on the Food Standards Agency's website.

9. Guidance

9.1 The Food Standards Agency's guidance on the nutrition and health claims made on food provides advice on compliance and, whilst aimed primarily at industry, is also of use to enforcement authorities.

9.2 As the amendment the instrument makes is technical in nature and relates solely to the execution and enforcement of Regulation 1924/2006, the guidance will not be revised.

9.3 The Food Standards Agency will be writing to enforcement authorities, their representative bodies and other stakeholders to inform them of the legislative changes.

10. Impact

10.1 The instrument makes a technical amendment to the national Regulations which will not place any additional burdens on stakeholders, other than the one-off impact associated with being aware of, and becoming familiar with, the amendment and its effect on the national Regulations. An Impact Assessment has therefore not been prepared.

11. Regulating small business

11.1 The instrument applies to small business. Small businesses will not be exempted because the instrument does not place any new burdens on them.

12. Monitoring and review

12.1 Article 27 of Regulation 1924/2006 requires the European Commission to submit to the European Parliament a report on the application of the Regulation by 19 January 2013. The costs and benefits of the instrument will be monitored and reviewed in the course of the UK's participation in this process.

13. Contact

13.1 Vivien Lund at the Food Standards Agency Tel: 020 7276 8764 or email: vivien.lund@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.