EXPLANATORY MEMORANDUM TO

THE SWEETENERS IN FOOD (AMENDMENT) (ENGLAND) REGULATIONS 2004

2004 No. 3348

1. **Laying Authority and Purpose**

1.1 This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Department responsible

1.2 The Secretary of State for Health on the advice of the Food Standards Agency is responsible for this measure.

2 **Description**

The Statutory Instrument updates in England the rules relating to the use of sweeteners in foodstuffs. The Sweeteners in Food Regulations 1995 (as amended) implements all existing European legislation relating to sweeteners.

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

None.

4 **Legislative Background**

General

4.1 The Sweeteners in Food (Amendment) (England) Regulations 2004 are being made to implement the provisions of European Parliament and Council Directive 2003/115/EC and Commission Directive 2004/46/EC. These Directives set implementation deadlines of 29 January 2005 and 1 April 2005 respectively.

4.2 The ministerial powers under which it is made are Sections 16(1) (a) and (e), 17(1), 26 (1), (3) and 48 (1) of, and paragraph 1 of Schedule 1 to, the Food Safety Act 1990.

EU Legislation

4.3 Transposition Notes for Directive 2003/115/EC and Directive 2004/46/EC are attached at Annex A and B respectively.

4.4 Council Directive 2003/115/EC of 22 December 2003 was published in the Official Journal of the European Communities (L24) on 29 January 2004 and amends Directive 94/35/EC for the second time. Directive 94/35/EC sets out a list of authorised sweeteners, the foodstuffs in which they may be used and their conditions of use.

4.5 Commission Directive 2004/46/EC of 16 April 2004 was published in he Official Journal of the European Communities (L114) on 21 April 2004 and amends Directive 95/31/EC for the fourth time, laying down specific purity criteria for two new sweeteners, sucralose (E955) and salt of aspartame-acesulfame (E962). Directive 95/31/EC lays down specific criteria for permitted sweeteners throughout the EU to ensure the purity of sweeteners.

4.6 The Parliamentary Scrutiny Committees considered the proposal to amend Directive 94/35/EC on a number of occasions. The House of Lords (HoL) EU Scrutiny Committee cleared the proposal on 4 September 2002 on its first deposit (10986/02). However, when considered by the House of Commons (HoC) EU Scrutiny Committee on 16 October 2002, it was not cleared as the Committee wanted to see the results of the Agency's survey of sweetener intake by young children. This information was presented to both Committees (8306/03) and HoC cleared the proposal on 14 May 2003.

4.7 The Commission subsequently revised and published their proposal (9753/03) which was cleared by HoL and HoC on 24 and 25 June 2003 respectively. This was the common position.

4.8 Both Committees considered and cleared the proposal again on 22 January 2004 (16248/03) following Council informing Member States of the Commission's acceptance of certain amendments adopted by the European Parliament on their second reading.

5 Extent

The Regulations apply to England only. Devolved administrations in Scotland, Wales and Northern Ireland are implementing parallel legislation.

6 European Convention on Human Rights

It is the view of Melanie Johnson, Parliamentary Under Secretary for Public Health, that the instrument is compatible with Convention Rights.

7 Policy Background

7.1 Council Directive 94/35/EC and Commission Directive 95/31/EC form part of the Single Market initiative on the use of additives in the European Union and ensure consumer protection measures are in place in relation to sweeteners.

7.2 Directive 94/35/EC was amended on this occasion to incorporate the recent technical and scientific developments in relation to sweeteners.

7.3 The key aspects are:

- the authorisation of two new sweeteners, sucralose (E955) and salt of aspartame-acesulfame (E962) throughout the European Union (EU). Prior to their EU-wide approval, sucralose and salt of aspartame-acesulfame were permitted to be marketed in the UK under a temporary national authorisation. These national authorisations will be revoked when the

new Regulations come into force and whilst the sweeteners will continue to be permitted to be used under the new Regulations, some changes to the conditions of use of sucralose in a small number of categories of foodstuffs will occur as a result.

- the extension of the use of the permitted sweetener aspartame (E951) to an additional food category (*Essoblaten* – a traditional German wafer similar to ice-cream wafers made in the UK); and

- changes to the conditions of use of cyclamic acid and its sodium and calcium salts (E952 "cyclamate"). The maximum permitted level of cyclamate has been reduced in some food categories and its use in others has been prohibited. Member States accepted that there was a need to reduce the maximum permitted level of cyclamate in soft drinks following the revised opinion of the European Scientific Committee on Food (SCF) on the sweetener published in March 2000.

7.4 The changes to the use of cyclamate are unlikely to affect producers of soft drinks in England. Cyclamate is currently thought to be used by only one major producer and a few smaller producers of soft drinks and the costs for reformulating products to conform to these Regulations are not likely to be significant.

7.5 Public consultations were carried out on the Commission's proposal to amend Council Directive 94/35/EC and also on the draft Regulations implementing these measures and those contained in Commission Directive 2004/46/EC. Details of the responses to both consultations are included in the Regulatory Impact Assessment at Annex C. The level of public interest was low for each consultation exercise as shown by the limited number of responses received (five responses to the first consultation and six responses to the second consultation).

8 Impact

A Regulatory Impact Assessment has been placed in the Library. Copies can be obtained from Donna Griffith-Sackey[1]. There are no identifiable costs to the public or the Exchequer.

9 Contact Point

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EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2003/115/EC AMENDING DIRECTIVE 94/35/EC ON SWEETENERS FOR USE IN FOODSTUFFS

Articles	Objectives	Implementation	Responsibility
Article 1.2 **Article 1.4**	**amends Directive 94/35/EC by:** • **extending labelling requirements for tabletop sweeteners containing aspartame and salt of aspartame-acesulfame,** **amends Directive 94/35/EC by:** • **modifying and extending the Annex that contains a list of permitted sweeteners.**	**Regulation 5 of the Sweeteners in Food (Amendment) (England) Regulations 2004 which will come into force on 29 January 2005.** **Regulation 7 of the above Regulations.**	**The Secretary of State for Health on the advice of the Food Standards Agency is responsible for the measures taken to implement the Directive in England.**
Article 3	**Requires member States to –** • **authorise trade in and use of products conforming with this Directive by 29 January 2005 at the latest,** • **prohibit trade in and use of products not conforming with this Directive by 29 July 2005 at the latest; save that products placed on the market before that date which do not comply with this Directive may be marketed until 29 January 2006.**	**Regulation 6 of the above mentioned Regulations.**	**As above.**

COMMISSION DIRECTIVE 2004/46/EC AMENDING DIRECTIVE 95/31/EC LAYING DOWN SPECIFIC CRITERIA OF PURITY CONCERNING SWEETENERS FOR USE IN FOODSTUFFS

Articles	Objectives	Implementation	Responsibility
Article 1	**amends Directive 95/31/EC by:** • **inserting purity criteria as regards sucralose (E955) and salt of aspartame-acesulfame (E962).**	**Regulation 3 (1) (b) of the Sweeteners in Food (Amendment) (England) Regulations 2004 which will come into force on 1 April 2005.**	**The Secretary of State for Health on the advice of the Food Standards Agency is responsible for the measures to be taken to implement the Directive in England.**