

## EXECUTIVE NOTE

### THE FOOD (JELLY MINI-CUPS) (EMERGENCY CONTROL) (SCOTLAND) REGULATIONS 2009 SSI/2009/437

#### **Description**

The above instrument was made under the power in section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure and does not amend primary legislation.

#### **Policy Objective**

This instrument, which extends to Scotland only, and provides legal continuity in the light of changes made by 1333/2008 to earlier EU provisions on jelly mini-cups. Jelly mini-cup sweets which contain food additives and / or binding agents specified in these regulations have been banned in the EU since 2004 (and those containing konjac-E425 since 2002) because of concerns that they pose a choking hazard.

#### **Legislative Background**

This instrument reflects Article 33(1)(k) of EC Regulation 1333/2008 within Scotland. That provision revokes EC Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery which contains E425-konjac and which is intended for human consumption. That decision was implemented in Scotland by S.S.I. 2002/179. This instrument accordingly revokes S.S.I. 2002/179. In 2004 a related EC decision was adopted (2004/374/EC) suspending the placing on the market and import of jelly mini-cups, containing certain named additives. That decision was implemented by S.S.I. 2004/187. As the 2004 decision has not yet been revoked, it is necessary to preserve the effect of this on the statute book and the relevant elements of S.S.I. 2004/187 have been revoked and re-enacted (with modifications to improve enforcement) in this instrument.

#### **Policy Background**

The key aspects are:

- Prior to 2004, several EC Member States took measures temporarily to prohibit placing on the market or import of jelly confectionery of a firm consistency, contained in semi-rigid mini-cups or mini-capsules intended to be ingested in a single bite by exerting pressure on the mini-cup or mini-capsule to project the confectionery into the mouth. These measures were specifically aimed at those products containing additives derived from seaweed and / or certain gums.
- From 2004 EU measures were taken to address this issue as explained above under the heading “Legislative Background”.

- These jelly mini-cups combine several risk factors due to their consistency, shape, size and manner of ingestion, giving rise to the risk that they remain blocked in the throat and provoke choking.
- The risk also originates from the chemical and physical properties of the additives. In addition, warning through labelling would not be sufficient to protect human health, especially with regard to children.
- As explained above under the heading “Legislative context”, this instrument provides legal continuity with respect to changes made by 1333/2008 to earlier EC and national provisions on jelly mini-cups.
- The SSI addresses technical issues and does not make substantive changes to the control of jelly mini-cups. As such, it has not attracted public interest during consultation.
- Member States are required to implement by 20 January 2010.

### **Consultation**

In July 2009, during the 12 week consultation on the enforcement S.S.I.s were for new additives and enzymes regulations, FSA in Scotland informed stakeholders of the new S.S.I. on jelly mini-cups, including the relevant industry bodies. No comments made by Scottish stakeholders. The new S.S.I. introduces updated enforcement provisions, the substantive requirements relating to jelly mini-cups are not changing at all.

### **Other Administrations**

Similar Regulations will apply in England, Wales and Northern Ireland.

### **Impact**

The Food Standards Agency Scotland fully consulted all stakeholders on the proposed Regulation. A Regulatory Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

### **Contact**

Claire Moni at the Food Standards Agency Scotland (Telephone 01224 285158)  
(email: [claire.moni@foodstandards.gsi.gov.uk](mailto:claire.moni@foodstandards.gsi.gov.uk))

**Food Standards Agency Scotland**  
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