

**EXPLANATORY MEMORANDUM TO THE  
FOOD SAFETY ACT 1990 (AMENDMENT) REGULATIONS 2004**

**2004 No. 2990**

1. This explanatory memorandum has been prepared by The Food Standards Agency and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This new instrument would align the definition of ‘food’ in the Food Safety Act 1990 with the definition in the General Food Law Regulation (EC) 178/2002. It would also make some minor amendments to the Food Safety Act 1990 in respect of public consultation requirements, to remove duplication with directly applicable provisions in the EC Regulation.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Background**
  - 4.1 Regulation 178/2002 lays down the general principles and requirements of food law, establishes the European Safety Authority and lays down procedures in matters of food safety.
  - 4.2 Although Regulation 178/2002 is directly applicable in Member States, there is a need to ensure that domestic legislation does not duplicate or conflict with the Regulation, or put a gloss on it. This instrument removes the duplication between the consultation provisions of the Food Safety Act 1990 and the Regulation. The opportunity is also being taken to align the definition of ‘food’ in the Food Safety Act 1990 with the one in Regulation 178/2002, in the interests of clarity and consistency, particularly in relation to penalties. These definitions essentially cover the same ground, although are expressed differently. It would not make sense to have slightly different definitions applying for domestic and EU legislation. Moreover, it could also hinder the implementation of future EU food law, where this uses the EU definition of ‘food’.
  - 4.3 This instrument is the first of two instruments “implementing” Regulation 178/2002 in so far as it relates to food. This instrument needs to be in force before the second instrument can be made. The second instrument will introduce new enforcement provisions in respect of new food safety requirements which will apply from 1 January 2005, and will use the new definition of “food” for that purpose. This will ensure consistency, particularly in relation to penalties.

## 5. **Extent**

- 5.1. This instrument applies to Great Britain. This is being done at the request of the Scottish and Welsh devolved administrations because of difficulties in giving effect to the 'food' elements of Regulation 178/2002 by means of separate legislation across GB. Parallel legislation is being developed in Northern Ireland.

## 6. **European Convention on Human Rights**

The Parliamentary Under Secretary for Public Health has made the following statement regarding Human Rights:

In my view the provisions of the Food Safety Act 1990 (Amendment) Regulations 2004 are compatible with the Convention rights.

## 7. **Policy Background**

- 7.1 The instrument ensures that domestic legislation does not duplicate the general principles of Regulation 178/2002 relating to consultation. About 2500 consumer groups, manufacturers, retailers, trade associations and other industry bodies, enforcement bodies, health professional groups, individuals and other government departments were consulted on the draft legislation. There have been no objections to the alignment of the definition of 'food' in the Food Safety Act 1990, with a number of responses supporting the proposed alignment. No comments have been received about the proposed changes to the consultation provisions.

## 8. **Impact**

- 8.1 A Regulatory Impact Assessment (RIA) has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is negligible.

## 9. **Contact**

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