

**EXPLANATORY MEMORANDUM TO**  
**THE FOOD (JELLY MINI-CUPS) (EMERGENCY CONTROL) (ENGLAND)**  
**REGULATIONS 2009**

**2009 No. 3230**

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 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. This instrument provides legal continuity in the light of changes made by 1333/2008 to earlier EU provisions on jelly mini-cups.

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

3.1 None

**4. Legislative Context**

4.1 This instrument reflects Article 33(1)(k) of EC Regulation 1333/2008. That provision revokes EC Decision 2002/247/EC suspending the placing on the market and import of jelly confectionary which contains E425-konjac and which is intended for human consumption. That decision was implemented in England by Statutory Instrument 2002/931. 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 Statutory Instrument 2004/1151 which amended 2002/931 for that purpose. As the 2004 decision has not yet been revoked, it is necessary to preserve on the statute book those elements of 2002/931 as amended which implement Decision 2004/374/EC (i.e. those relating to jelly mini-cups) and revoke those that implement Decision 2002/247/EC (i.e. those relating to konjac). This is being achieved by revoking S.I. 2002/931 and re-enacting in this Instrument the elements, previously in S.I. 2002/931, that implement Decision 2004/374/EC.

**5. Territorial Extent and Application**

5.1 This instrument applies to England. Separate S.I.s will be established for 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 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 confectionary into the mouth. These measures were specifically aimed at those products containing additives derived from seaweed and / or certain gums.

7.2 From 2004 EU measures were taken to address this issue as explained above under the heading “Legislative context”.

7.3 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.

7.4 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.

7.5 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.

7.6 The SI 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.

- ***Consolidation***

7.7 The new S.I. addresses the issue explained above under the heading “Legal Context” and does not consolidate existing legislation.

## **8. Consultation outcome**

8.1 Whilst the new S.I. introduces updated enforcement provisions, the substantive requirements relating to jelly mini-cups are not changing at all.

8.2 During the 12 week consultation on the enforcement S.I.s for new additives and enzymes regulations, the FSA informed stakeholders of the new S.I. on jelly mini-cups, including the relevant industry bodies. No replies were received on this S.I.

## **9. Guidance**

9.1 Existing guidance on food additives will be revised and updated in due course. However, as already stated, the substantive requirements relating to jelly mini-cups are not changing

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as no new impact on the private or voluntary sector is foreseen.

## **11. Regulating small business**

11.1 The legislation applies to small business, however as the current substantive requirements are not changing, it does not present any new burdens for small businesses.

## **12. Monitoring & review**

12.1 When the 2004 Decision (2004/374/EC) is revoked, the Agency will repeal this instrument. A proposal is currently being discussed, to be adopted in December, to revoke EC Decision 2004/374 on jelly mini-cups.

## **13. Contact**

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