EXPLANATORY MEMORANDUM TO

THE FOOD INFORMATION (AMENDMENT) (ENGLAND) REGULATIONS 2019

2019 No. 1218

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The main purpose of this instrument is to amend the Food Information Regulations (2014) (FIR) to improve the provision of information to consumers for food that is prepacked for direct sale (PPDS) following the advice of the Food Standards Agency (FSA). Currently, food businesses can provide allergen information for PPDS foods by any means that they choose, including orally by a member of staff. This instrument places a duty on food businesses to label PPDS foods with the name of the food and full list of ingredients, with allergens emphasised, on the packaging, bringing the provision of allergen information in line with labelling for prepacked food and reducing consumer confusion.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application.

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The legislative framework around the provision of food allergen information is largely contained in the Food Information to Consumers Regulation (EU) No 1169/2011 (EU FIC). The Food Information Regulations 2014 (FIR) and equivalent regulations in Northern Ireland, Scotland and Wales establish the enforcement measures for the FIC in the UK. EU FIC imposes a duty on food businesses to ensure

that all mandatory food allergen information (relating to 14 substances listed in EU FIC that are known to cause allergies) is accurate, available and easily accessible to the consumer. EU FIC allows Member States to make a distinction between prepacked foods and non-prepacked foods in how mandatory allergen information should be provided to consumers.

6.2 Under EU FIC, food which is prepacked, for example a ready meal sold in a supermarket, must be labelled with full ingredients and any of the 14 specified food allergens present must be emphasised. For non-prepacked food the allergen labelling requirements differ. There are three categories of non-prepacked food under FIC: food not packed such as loose items, food packed on the sales premises at the consumer's request and food prepacked for direct sale (PPDS). Which category of non-prepacked food a food falls into depends on whether, where and when it is packed in relation to the point at which it is offered for sale.

6.3 This instrument is being made to place a duty on food businesses in England to label PPDS foods with the name of the food and a full list of ingredients, with allergens emphasised, on the packaging. FIC does not provide a specific definition of PPDS, but the FSA has provided guidance which is available to businesses and Local Authorities.

7. Policy background

What is being done and why?

7.1 Approximately 2 million people in the UK have a food allergy; this figure does not include those with food intolerances. In addition, it is estimated that 1 in 100 people have coeliac disease, an auto-immune condition which causes damage to the gut lining when gluten is consumed.

7.2 An allergic reaction can be produced by the presence of a tiny amount of a food ingredient which a person is sensitive to. Symptoms of an allergic reaction can range from mild symptoms such as itching around the mouth or a rash but can progress to more severe symptoms such as vomiting, diarrhoea, wheezing or, on occasion, anaphylaxis. In the UK, around ten people die from allergic reactions to food every year.

7.3 There is no cure for food allergies or intolerances. The only way to manage the condition is to avoid the food that makes the person ill. Therefore, it is very important that consumers are provided with accurate information about allergenic ingredients in products to allow them to make safe food choices. Continuing fatalities and the effects on public health mean that allergen information provision is of significant interest to the public, with individual cases often receiving a significant amount of media attention. Anecdotal evidence indicates that it is often difficult for consumers to distinguish between prepacked and PPDS foods, and that some consumers assume that the absence of allergen information on PPDS foods means food allergens are not contained in the product, whether or not this is the case.

7.4 The objective of this instrument is to improve the provision of information to consumers purchasing PPDS foods. In recognition that food businesses will need time to adapt to this regulatory change, this instrument will come into force on the 1st October 2021. This implementation period is deemed necessary as a result of the information gathered from food businesses during the Government's consultation on

amending allergen information provisions for food prepacked for direct sale and is in line with FSA advice.

7.5 The FIR provisions regarding allergen information in respect of the other two forms of non-prepacked food, namely foods which are loose and those which are packed at the consumer's request, remain unchanged. This is because loose food has no packaging on which to place a label and the other is packed in front of the consumer at their request. This instrument brings consistency of allergen information between PPDS and prepacked food.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 Defra has no plans to consolidate FIR at this time, but will keep the matter under review.

10. Consultation outcome

10.1 On 25 January 2019, Defra, the FSA and Food Standards Scotland (FSS) launched a UK wide consultation on proposed amendments relating to the mandatory information, form of expression and presentation of allergen labelling information for PPDS foods.

10.2 The four policy options consulted on were: promote best practice; "ask the staff" labelling on packaging; name of food and allergen labelling; and full ingredient labelling.

10.3 The consultation was carried out through the online survey Citizen Space, and ran for nine weeks from 25 January to 29 March 2019. In total we received 1,887 responses.

10.4 Full ingredient labelling was supported by 73% of individuals, as it was considered the safest option for consumers, providing them with the most information, including those eating PPDS foods with allergies outside the EU's 14 listed allergens. 13% of businesses supported full ingredient labelling; key concerns raised were the cost to business and difficulties associated with implementing this option, and the risk of mislabelling. To mitigate these challenges, this instrument provides for a two year implementation period to allow for local authorities and businesses to make the necessary changes. The summary of responses to the consultation can be found here https://www.gov.uk/government/consultations/food-labelling-changing-food-allergen-information-laws/outcome/summary-of-responses-and-government-response.

10.5 Parallel regulations are going to be introduced in Northern Ireland, Scotland and Wales, and they have committed to their rules being in force in Autumn 2021.

11. Guidance

11.1 The FSA will publish implementation guidance alongside this instrument to support businesses and Local Authorities, and this will be followed up with further detailed technical guidance by the end of 2019. The FSA will be working with businesses and representative organisations during the implementation period to support sharing of allergen initiatives and best practices, and will refresh online training tools and update

the Safer Food Better Business pack to help small businesses. E-learning modules covering legislative requirements on allergens will be refreshed.

12. Impact

12.1 The impact on business, charities or voluntary bodies is primarily arising from the initial transitional cost of introducing new labelling to PPDS products and the on-going cost of new or additional labelling. Initial cost estimates for the impact of this statutory instrument are estimated to range from a present value of £140million to £450million in 2019 prices over a ten year horizon.

12.2 The impact on the public sector will fall largely on the FSA and on Local Authorities, who will be responsible for enforcing the legislation. This will consist of two costs: a one off familiarisation cost (central estimate £1.58million) and the ongoing cost of additional enforcement, occurring annually from 2021 (central estimate £1.65million).

12.3 A full Impact Assessment is submitted with this memorandum and published alongside this Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 No specific action has been taken to minimise regulatory burdens on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses was based on consultation responses and stakeholder workshops. We considered the options and impacts for supporting small businesses specifically, such as through having a two tiered approach allowing SMEs to label their food to a lower level of detail than medium and large businesses or a phased implementation. On balance the importance of consistency of policy across all business sizes was seen to outweigh the risks. Stakeholders informed us that they wanted to be held to the same standards to reduce the risk of consumer confusion, otherwise consumers may interpret no, or different, allergen information on PPDS labels as meaning food does not contain allergens. Consumer confusion is what we are aiming to address, and creating another set of exemptions would reduce the impact of this instrument. SMEs do not want to be seen as having lower standards than medium and large businesses and an exemption could be perceived this way by consumers. Businesses will be supported by Local Authorities and the FSA throughout the implementation period, with specific advice for SMEs.

14. Monitoring & review

14.1 The approach to monitoring of this instrument is that a review will be carried out to determine the impact of the policy on PPDS allergen provision on business and consumers. The policy will be reviewed five years after this instrument is laid.

14.2 Following a post-implementation review of FIR, this instrument amends the review clause in FIR and requires the next report to be published by 13th December 2024.

15. Contact

15.1 Sarah Cunningham at the Department for Environment, Food and Rural Affairs, Telephone: 0208 0264032 or email: sarah.cunningham@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Karen Lepper, Deputy Director for Food Standards and Consumers, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Zac Goldsmith MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs and at the Department for International Development can confirm that this Explanatory Memorandum meets the required standard.