# EXPLANATORY MEMORANDUM TO

# THE FOOD INFORMATION (AMENDMENT) (ENGLAND) REGULATIONS 2022

# 2022 No. 481

## 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 These Regulations revoke and restate certain amendments made by the Food Information (Amendment) (England) Regulations 2019 (S.I. 2019/1218, "the 2019 Regulations"). This is being done to resolve a procedural point of whether the 2019 Regulations should have been notified to the European Commission under Directive 2015/1535, under the law applicable in England at that time.

As before, the restated provisions amend the Food Information Regulations 2014 (S.I. 2014/1855) (FIR) in relation to England to improve the provision of information to consumers for food that is prepacked for direct sale (PPDS), in line with the advice of the Food Standards Agency (FSA).

The procedure for free issue of these Regulations has been applied; they are being issued free of charge to all known recipients of the 2019 Regulations.

## 3. Matters of special interest to Parliament

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

3.1 None.

## 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 the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 These Regulations revoke and restate certain amendments made by the 2019 Regulations, which came into force on 1st October 2021. The 2019 Regulations were made whilst the UK was still a Member State of the EU. Directive 2015/1535 requires Member States to notify the European Commission as regards 'technical regulations'. Such notification was not given prior to making the 2019 Regulations.

6.2 The legislative framework around the provision of food allergen information is largely contained in retained Regulation (EU) No. 1169/2011 on the provision of food information to consumers (FIC). The FIR, which have effect in England, and

equivalent regulations in Scotland and Wales establish the enforcement measures for FIC in Great Britain (in Northern Ireland, the EU version of FIC continues to apply under the terms of the Protocol on Ireland/Northern Ireland as part of the withdrawal agreement, supplemented by similar enforcement regulations to those in GB). FIC imposes a duty on food businesses to ensure that all mandatory food allergen information (relating to 14 substances listed in FIC that are known to cause allergies) is accurate, available and easily accessible to the consumer. FIC allows the appropriate authority to make a distinction between prepacked foods and non-prepacked foods in how mandatory allergen information should be provided to consumers.

6.3 Under 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. Prior to the coming into force of the 2019 Regulations (S.I. 2019/1218), food businesses in England could provide allergen information for PPDS foods by any means that they choose, including orally by a member of staff.

6.4 The amendments to the FIR restated by this instrument 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.

6.5 FIC does not provide a specific definition of PPDS, but the FSA has provided guidance which is available to businesses and Local Authorities (see section 11 below).

## 7. Policy background

***What is being done and why?***

7.1 The policy purpose behind the measures restated in this instrument remains the same as it was in relation to the 2019 Regulations.

7.2 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.

7.3 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.

7.4 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.

7.5 Prior to the coming into force of the 2019 Regulations, food businesses in England could provide allergen information for PPDS foods by any means that they choose, including orally by a member of staff. Anecdotal evidence indicates that consumers found it difficult to distinguish between prepacked and PPDS foods, and that some consumers assumed that the absence of allergen information on PPDS foods meant that food allergens are not contained in the product, whether or not this is the case.

7.6 The amendments to the FIR restated by this instrument 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, bringing the provision of allergen information in line with labelling for prepacked food and reducing consumer confusion. The objective of this instrument (in line with the objective of the 2019 instrument) is to improve the provision of information to consumers purchasing PPDS foods.

7.7 Given the new Regulations are in materially the same form as those they are replacing and given that the 2019 Regulations were preceded by a 2 year implementation period, no new implementation period is required for these Regulations.

7.8 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.

7.9 The amendments to Schedule 1 of FIR made by the 2019 Regulations are revoked but not reinstated by this instrument. This is a technical matter rather than a substantive one, relating to the fact that this instrument is made after the end of the Transition Period and its references to FIC are therefore direct references to the retained version of FIC rather than to its EU predecessor. Following the repeal of the European Communities Act 1972 the power to make ambulatory references to EU instruments pursuant to paragraph 1A of Schedule 2 of that Act is no longer available, but the references made by this instrument to the retained version of FIC (which forms part of domestic law) may be interpreted dynamically without needing to rely on such a power.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / 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 These Regulations fulfil the same purpose as the 2019 Regulations, and as such the consultation for those regulations remains relevant.

10.2 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.

10.3 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.

10.4 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.

10.5 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, a two year implementation period to allow for local authorities and businesses to make the necessary changes was provided by the 2019 instrument.

10.6 The summary of responses to the consultation can be found here: https://www.gov.uk/government/consultations/food-labelling-changing-food-allergeninformation-laws/outcome/summary-of-responses-and-government-response.

10.7 Parallel regulations have been introduced in Northern Ireland, Scotland and Wales.

## 11. Guidance

11.1 The FSA published a full set of implementation guidance to support businesses and Local Authorities in relation to FIR as amended by the 2019 Regulations. Given that the amendments restated by this instrument are identical to those made by the 2019 Regulations, the implementation guidance remains the same. The guidance can be found here: Introduction to allergen labelling changes (PPDS) | Food Standards Agency

## 12. Impact

12.1 As these Regulations revoke and restate amendments made by the 2019 Regulations, the 2019 Impact Assessment remains relevant and continues to be relied upon.

12.2 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 ongoing cost of new or additional labelling. Initial cost estimates for the impact of this are estimated to range from a present value of £140million to £450million in 2019 prices over a ten year horizon.

12.3 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).

12.4 The full 2019 Impact Assessment is 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 from 2019. 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 have been supported by Local Authorities and the FSA throughout the implementation period for the 2019 Regulations, with specific advice for SMEs legislation.

## 14. Monitoring & review

14.1 Under regulation 15 of FIR, the next post-implementation review of those regulations must be published by 13th December 2024.

## 15. Contact

15.1 Oliver Dye at the Department for Environment, Food and Rural Affairs, Telephone: 07825387309 or email: oliver.dye@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 Victoria Prentis MP, Minister of State for Farming, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.