

## **Explanatory Memorandum to The Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009.**

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009. I am satisfied that the benefits outweigh any costs.

**GWENDA THOMAS A.M**  
**Deputy Minister for Health and Social Services**

**21 December 2009**

## **1. Description**

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.

## **2. Matters of special interest to the Subordinate Legislation Committee**

None.

## **3. Legislative background**

Welsh Ministers have the power to make these regulations under the European Communities (Designation) (No.2) Order 2005. Under that Order they are designated for the purposes of section 2(2) of the European Communities Act 1972 to make measures in relation to food.

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 confectionery which contains E425-konjac and which is intended for human consumption. That decision was implemented in Wales by Statutory Instrument (SI) 2002/1090 (W.115). In 2004 a related EC decision was adopted, namely Decision 2004/374/EC suspending the placing on the market and import of jelly mini-cups, containing certain named additives. That decision was implemented by SI 2004/1262 (W.134) which amended SI 2002/1090 (W.115) for that purpose. As the 2004 decision has not yet been revoked, it is necessary to preserve on the statute book those elements of SI 2002/1090 (W.115) as amended which implement Decision 2004/374/EC (i.e. those relating to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 SI 2002/1090 and re-enacting in The Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009 the elements, previously in SI 2002/1090 (W.115), that implement Decision 2004/374/EC.

## **4. Purpose & intended effect of the legislation**

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 context".

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 Regulation (EC) No. 1333/2008 to earlier EC and national provisions on jelly mini-cups.

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.

## **5. Consultation**

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

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.

## **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment has not been prepared for this instrument as no new impact on the private or voluntary sector is anticipated.