

## **EXPLANATORY MEMORANDUM TO**

### **The Food Protection (Emergency Prohibitions) (Scallops) (Irish Sea) (Amendment) Order 2004 No. 2123**

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

#### **2. Description**

This SI amends an emergency Order made on 29 July 2004 under the Food and Environment Protection Act 1985 that prevents the taking of scallops from a certain area as they are affected by the toxin that causes amnesic shellfish poisoning in humans if consumed. The original SI was found to contain incorrect co-ordinates for the affected area. It has also been revised so that ‘fishing for’ and taking fish’ are separately prohibited.

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

3.1 This Order was made on 12<sup>th</sup> August and came into force the following day.

3.2 The instrument was brought into force as a matter of urgency to clarify the description of the designated area set out in the original emergency Order. The original emergency Order was made because it was necessary to prevent the consumption of scallops from a certain area as soon as possible because they may be affected by the toxin which causes amnesic shellfish poisoning in human beings. The scallops are likely to create a hazard to human health if they are consumed.

#### **4. Legislative Background**

The Order was made under Part I of the Food and Environment Protection Act 1985. This Act allows for the making of emergency orders where there exists or may exist circumstances which are likely to create a hazard to human health through human consumption of food.

#### **5. Extent**

This amendment applies to England only. An emergency Order was made for the other part of the affected area in Scottish waters, but the details in that Order do not require amending.

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

The Health Minister has made the following statement regarding Human Rights:

“In my view, the provisions of The Food Protection (Emergency Prohibitions) (Scallops) (Irish Sea) Amendment Order 2004 are compatible with the Convention rights.”

## **7. Policy background**

7.1 Amnesic Shellfish Poison (ASP) is caused by naturally occurring algal blooms. Council Directive 97/61/EC of 20 October 1997 required a monitoring programme for ASP to be in place by July 1998. Member States are required to carry out periodic monitoring for the presence of ASP toxins in live bivalve molluscs. The Directive lays down a limit of 20 µg domoic acid/gram of edible parts of the shellfish. The Food Standards Agency has responsibility for managing an algal toxin monitoring programme.

7.2 If levels above the statutory limit are found, then the Agency is required under the Directive to close the bed. In accordance with the Agency’s monitoring programme, the bed will remain closed until such time as two consecutive samples collected at least seven days apart achieve negative results, the area may then be opened and the Order revoked.

## **8. Impact**

A Regulatory Impact Assessment has not been prepared for this instrument as the amendment Order makes minor changes to the original emergency Order. The restrictions set out in the original emergency Order will mainly affect the industry in Scotland. The impact will depend on how long the bed may be closed. Further shellfish samples will be collected. When two consecutive samples collected at least seven days apart achieve negative results, the area may be reopened and the original emergency Order revoked.

## **9. Contact**

Mike Glavin at the Food Standards Agency Tel: 020 7276 8944 or e-mail: [mike.glavin@foodstandards.gsi.gov.uk](mailto:mike.glavin@foodstandards.gsi.gov.uk) can answer any queries regarding the instrument.