

**Title: THE PROPOSED MATERIALS AND ARTICLES IN CONTACT WITH FOOD (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2017**

**CONSULTATION SUMMARY PAGE**

<b>Date launched:</b>	<b>12 April 2017</b>	<b>Closing date:</b>	<b>2 June 2017</b>
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**Who will this consultation be of most interest to?**  
 Businesses that manufacture, import, wholesale and/or retail materials and articles intended to come into contact with food, district councils, consumers and others who may have an interest in the policy and legislation on food contact materials.

**What is the subject of this consultation?**  
 The proposed Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2017 will provide for the enforcement, in Northern Ireland, of Commission Regulation (EU) No. 10/2011 as amended by Commission Regulation (EU) No. 2016/1416, by amending the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012.

**What is the purpose of this consultation?**  
 To seek comments from industry, district councils, consumers and other interested stakeholders on the proposed Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2017.

**Responses to this consultation should be sent to:**

<b>James O'Neill</b> <b>Executive Support Unit</b> <b>FOOD STANDARDS AGENCY in</b> <b>NORTHERN IRELAND</b> <b>Tel: 02890 417733</b>	<b>Postal address</b> <b>FSA in NI</b> <b>10a-c Clarendon Road</b> <b>Belfast</b> <b>BT1 3BG</b>  <b>Email:</b> <a href="mailto:executive.support@foodstandards.gsi.gov.uk">executive.support@foodstandards.gsi.gov.uk</a>
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<b>Impact Assessment included?</b>	<b>Yes</b>	<b>No X</b>
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# THE MATERIALS AND ARTICLES IN CONTACT WITH FOOD (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2017

## DETAIL OF CONSULTATION

1. We would welcome your comments on:
  - The proposed Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2017 (“the proposed Regulations”) at Annex B, which will provide for the enforcement of Commission Regulation (EU) No. 10/2011 (“the principle Regulation”) required by recent amendments made to the principle Regulation by Commission Regulation (EU) No. 2016/1416 (“the new EU Regulation”), relating to plastic materials and articles intended to come into contact with food.
  - And the proposal to introduce improvement notices (INs) to replace existing criminal sanctions.
2. The Food Standards Agency (The FSA) in England and Wales and Food Standards Scotland will be carrying out consultations on parallel but making separate Regulations relating to those parts of the UK.
3. The Regulations will amend the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012.

## Background

4. The general principles governing the safety of all materials and articles intended to come into contact with foods are established in Regulation (EC) No. 1935/2004<sup>1</sup> of the European Parliament and of the Council (“the framework Regulation”). This lays down the framework of regulation of all such materials and articles intended to come into contact with food. The Regulation on plastic materials and articles in contact with food is a specific measure within the meaning of Article 5(1) of the framework Regulation and establishes the specific rules for plastic materials and articles intended to come into contact with food.

5. Harmonised EU rules on food contact plastics are laid down in the principal Regulation and this is routinely amended to improve the clarity of the rules and to keep up with technological innovation, by adding new substances that may be used in the manufacture of food contact plastics. This latter point arises from improving technical and scientific knowledge that enables experts within the European Food Safety Authority (EFSA) to evaluate and re-evaluate risk to public health arising from the migration of chemicals from food contact plastics into food. The latest of these amendments are contained in the new EU Regulation which the proposed regulations would enforce.

6. The new EU Regulation was published in the Official Journal on 25 August 2016<sup>2</sup> and came into force on 14 September 2016. It is directly applicable throughout the EU. There is a transitional period of one year for materials and

<sup>1</sup> OJ Ref L338, 13.11.2004 pg 4-17

<sup>2</sup> OJ Ref L 230, 25.8.2016

articles that were compliant before entry into force of the new Regulation, whilst the migration limits for aluminium and for zinc, set out in point 2(a) of the Annex and the assignments of food simulants in point 3(c) of the Annex will apply from 14 September 2018.

7. The new EU Regulation is available to download free of charge from the EURlex website at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1416>

8. The new EU Regulation amends Articles 3, 6, 11, 13, 17 and 18 of the principal Regulation. It also makes amendments to the provisions concerning food simulants to correct the definition of 'fatty foods' and to assign a food simulant category for peeled fresh fruit and vegetables in the list of simulants to be used for migration testing of food contact plastics not yet in contact with food in Table 2 of the principal Regulation.

The Authorised Union list is amended to include new substances and amend the entries for existing substances following risk assessments published by the EFSA. The new EU Regulation also updates the Annexes. For certain substances the restrictions established at Community level have been amended on the basis of new information becoming available. As such Annexes I, II, III IV and V are amended accordingly.

## Proposals

9. The options being considered are:

**Option 1** – Do not provide for the enforcement of Regulation (EU) 10/2011 as amended by Regulation (EU) 2016/1416, and make no change to the enforcement procedures provided for by the 2012 Regulations. Not providing for the enforcement of Regulation (EU) 10/2011 as amended by Regulation (EU) 2016/1416 would mean that the amendments to the directly applicable European Regulation on materials and articles intended to come into contact with food could not be enforced in Northern Ireland. As an EU Member State, the UK remains obliged to provide for the enforcement of EU legislation. The Northern Ireland Assembly remains under an obligation to comply with EU requirements in relation to Northern Ireland.

**Option 2** – Introduce legislation to provide enforcement provisions in Northern Ireland for Regulation (EU) 10/2011 as amended by Regulation (EU) 2016/1416, and to make no change to the enforcement mechanisms provided for by the 2012 Regulations.

**Option 3** – Introduce legislation to provide enforcement provisions in Northern Ireland for Regulation (EU) 10/2011 as amended by Regulation (EU) 2016/1416, and amend the 2012 Regulations to allow authorised officers to issue INs for non-compliances with specific, non-safety related, provisions of the 2012 Regulations and the EU legislation that they enforce.

Option 3 is the preferred option.

#### Key proposals:

- To provide enforcement provisions for Regulation (EU) 10/2011 as recently amended by Commission Implementing Regulation (EU) 2016/1416.
- To amend the 2012 Regulations to allow authorised officers to issue INs for non-safety related non-compliance. All safety-related instances of non-compliance would still be dealt with by way of criminal proceedings.

### **Enforcement**

10. The proposed amendments to the Regulations provide an opportunity to introduce new and simpler enforcement provisions for non-compliance with specific provisions of the 2012 Regulations and the EU legislation that they enforce. The draft Materials and Articles in Contact with Food Regulations (Northern Ireland) 2017 proposes enabling district councils in Northern Ireland to serve an (IN) under Article 9 of the Food Safety (Northern Ireland) Order 1991 as applied and modified by these regulations in the event of non-compliance with the provisions specified in paragraph 12 below.

11. The INs would not impose criminal sanctions in themselves, but would require persons that fail to comply with the EU requirements to take specified steps in a limited time-period to remedy the situation. Failure to comply with an IN would be a criminal offence under Article 9(2) of the Food Safety (Northern Ireland) Order 1991 as applied and modified. The penalty is a fine not exceeding level 5 (£5000) on the standard scale. It is proposed that all safety-related instances of non-compliance would continue to be dealt with by criminal prosecution, with the power to also/alternatively serve an IN.

12. The provisions we are proposing to cover by INs are:

- Regulations 10(4), 10(6) and 12(6) of the 2012 Regulations;
- Article 16 of Regulation 1935/2004;
- Article 5 of Regulation 1895/2005;
- Articles 12 and 13 of Regulation 450/2009; and
- the second sentence of Article 8, Article 15 as read with Annex IV and Article 16 of Regulation 10/2011.

13. INs would be used as part of the hierarchy of enforcement when informal measures are no longer appropriate and the contravention or issue should be elevated to formal enforcement action. If the conditions set by an IN are not met then the non-compliance with those conditions will be a criminal offence. Businesses will have the opportunity to appeal against an IN; appeals will be heard by the court of summary jurisdiction. Criminal prosecutions will continue to be available for food safety related provisions.

### **Consultation Process**

14. During the course of negotiations with the Commission, FSA officials conveyed information to interested organisations, including industry, research institutes, consumer groups, enforcement bodies, public analysts and others with an interest in policy issues related to food contact materials. Consultations on the harmonised rules on food contact plastics were conducted in eight years; 2002, 2004, 2005, 2006, 2007, 2008, 2009 and 2012 when the rules on food contact plastics were last amended.

### **Purpose of this Consultation**

15. An 8 week consultation is being held to provide interested parties with the opportunity to comment and express their opinion on the content of the proposed Regulations at Annex B.

16. The FSA anticipates that the proposed Regulations will cause minimal impact to a fully compliant society and the main cost arising is likely to be familiarisation costs.

### **Groups affected**

17. Businesses that manufacture, import, wholesale and/or retail materials and articles intended to come into contact with food, district councils, consumers and others who may have an interest in the policy and legislation on food contact materials.

18. We would particularly welcome responses to the following questions along with any evidence that you can provide to support your views:

#### **Questions asked in this consultation:**

We are not conducting an Impact Assessment as we believe there is limited impact on businesses in Northern Ireland.

#### **Q1: Will implementation of these Regulations affect your business?**

If you believe your business or business in your area would be affected by the regulations, please provide us with information on the number of food businesses potentially affected, their location and ideally firm size in terms of the number of employees.

**Q2(a): We invite stakeholders to comment on the introduction of INs to replace existing criminal sanctions for failure to comply with a Declaration of Compliance (DOC) or supporting documentation (and any other instances where the offence is for a failure to provide information).**

If you agree or disagree, with the introduction of INs please provide evidence to support your views.

**Q2(b): Will the introduction of INs for the existing offences for the provisions outlined in (a) above provide adequate protection for consumers? Please provide evidence to support your views.**

**Q2(c): We invite stakeholders to comment on the proposal to use 'backstop' criminal offences for failure to comply with an IN. A criminal offence would apply, with a penalty on summary conviction to a fine not exceeding level 5 on the standard scale.**

If you agree or disagree with the proposed 'backstop' criminal offences, please provide evidence to support your views.

### **Other Comments**

19. Any comments that interested parties are able to provide in relation to the proposed Regulations would be gratefully received. We are particularly keen to hear from Small and Medium Enterprises on a likely impact and would encourage them to comment on all aspects of this proposal.

20. Following the consultation, we will review the responses received and consider whether any changes are required to the proposed Regulations. A summary of all comments received will be published on the FSA's website within 3 months following the end of the consultation period

### **Other relevant documents**

21. The European legislation on food contact materials mentioned in this document is available on the European Commission website at: [http://ec.europa.eu/food/food/chemicalsafety/foodcontact/index\\_en.htm](http://ec.europa.eu/food/food/chemicalsafety/foodcontact/index_en.htm):

22. The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012 are available on the 'legislation.gov.uk' website at: [http://www.legislation.gov.uk/nisr/2012/384/pdfs/nisr\\_20120384\\_en.pdf](http://www.legislation.gov.uk/nisr/2012/384/pdfs/nisr_20120384_en.pdf)

### **Responses**

23. Responses are required by close of business **2<sup>nd</sup> June 2017**. Please state, in your response whether you are responding as a private individual or on behalf of an organisation / company (including details of any stakeholders your organisation represents).

Thank you on behalf of the FSA for participating in this public consultation.

Yours sincerely,

James O'Neill  
Executive Support Unit  
FSA in NI

Enclosed

**Annex A: Standard Consultation Information**

**Annex B: Draft Regulation**

**Annex C: List of interested parties**

1. In accordance with the FSA principle of openness we shall keep a copy of the completed consultation and responses, to be made available to the public on receipt of a request to the FSA Consultation Coordinator (020 7276 8308). The FSA will publish a summary of responses, which may include your full name. Disclosure of any other personal data would be made only upon request for the full consultation responses. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at <http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc>. Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
2. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
3. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

**Further information**

4. A list of interested parties to whom this letter is being sent appears in Annex C. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
5. Please contact us if you require this consultation in an alternative format such as Braille or large print.
6. This consultation has been prepared in accordance with HM Government consultation principles<sup>3</sup>.

<sup>3</sup> <http://www.bis.gov.uk/policies/bre/consultation-guidance>