The Materials and Articles in Contact with Food (England) (Amendment) Regulations 2018

Summary Report of Stakeholders Responses

The Materials and Articles in Contact with Food (England) (Amendment) Regulations 2018 consultation was issued on 09 April 2018 and closed on 04 June 2018.

The purpose of the consultation was to seek comments from industry, enforcement authorities, port health authorities, consumers and other interested stakeholders on the proposed Materials and Articles in Contact with Food (England) (Amendment) Regulations 2018, and on the associated Impact Assessment.

1. The FSA is grateful to those stakeholders who responded and sets out in the table below responses in order of the questions considered and stakeholder responding.
2. The key proposals on which the consultation sought views were:
   1. providing enforcement authorities with the necessary powers, for the execution and enforcement of the Recycling Regulation (Regulation (EC) No. 282/2008), the revised Plastics Regulation (Regulation (EU) No. 2016/1416) and BPA Regulation (Regulation (EU) No. 2018/213)
   2. any cost implications that come from changes derived from the Regulations mentioned above and as indicated in the Impact Assessment at Annex C
   3. any costs associated with the proposed testing of food contact plastics for new migration limits for aluminium and zinc
   4. the Food Standards Agency’s (FSA) proposal on introducing compliance notices to act as a first intervention, rather than starting with criminal sanctions

The FSA’s considered responses to stakeholders’ comments are given in the last column of the table. No responses were received for questions 2, 3, 4, and 7 (see Annex for details of questions).

Further details about business guidance and relevant legislation on food contact materials can be found at the following webpage:

<https://www.food.gov.uk/business-guidance/food-contact-materials>

**SUMMARY OF SUBSTANTIVE COMMENTS TO THE FSA CONSULTATION –**

**MATERIALS AND ARTICLES IN CONTACT WITH FOOD (ENGLAND) (AMENDMENT) REGULATIONS 2018**

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| **MACF(E)(A) R 2018 Consultation** | | | |
| **Question 1a We invite stakeholders to comment on the introduction of compliance notices to act as a first intervention for the offences listed above.** | | | |
| **Stakeholder** | **Method** | **Stakeholder Response** | **FSA response** |
| East of England Trading Standards Association | Email | The introduction of compliance notices is welcomed and seen as a good idea. It is seen as a cost effective and timely addition to the toolbox for what could simply be seen as a 'technical' offence which otherwise isn't likely to be pursued or treated seriously by the courts. | Noted. |
| Food and Drink Federation | Email | Feedback from members indicates they are in agreement with the proposal to introduce the use of compliance notices to act as a first intervention for the offences of failing to comply with the requirements for a Declaration of Compliance or for providing supporting documentation. |
| **Question 1b Will the introduction of compliance notices provide adequate protection for consumers?** | | | |
| East of England Trading Standards Association | Email | Although the introduction of compliance notices is welcomed, there is concern that the notices will be poorly enforced partly due to a general lack of knowledge or priority. Increased and clearer publicity of the requirements to businesses and enforcers would increase activity in this area. In support of this, it has been suggested that the FSA should provide LA enforcement officers with free or low-cost training on Food Contact Materials to improve awareness, consistency and enforcement, allowing enforcement to be more simply focused on the required paperwork could assist in this. Another way to increase consumer protection would be the option for fixed penalty notices. | Noted.The FSA will consider the merits of increasing awareness of food contact material enforcement requirements. |
| Food and Drink Federation | Email | No comments received. |  |
| **Question 1c We invite stakeholders to comment on the proposal to use ‘backstop’ criminal offences for failure to comply with a compliance notice. A criminal offence would apply, with a penalty on summary conviction of a fine.** | | | |
| East of England Trading Standards Association | Email | It is seen as essential to have backstop criminal offences for failure to comply with a compliance notice especially for persistent / wilful non-compliance. | Noted. |
| Food and Drink Federation | Email | No comments received. |  |
| **Question 5 We welcome stakeholders’ comments on whether our estimates of familiarisation costs to industry (outlined in Tables 4, 6 and 8) and our assumption that it will take businesses up to one hour to familiarise themselves with the requirements of the EU Regulations (plus half an hour for the Recycled Plastics requirements where pertinent) and one hour to disseminate to other members of staff (two or two-and-a-half hours in total) is reasonable.** | | | |
| East of England Trading Standards Association | Email | No comments received. |  |
| Food and Drink Federation | Email | With respect to the estimates of familiarisation costs to industry, members have highlighted that these do not include the costs relating to the time spent in discussion with suppliers regarding the requirements of the regulation and in particular the requirements of the Declaration of Compliance. | The FSA notes the comments on exclusion of costs in relation to discussions with suppliers. The estimated costs have been adequately captured for the UK industry as discussions with suppliers would be considered part of standard business to business dealings and under existing regulations, it is down to each actor in the supply chain to be aware of its responsibilities. This consultation will have also provided useful information regarding details of new or amended EU Regulations that would be directly applicable to industry. |
| **Question 6 We invite stakeholders’ comments on whether our estimates of familiarisation costs to enforcement bodies and official control laboratories (outlined in Table 10) and our assumption that it will take enforcement bodies and official control laboratories one hour to familiarise themselves with the requirements of the EU Regulations, and one hour to disseminate to other members of staff (two hours in total) is reasonable.** | | | |
| East of England Trading Standards Association | Email | As a group that represents enforcement bodies it is recognised that Commission Regulation (EC) No. 282/2008 (“the Recycling Regulation”) will require audit of recycling processes once authorised.  This will be a highly technical and specialist role that should be designated to a specific LA or body to deliver nationally on behalf of the FSA (go out for tender with the FSA) in order to ensure safety of the final product, consistency and develop expertise.  In addition, we are unable to agree ‘that the additional burden on enforcement authorities is likely to be minimal, if not negligible.’ All food officers will need to be trained in the changes, implement new policies and procedures for the introduction of Compliance Notices, redraft business advice leaflets on FCM and if left to audit recycling process required to become competent in this highly specialist and scientific area. A much longer and more complicated process than the two hours that is suggested.  In support of this it has been suggested that the FSA should provide LA enforcement officers with free or low cost training on Food Contact Materials to improve awareness, consistency and enforcement, which was previously identified as the first recommendation in FVO Mission Report ref. DG(SANCO)/2009-8170-MR carried out in October 2009 namely, ‘Ensure that all staff of the local authorities keep up to date in their area of competence, particularly regarding the declaration of compliance for food contact materials,…..as required by Article 6 of Regulation (EC) 882/2004.’ | The FSA is developing a national strategy for the auditing of recycling processes which is not envisaged to involve enforcement officers at the local authority level.  Noted.The FSA will consider the merits of increasing awareness of food contact material enforcement requirements. |
| Food and Drink Federation | Email | No comments received. |  |
| **Question 8 We invite stakeholders’ comments on whether or not you agree with our assumption that there will not be a significant impact on small or microbusinesses as a result of this legislation.** | | | |
| East of England Trading Standards Association | Email | It is believed this will not be a significant impact on small businesses as it's something they should already be aware of - raising knowledge of the requirements should assist everyone. However, businesses should be in a better position to answer this one. | Noted – there is no evidence to suggest otherwise. |
| Food and Drink Federation | Email | No comments received. |  |
| **Question 9 We welcome stakeholders’ comments on whether you are aware of any other impacts as a result of the EU Regulations and national Regulation?** | | | |
| East of England Trading Standards Association | Email | There should be a better information exchange between Port Health and inland authorities about importers of FCM and failures of samples at Ports.  In addition, we welcome the consolidation of the different Regulations for now – inevitably there will be other changes in the future that consolidation will not keep up with particularly following EU exit when UK law diverges from EU law, therefore it is just as valuable for the FSA to maintain legislative sources and guidance notes for enforcement officers to help as and when FCM matters arise.  As discussed this is a technical and scientific area which many officers do not currently have a good grasp of. | Noted – However these comments are not relevant in relation to food contact materials legislation. |
| Food and Drink Federation | Email | No comments received. |  |

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| **Other comments** | | | |
| Food and Drink Federation | Email | Feedback from members indicates they are in agreement that Option 2 – Make appropriate domestic Regulations for the execution and enforcement of Commission Regulation (EC) No. 282/2008, Commission Regulation (EU) No. 2016/1416 and Commission Regulation (EU) No. 2018/213 – is the preferred option. | Noted |

**Annex – Consultation questions for which no responses received**

1. We welcome stakeholders’ comments on whether the new migration limit for aluminium from plastics; the lower migration limit for zinc from plastics; and simulant testing for unpeeled fruit and vegetables, is likely to lead to significant costs and whether any other costs are expected as a result of the EU Regulation.
2. We invite stakeholders to comment on our assessment that there may be costs associated with testing to demonstrate compliance with the new migration limits for BPA from coatings and varnishes.
3. We invite stakeholders to comment on whether we have adequately captured the nature of England, Wales and Northern Ireland markets or not. If not, please provide us with an approximation of the number of firms affected and their size in terms of number of employees.
4. We welcome stakeholders’ comments on our assessment that there may be benefits to industry for using new substances in the manufacture of plastic materials and articles, and benefits from the removal of the Generic Specific Migration Limit.