

**Title: The proposed Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017**

**CONSULTATION SUMMARY PAGE**

|                       |                   |                      |                  |
|-----------------------|-------------------|----------------------|------------------|
| <b>Date launched:</b> | <b>11/04/2017</b> | <b>Closing date:</b> | <b>4/07/2017</b> |
|-----------------------|-------------------|----------------------|------------------|

**Who will this consultation be of most interest to?**  
 Businesses that manufacture, import, wholesale and/or retail plastic and recycled plastic materials and articles intended to come into contact with food, port health authorities, local enforcement authorities, 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 (Wales) (Amendment) Regulations 2017 would amend the Materials and Articles in Contact with Food (Wales) Regulations 2012 ("the 2012 Regulations") to provide for the execution and enforcement, in Wales, of Commission Regulation 10/2011 on plastic materials and articles intended to come into contact with food as recently amended by Commission Regulation (EU) No. 2016/1416.  
 The proposed Regulations would also enable authorised officers to issue improvement notices for a failure to comply with specific provisions of the 2012 Regulations and the EU legislation that those Regulations enforce, instead of issuing criminal proceedings

**What is the purpose of this consultation?**  
 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 (Wales) (Amendment) Regulations 2017.

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

|   |  |
|---|--|
| <p><b>Andrew Dodd</b><br/> <b>Food Policy Team</b></p> <p><b>FOOD STANDARDS AGENCY</b><br/> <b>Tel:</b></p> | <p><b>11<sup>th</sup> Floor Southgate House</b><br/> <b>Wood Street</b><br/> <b>Cardiff</b><br/> <b>CF10 1EW</b><br/> <b>Email:</b> <a href="mailto:Andrew.dodd@foodstandards.gsi.gov.uk">Andrew.dodd@foodstandards.gsi.gov.uk</a></p> |
|---|--|

|                                    |            |   |
|------------------------------------|------------|---|
| <b>Impact Assessment included?</b> | <b>Yes</b> | <input checked="" type="checkbox"/> <b>No</b> |
|------------------------------------|------------|---|

# The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017

## DETAIL OF CONSULTATION

Food Standards Agency in Wales (FSA) would welcome your comments on the draft Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017 (“the proposed Regulations”) (see Annex B)

The proposed Regulations will amend the Materials and Articles in Contact with Food (Wales) Regulations 2012 to provide enforcement for Regulation (EU) 10/2011 as recently amended by Commission Regulation (EU) 2016/1416.

The proposed Regulations will also amend the 2012 Regulations to allow enforcement authorities to issue improvement notices for non-compliance with specified provisions of the 2012 Regulations and the EU legislation that those Regulations enforce, instead of issuing criminal proceedings.

## Background

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. Commission Regulation (EU) No. 10/2011 (“the principal Regulation”) on plastic materials and articles in contact with food establishes the specific rules for plastic materials and articles intended to come into contact with food.

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 Commission Regulation (EU) 2016/1416 (“the new EU Regulation”) which the proposed Regulations would enforce.

The new EU Regulation, amending and correcting the principal Regulation on plastic materials and articles intended to come into contact with food, was published in the EU Official Journal on 25 August 2016<sup>2</sup>. The new EU Regulation came into force on 14 September 2016, and is directly applicable throughout the EU. There is a transitional period of one year for materials and articles that were compliant before its entry into force, whilst the migration limits for aluminium and for zinc, and the assignments of food simulants, will apply from 14 September 2018.

There are further proposed amendments expected to the Materials and Articles in Contact with Food (Wales) Regulations to provide enforcement for an expected Commission Decision on Regulation EU No. 282/2008 and proposed amendments to the EU BPA regulations. More information on these proposals will when it is available.

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

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

## Proposals

The options being considered are:

**Option 1** – To not provide for the enforcement of Regulation (EU) 10/2011 as amended by Regulation (EU) 2016/1416, and to 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 Wales. As an EU Member State, the UK remains obliged to provide for the enforcement of EU legislation. The Welsh Ministers remain under an obligation to comply with EU requirements in relation to Wales.

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

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

### 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 improvement notices for non-safety related non-compliance. All safety-related instances of non-compliance would still be dealt with by way of criminal proceedings.**

## Enforcement

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. It is proposed that the method of enforcement for non-compliance with non-safety related provisions will be through improvement notices. All safety-related instances of non-compliance would continue to be dealt with by criminal prosecution.

The provisions we are proposing be covered by improvement notices 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.

Improvement notices 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 improvement notice are not met then the non-compliance with those conditions will be a criminal offence. Businesses will have the opportunity to appeal against an improvement notice;

appeals will be heard by the magistrates' court. Criminal prosecutions will continue to be available for food safety related provisions.

## Consultation Process

A 12 week public consultation is being launched to provide interested parties with an opportunity to comment on the proposals and its associated impacts. The FSA anticipate that the proposed Regulations will cause minimal impact to a fully compliant society and the main cost arising is likely to be familiarisation costs.

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 (SMEs) on any likely impact and would encourage them to comment on all aspects of this proposal.

### Questions asked in this consultation:

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

#### **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: Do you have any comments on our proposal to use improvement notices as the method of enforcement for specific, non-safety related, provisions of the 2012 Regulations and the EU legislation that they enforce?**

#### **Q3: Do you consider that the policy/proposed Regulations will have an effect on opportunities for use of the Welsh language?**

#### **Q4: We would like to know your views on the effects that the Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017 would have on the Welsh language, specifically on:**

- i) opportunities for people to use Welsh and
- ii) on treating the Welsh language no less favourably than English.

#### **Q5: What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?**

## Other relevant documents

The Materials and Articles in Contact with Food (Wales) Regulations 2012 are available to download free of charge from the legislation.gov.uk website at:

<http://www.legislation.gov.uk/wsi/2012/2705/contents/made>

The consolidated EU Regulation is available to download free of charge from the EURlex website at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011R0010-20160914&qid=1491395402569&from=EN>

## **Responses**

1. **Responses are required by close 06/07/2017.** 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 Food Standards Agency for participating in this public consultation.

Yours,

**Andrew Dodd**  
**Food Policy Team**  
**Food Standards Agency Wales**

## **Enclosed**

**Annex A: Standard Consultation Information**

**Annex B: Statutory Instrument**

**Annex C: List of interested parties**

## **Publication of personal data and confidentiality of responses**

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.
3. 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.
4. 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**

5. 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.
6. A Welsh version of the consultation package can be found at [www.food.gov.uk](http://www.food.gov.uk)
7. Please contact us if you require this consultation in an alternative format such as Braille or large print.
8. 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>

---

W E L S H S T A T U T O R Y  
I N S T R U M E N T S

---

**2017 No. (W.)**

**FOOD, WALES**

The Materials and Articles in  
Contact with Food (Wales)  
(Amendment) Regulations 2017

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

**2017 No. (W.)**

**FOOD, WALES**

The Materials and Articles in  
Contact with Food (Wales)  
(Amendment) Regulations 2017

*Made* \*\*\*

*Laid before the National Assembly for Wales*  
\*\*\*

*Coming into force* \*\*\*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(1) and (2), and 48(1) of the Food Safety Act 1990(1).

In accordance with section 48(4A)(2) of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency before making these Regulations.

There has been open and transparent public consultation during the preparation and evaluation of these Regulations as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing

- 
- (1) 1990 c. 16. Section 16(2) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 17(1) and (2) was amended by paragraphs 8 and 12(a) of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 48 was amended by paragraph 8 of Schedule 5 to the 1999 Act. Functions formerly exercisable by the “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.



the European Food Safety Authority and laying down procedures in matters of food safety<sup>(1)</sup>.

### **Title, application and commencement**

**1.**—(1) The title of these Regulations is the Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on XX.

### **Amendment of the Materials and Articles in Contact with Food (Wales) Regulations 2012**

**2.** The Materials and Articles in Contact with Food (Wales) Regulations 2012<sup>(2)</sup> are amended in accordance with regulations 3 to 14.

**3.** In regulation 2 (interpretation), for the definition of “Regulation 10/2011” substitute—

““Regulation 10/2011” (“*Rheoliad 10/2011*”) means Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food<sup>(3)</sup>”.

**4.** In regulation 7 (offences of contravening specified provisions of Regulation 450/2009), omit paragraph (2).

**5.** In regulation 12(8) (controls and limits), omit “, (6)”.

**6.** In regulation 14 (offences of contravening specified provisions of Regulation 10/2011)—

- (a) in paragraph 1, for “the Schedule” substitute “Schedule 1”; and
- (b) omit paragraph (2).

**7.** For regulation 15 (competent authorities for the purposes of Regulation 10/2011), substitute—

“**15.** The competent authorities for the purposes of Articles 8 and 16(1) of Regulation 10/2011 are the Food Standards Agency, each food authority in its area and each port health authority in its district.”.

**8.** In regulation 16 (restrictions on the use of certain epoxy derivatives (BADGE, BFDGE and NOGE))—

---

(1) OJ No L 31, 1.2.2002, p 1, last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p 1).

(2) S.I. 2012/2705 (W. 291).

(3) This Regulation was last amended by Commission Regulation (EU) 2016/1416 amending and correcting Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food (OJ No. L230, 25.8.2016, p.22).

- (a) in paragraph (1)(b), for “paragraphs (2) and (3) are” substitute “paragraph (2) is”;
- (b) omit paragraph (3); and
- (c) in paragraph (4), omit “or (3)”.

**9. In regulation 19 (offences and penalties)—**

- (a) in paragraph (1), omit “or (4)”;
- (b) in paragraph (3), omit “or fails to comply with regulation 10(6)”;
- (c) for paragraph (5) substitute—

“(5) A person guilty of an offence is liable—

- (a) in the case of an offence created by paragraph (1) or (4) or by regulation 4(3), 5, 7(1), 14(1), or 16(4)—
  - (i) on conviction on indictment to a fine or to a term of imprisonment not exceeding two years or both, or
  - (ii) on summary conviction to a fine; and
- (b) in the case of an offence created by paragraph (2) or (3), on summary conviction to a fine not exceeding level 4 on the standard scale.”

**10. In regulation 20 (execution and enforcement), for sub-paragraph (2) substitute—**

“(2) The Food Standards Agency may also execute and enforce the provisions of—

- (a) Articles 16(1) and 17(2) of Regulation 1935/2004;
- (b) Article 13 of Regulation 450/2009; and
- (c) Article 16(1) of Regulation 10/2011.”.

**11. In regulation 23(2) (time limit for prosecutions), omit “7(2), 14(2) or”.**

**12. For regulation 27 (application of various provisions of the Act) substitute the following—**

“**27.**—(1) Section 10(1) and (2) of the Act (improvement notices) applies for the purposes of these Regulations with the modification (in the case of section 10(1)) set out in Part 1 of Schedule 2 for the purposes of—

- (a) enabling an improvement notice to be served on a person requiring that person to comply with any of the following provisions—
  - (i) regulations 10(4), 10(6) and 12(6);
  - (ii) Article 16 of Regulation 1935/2004;
  - (iii) Article 5 of Regulation 1895/2005;
  - (iv) Articles 12 and 13 of Regulation 450/2009; and

(v) the second sentence of Article 8, Article 15 as read with Annex IV, and Article 16 of Regulation 10/2011; and

(b) making the failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) The provisions of the Act specified in column 1 of the table in Part 2 of Schedule 2 apply, with the modifications (if any) specified in column 2 of that table.

(3) Paragraphs (1) and (2) are without prejudice to the application of the Act to these Regulations for purposes other than those specified in paragraph (1).”.

**13.** In the Schedule (specified provisions of Regulation 10/2011)—

(a) rename the Schedule, “Schedule 1”;

(b) for the text in the first column of the seventh row (which relates to Article 11) of the table, substitute “Article 11(1) and Annex I, as read with Article 11(3) and (4)”;

(c) omit the entries in the final row of the table.

**14.** After the Schedule insert the Schedule to these Regulations.

*Name*

Minister for Social Services and Public Health under authority of the Cabinet Secretary for Health, Well-being and Sport, one of the Welsh Ministers

Date

# SCHEDULE

Regulation 14

## Application of provisions of the Food Safety Act 1990

### “SCHEDULE 2

Regulation 27

#### PART 1

#### Modification of section 10(1)

1. For section 10(1) of the Act (improvement notices) substitute—

“(1) If an authorised officer has reasonable grounds for believing that a person is failing to comply with any provision specified in subsection (1A), the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the authorised officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure to so comply;
- (c) specify the measures which, in the authorised officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(1A) The provisions referred to in subsection (1) are—

- (a) regulations 10(4), 10(6) and 12(6) of the Materials and Articles in Contact with Food (Wales) Regulations 2012;
- (b) Article 16 of Regulation 1935/2004;
- (c) Article 5 of Regulation 1895/2005;
- (e) Articles 12 and 13 of Regulation 450/2009; and

- (f) the second sentence of Article 8, Article 15 as read with Annex IV, and Article 16 of Regulation 10/2011.”.

## PART 2

### Application and modification of other provisions of the Act

| <i>Column 1</i>   | <i>Column 2</i>  |
|---|--|
| <i>Provision of the Act</i>   | <i>Modification</i>  |
| Section 2 (extended meaning of “sale” etc.)   | For “this Act” (in each place it occurs) substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012”.  |
| Section 3 (presumption that food intended for human consumption)                                      | In subsection (1), for “this Act” substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012, Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 and Regulation 10/2011”. |
| Section 20 (offences due to fault of another person)  | For “any of the preceding provisions of this Part” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.   |
| Section 21(1) and (5) (defence of due diligence)  | In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.                              |
| Section 30(6) and (8) (which relates to evidence of certificates given by a food analyst or examiner) | In subsection (8), for “this Act” substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012”.   |
| Section 32 (powers of entry)  | For “this Act” (in each place it occurs)   |

|   |  |
|---|--|
| Section 33<br>(obstruction of officers)           | <p>substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012, Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 and Regulation 10/2011”.</p> <p>In subsection (1), for “this Act” (in each place it occurs), substitute “section 10(1) of this Act as applied and modified by regulation 27 of, and Part 1 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012”.</p>   |
| Section 35(1) and (2)<br>(punishment of offences) | <p>In subsection (1), after “section 33(1) above” insert, “, as applied and modified by regulation 27 of, and Part 2 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012,”</p> <p>After subsection (1) insert—</p> <p>“(1A) A person guilty of an offence under section 10(2), as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012 shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.”.</p> <p>In subsection (2), in the opening words, for “any other offence under this Act” substitute “an offence under section 33(2), as applied by regulation 27 of, and Part 2 of Schedule 2 to, the</p> |

|  |  |
|--|--|
|  | Materials and Articles in Contact with Food (Wales) Regulations 2012.”.  |
| Section 36 (offences by bodies corporate)        | In subsection (1), for “this Act” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.  |
| Section 36A (offences by Scottish partnerships)  | For “this Act” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.   |
| Section 37(1) and (6) (appeals)                  | For subsection (1) substitute—<br>“Any person who is aggrieved by a decision of an authorised officer to serve an improvement notice under section 10(1), as applied and modified by regulation 27 of, and Part 1 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012, may appeal to a magistrates’ court.”<br>In subsection (6)—<br>for “(3) and (4)” substitute “(1)”; and<br>in paragraph (a), omit “or to the sheriff”. |
| Section 39 (appeals against improvement notices) | For subsection (1) substitute—<br>“(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 27 of, and Part 1 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012, the magistrates’   |



court may either  
cancel or affirm the  
notice and, if it affirms  
it, may do so either in  
its original form or  
with such  
modifications as the  
magistrates' court may  
in the circumstances  
think fit.”  
In subsection (3), omit  
“for want of  
prosecution.”.

---

”

## Annex C

Welsh Government

Ty Nant Spring Water Limited

Cardiff Metropolitan University

Minton, Treharne & Davies Limited

The Patchwork Traditional Food Company

Welsh Hills Bakery

Castell Howell Foods Ltd

Gwaun Valley Meats

OP Chocolate Ltd

Lewis Fine Foods Ltd

GRH Food Company Ltd

Menter a Busnes

Food Centre Wales

Uren Food Group Ltd

Dailycer Ltd

Drink Pac UK Ltd

Tate and Lyle Food Systems

Otley Brewing Company Ltd

One Stop Stores Limited

Abergavenny Fine Foods Ltd

Prince's Gate Spring Water

Rhydwen Bakery

Mark Hunter Ltd

Cranberry Foods Limited

Zero2Five

Coleg Menai

Welsh Local Government Association (WLGA)