

The Proposed Materials and Articles in Contact with Food (England) (Amendment) Regulations 2020

Summary of stakeholder responses

16 December 2020

Introduction

This consultation was issued on 4 November 2020 and closed on 18 November 2020.

This further consultation sought stakeholder views on the latest proposed amendments to the Materials and Articles in Contact with Food (England) (Amendment) Regulations 2020. This included proposals to introduce new changes in relation to the criminal offences within the Regulations.

The FSA is grateful to those stakeholders who responded and their comments are set out in the table below.

The key proposals on which the consultation sought views were:

- on the latest proposed changes in relation to criminal sanctions, which included the removal of the maximum penalty of a custodial sentence from nine specific offences within the current Regulations, retaining the maximum penalty on summary conviction to a fine. This approach was also proposed for the execution and enforcement of Commission Regulation (EC) No. 282/2008 on recycled plastic materials intended to come into contact with food (“the Recycling Regulation”), which differed to the original approach outlined in the 2018 consultation; and
- on the FSA’s assessment that the impact of this proposed change will be extremely low.

The Food Standards Agency’s considered responses to stakeholders’ comments are given in the last column of the table.

A list of stakeholders who responded can be found at the end of the document.

Summary of substantive comments

Respondent: Government Chemist

Comment	Response
<p>“The proposal to restrict the maximum penalty for the nine listed specific offences, to an unlimited fine rather than a custodial sentence, appears proportionate and deterrent. I therefore support this aspect of the consultation.</p> <p>I also support the proposal to give a right of appeal against imposition of a compliance notice or stop notice to the Magistrates’ Court rather than the general chamber of the first-tier tribunal.</p> <p>On a technical point there is text on page 3 paragraph 4 of the consultation document which had us puzzled.</p> <p>Whilst [bisphenol A] BPA is prohibited in the manufacture of polycarbonate feeding bottles and cups there is a specific migration limit (SML) value of 0.05 mg/kg (food) in Table 1 of Annex 1 to the Commission Regulation (EU) No. 2018/213, entry 151 for BPA which presumably would apply to varnishes or coatings applied to materials and articles not made of polycarbonate?”</p>	<p>Comment noted.</p> <p>The right of appeal via the Magistrates’ Court was part of the proposed amended SI prior to the launch of this further consultation.</p> <p>The SML value of 0.05 mg/kg applied to BPA (Article 2, paragraph 1) is intended to support the proposed approach for the enforcement of <i>Commission Regulation (EU) No. 2018/213</i>, which remains unchanged from the 2018 consultation.</p> <p>For the purposes of explaining our reasoning for including a maximum penalty for offences related to contraventions of the BPA Regulation, we elected to refer to the derogation point (Article 2, paragraph 2 of <i>Commission Regulation (EU) No. 2018/213</i>), which is required to protect infants and young children based on the precautionary principle.</p>

Respondent: Food and Drink Federation

Comment	Response
<p>“FDF is in agreement with this proposed change and agrees with the [FSA] assessment.”</p>	<p>Comment noted</p>

Respondent: Fera

Comment	Response
Acknowledged the consultation but did not provide any comments in relation to the proposals.	N/A

Respondent: Private individual

Comment	Response
Two responses were received from private individuals. One response noted "On the general amendments to the regulations I have no objections."The other acknowledged the consultation but did not provide any comments in relation to the proposals.	Comment noted

Summary of changes made

Of the comments received, all those that provided substantive comments in scope of the consultation supported the proposals and no issues to be addressed were identified. Therefore no changes have been made as a result of the consultation process.

Implementation

- As outlined above, no actions were implemented following the responses received for this further consultation. The proposed amendments therefore remained unchanged. The Statutory Instrument was laid on 3 December 2020 and is expected to come into force on 25 December 2020.

List of respondees to this consultation:

1. Government Chemist
2. Food and Drink Federation
3. Fera Science
4. Private individual
5. Private individual