

THE PROPOSED MATERIALS AND ARTICLES IN CONTACT WITH FOOD (ENGLAND) (AMENDMENT) REGULATIONS 2020

Launch date: 04 November 2020

Respond by: 18 November 2020

This consultation will be of most interest to

Businesses that manufacture, import, wholesale and/or retail food contact plastic; recycled plastic materials and articles intended to come into contact with food; and varnishes and coatings. Port health authorities; local enforcement authorities; consumers and other interested stakeholders, who may have an interest in the policy and legislation on food contact materials.

Consultation subject

This further consultation supplements the proposed Materials and Articles in Contact with Food (England) (Amendment) Regulations 2018.¹ It focuses on two changes now proposed in relation to the offences for non-compliance.

Purpose of the consultation

To seek comments from industry, enforcement authorities, port health authorities, consumers and other interested stakeholders on the small number of additional changes proposed for the Materials and Articles in Contact with Food (England) (Amendment) Regulations 2020.

How to respond

Responses to this consultation should be sent to:

Email: tim.chandler@food.gov.uk	Postal address: (N/A at this current time)
Tim Chandler Food Additives, Flavourings and Contact Materials Branch Food Policy Division	

¹ https://www.food.gov.uk/sites/default/files/media/document/materialsandarticlesincontactwithfood_0.pdf.

Details of consultation

1. A consultation was made from 9 April 2018 to 4 June 2018 on the proposed Materials and Articles in Contact with Food (England) (Amendment) Regulations 2018. Full details are provided at the link below, including the summary of responses:
https://www.food.gov.uk/sites/default/files/media/document/materialsandarticlesincontactwithfood_0.pdf
2. This originally looked to provide for the execution and enforcement, in England, of:
 - Commission Regulation (EC) No. 282/2008 on recycled plastic materials intended to come into contact with food (“the Recycling Regulation”)
 - Commission Regulation (EU) No. 2016/1416 (“the revised Plastics Regulation”) amending Commission Regulation (EU) No. 10/2011 (“the Plastics Regulation”) on plastic materials and articles intended to come into contact with food
 - Commission Regulation (EU) No. 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food (“the BPA Regulation”)
3. Following discussions, we are now proposing to introduce changes in relation to the criminal offences proposed in the Regulations. These are as follows:
 - To remove the maximum penalty of a custodial sentence from nine specific offences within the current Regulations, retaining the maximum penalty on conviction of indictment or on summary conviction to a fine. The proposed change recognises that fines for such offences are now unlimited and therefore represent a dissuasive deterrent to certain non-compliance. The nine specific offences are as follows:
 - No person may place on the market a ceramic article that does not comply with the requirements of paragraph (1 – limits for cadmium and lead) as read with paragraph (2 – appropriate documentation to show it does not contain lead and cadmium).
 - No person may place on the market any regenerated cellulose film which has been manufactured in contravention of the requirements of paragraphs (1) to (4), or which fails to comply with paragraphs (5), (6) or (7).
 - No person may – (a) place on the market; or (b) use in the course of a business in connection with the storage, preparation, packaging, selling or service of food (Requirements for vinyl chloride).
 - Any person who, in purported compliance with any requirement under paragraph (4), knowingly or recklessly supplies information that is false or misleading in any material particular is guilty of an offence.
 - Any person who contravenes paragraph (1) – not complying with the general requirements or special requirements for active and intelligent materials or (2) or Article 11(4) or (5) (Community authorisation) or 17(2) (traceability) is guilty of an offence (relates to Regulation 1935/2004 requirements).
 - Any person who fails to comply with the requirements of Article 4 (conformity with good manufacturing practice) of Regulation 2023/2006 is guilty of an offence.

- Subject to the transitional provisions contained in Article 14 (entry into force and application) of Regulation 450/2009, any person who places on the market any active and intelligent material or article which does not comply with the requirements of Article 4 of that Regulation is guilty of an offence(a).
 - Subject to the transitional arrangements set out in Article 22(4) and (5) and Article 23(a), any person who places on the market a plastic material or article that fails to comply with a requirement of Regulation 10/2011 specified in column 1 of the Schedule is guilty of an offence.
 - Any person who contravenes paragraph (2) or (3) is guilty of an offence (Relates to Regulation 1895/2005 requirements).
- As detailed above, the original 2018 consultation also outlined the intention to provide 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”). The specific offence related to this was:
 - Subject to the transitional provisions contained in Article 14, any person who places on the market a material or article that fails to comply with Article 3(1) (requirements for plastic materials and articles) is guilty of an offence.
 - In line with the approach taken for the nine offences specified above, we now also propose to only introduce a maximum penalty on conviction of indictment or on summary conviction to a fine for this new offence. These latest proposals align with the UK Government’s objectives on reducing reliance on criminal sanctions. We believe that the penalty of a fine upon conviction for this offence is more proportionate and consistent, considering the similar nature of the individual potential offences, and represents a useful deterrent.
 - The draft 2018 Regulations on which we consulted reflected a right of appeal via the general chamber of the first-tier tribunal. However, following consideration of the collated evidence we believe that appeal to the Magistrates’ Court against imposition of a compliance notice or stop notice, is preferable as it represents better management of public money.
4. The proposed enforcement measures for Commission Regulation (EU) No. 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food (“the BPA Regulation”) remains unchanged from the original amendment within the 2018 consultation. This reflects the potential significance of the health risk presented for vulnerable consumer groups (i.e. infants and young children) by which the EU Regulation seeks to protect under the precautionary principle. This means that no migration of bisphenol A shall be permitted from varnishes or coatings applied to materials and articles specifically intended to come into contact with infant formula, follow-on formula, processed cereal-based food, baby food, food for special medical purposes developed to satisfy the nutritional requirements of infants and young children or milk-based drinks and similar products specifically intended for young children. We therefore believe that this should not be within the same category as the offences listed earlier within this consultation. This will mean that we are committed to introducing a term of imprisonment as a maximum penalty for offences related to the main requirements of the BPA Regulation.

Impacts

5. We consider that the level of impact as a result of the proposed additional changes to the Regulation will be extremely low. The original impact assessment essentially remains unchanged and can be referred to within the 2018 consultation documents provided above.
6. We welcome your comments on:
 - The proposed 2020 changes, as outlined above, to the originally proposed Materials and Articles in Contact with Food (England) (Amendment) Regulations 2018 (“the proposed Regulations”), which will provide enforcement authorities with the necessary powers, for the execution and enforcement of the Recycling Regulation, the revised Plastics Regulation and BPA Regulation.
 - The FSA assessment that the impact of this proposed change will be extremely low.

Responses

7. Responses are required by close 18 November 2020. 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).

Please send response to tim.chandler@food.gov.uk

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Tim Chandler
Food Additives, Flavourings and Contact Materials Branch
Food Policy Division

Annex A: Standard Consultation Information

Disclosure of the information you provide

Information provided in response to this consultation may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Any automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The Food Standards Agency will be what is known as the 'Controller' of the personal data provided to us.

Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

The Data Protection Act 2018 states that, as a government department, the Food Standards Agency may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

What we do with it

All the personal data we process is located on servers within the European Union. Our cloud based services have been procured through the government framework agreements and these services have been assessed against the national cyber security centre cloud security principles.

No third parties have access to your personal data unless the law allows them to do so. The Food Standards Agency will sometimes share data with other government departments, public bodies, and organisations which perform public functions to assist them in the performance of their statutory duties or when it is in the public interest.

What are your rights?

You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter.

If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner's Office (ICO) at <https://ico.org.uk>, or telephone 0303 123 1113.

Our Data Protection Officer in the FSA is the Information Management and Security Team Leader who can be contacted at the following email address: informationmanagement@food.gov.uk

Further information

If you require a more accessible format of this document please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#).