

EXPLANATORY MEMORANDUM TO

THE MATERIALS AND ARTICLES IN CONTACT WITH FOOD REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 384

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 15(2), 16(1) and (2), 25(1)(a), 2(a) and (3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991 as read with paragraph 1A of Schedule 2 to the European Communities Act 1972.

2. Purpose of the Rule

- 2.1 This rule provides for the execution and enforcement, in Northern Ireland, of the provisions of Commission Regulation (EU) No. 10/2011⁽¹⁾ (“the new EU Regulation”) of 14 January 2011, on plastic materials and articles intended to come into contact with food.
- 2.2 This rule also revokes four sets of Regulations and consolidates into one Statutory Rule nearly all existing national legislation on materials and articles intended to come into contact with food, with the exception of the Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011⁽²⁾. (These Regulations put in place additional import controls for plastic kitchenware originating from China and will be periodically reviewed by the European Commission, taking into account information received from Member States).

3. Legislative Context

- 3.1 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⁽³⁾ 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 foodstuff. The new EU Regulation is a specific measure within the meaning of Article 5(1) of the framework Regulation and establishes specific rules for plastic materials and articles intended to come into contact with foods. The new EU Regulation repeals Commission Directive 2002/72/EC and all its amendments on plastic materials and articles intended to come into contact with foods. The Directive laid down the rules for the manufacture of plastic materials and articles; it has been the subject of substantial amendments spanning ten years. The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2009⁽⁴⁾ implemented the provisions of Directive 2002/72/EC.
- 3.2 Directive 2002/72/EC was most recently amended in late November 2010 by Commission Directive 2011/8/EU, which introduced restrictions on bisphenol A (BPA). Once the new EU Regulation came into force it was amended by Commission Implementing Regulation

¹ OJ Ref L12, 15.1.2011, pg 1-89

² S.R. No 2011 No. 236

³ OJ Ref L338, 13.11.2004 pg 4-17

⁴ S.R. No 2009 No. 56

(EU) No. 321/2011⁽⁵⁾ as regards the restriction of the use of BPA in plastic infant feeding bottles, which carried forward the restrictions originally contained in Directive 2011/8/EU. This ensured continuity of the prohibition of BPA in infant feeding bottles.

4. Parity or Replicatory Measure

4.1 This Rule applies to Northern Ireland only. Parallel legislation is being made in England, Scotland and Wales.

5. European Convention on Human Rights

5.1 As this Rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Policy background

- What is being done and why

6.1 Unregulated chemical migration from food contact plastics may potentially create negative cost to others such as the National Health Service, through detrimentally affecting consumer health. Consumers are unable to assess the risks involved when consuming a product because they cannot observe the level of chemical migration and do not have full information on the production methods. Therefore, they cannot make informed choices about such risk. Legislative intervention, through European legislation that is regularly updated and implemented in the domestic law of the UK and other Member States, is necessary to reduce the risks to health and provide for consistent enforcement across the single market.

6.2 Providing for the execution and enforcement of the new EU Regulation provides for the continuation of consumer protection against exposure from chemicals that could migrate into food, which could carry serious long term and unacceptable risk to consumer health, particularly amongst vulnerable people. The new EU Regulation updates and replaces all the existing rules on food contact plastics into a single European Regulation.

6.3 The legislation also aims to protect the nature and quality of the food concerned; to provide clear and consistent conditions for the trade in goods and to provide the enforcement authorities and industry with one set of harmonised rules that apply throughout the EU, instead of a plethora of different national rules in each of the twenty seven Member States. It also our aim to simplify the way the rules governing these articles and materials are presented in Northern Ireland to make them as plain as possible to those that need to refer to them.

6.4 The following Regulations are being revoked

- a) The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2009⁽⁶⁾
- b) The Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Regulations) 2011⁽⁷⁾
- c) The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2010⁽⁸⁾;

⁵ OJ Ref L87, 2.4.2011, p1

⁶ S.R. 2009 No. 56

⁷ S.R. 2011 No. 28

⁸ S.R. 2010 No. 321

- d) The Ceramic Articles in Contact with Food Regulations (Northern Ireland) 2006⁽⁹⁾, which implement the provisions of Council Directive 84/500/EEC⁽¹⁰⁾, as amended by Commission Directive 2005/31/EC⁽¹¹⁾

7. Consultation outcome

Informal Consultation

- 7.1 During the course of negotiations with the Commission, FSA officials have frequently 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 have been conducted in seven recent years; 2002, 2004, 2005, 2006, 2007, 2008, 2009 and 2011, when the rules on food contact plastics were last amended.
- 7.2 Two informal consultations on the proposed new EU Regulation were carried out; the first in 2004 and the second in 2009. Industry welcomed the proposed consolidation of the plastics legislation into a single European Regulation, simultaneously applicable all Member States, noting that the process of compliance demonstration would become much simpler. They also welcomed the introduction of the text in Article 18 of the new EU Regulation, which recognises the use of internationally recognised scientific principles for risk assessment of non-intentionally added substances and non-listed substances. This would result in industry possibly being able to use exposure-based risk assessments.
- 7.3 Any comments received from interested organisations have, where appropriate, been incorporated into the UK's negotiating line.

Formal Public Consultation

- 7.4 The Food Standards Agency in Northern Ireland conducted a formal public consultation from 20th January to 13th April 2012, seeking comments on the draft consolidated rule. Over seventy stakeholders were consulted on these proposals; these included food industry organisations, sector specific businesses (e.g. manufacturers of plastic food packaging), consumer groups, non-government organisations, enforcement bodies, public and independent laboratories and others with an interest in food contact materials legislation. No responses were received in Northern Ireland.

8. Equality Impact

- 8.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

9. Impact

- 9.1 The proposed consolidated Regulations will affect UK manufacturers of plastic materials and articles intended to come into contact with food (including food packaging, cookware, cutlery, tableware, work surfaces and food contact parts of processing equipment). They will also affect importers, retailers, including retailers of food beverage products, supermarkets, food stalls, food markets, as well as retail of food and beverages in

⁹ S.R. 2006 No. 217

¹⁰ Council Directive 84/500/EEC on the approximation of laws of the Member States relating to Ceramic articles intended to come into contact with foodstuffs

¹¹ Commission Directive 2005/31/EC amending Council Directive 84/500/EEC, as regards a declaration of compliance and performance criteria of the analytical method for ceramic articles intended to come into contact with foodstuffs.

specialised stores. For this sector, there will be a one-off cost for reading and familiarising with the new consolidated Regulations and the requirements of the new EU Regulation.

- 9.2 District Councils and public official control laboratories (OCLs) will also be affected by this policy as they will be required to read and familiarise themselves with the new EU Regulations, since they are responsible for enforcing food safety legislation in their respective areas or districts. There will be a one-off cost for this.
- 9.3 In addition, there will be a one-off cost to OCLs also for reading and familiarising with the changes to testing requirements, as outlined in the requirements of the new EU Regulation.
- 9.4 There is no particular impact on charities or voluntary bodies, rural areas or on members of the ethnic communities of any particular racial group that can be identified. No comments were received from such bodies on the effects of the proposal on them.
- 9.5 As regards the public sector, there may be an impact on Enforcement Authorities and the FSA in the form of administrative costs associated with achieving compliance with the EU Regulation.

10. Regulating small business

- 10.1 The rule will apply to all businesses, small and large.

11. Monitoring and review

- 11.1 The Agency will work with District Councils where problems arise or suspected infringements of the rule arise. The effectiveness of the rule will be also be monitored via general feedback from industry and Enforcement Authorities.

12. Contact

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