

POLICY NOTE

THE MATERIALS AND ARTICLES IN CONTACT WITH FOOD (SCOTLAND) AMENDMENT REGULATIONS 2019

SSI 2019/32

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 16(2), 17(1) and (2), 26(1)(a), 2(a) and (3) and 48(1) of the Food Safety Act 1990 (a) and all other powers enabling them to do so. This instrument is subject to the negative procedure.

To provide for the execution and enforcement, in Scotland, of the two European Regulations listed below.

Policy Objective

These Regulations are necessary to meet the following objectives:

To amend the Materials and Articles in Contact with Food (Scotland) Regulations 2012 in order to provide for the execution and enforcement, in Scotland of;

- 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 (BPA) in varnishes and coatings intended to come into contact with food and in plastic food contact materials (“the BPA Regulation”)

Regulation 2016/1416 amends Regulation 10/2011 on specific rules for plastic materials and articles intended to come into contact with food. Provisions include setting new migration limits for manufacturers of plastic food contact materials that include aluminium and zinc in their process and allowing industry to use new substances in the manufacture of plastic materials and articles to keep up with innovation.

Regulation 2018/213 sets a Specific Migration Limit (SML) of 0.05mg/kg for the migration of BPA from varnishes and coatings applied to food contact materials. This SML is derived from the temporary tolerable daily intake (t-TDI) that the European Food Safety Authority (EFSA) set for BPA in 2015. The t-TDI takes account of some remaining uncertainties in relation to potential health effects and exposure estimates and therefore the precautionary principle is applied. It is expected that on-going long-term research will help to reduce these uncertainties.

The BPA Regulation also specifies that there shall be no permitted migration of BPA from varnishes or coatings applied to materials and articles specifically intended to come into contact with the following products:

- 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
- Milk-based drinks and similar products specifically intended for young children

It also amends the Plastic Regulation to reflect the new lower SML for BPA

Materials and articles that come into contact with food are governed by EU law. Almost all EU law on these materials and articles is given effect in Scotland by the Materials and Articles in Contact with Food (Scotland) Regulations 2012. Our proposed Scottish Statutory Instrument will amend the 2012 Regulations and introduce enforcement provisions for both European Regulations. These proposed amendments will enable enforcement authorities to provide for the continuation of consumer protection against adventitious migration of chemicals from food contact materials that could carry a serious long-term and unacceptable risk to consumer health.

There has been a delay in providing specific enforcement provisions for the two sets of EU measures. Initially, another element of legislation covering materials and articles in contact with food was to be included. However, due to work at EU level taking longer than anticipated and without a confirmed completion date, it is felt necessary to progress the two measures described above without further delay.

Consultation

To comply with the requirements of Article 9 of Regulation (EC) No. 178/2002, One hundred and twelve interested parties were consulted in Scotland on the draft SSI and the supporting Business and Regulatory Impact Assessment between 15 October 2018 and 26 November 2018. This included interested businesses, a consumer organisation, trade associations and enforcement authorities. The consultation was available on the Food Standards Scotland (FSS) website. One response was received from a local authority Environmental Health Department. They did not respond to all questions in the consultation but, where they did respond, they agreed with our position.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Food Standards Scotland's section on Citizen Space.

Impact Assessment

A final Business and Regulatory Impact Assessment (BRIA) has been prepared following public consultation and accompanies this note.

Financial Effects

A BRIA has been completed and is attached. The impact of this policy on business across Scotland is a one-off familiarisation cost of £52.62 per business. Ongoing costs to businesses should be minimal, as after the one-off familiarisation process, it is expected business will implement set practices.

Contact:

Siobhan Watt
Food Standards Scotland
Pilgrim House
Old Ford Road
Aberdeen AB11 5RL

Tel: 01224 285112

Email: Siobhan.watt@fss.scot