

Industry Comments on The Materials and Articles in Contact with Food (England) Regulations 2010

Name and Company	Comment	FSA Response
<p>The Trading Standards Institute</p>	<ul style="list-style-type: none"> ➤ Trading Standards Institute support the assumption that no or new additional costs associated with the Regulations with regard to enforcement authorities other than reading and familiarising themselves with the proposed regulations. ➤ TSI believes that currently it is reasonable to assume that there appears to be no new or additional administrative burdens associated with the proposed regulations for enforcement authorities. ➤ TSI has no comments to add in relation to the proposed Regulations in so far as they relate to the remaining provisions for enforcement, defences and penalties. As already stated, the only foreseeable costs for enforcement authorities are the familiarisation of the new regulations. ➤ TSI has nothing further to add on the proposed Regulations; and are satisfied with the content, form, layout and clarity of the guidance and doesn't believe that more simplified guidance is needed. ➤ TSI agrees with the assumption that it will take about an hour for enforcement authorities to read and familiarise themselves with the new Regulations. ➤ TSI is not currently aware of any other costs that might be associated with the Regulations or any other additional burdens. ➤ TSI agrees that there appears to be no new administrative actions ➤ TSI is not currently aware of any other impacts under the specific tests from the proposed 	<p>All respondents were thanked for their comments, where required, appropriate responses were sent.</p>

	amendments.	
East of England Trading Standards Association – Emma Head	<ul style="list-style-type: none"> ➤ The East of England Trading Standards Association Limited (EETSA) agree that one hour is a sensible estimate for enforcement officers to familiarise themselves with the requirements ➤ Agree with Q38, however, feel more guidance to Local Authorities would be needed to identify the different types of AIMS. ➤ The EETSA are concerned that active materials proposed in the Regulations would be classed as “ingredients” under 2000/13/EC, the requirements of the Food Labelling Regulations 1996 so would: <ul style="list-style-type: none"> * the material need to be included in the list of ingredients? * what would be the impact of this be on QUID calculations? * Will they be listed by descending order by weight? ➤ EETSA are of the opinion that having the words “DO NOT EAT” on the materials and then listing them in the ingredients list is likely to cause confusion amongst consumers; rather than the alternative option of having a separate statement on the label declaring that the product contains an active material which has been tested in accordance with food safety requirements. ➤ EETSA hold the view that the proposed symbol does not communicate a clear message to consumers. They accept that the use of symbols overcomes language barriers; however, they must clearly convey the message intended. EETSA note that the requirement to display the logo applies only 	

	<p>where it is technically possible and would suggest that in the alternative option, clear wording is used.</p> <ul style="list-style-type: none"> ➤ UK consumers would be more familiar with the words “DO NOT EAT” message which has been on products like silica gel sachets for years. 	
<p>Food and Drink Forum – John Lepley</p>	<ul style="list-style-type: none"> ➤ The FDF and its members have no comments for this consultation 	
<p>Suffolk Coastal Port Health Authority – Kay Davidson</p>	<ul style="list-style-type: none"> ➤ Suffolk Coastal PHA acknowledge that there will be no new or additional costs to enforcement authorities in familiarising themselves with the proposed Regs. Although elements of the legislation are already in force, it is the understanding of Suffolk PHA that no enforcement is undertaken on such products at the point of import ➤ There is a low knowledge base at the PHA and they feel that the complex nature of the legislation and the requirements of active and intelligent articles and materials in contact with food cannot be achieved in the hour proposed to familiarise themselves with the regs. ➤ Suffolk PHA conducted a 3month trial in the area and don't believe they have sufficient knowledge to contemplate enforcement of any aspects of the legislation. ➤ It is therefore difficult to put an actual figure on the amount of time required to obtain an understanding of these requirements to make enforcement realistic. Suffolk PHA feels that the figure given within the Evidence Base of the consultation for an officer's time is too low. Suffolk use an hourly rate of £33 for a PHO to 	

	<p>calculate statutory costs for carrying out checks. Included in this figure are staff overheads related to training, shift working premiums, but not including overheads for business needs such as rent, electric etc.</p> <ul style="list-style-type: none">➤ Currently, Suffolk PHA charge £45 for checking Organic documents, and £50 for checking Common Entry Documents. This represents the actual time spent checking these documents and costs for administration processes to support the presentation of such documents. The checking of the documents required under this legislation are likely to be, if not more time consuming due to the complexity of them so a figure of £45-£50 represents the cost to the PHA of each additional document check that would be undertaken.➤ At present, staff time for examination and sampling consignments are currently charged at £89.50 for those consignments where cost recovery is available. This cost is indicative of the cost to this authority of examining any consignments which we would need to examine and sample to determine compliance under this legislation.➤ It appears that import is not permitted when Regenerated Cellulose Film is not accompanied by a written declaration, however, this does not appear to be the case for other materials covered by this legislation. Non-compliance allowing prevention of import could only be determined by chemical analysis; which would give rise to additional costs.	
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- Current costs by analyst for specified food contact materials testing are:

Primary aromatic amines	Kitchen Utensils	2 items/4 items especially if small	£395.00
Formaldehyde	Melamine ware	2 items / 4 items especially if small	£395.00

- As there is no cost recovery provisions in the legislation other than for submission of the third part of a formal sample to the Government Chemist when the defendant of formal proceedings requests it; analytical costs, examination costs and documentary checks would all be additional costs that are unacceptable for the enforcement authority.
- Work has been undertaken in the area which suggests that there is a low level of understanding and compliance with these regulations within businesses. Suffolk PHA undertook a trail in which 100 consignments of plastic goods intended to come into contact with food were identified and documentation requested. Although only basic checks were undertaken on the documents, none of the consignments had the necessary document which could be classed as covering the required information. Suffolk PHA are of the opinion that businesses would need more time than currently allocated in the Evidence Base to

familiarise themselves with the new requirements which would give rise to additional costs.

- Businesses may also incur additional costs by PHA's detaining consignments to request and examine documentation and consignments. The port charges rent for each day a container remains on port after exceeding its specified timescale. The port also charges a set fee for each consignment called for examination as it must be moved from its position on the port to the examination facilities. Charges of these fees which commence from 1.7.2010 are:

	Charges from 6 th day from commencement of discharge of the vessel to the 12 th day	Charges from 13 th day onwards
Containers, flats, platforms, semi-trailers.	£13.00	£35.00
Up to 20 foot	£26.00	£70.00
Over 20 foot		

- Port of Felixstowe charge £85.20 for Port Health Examination.
- Suffolk PHA feel there would be additional administrative burdens associated with the

	<p>regulations for businesses and enforcement authorities. Due to the low level of current enforcement work in this area, businesses are currently not being asked to produce any documentation in relation to their imports; therefore, any such requests made by Suffolk PHA would place additional burden on the business in obtaining the requested documents, and then presenting them to officers in Suffolk PHA.</p> <ul style="list-style-type: none">➤ As the enforcement authority in this case, Suffolk would experience additional burdens through making the requests for the documents, logging the receipt of the documents onto their system and any follow up work needed where the documents are incorrect.➤ Past experience suggests that Suffolk would find a high level of non-compliance amongst presented Declarations of Compliance certificates and supporting documentation; resulting in legal action being taken as this would be treated as an offence with this course of action being the only 1 available to the enforcement authority. This would represent a large administrative burden due to the preparation of case files, and the engagement and communication with legal representatives.➤ Suffolk PHA is unable to provide quantitative figures as they rarely have to resort to legal proceedings in their line of work. The majority of their legislation allows them to refuse importation through the service of legal notices on non-compliant consignments either due to documentary	
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	<p>errors or unsatisfactory analytical results. Although there is a right of appeal to such notices, the goods remain at the port whilst the matter is being dealt with and generally there is no legal involvement.</p> <ul style="list-style-type: none">➤ Other than comments already provided, Suffolk PHA are unable to comment further on the administrative costs to business.➤ Looking at the proposed Regulations solely from how they apply to dealing with goods at the point of importation, it appears there are differences between the enforcement provisions in different parts of the Regulations. Part 4 which applies to Regenerated Cellulose Film prevents a person from importing any such film which fails to comply (Regulation 10 (6) (b) with paragraph (8) which covers the written declaration.➤ The assumption is that Suffolk would be able to serve an Official Feed & Food Regulation 32 notice (although further clarification is being sought on this) where there is paperwork that demonstrates non-compliance for such products. This provision doesn't seem to be available for products covered by other parts of the Regulation where non-compliant paperwork appears to be an offence for which we would need to resort to legal action (prosecution) for resolution.➤ It is unclear what would happen to such a consignment whilst the legal proceedings are taking place. The assumption would be that the consignment would be permitted entry and legal action would take its course	
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	<p>and produce an outcome. Additionally for consignments where non-compliance continued, the same course of action would be pursued. Suffolk PHA hold the belief that a refusal of entry for a non-compliant consignment would have greater effect in ensuring future compliance by the importer/exporter and this would be the most effective means of reducing the impact on health of such products.</p> <ul style="list-style-type: none">➤ Suffolk PHA would like to seek clarification as to how to reject any non-complaint consignment at the point of importation for example in a case where products are found to exceed migration limits for their product. Although it is clear that the materials and articles in contact with food legislation is included under the definition of relevant food law; for the purposes of the Official Feed and Food Control (England) Regulations 2009, it is unclear whether this group falls within that definition. Under Regulation 32 of this regulation, it would allow Suffolk PHA to serve legal notices requiring the detention, re-dispatch or destruction of consignments.➤ The lack of any cost recovery mechanisms in the Regulations means it is highly unlikely that Suffolk PHA would get involved in any enforcement work. The current undertaking of documentary checks has a cost implication for them and in the current financial climate; they do not believe Suffolk Coastal District Council would be able to provide additional funding for this work. There is a strong belief that this national service should not be supported by the local	
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	<p>people who live in the district.</p> <ul style="list-style-type: none">➤ Suffolk PHA would support the need for Industry Guidance for these Regulations. The low level of enforcement means that exporters and industry personnel are unfamiliar with the requirements for such products as goods are not routinely stopped and checked at point of import.➤ The current layout and form of guidance is satisfactory as it is well laid out and easy to read and understand. From a PHA viewpoint, they would like to see additional detail given about what information the Declaration of Compliance and supporting documents should contain; and perhaps more detailed information as to the enforcement action which may be taken at the point consignments are detained or taken for sampling.➤ It may be helpful to have a specific set of guidance for importers. Once the goods have been imported and left our control, our requirements are irrelevant for example to a UK buyer who has already purchased the goods whilst in the UK so perhaps Port Health requirement details in general guidance would be confusing	
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