

Consultation Pack - Review of the Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011

This routine follow-up Post Implementation Review (PIR) is part of the Statutory Review requirements for English Regulations. The first PIR was carried out in 2016, five years after the Kitchenware Regulations came into force and subsequent reports must be published at intervals not exceeding five years. This PIR is a follow-up to fulfil that requirement.

1. Executive Summary

1.1 The Plastic Kitchenware (Conditions on Imports from China) Regulations (“the Kitchenware Regulations”)([footnote](#)) came into force on 1st July 2011, to provide for the execution and enforcement of European Commission (EU) Regulation No. 284/2011. The main aim of the EU Regulation was to provide additional official control measures on imports of melamine and polyamide (nylon) kitchenware; thereby reducing concerning levels of non-compliant melamine and polyamide kitchenware products that were being imported from the People’s Republic of China and the Hong Kong Special Administrative Region of the People’s Republic of China.

1.2 The UK exited the European Union (EU) at the end of the transition period on 31st December 2020 and since then EU legislation became part of Great Britain’s retained EU law. This means Commission Regulation (EU) No. 284/2011 (“the EU Regulation”), also became part of GB’s retained EU law. The EU Regulation was considered a temporary official control measure when it was first introduced and is in the process of undergoing a wider review at the EU level. However, from that date, subsequent changes to EU legislation have not been reflected in GB law. Any subsequent changes to EU Regulations on food contact materials do not apply to Great Britain.

1.3 It should be noted that the Kitchenware Regulations were reviewed to fix inoperability’s arising from the UK leaving the European Union, once the transition period ended. The Kitchenware Regulations were subject to amendment following EU exit to fix parts of the legislation that could no longer function as intended.

Amending Regulation	Effect on the Kitchenware Regulation 2011
The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019 (footnote)	Part 3 Regulations 18 to 26: Member State references to United Kingdom
The Official Feed and Food Controls (England) (Miscellaneous Amendments) Regulations 2019 (footnote)	Regulations 29 to 32 amends: The Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011

Amending Regulation	Effect on the Kitchenware Regulation 2011
<p>The Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 (footnote)</p>	<p>Regulation 13 (6) to (8) amends: The Food and Feed Imports (Amendment) (EU Exit) Regulations 2019 – to differentiate Great Britain and the United Kingdom</p>

1.4 The requirements themselves introduced by the Kitchenware Regulations in 2011 were not, however, reviewed as part of the work to redress issues raised by the departure from the European Union.

1.5 This routine follow-up Post Implementation Review (PIR) is part of the Statutory Review requirements for English Regulations. The first PIR was carried out in 2016, five years after the Kitchenware Regulations came into force and subsequent reports must be published at intervals not exceeding five years. This PIR is a follow-up to fulfil that requirement.

1.6 The first PIR did not reveal any major unintended consequences or evidence that UK businesses were being put at a competitive disadvantage. While the evidence suggested that there was a financial burden to both the H.M. Revenue & Customs and the importers of these products, overall, the actual costs were significantly lower than estimates made in the impact assessment in 2011.

1.7 There appears to be some evidence of a reduction in reported levels of non-compliance since the introduction of the Regulations in 2011 (especially in relation to polyamide kitchenware), but the low numbers of products that undergo laboratory testing (10%) are deemed insufficient to draw any firm conclusions.

1.8 The Kitchenware Regulations are EU-derived, but under the existing regulatory framework any EU options for renewal, removal or replacement are not directly applicable. Nevertheless, the findings of this follow-up PIR will help to inform the national position on whether to retain or modify the Regulations or not.

1.9 The policy objective of the EU Kitchenware Regulation No. 284/2011 was to reduce levels of non-compliant melamine and polyamide kitchenware products, which were being imported from China and Hong Kong, thereby minimising any potential risk to consumers. The data suggests that there has been a drop in levels of non-compliance, especially in relation to polyamide products.

1.10 Whilst there was a marked decline in the number of reported levels of non-compliance initially, in the past five years there has been a steady low level of negative reports. Proposals to rescind the legislation were abandoned due to the on-going levels of non-compliance. The number of incidents dealt with by the UK per year has averaged around two for melamine and three for polyamide. The majority of border rejections were due to documentary irregularities and not for the levels of migration found during the required 10% compliance testing.

1.11 The Port Health Authorities (PHAs), that were consulted, informed us of a noticeable reduction in the level of non-compliant imports attributable to the existence of the Regulations. However, it is not possible to deduce whether there is a direct correlation with a decrease in levels of reported non-compliant imports and the kitchenware measure or not.

1.12 The UK was the main access point of melamine and polyamide kitchenware from China into Europe; as such, the burden of the EU Regulation fell disproportionately onto the UK. Whilst a

Member State of the European Union we actively participated in discussing the issue (within the period of this review). Discussions at the EU Food Contact Materials Expert Working Group meetings suggested that the implementation and enforcement across the whole of the EU was aligned, with all pertinent EU Member States carrying out the required analytical and documentary checks.

1.13 The other main EU importer countries were diligent in applying the legislation and raising alerts when required and continued to do so.

1.14 Despite the low-impact approach determined to be appropriate for this PIR, it was felt that a small-scale survey of affected stakeholders would help to understand the effect of the legislation, and in particular, to ascertain whether any significant unintended consequences or unforeseen burdens had been created as a result of their introduction. The exercise took the form of dialogue with PHAs, importers and HM Revenue and Customs. Compliance monitoring data was also used as part of the evidence base to determine any drop in levels of non-compliance for such imported polyamide and melamine plastic kitchenware products.

2. Introduction and Background

2.1 In 2011 a measure was introduced to control the quality of imports of melamine and polyamide kitchenware from the People's Republic of China and from the Hong Kong Special Administrative Region of the People's Republic of China. Subsequent references to 'China' is specific to the People's Republic and the Special Administrative Region alone. In 2016 this was subject to a review to ascertain as to whether it was effective and proportionate, and at that time the Food Standards Agency consulted with a range of stakeholders to seek their views on it.

Upon departure from the European Union, Great Britain (GB) retained the legislation, and as it is now over a decade since its introduction we are once again seeking views on the measure.

2.2 Commission Regulation (EU) No. 10/2011([footnote](#)) on plastic materials and articles intended to come into contact with food ('the EU Plastics Regulation') regulated migration of substances from food contact plastics including melamine and polyamide products. Following a concerning number of non-compliant polyamide and melamine kitchenware products originating from China, the European Commission introduced the EU Kitchenware Regulation (Commission Regulation (EU) No. 284/2011).

2.3 Polyamide and melamine plastic kitchenware are plastic kitchenware articles which consist completely of polyamide or melamine, or have parts of polyamide or melamine that are intended to come into contact with food. Polyamide is commonly called 'nylon.'

2.4 Polyamide plastic may contain primary aromatic amines (PAA), which occur as a result of impurities or degradation products formed during the production process. Many PAAs are considered toxic and some are considered to be possible carcinogens. All polyamide kitchenware products must comply with the Plastic Regulation and not release PAAs into food in a detectable quantity. The detection limit for PAAs is set at 0.01 milligrams per kilogram (mg/kg) food or food simulants, above that migration limit an article is deemed non-compliant.

2.5 Melamine plastic uses formaldehyde in its manufacture. Exposure to formaldehyde has the potential to cause adverse health effects, including immune effects such as hypersensitivity and contact dermatitis in sensitive individuals. The Plastics Regulation established a migration limit of 15 mg/kg for formaldehyde (together with the associated chemical hexamethylenetetramine if present) into food. Separate to these particular requirements, enforcement action can be undertaken above the Specific Migration Limit (SML) of 2.5 mg/kg for melamine itself, which is referred to in the Plastics Regulation under its chemical name: 2,4,6-triamino-1,3,5-triazine.

2.6 The retained EU Regulation No. 284/2011 lays down specific requirements and detailed procedures for the import of polyamide and melamine plastic kitchenware products originating or consigned from China. The specific requirements include:

- Importers/food businesses must pre-notify the competent authority at the First Points of Introduction (FPI)([footnote](#)) in the European Union (as originally required) or Great Britain (as is now the case) at least two working days in advance of the estimated date and time of physical arrival of their consignments.
- The importer must submit to the competent authority a declaration and a laboratory report for each consignment, confirming that the products meet the requirements concerning the release of PAA or formaldehyde (as appropriate) as laid down in the Plastics Regulation.
- At the FPI there is a documentary check of each consignment. An identity and physical check, including laboratory analysis, is then carried out on 10% of such consignments.

3. Aim and Purpose of the Report

3.1 As part of the UK Government's commitment([footnote](#)) to review provisions in secondary legislation that regulate businesses, the Kitchenware Regulations for England require the Food Standards Agency (FSA) to undertake a review of the Regulations and set out the conclusions in a report. This report:

- restates the objectives intended to be achieved by the Kitchenware Regulations when they were introduced in 2011 including the baseline costs identified in the associated impact assessment.
- provides evidence-based evaluation of the extent to which those objectives are being achieved.
- assesses whether the objectives remain appropriate and, if they are, the extent to which they may be achieved within a framework that imposes less regulation.

3.2 It should be noted that an examination of how the legislation was executed and enforced in other Member States was undertaken prior to EU exit for the first PIR.

3.3 A light touch PIR is being considered, as a follow-up to the first five-year PIR, carried out in 2016([footnote](#)) based on the low impact understood to have arisen from the English Kitchenware Regulations, which have the main function of providing enforcement provisions for EU legislation that was directly applicable in England prior to the UK's departure from the EU.

3.4 The follow-up PIR considers whether the objectives of the Kitchenware Regulations (as amended as a consequence of the departure from the European Union) continue to be achieved. The PIR also considers evidence provided by interested parties on the effectiveness of the Regulations and the extent to which they remain relevant.

3.5 The FSA considers that the requirements remain necessary and relevant, and that the England Statutory Instrument remains fully effective and fit for purpose. The FSA view is informed by routine engagement with industry and local enforcement authorities, as well as monitoring of UK official controls and enforcement.

3.6 As with the previous PIR, key stakeholders were consulted to collect evidence to support the FSA views on the Kitchenware Regulations as a whole and to ascertain if they are fit for purpose, their views are included in this report.

4. Objectives of the EU Kitchenware Regulation

4.1 In 2009, the EU Food and Veterinary Office (FVO) reported shortcomings in the Chinese system that control plastic kitchenware exports to the European Union. The FVO noted -

- deficiencies related to laboratory performance; the laboratory method for testing migration from plastic food contact materials in the Chinese national standard differed from that described in the Plastics Regulation with the consequence that tests by EU and Chinese laboratories could produce different results.
- incomplete official investigation by the Chinese authorities into the non-compliant companies notified under the European Union's Rapid Alert System for Food and Feed (RASFF).
- a potential risk of non-compliant plastic food contact materials exported to the EU via Hong Kong: some food contact material exporters declared that these products were going to be exported only to Hong Kong but were then exported on to Europe. Therefore, these products (e.g., polyamide kitchenware) were only tested on the basis of Chinese national standards, which in some cases meant that the products were not tested for full compliance with EU requirements.

4.2 Large quantities of polyamide and melamine plastic kitchenware originating from China continued to breach the requirements of the Plastics Regulation. Therefore, to reduce the number of these non-compliant products, the Commission introduced these specific control measures.

4.3 The objective of the EU Regulation No. 284/2011 was to provide additional official control measures on Chinese imports of melamine and polyamide kitchenware; thereby reducing the concerning levels of non-compliant melamine and polyamide kitchenware products that were being imported from China.

5. Impacts

5.1 In the 2011, Impact Assessment (IA)^(footnote), there was an overestimation of the anticipated cost (to different sectors) of enforcing these Regulations. (See estimates to different sectors in 5 (a)). This overestimation assumed that HMRC would be processing 34,000 consignments per annum of plastic kitchenware imported into the UK; most of which would fall under the scope of the EU Kitchenware Regulation. This was a significant overestimation in the order of 25 times the anticipated. However, monitoring data collected after the introduction of the Kitchenware Regulations suggest that the number of annual melamine and polyamide kitchenware consignments that HMRC process is more accurately 1,372.

5.2 We do not anticipate the impacts to be greater than those highlighted when the Kitchenware Regulations came into force in 2011. The number of non-compliances has greatly reduced since then as reflected in the monitoring data collected since the previous PIR was published.

5.3 Annex 1 contains the details on the number of non-compliances from 2015 – 2020 and Annex 2 provides details of costs to PHAs processing consignments of kitchenware imported into the UK.

Baseline costs

5.4 The estimated baseline costs and benefits anticipated for the enforcement of the Kitchenware Regulations were set out in the FSA impact assessment which accompanied the Regulations.

Estimated costs of familiarisation

5.5 It was estimated that; Industry, Enforcement Authorities (Local Authorities and Port Health Authorities) and Official Control Laboratories (OCLs) would face one-off familiarisation costs as a result of reading and understanding the Plastics Regulation. The costs were estimated by

multiplying the median hourly wage rate for each sector by the estimated time needed to assimilate and disseminate the information. This was then multiplied by the total number of businesses, authorities, or laboratories.

- Port Health Authorities (PHAs) - The cost to PHAs for analysis was estimated at £1,975,400 per annum. Documentary and onward transportation costs were estimated at £1,459,167 per annum. It was expected that both costs would be recovered from importers. A further administrative cost to PHAs of £149,600 per annum was also estimated. This cost was deemed not recoverable.
- Importers - As alluded to the above, it was envisaged that the costs to PHAs for documentary checks and analytical tests would be recovered from the importers.
- The FSA impact assessment in 2011 suggested that for the most part, importers would not be able to recover these costs from identified Chinese exporters, particularly where the goods were sampled and found to be compliant with the legal requirements. Importers are also expected to incur storage costs (demurrage charges) when their consignments are stored at the ports, pending the release of analytical results.
- Storage - The cost of storage to importers was estimated at between £573,240 and £1,146,480 per annum. This was estimated by multiplying the cost of a two- week storage period (from £168.60 to £337.20) by the number of consignments expected to be sampled per annum (3,400).
- H.M. Revenue and Customs (HMRC) - The baseline cost to HMRC was estimated at £300,560 per annum. Consumers: The benefit to consumer health was considered to be unquantifiable, as it is not possible to isolate the benefits of this Regulation directly to a reduction in ill health from chemical contamination.

Actual cost to affected sector's Port Health Authorities (PHAs)

- The actual recoverable cost to PHAs for analysis, based on 137 analytical tests, is in the region of £80,000. The actual non-recoverable administrative cost to PHAs is in the region of £6,036.
- Importers - The actual cost of storage to import businesses is between £23,131.92 and £46,263.84 per annum.
- HMRC - The actual cost to HMRC for checks to kitchenware documentation was approximately £13,176 per annum. HMRC makes an average of 1,372 interventions at a cost of £9.60 each.

Impact Assessment Cost Estimations verses Actual Costs in 2016

Port Health Authorities

Sector	IA costs estimated in 2011	Actual costs in 2016
Sampling and analysis	£1,975,400	£76,111
Documentary and onward transportation	£1,459,167	£58,868.50

Sector	IA costs estimated in 2011	Actual costs in 2016
Administrative costs	£149,600	£6,036
Importers		
Storage costs	£573,240 and £1,146,480	£23,131.92 and £46,263.84

HMRC

Sector	IA costs estimated in 2011	Actual costs in 2016
HMRC Clearance costs	£300,560	£13,176

6. Assess whether the objectives remain appropriate and, if they are, the extent to which they can be achieved within a framework that imposes less regulation.

6.1 In order to evaluate the effectiveness of the Kitchenware Regulations, this report examines the EU monitoring data and the publicly available RASFF notifications as well as feedback from key stakeholders such as importers, retailers, and PHAs, on how the Regulations have been working, and whether there have been any unforeseen consequences which have resulted from its introduction.

6.2 Whilst consideration has been made for an alternative system to the Regulations to ensure compliance, with less stringent requirements upon entry of consignments into GB, the on-going levels of non-compliance precluded that during the period of the PIR and subsequently during the trade disruption of the covid pandemic. Any future change in the requirements would be evidence based and proportionate to the level of risk for consumers.

7. Examination as to how the legislation is executed and enforced

7.1 In England (as well as Scotland, Wales, and Northern Ireland) specific food contact materials legislation is enforced by means of Statutory Instruments which provide penalties and enforcement powers for infringements.

7.2 Great Britain was fully committed in the enforcement and implementation of the EU Regulation and aligned with EU countries prior to leaving the EU. GB continues to monitor

consignments carrying out the required analytical and 10% documentary checks and physical checks.

7.3 The uniformity in the implementation and enforcement of the European Regulation in GB strongly suggests that British businesses were not at a competitive disadvantage, and that has not changed.

7.4 We did not receive any responses from consumers to our public consultation on the Post Implementation Review in 2016 nor for the 2011 Regulations.

8. Conclusions

8.1 Whilst there appears to be some evidence of a reduction in reported levels of non-compliance in the EU and UK since the introduction of the Regulations in 2011 (especially in relation to polyamide kitchenware), the number of products that undergo laboratory testing (10%) are deemed insufficient to draw any meaningful conclusions. However, it is likely to be higher by comparison to other regulated products.

8.2 Overall, our considered view is that the Kitchenware Regulations continue to deliver the enforcement provisions on non-compliances of kitchenware from China; this is supported by the current monitoring data and that reported in the earlier PIR. This review supports our view that the domestic instrument remains necessary, fully effective and continues to be fit for purpose.

8.3 Evidence gathered from stakeholder responses to the original 2011 consultation on the Kitchenware Regulations and in response to this and the previous post implementation review supports the FSA view on the impacts of the EU Regulation.

Annex 1

List of Questions for Consultation

We would appreciate any comments as to your views on the following:

Q1. Has the system improved, got worse or remained about the same with regards to importing melamine/polyamide kitchenware from China/Hong Kong?

Q2. Are there any specific issues that have arisen regarding this since the 2016 review of the Kitchenware Regulations worthy of bringing to our attention?

Q3. Has there been a significant impact since the UK exit from the European Union on trade, i.e., has there been a noticeable financial penalty from this on these goods or the system to control them, or both? Please provide evidence to support your views.

Q4. There was a noticeable fall in such imports during the pandemic, we would welcome your views on whether this was temporary or a more meaningful change in consumer behaviour? If the change is deemed permanent, what in the main do you see as the main factors for this, for example:

- Changes in customer perception of plastics?
- Preference for local sourcing?
- Economic factors?

Q5. We would also welcome comments on whether the Kitchenware Regulation remains fit for purpose and should be retained?

Q6. We would welcome any other comments you have with regards to this PIR.

Table 1. Number of Consignments Received by GB from 2016 – 2022*

Year	Number of Consignments	Physical checks	Number rejected	Physical check rejected	% Physical rejection
2022	987	155	15	1	0.6%
2021	1083	100	1	2	1.5%
2020	1077	95	11	6	6.3%
2019	1425	262	21	4	1.5%
2018	1371	144	12	4	2.8%
2017	1627	181	5	2	1.1%
2016	1547	171	10	3	1.8%

Table 1 provides a summary of the total number of consignments received from 2016 – 2022 by the various GB ports, this includes data on the number of documentary, identity and physical checks, and the level of non-compliance. It is clear from the figures that although there continues to be non-compliance products entering the ports, the levels are now comparatively low for rejections due to failure of physical checks.

*Data is also given for the years after the five-year review period of this PIR to additionally reflect the situation during the covid pandemic.

Table 2: UK Raised Rapid Alerts for Polyamide/PAA and Melamine/formaldehyde 2015 - 2020

Type of Rapid Alert	2016	2017	2018	2019	2020
PAA	1	0	2	7	1 and 1*
Formaldehyde	3	0	1	1	0

Type of Rapid Alert	2016	2017	2018	2019	2020
Total Number of UK raised FCM RASFFs	5	0	3	8	3

*Not identified as from China or Hong Kong.