

# **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL**

C/2022/6146 + Annex

**Title - COMMISSION REGULATION (EU) No 2022/1616 of 15 September 2022 on recycled plastic materials and articles intended to come into contact with foods, and repealing Commission Regulation (EC) No 282/2008**

Submitted by Food Standards Agency on 25<sup>th</sup> October 2022

## **SUBJECT MATTER**

The European Commission has introduced updated requirements for recycled plastic materials and articles intended to come into contact with food. Operators and manufacturers will need to meet the necessary requirements to ensure recycled plastic materials and articles are safe. This regulation repealed and replaced Commission Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with food on 10<sup>th</sup> October 2022. The new Commission Regulation has been in the pipeline for some time given that the previous measure did not include all types of plastic recycling processes. The updated measure now covers recycled plastic that has been obtained using chemical/feedstock recycling processes to some extent. It sets out more detailed requirements, including a rigorous assessment procedure for so called 'novel technologies' which to date have not been readily used for producing recycled plastic for food contact use. Furthermore, it sets out specific requirements for collection and pre-processing of plastic material before it can be recycled. This will ensure that the input plastic is predominantly of material that was previously used for food contact applications and that it hasn't been mixed with hazardous waste.

## **SCRUTINY HISTORY**

Regulation 1935/2004 was scrutinised as EU proposal 15113/03, COM(03)689, Proposal for a Regulation of the EP and Council on materials and articles intended to come into contact with food. FSA provided EMs dated 8 December 2003 and 14 May 2004. The Commons ESC reported on two occasions that the proposal raised issues of legal and political importance in reports 3 and 21, 03/04 and scrutiny was completed on 26 May 2004. The proposal was examined by the then Lords EUC sub-committee G and scrutiny was completed on 30 January 2004.

Furthermore, 8518/18, COM(18)179, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and

sustainability of the EU risk assessment in the food chain amending Regulation (EC) No 178/2002 [on general food law], Directive 2001/18/EC [on the deliberate release into the environment of GMOs], Regulation (EC) No 1829/2003 [on GM food and feed], Regulation (EC) No 1831/2003 [on feed additives], Regulation (EC) No 2065/2003 [on smoke flavourings], Regulation (EC) No 1935/2004 [on food contact materials], Regulation (EC) No 1331/2008 [on the common authorisation procedure for food additives, food enzymes and food flavourings], Regulation (EC) No 1107/2009 [on plant protection products] and Regulation (EU) No 2015/2283 [on novel foods]. FSA submitted an EM dated 18 May 2018. The Commons ESC reported on three occasions that the proposal raised issues of political importance in reports 31, 48 and 53, 17/19 and completed scrutiny on 30 January 2019. The then Lords EUC examined the proposal in the Energy and Environment sub-committee and completed scrutiny on 25 January 2019.

## **MINISTERIAL RESPONSIBILITY**

The Secretary of State for Health and Social Care has responsibility for this area of food law.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

The Food and Feed Safety and Hygiene provisional common framework covers food and feed safety and hygiene law. The responsible Government department is the Food Standards Agency in England, Northern Ireland and Wales, and Food Standards Scotland in Scotland. This area sits within scope of the Food and Feed Safety and Hygiene provisional common framework.

This is a devolved area of policy. Scottish Government Ministers, Welsh Government Ministers and Northern Ireland Executive Ministers have an interest in food and feed safety and hygiene law, in this instance the legislative requirements for recycled plastic materials in contact with food. The devolved administrations have been consulted in the preparation of this EM.

## **LEGAL AND PROCEDURAL ISSUES**

i. This is based upon the Treaty on the Functioning of the European Union, having regard to Commission Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food (framework regulation). This new regulation repeals and replaces Commission Regulation (EC) No 282/2008 of 27 March 2008 on recycled

plastic materials and articles intended to come into contact with foods and amending Commission Regulation (EC) No 2023/2006.

ii. Commission Regulation (EU) No 2022/1616 received a favourable opinion on 24 March 2022. France abstained from voting.

iii. Following the Council of the EU and Parliament scrutiny, this piece of EU legislation was adopted on 15<sup>th</sup> September 2022 and came into force on 10<sup>th</sup> October 2022.

iv. The Northern Ireland Protocol (NI Protocol) provides that limited areas of EU law will continue to apply to and in the UK in respect of Northern Ireland. This EU legislation is within scope of the current terms of the Protocol on Ireland/Northern Ireland since it is made under Commission Regulation (EC) No 1935/2004 which is listed within Annex 2 of the NI Protocol. Commission Regulation (EC) No 282/2008, which directly applied in Northern Ireland, has been repealed and replaced by Commission Regulation (EU) No 2022/1616.

## **POLICY IMPLICATIONS**

The introduction of this legislation is expected to develop moderate national interest. The UK Government has already taken major steps to tackle plastic waste and encourage the use of more recycled material. Whilst the legislation itself introduces new requirements and obligations for competent authorities and businesses, it only concerns materials and articles in contact with food that are made, either in part or fully, from recycled plastic.

The updated EU requirements will lead to regulatory divergence between GB and Northern Ireland/EU, and are likely to lead to an increase in costs for Northern Ireland-based recycling operators, particularly for those using innovative technologies given the additional requirements being placed upon them within this Commission Regulation as 'Novel technologies'. Business operators using a novel technology will need to publish reports every six months and will be required to do this for at least two years, making them available to the European Commission and the competent authority in Northern Ireland. Businesses will also need to submit a notification to the European Commission and to the competent authority within its territory. These notifications will consist of information relating to the new technology and they can be formally recorded by the European Commission. Some of this information will need to be verified by the competent authority within its territory to ensure that the operator can continue to make recycled plastic available for the EU and Northern Ireland markets. GB-based recycling operators who wish to place recycled plastic products on the Northern Ireland or EU market will also be impacted by the introduction of this Commission Regulation. Additional costs are expected to

be associated with the need to undertake regular testing to ensure that the recycled plastic has been sufficiently decontaminated and will be safe for bringing into contact with food.

The introduction of this Commission Regulation will also impact regulatory bodies in Northern Ireland and GB. There is a legal requirement for competent authorities to complete compliance auditing of authorised facilities in Northern Ireland. A UK-wide auditing scheme has been established which will commence upon the publication of EU authorisation decisions for UK-based operators. This auditing scheme will cover both GB and Northern Ireland-based operators that receive an EU authorisation given that they intend to make available recycled plastic for the EU and Northern Ireland markets. The auditing will be carried out annually on individual recycling operators to ensure that they are fully adhering to the requirements as set out in their EU authorisation decision. It will also provide valuable information concerning the status of recycled plastic material being placed onto the UK market and ensuring it meets the current legislative requirements. The outcome of the annual audits will be communicated to the FSA and FSS, and action will be taken on any non-compliance issues that are specifically set out within the new Commission Regulation. It is expected that the outcome of the audits will need to be reported to the European Commission to ensure that these recycling operators continue to meet the requirements as set out in their individual EU authorisation decision and can remain on their register of authorised EU processes. The appropriate enforcement authorities will also need to be notified of any non-compliance issues. The FSA is currently considering what legislative amendments will be needed to introduce this legislation in Northern Ireland, including any impacts to enforcement authorities.

There are still some uncertainties surrounding the role of GB and NI competent authorities in the context of the new EU legislation, for example how novel technology notifications will be handled and what additional resources may be required. We will aim to send out a follow up communication to recycling operators as soon as we have clarified this. It is anticipated that we may need to review compliance monitoring summary sheets in some capacity and verify these with the European Commission and recycling operator.

There has been no engagement by the EU with colleagues in Northern Ireland on the proposals and no discussions have taken place within the joint structures under the Withdrawal Agreement. Official notification of the adopted measure was received from the EU via the usual information exchange procedures under the Joint Consultative Working Group (JCWG).

The FSA and FSS are engaged in discussions about adopting updated requirements within domestic legislation in GB. It will also need to consider wider UK reforms including extended producer responsibility (EPR).

These regulations would interact with the introduction of a dual regulatory regime under the Northern Ireland Protocol Bill. Under this regime, businesses could choose to place goods on the market in NI according to either UK or EU regulations, or both where the rules are sufficiently compatible. By placing goods on the market in Northern Ireland according to UK rules, businesses would not need to adhere to these rules.

## **CONSULTATION**

No UK consultations have been undertaken on this measure, UK businesses were however able to comment on the EU consultation that was published.

A UK impact assessment has not been produced given that this is an EU Commission Regulation and the UK has not formally prepared a draft equivalent or similar measure.

The FSA circulated a communication to known contacts of UK-based recycling operators, including Northern Ireland, concerning the new EU requirements on 26<sup>th</sup> September 2022. This also directed them to online resources that the European Commission established on this matter.

## **FINANCIAL IMPLICATIONS**

The European Commission has not published details of the financial implications for competent authorities and business operators. As indicated above, no EU nor a UK impact assessment has been carried out. It is anticipated that there will be some financial and resource implications as a result of these changes.

## **MINISTERIAL NAME AND SIGNATURE**

Dr Caroline Johnson

Parliamentary Under Secretary of State

Department of Health and Social Care

