

Explanatory Memorandum to the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011**. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Health and Social Services

28 June 2011

Explanatory Memorandum for the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

1. Description

This Statutory Instrument will provide for the provide for the implementation and enforcement of European Commission Regulation (EU) No. 284/2011 which lays down additional controls for the import of certain plastic kitchenware from China and Hong Kong (hereafter referred to as the Kitchenware Regulation)

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

The Instrument breaches the 21 day rule. Member States are required under European law to transpose and implement the provisions of the Commission Decision into domestic Legislation by 1 July 2011. Parallel legislation in England, Scotland and Northern Ireland will also come into force no later than 1 July 2011. The breach of the 21-day rule is required to protect public health by ensuring that enforcement authorities have the necessary powers to carry out the additional controls required by Commission Directive 284/2011.

3. Legislative Background

Welsh Ministers have the powers to make these Regulations under sections 16(2), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990.

This instrument is subject to the negative procedure.

4. Purpose and Intended Effect of the Legislation

This instrument designates Local Authorities and Port Health Authorities as having responsibility for the enforcement of the Kitchenware Regulation in Wales. It provides offences for contravening certain provisions of the EU Regulation and for defences against prosecution for committing an offence in particular circumstances, and specifies the penalties that the Courts may impose upon conviction for an offence.

This instrument also enables enforcement Authorities to recover the actual costs incurred in undertaking the additional enforcement activity arising from the EU Kitchenware Regulation in accordance with certain provisions of Regulation (EU) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

5. Consultation

The FSA conducted a formal public consultation from 28 April to 27 May 2011, seeking comments on a draft of this instrument and an earlier draft of the

Impact Assessment. The EU Kitchenware Regulation was also included in the consultation package. Once more, Enforcement Authorities and their representative bodies, trade associations, individual companies (both large and SMEs), the UK Border Agency, HM Revenue and Customs and the UK's Official Control Laboratories were consulted.

The FSA received 10 responses to the consultation in England from local enforcement Authorities, industry and trade associations representing the interests of small food businesses and large retailers. There were no responses from stakeholders in Wales. Comments focused mainly on the estimated costs associated with the new legislation as reflected in the draft Impact Assessment.

There were several comments on the draft Regulations from Port Health Authorities (PHAs) on drafting detail and these have been acted upon where necessary.

Enforcement authorities were generally in support of the proposed control measures and the Regulations enforcing them for the increased protection they provided UK citizens from exposure to harmful chemicals. They indicated that costs for familiarising themselves ("familiarisation costs") with the requirements of new legislation were underestimated. The PHAs asked for further guidance on consistent execution of the Regulations.

There was a general consensus amongst industry that familiarisation costs had been underestimated. Industry suggested that it would be unable to pass the additional costs associated with these controls on to Chinese exporters. Industry also highlighted the costs of storing consignments subjected to random 10% checks and held pending analytical results and the costs associated with sourcing relevant products from countries other than China, should they opt to do so. Industry also raised the possibility that the charity/third sector could potentially be affected, although no comments were received from this sector.

Stakeholders were asked to provide evidence to support their views in relation to additional costs over and above their commercial activities of the proposed Regulations; however, none were able to quantify the additional costs in their comments or provide evidence to support their views.

A full summary of comments received in response to the consultation will be published on the FSA's website.

6. Regulatory Impact Assessment

Options Considered

Policy Option 1: Do Nothing. Do not provide for the execution and enforcement of the EU Kitchenware Regulation in Wales

This option would not prevent the EU Kitchenware Regulation from applying in Wales; it would already be legally binding and applicable throughout the European Union (EU). However, enforcement authorities in the UK would not

have the necessary powers to enable them to enforce it. Therefore, the UK's obligation (under the Treaty on the Functioning of the European Union) to put in place provisions for its enforcement would not be fulfilled which would be likely to lead to the UK being subject to infraction proceedings.

This option would also mean allowing China to continue to export polyamide and melamine plastic kitchenware into Wales without additional targeted controls, thus exposing consumers to the risk of ingesting primary aromatic amines and formaldehyde with potential adverse health effects.

Policy Option 2: National Regulations to provide for the execution and enforcement of the EU Kitchenware Regulation in Wales

This option provides a significant measure of control that would minimise the potential health risks. The control would, however, place some financial cost on businesses that use, sell and import such products into Wales. We understand, however, that in some instances (i.e. where importers products are not compliant with the law) UK importers and or their representatives will seek to recover these costs from the Chinese exporters. It is our view that large businesses are more likely to be able to achieve cost recovery from the Chinese businesses due to their extensive buying power. However, for SMEs this is less likely to be the case, potentially resulting in them having to bear the costs of the import controls.

This also ensures that enforcement authorities and port health authorities can fulfil the requirements placed upon them and the Courts can impose penalties that are consistent with those that apply elsewhere in Welsh food law. It also provides for defences to alleged offences in certain specified circumstances.

Policy Option 3 – Non-regulatory option - European Commission visits to China to encourage the Chinese control authorities to improve the safety standards of kitchenware manufactured there.

This option has been tried by the European Commission in the shape of two Food and Veterinary Office (FVO) missions with the Chinese control authorities in 2009; however, the initiatives identified serious weaknesses in the Chinese control systems. Thus, this option would fail to deliver the level of protection for consumers agreed as necessary by the EU, as large quantities of polyamide and melamine plastic kitchenware continued to fail to meet the requirements of Directive 2002/72/EC. This option would not fulfil the requirements of the EU Kitchenware Regulation and would therefore not be fit for purpose.

Thus, option 2 is the preferred option that will achieve the requirements of the EU Kitchenware Regulation.

Sectors Affected

Industry

This proposal will affect UK retailers, wholesalers and importers of plastic products from China. Businesses potentially affected by this measure are not identified by a specific standard industrial classification code (SIC), and as such it is difficult to provide accurate estimates of the precise number of businesses that will face an impact. Where appropriate, an attempt has been made to estimate the number of retailers and wholesalers *potentially* affected using the Interdepartmental Business Register (IDBR¹) and the number of importers through the consultation process.

Retailers

For retailers, because it is not possible to isolate the precise subsectors affected by this Regulation we have made assumptions about the *types* of businesses that may face an impact using SICs that are broader than the limited remit of this policy². As such, the sectors identified below will encompass, but be greater than, all affected businesses. This will inevitably lead to an overestimate of the costs involved but in the absence of any better data, will serve as useful upper bound.

Wholesalers

The number of wholesalers affected is derived from the IDBR³ category labelled 'wholesale of other household goods'. Again, because of the wide coverage of this category and the fact that we are dealing with a specific industry in plastics, it is likely that we are overestimating the number of wholesalers affected. Some responses from consultation indicate that this is the case and the number of wholesalers is likely to be much lower than that which is reported here.⁴ Estimated ranges start at only 100 first tier wholesalers but we believe this is likely to be an underestimate. Thus, to be conservative and ensure we have captured the full extent of wholesalers that may be affected by this legislation, we have used the figures provided by IDBR.

Importers

The IDBR does not identify importers as a distinct category and as such we have no robust data regarding the total number of importers that may be affected. However as an approximation, industry body membership data (obtained from consultation) indicates that the total number of nylon kitchenware importers in the UK is approximately 150. Some large retailers will also import directly but this is covered by the retail section above.

¹ <http://statistics.gov.uk/idbr/idbr.asp>

² Categories for retailers includes: 47.11 Retail sale in non-specialised stores with food, beverages or tobacco predominating; 47.19 Other retail sale in non-specialised stores and 47.52 Retail sale of hardware, paints and glass in specialised stores

³ Categories for wholesalers; 46.49 Wholesalers of other household goods.

⁴ Estimate ranges begin from only 100 first tier wholesalers.

Table 1 displays the estimated number of businesses affected by the proposal by country. Note that we currently have no information regarding the country level disaggregation of importers. The split has been estimated using the proportion of businesses in each of the countries in the other sectors using IDBR data. This is not therefore an accurate representation but may be used as an indicative estimate in the absence of robust data.

Table 1: Sectors Affected

	England	Wales	Scotland	NI	UK
Retailers	34,020	2,175	3,835	1,460	41,490
Wholesalers	4,860	140	220	120	5,340
Importers	125	7	13	5	150
Total	39,005	2,322	4,068	1,585	46,980

Source: IDBR and consultation process

Note: Totals may not sum due to rounding

HM Revenue and Customs (HMRC) and Local Authorities will also be affected by these proposals. For these bodies there will be a one-off cost for reading and familiarising themselves with the new Regulations. HMRC may also incur costs for delaying consignments awaiting release into free circulation, pending receipt of documents from Enforcement Authorities confirming their compliance with the EU Kitchenware Regulation and subsequent release. These costs will ultimately be recovered from the Food Standards Agency (the FSA) and so although HMRC will initially incur these costs the FSA will bear the final burden.

Option 1 – Do Nothing

Costs to the Consumer

This is the baseline with which other options are compared. The costs associated with this option are predominantly public health related. Excessive levels of primary aromatic amines (PAAs) are known to be carcinogenic and excessive levels of formaldehyde can have potential adverse health effects. If nothing is done to prevent China from exporting polyamide and melamine plastic kitchenware into Wales without additional targeted controls, consumers will be exposed to the risk of ingesting primary aromatic amines and formaldehyde with potentially serious health consequences.

Option 2 - Fully implements the necessary requirements and makes appropriate domestic Regulations for the execution and enforcement of the EU Kitchenware Regulation

This option would provide enforcement authorities with the necessary domestic legislation for the enforcement and execution of the EU Kitchenware Regulation in Wales, which is binding in its entirety and directly applicable in all EU Member States.

Costs to Enforcement Authorities

One-off Costs

There will be a one-off cost to enforcement authorities for reading and familiarisation with the new Regulations. Each Local Authority (LA) in its area and each Port Health Authority (PHA) in its district are responsible for enforcing the legislation with respect to food safety and/or food hygiene, and thus will have the responsibility for enforcing the food contact materials legislation. At this stage it is unclear if a Trading Standards Officer (TSO) or an Environmental Health Officer (EHO) would be responsible for enforcing and thus familiarising themselves with these Regulations. To account for the uncertainty, we have presented a range for the hourly wage rate using an EHO hourly salary of £20.45⁵ as the lower bound, and a TSO hourly salary of £22.09⁶ as the upper bound; the midpoint is £21.27⁷.

We have estimated that one enforcement officer per LA will typically invest one hour to read and familiarise themselves with the new Regulations and that PHAs will require a further one hour to assimilate this information. In addition, we have estimated that each enforcement officer (in each PHA or LA) will spend a further hour disseminating key information to staff within the organisation; this results in a total of two hours for familiarisation in each LA and three hours per officer in each PHA.

Familiarisation costs are quantified by multiplying the hourly rate of a TSO/EHO by both the time required to read, assimilate and disseminate the new Regulations and the total number of enforcement authorities.

For LAs, using the range of enforcement officers wage rates: £20.45 - £22.09 and a time investment of two hours, results in a familiarisation cost per Local authority of between £40.90 and £44.17⁸, with a best estimate of £42.54. For PHAs, using the same range of salaries and a time investment of three hours, results in a familiarisation cost for each PHA of between £61.35 and £66.26 with a best estimate of £63.80. This gives a best estimate of £1,000 total familiarisation cost in Wales. Table 2 displays the familiarisation cost by location using the best estimate.

⁵ Wage rate obtained from the Annual Survey of Household Earnings, 2010. (See:<http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313>). Median hourly wage of 'Environmental health officers' £15.73 + 30% to cover overheads = £20.45).

⁶ Wage rate obtained from the Annual Survey of Household Earnings, 2010. (See:<http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313>). Median hourly wage of 'Inspectors of factories, utilities and trading standards' (£16.99 + 30% to cover overheads = £22.09).

⁷ $(£20.45 + £22.09)/2$

⁸ Note that wage rates have been estimated by taking the median rate and uplifting by 30% to account for overheads. This means that figures reported are to two decimal places and when multiplied the numbers may not accurately sum due to rounding.

Responses from the consultation process have indicated on the whole that time spent initially familiarising with the Regulations is reflected by this estimate. However, the responses also indicated that PHAs may require further familiarisation/training. One PHA suggested that 12 members of its enforcement team would be sent on a training course to ensure they could adequately enforce the legislation at a cost of £75 per officer. This additional requirement was not reflected by other PHAs however, in order to attempt to provide an estimate of the potential costs involved, we have assumed that on average each PHA will require additional training for six⁹ members of staff at a cost of £75 per person.

Table 2 - 'One-Off' costs to Local Authorities and Port Health Authorities in the UK (Best Estimate)

Country	England	Wales	Scotland	NI	UK
Number of LAs	354	22	32	26	434
Familiarisation cost (LA)	£15,058	£936	£1,361	£1,106	£18,461
Number of PHAs	39	1	N/A	N/A	£40
Familiarisation cost (PHA)	£2,488	£64	N/A	N/A	£2,552
Training cost (PHA)	£17,550	£450	N/A	N/A	£18,000
Total Familiarisation cost (LA+PHA)	£17,546	£1,000			£21,013
Total One-off Cost (All familiarisation + Training)	£35,096	£1,450	£1,361	£1,106	£39,013

Note: Totals may not sum due to rounding

Wage rates are reported in the text to 2 decimal places and when grossed may result in a rounding error

Equivalent Annual Net Costs (EANC)

In order for 'one-off' transition costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula¹⁰. Under Standard HMT Green book guidance a discount rate of 3.5% is used.

A total one-off cost to enforcement authorities in Wales affected by this proposal is an estimated £35,096. This yields an EANC of approximately £4,077 in Wales over 10 years. Table 3 displays the breakdown of the EANC per country.

⁹ Taking 6 as the midpoint of 0 and 12 to obtain an average estimate.

¹⁰ $EANCB = PVNCB/a_{tr}$, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^j \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

Table 3: Equivalent Annual Costs to Enforcement Authorities (by location)

Country	EAC
England *	£4,077
Wales **	£168
Scotland	£158
NI	£128
UK	£4,532

Ongoing Costs¹¹

In addition to reading and familiarisation costs, it is expected that the procedure for recording information arising from the controls will be established and reports will need to be forwarded to the Commission on a quarterly basis. This will require additional work for PHAs. The cost of this administrative work is not recoverable.

In a recent (2010) trial conducted by Suffolk Coastal Port Health Authority in Felixstowe, 1,657 consignments of plastic items were identified on manifests over a 10 week period, most of which will be captured by the EU Kitchenware Regulation.

Estimates of costs for a typical Port Health enforcement as exemplified by Felixstowe are shown in table 4 below. Note that each port will charge varying fees to business and thus evidence from Felixstowe is used indicatively and does not necessarily provide an accurate representation of costs to PHAs across the whole UK.

¹¹ Note that all costs in the ongoing costs section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to England only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Table 4 – Cost of activities at Felixstowe Port

	Activity – Document receipt & check	Time Involved	Officer (£50 inc on costs)	Admin (£22 inc on costs)
1	Check ship's manifest and detain consignments	10 mins		£3.67
2	Record receipt of Annex, commercial docs and analytical certificates, Invoice fees.	15 mins		£5.50
3	Conduct documentary check inc analytical cert check, stamp / sign / copy documents & notify HMRC (inc allowance for notifying customs of those consignments captured but not subject to checks)	30 mins	£25.00	
4	Record and submit data for quarterly return	12 mins		£4.40
		Sub total		£38.57
	Activity – Examination sampling & analysis			
1	Determination of correct sampling protocol – exam request information communicated to examination facility	15 mins	£12.50	
2	Examination of consignment including identity check	15 mins	£12.50	
3	Sampling of consignment according to legislation/ guidance	30 mins	£25.00	
	Sampling time (assuming simple sampling protocol)			
4	Prepare sample paperwork and issue detention notice	15 mins	£12.50	
5	Dispatch of samples to laboratory & consumables	Fixed Cost		
6	Analyst fee	Variable: Note Storage costs have been discussed separately in the cost section below	£400.00	
		Sub total		£462.50
	Activity – Charge for Onward transportation arrangements			
1	Arrangement for sampled consignments to move forward to ERTS for detention pending results – dealing with request, completion of additional paperwork.	30 mins	£25.00	
		Sub total		£25.00
		Total: excluding cost of tests and recording and submitting data		£59.17
		Total		£526.07

Source: Port of Felixstowe Suffolk

ERTS (Enhanced Remote Transit Shed)

Unrecoverable administrative costs

The evidence from Felixstowe suggests that recording and submitting data to the Commission will take an administrative member of staff 12 minutes to complete per consignment. The cost of reporting each consignment is quantified by multiplying the hourly wage rate of a member of staff carrying out the reporting (£22, as shown in table 4) by the length of time take per consignment (12 minutes) resulting in a cost of reporting each consignment of £4.40. The total cost is quantified by multiplying the cost of reporting each consignment (£4.40) by the total number of consignments entering the UK

(approximately 34,000), resulting in an annual reporting cost to enforcement authorities of £149,600. This cost is not recoverable.

Recoverable compliance costs

Table 4 also details other costs associated with complying with this regulation. Enforcement authorities will **initially** incur costs associated with administrative checks, sampling and analysis, and onward transportation. The costs highlighted here would be recovered from businesses. As table 4 indicates, the total cost of these actions (excluding analysis fees for tests and recording and submitting data) will cost approximately £59.17 per sampled consignment. In addition, all consignments entering the UK will be charged for the activities associated with document receipt and check. Table 5 details total activity costs incurred by Local Authorities (excluding sampling tests fees) that will be recovered from business.

Table 5: Summary of additional costs

Activity Type	Cost	Consignments affected	Total cost
Activity Document receipt and check	£34.17	34,000	£1,161,667
Activity Examination sampling and analysis	£62.50	3,400	£212,500
Activity Charge for onward transportation	£25.00	3,400	£85,000
Total	£0.00	-	£1,459,167

Source: Data from Port of Felixtowe

Recoverable sampling and analysis costs

Enforcement authorities will also incur sampling and analysis costs as each sampled consignment will need to be tested. Initially these costs will be incurred by the enforcement authorities who send the consignments to public analysts; however, enforcement authorities will seek to recover the costs from food importers/or importers of those goods. Evidence from consultation suggests that for the most part importers **will not** be able to recover these costs from Chinese exporters particularly if the goods are sampled and found to be compliant with the legal requirements. If the products are found to be non-compliant then large businesses are more likely to be able to recover costs from Chinese exporters due to their strong buying power. SMEs however are unlikely to be able to claim back costs in the same way. Evidence from consultation has suggested that SMEs will not be able to recover costs from exporters under any circumstances.

The sampling and analysis cost per consignment comprises a test for formaldehyde and a test for PAAs. Each product will only be tested for **either** PAAs or Formaldehyde; nylon kitchenware will be tested for formaldehyde and melamine kitchenware for PAAs. Costs of these tests vary greatly between laboratories and prices have been quoted ranging from between £395 and £617 for formaldehyde and between £395 and £917 for PAAs. Using the upper and lower bounds yields a best estimate of £506 for formaldehyde and £656 for PAA. In the absence of robust evidence, we have assumed there will be an equal split of each type of test. Multiplying the average sampling cost by the

estimated number of consignments being sent for analysis each year (3,400), results in a total annual cost of £1,975,400, which will be charged back to industry (see industry cost section).

Total Ongoing Costs to Enforcement Authorities

Accounting for the fact that most of the costs discussed above will be recovered, ongoing costs to enforcement authorities is as detailed below:

Table 6: Ongoing Costs to Enforcement Authorities

On-going Enforcement Costs	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
Reporting costs	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£1.50	£1.29

Note: These costs are for the UK as a whole; for England only see summary table

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future, which is why future costs are discounted.

Costs to HM Revenue and Customs (HMRC)

There will be a one-off cost to HMRC for reading and familiarising with the new Regulations. We estimate that one member of HMRC staff per Port Health Authority (PHA) will typically invest one hour to read and familiarise themselves with the new Regulations, plus a further hour to disseminate key information to staff within the organisation;

The familiarisation cost to HMRC is quantified by multiplying the cost per organisation by the time required to read and disseminate the new Regulations. The familiarisation cost per organisation equates to £47.74¹² (the hourly wage rate of a public sector worker £23.87¹³ multiplied by the time taken to become familiar with the regulation (2 hours). For the 39 PHOs in Wales, this generates a one off familiarisation cost to HMRC of approximately £47.74.

Equivalent Annual Costs (EAC)

It is necessary to equivalently annualise the one off cost to HMRC. The one cost component to HMRC in Wales totals £47.74, which equates to an equivalent annual cost to HMRC of approximately £216 over 10 years. Table 7 displays the familiarisation cost and EAC¹⁴ by location.

¹² Note that wage rates have been estimated by taking the median rate and uplifting by 30% to account for overheads. This means that figures reported are to two decimal places and when multiplied the numbers may not accurately sum due to rounding.

¹³ Wage rate obtained from The Annual Survey of Household Earnings, 2010 (See <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313>). Median hourly wage of 'Business and public service associate professionals' (£18.36 + 30% to cover overheads = £23.87).

¹⁴ EAC = PVNCB/a_{tr}, Where a_{tr} is the annuity rate given by:

Table 7: Equivalent Annual Costs to HMRC (by location)

Country	Number of PHO's	Total	EAC
England	39	£0	£216
Wales	1	£0	£6
Total	40	£0	£222

Ongoing Costs to HMRC

The additional controls imposed by the new Regulations are likely to place a significant demand on the enforcement authority's resources. It is estimated from HMRC information that approximately 34,000 (per annum) consignments of plastic kitchenware are imported; it is envisaged that most of these consignment(s) will fall under the scope of the EU Kitchenware Regulation. The Regulation does not allow for the release into free circulation of any consignment(s) until satisfactory completion of checks has been confirmed by HMRC.

In accordance with Cabinet Office directives, HMRC could recover some costs from the FSA as the lead Agency in the UK. At present we have no detailed information about how this will be done (See FSA costs section for further details).

Costs to Industry

One-off Costs

Any likely costs to businesses associated with the proposed Regulations relate only to those businesses that import polyamide and melamine plastic kitchenware, this may include wholesalers, supermarkets and other retailers placing such products on the market. For these sectors, there will be a one-off cost for reading and familiarising with the Regulations. We have estimated that a business importing polyamide and melamine plastic kitchenware will spend one hour reading and familiarising themselves with the new Regulations. In addition, we have estimated that each person uses a further hour disseminating key information within the organisation, which is a total of two hours.

7. It will cost each business £31.15¹⁵ to become familiar with the new Regulations (based on an hourly wage rate of £15.57¹⁶ for a manager multiplied by the time

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^j \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

¹⁵ Note that wage rates have been estimated by taking the median rate and uplifting by 30% to account for overheads. This means that figures reported are to two decimal places and when multiplied the numbers may not accurately sum due to rounding.

taken to read and disseminate the information (2 hours)). The total cost is quantified by multiplying the cost per business (£31.15) by the number of retail, wholesale and importing businesses affected in Wales (39,005 as shown in table 1) which totals approximately £72,339 in Wales. The breakdown of costs is displayed in the table below:

Table 8: Familiarisation Costs to Industry

	All Retailers and Wholesalers					
Country	Micro	Small	Medium	Large	Importers	Total
England	£1,098,135	£97,822	£11,559	£3,518	£3,879	£1,214,913
Wales	£65,890	£5,438	£580	£200	£231	£72,339
Scotland	£115,500	£9,459	£997	£349	£405	£126,710
NI	£44,888	£3,774	£413	£138	£158	£49,371
UK	£1,324,413	£116,494	£13,549	£4,205	£4,672	£1,463,333

Source: IDBR and consultation process

Note: Totals may not sum due to rounding

As the number of importers of kitchenware products was not available from IDBR it has not been possible to disaggregate the figures in the same way as has been done for the retailers and wholesalers above. We have therefore made an assumption about the proportion of businesses in each of the countries based on the proportions presented by the IDBR data. This is not an accurate measure, but is indicative of the likely distribution.

Equivalent Annual Net Costs (EAC)

As with enforcement authorities above, the one-off cost to industry must also be expressed as equivalent annual costs (EAC¹⁷). Total one-off costs to industry in Wales have been estimated at £72,339. This yields an EAC for industry in Wales of approximately £8,404 over 10 years. Table 9 displays the breakdown of the EAC per country.

¹⁶ Wage rate obtained from The Annual Survey of Household Earnings, 2010 (See <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313>). Median hourly wage of 'Managers in Distribution, Storage And Retailing' (£11.98 + 30% to cover overheads = £15.57).

¹⁷ EAC = PVNCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^j \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

Table 9: Equivalent Annual Costs to Industry

Country	EAC
England	£141,143
Wales	£8,404
Scotland	£14,721
NI	£5,737
UK	£170,003

Ongoing Costs¹⁸

Sampling Costs

Importers will be charged by Port Health Authorities for their products being sent to public analysts for sampling. As discussed under costs to enforcement authorities there are considerable uncertainties regarding the likely costs of sampling due to difficulties in estimating the number of samples likely to be taken and subsequently sent for analysis. We have estimated that approximately 34,000 consignments containing plastic kitchenware articles are imported by the UK annually each containing numerous containers. Sampling will be carried out at a rate of approximately 10% of all consignments which annually results in 3,400 tests being carried out. As detailed in paragraph 47 our best estimate for the sampling and analysis cost is £1,975,400. Responses from consultation have indicated that large businesses may be able to recover some of these costs from Chinese exporters if samples taken are found to be non-compliant but that SMEs will be unable to recover any of these costs. However even for large businesses for any compliant samples, costs will not be recovered. Without further evidence regarding the likelihood of finding non-compliant samples and the volume of trade accounted for by large businesses in this sector it is not possible to estimate the proportion of costs that may be passed back to China. For the purpose of this analysis we have therefore conservatively assumed that **all costs** will be borne by UK Industry.

Storage Costs

Importers or their representatives may also incur additional costs if their consignments have been stored pending the release of analytical results. For example the Port of Felixstowe charges rent for each day a container remains on the port after a specified timescale. Each port charges different fees and so we've used the example of the Port of Felixstowe to illustrate the likely costs involved. See table 10 below:

¹⁸ Note that all costs in the ongoing costs section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to England only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Table 10: Storage charges

Size of Container	Detainment charge from day 6 to day 12	Total Cost day 6 to 12*	Detainment charge from day 13 onwards	Total cost day 13 onwards**	Cost per container for 20 days	Cost per container 2 weeks (best estimate)
Up to 20 foot	£13.60	£95.20	£36.70	£293.60	£388.80	£168.60
Over 20 foot	£27.20	£190.40	£73.40	£587.20	£777.60	£337.20
Total All Consignments (up to 20 foot)						£573,240
Total All Consignments (over 20 foot)						£1,146,480

Source: Port of Felixtowe

*daily fee multiplied by 7 days

**daily fee multiplied by 8 days

Consultation with PHAs indicates that each consignment that is sampled will require storing until the analysis results are available. As approximately 10% of all consignments containing melamine plastic kitchenware products will be sampled, this means that all 3400 sampled consignments will require storing at the port for a period of time. Guidance for the EU Commission suggests that consignments could be held for up to 3 weeks but that the intention would be to have the tests carried out in two weeks or less. Therefore as a best estimate we have assumed that consignments may require storing for on average 2 weeks. The Port applies a daily storage fee (see table 10) for each container, based on the length of the detention and the size of the container. As we cannot be sure of the size of the containers being stored we have used a range based on the cost of storing each size. Using costs provided by the Port of Felixstowe (see table 9 above), cumulative daily storage fees for a total of 14 days range from £168.60 to £337.20 per container. This yields a total cost to industry of between £573,240 and £1,146,480.

Demurrage costs

Responses from consultation have highlighted that in addition to charges made for storage, containers held at port will also incur demurrage fees (charged by the shipping line) at approximately £60-£120 per day for each additional day that the container is held in port. We are advised that each shipping company will make charges after differing periods of time but beginning at around 14 days is average. As we've assumed in the storage costs section above that on average containers will be held for two weeks, it seems reasonable to assume here that a maximum of 50% of containers will be held for up to 20 days. Using the sample rate of 10% and assuming 50% of these will be held for 20 days results in 1700 affected consignments and a cost ranging between £102¹⁹k and £204k²⁰ annually, with a best estimate of £153k.

¹⁹ £60*1700 consignments

²⁰ £120*1700 consignments

Other Recovered PHA Costs

As detailed in the ‘costs to enforcement authorities’ section above, PHAs will seek to recover additional administrative costs associated with document checking, onward transportation and sampling. Table 5 provides detail on the breakdown of this; the total cost amounts to approximately £1,459,167 annually.

Total Ongoing costs to Industry

Note that the annual costs presented below are quoted in constant prices. This means that the costs have been adjusted for any impact that inflation may have on rising prices over the period.

Table 11: Ongoing Costs to Industry

On-going costs to Industry	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
costs	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£1.98	£19.75	£17.00
Detainment fee	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£0.99	£9.91	£8.53
Demurrage Fees	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£0.15	£1.53	£1.32
PHA costs	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£1.46	£14.59	£12.56
Total Costs	£4.58	£45.79	£39.41									

Note: These costs are for the UK as a whole; for England only see summary table

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future, which is why future costs are discounted.

Foregone Earnings

Industry may face further costs as a result of consignment detainment associated with loss of earnings for foregone sales. If businesses do not have enough products in stock to compensate for product detainment this could potentially be a costly issue. Some consultation responses have highlighted potential problems in this area particularly around season/festival specific produce e.g. Halloween. Storage of up to 20 days at specific times of year could mean that the goods cannot be sold in the limited sales period available. Consulted parties were not able to provide estimates of the likely scale/magnitude of such sales losses due to uncertainties around the underlying data i.e. how often one of their containers will be sampled and how long it will be held at port, and as such it has not been possible to provide a quantification of these costs; any estimates would also be dependent on the time of year.

Costs of product destruction

EU guidance does not automatically necessitate destruction of products if they do not comply with the EU regulation.²¹ In the possible scenario that the plastic

²¹ The competent authority should place under official detention a consignment that does not comply with the applicable food contact materials legislation and, having heard the business operators responsible for the consignment; it could take the following measures:

kitchenware is destroyed as a result of containing excessive levels of PAA and formaldehyde, the importer would initially bear the costs. However we anticipate that some of the costs incurred could be recovered from the Chinese exporter. Again, it is more likely that large businesses will be able to recover full costs whereas this may be more difficult for SMEs. We have been unable to quantify the costs associated with destruction due to underlying uncertainties which has meant importers were unable to provide evidence, but we anticipate that where costs are incurred they will diminish over time for two reasons 1) that if kitchenware suppliers (Chinese exporters) have to bear the costs of destroyed products they will be less likely to infract the EU Kitchenware Regulation in future and 2) that if importers have to bear the costs they will switch to suppliers with a reputation for adhering to the standards set. In addition as there is scope under EU guideline for not requiring destruction of produce we anticipate that this would be used only as a last resort.

Food Standards Agency (FSA)

The FSA will incur charges from HMRC for compliance checks for release for free circulation of plastic products from China on the FSA's behalf. HMRC will charge the FSA a one-off fee of £161.50 to set up new proposed measures. HMRC will also charge the FSA an Annual fee of £64.60 for review of the measure. HMRC will then charge a fee of £8.84 to check each import declaration which is sent before the arrival of a consignment. To quantify the cost to the FSA of HMRC checking all import declarations we multiply the charge per check (£8.84) by the number of declarations that will accompany a consignment of plastics from China (approximately 34,000) resulting in an annual cost of checking each declaration of £300,560. This results in total annual cost of £300,625²² for each consignment being checked and the annual review. There will also be a one-off cost of £162 for HMRC set up fee.

Equivalent Annual Net Costs (EANC)

It is necessary to equivalently annualise the one off cost to the FSA. The one cost component to the FSA totals £162.50, which equates to an equivalent annual cost to the FSA of approximately £19.72 over 10 years.

(a) order that such plastic kitchenware be destroyed, in particular in cases where the consignment is injurious to human health or is unsafe;

(b) order that such plastic kitchenware be re-dispatched outside the Union; (c) order that such plastic kitchenware be used for purposes other than those for which it was originally intended; (d) if the plastic kitchenware has already been placed on the market, monitor it or, if

necessary, order its recall or withdrawal before taking one of the measures referred to above.

²² £300,560+ annual fee of £64.60

8. Ongoing Costs²³

Table 12: Ongoing Costs to the FSA

On-going Agency Costs	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
HMRC Charge and annual review cost (UK)	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£3.01	£2.59

Note: These costs are for the UK as a whole; for England only see summary table

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future, which is why future costs are discounted.

Total Costs Summary

A table summarising all one-off and ongoing annual costs to affected parties has been provided below for reference. Please note that all costs reported so far in the ongoing costs sections and one-off costs to the FSA section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to Wales only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Table 13: Costs Summary Table

	Year 0 (m)	Year 1 (m)	Year 2 (m)	Year 3 (m)	Year 4 (m)	Year 5 (m)	Year 6 (m)	Year 7 (m)	Year 8 (m)	Year 9 (m)	Total Cost (m)	Present Value (m)
One off costs												
Enforcement												
Authorities	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.004	£0.041	£0.035
Industry	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£0.141	£1.411	£1.215
HMRC	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.002	£0.002
FSA	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000	£0.000
Total	£0.145	£1.455	£1.252									
Ongoing costs												
Enforcement												
Authorities	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£0.12	£1.24	£1.07
Industry	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£3.80	£38.02	£32.72
HMRC	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
FSA	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£0.30	£3.01	£2.59
Total	£4.23	£42.26	£36.38									
Grand Total	£4.37	£43.72	£37.63									

Note: All costs have been presented on an annual basis. For one off costs the equivalent annual cost value is used.

²³ Note that all costs in the ongoing costs section are attributable to the UK as a whole. In order to estimate the proportion of costs that may reasonably be attributed to England only we have assumed a proportionate split based on the IDBR country based distribution of businesses. This does not necessarily provide an accurate representation but is useful for indicative purposes and will serve as the best estimate in the absence of robust data.

Benefits

Option 1 – Do nothing

There are no identifiable incremental benefits for this option.

Option 2 - Fully implements the necessary requirements and make appropriate domestic Regulations for the execution and enforcement that will support the EU Kitchenware Regulation

This option would ensure that enforcement authorities within Wales, including port health authorities, have adequate statutory powers to prevent the placing on the market of those materials and articles that fail to meet the requirements of the EU Kitchenware Regulation. This option would also harmonise standards across Member States and prevent any distortion of trade occurring as a result of there being different regulations in different individual Member States. It also meets the Government's commitment to fulfil its EU obligations and contributes significantly to providing the means of protecting consumers from ingesting harmful levels of chemicals that could have adventitiously migrated from the materials or articles that were intended to be brought into contact with food.

Consumers

This option minimises the potential for consumers to be exposed to harmful levels of substances migrating from food contact materials and articles to the food itself.

However, the benefit to consumer health is unquantifiable as it is impossible to isolate the benefits of this Regulation to a reduction in ill health from chemical contamination. Excessive levels of PAAs are known to be carcinogenic; it's not possible to provide more information, as no one type of cancer can be isolated because PAAs are genotoxic. In such instances it is not possible to quantify the benefits to consumer health. Excessive levels of formaldehyde can have potential adverse health effects. For further detail on this please see Annex 4.

Consultation

In Spring/Summer 2010, during the course of European negotiations, the FSA conducted an informal consultation on the Commission's draft proposal for specific control measures on polyamide and melamine plastic kitchenware originating in or consigned from China. Enforcement authorities and their representative bodies, trade associations, individual companies (both large businesses and SMEs), the UK Border Agency and HM Revenue and Customs and the UK's Official Control Laboratories were targeted. Responses to the consultation played a key role in shaping the EU Kitchenware Regulation. The FSA has continued to liaise with many of these stakeholders and has kept them abreast with developments.

The informal consultation carried out in 2010 raised a number of pertinent issues about cost implications in relation to the EU Kitchenware Regulation from enforcement authorities and industry. These comments informed the UK's approach to discussions in EU Working Group meetings, which led to a substantial reduction in the percentage of consignments to be subjected to random physical checks from the 50% initially proposed by the Commission down to 10%, as reflected in the published EU Regulation.

Formal Public Consultation

The FSA conducted a formal public consultation from 28 April to 27 May 2011, seeking comments on a draft of this instrument and an earlier draft of the Impact Assessment. The EU Kitchenware Regulation was also included in the consultation package. Once more, Enforcement Authorities and their representative bodies, trade associations, individual companies (both large and SMEs), the UKBA, HMRC and the UK's Official Control Laboratories were consulted.

The FSA received 10 responses to the consultation in England from Enforcement Authorities, industry and trade associations representing the interests of small food businesses and large retailers. Comments focused mainly on the estimated costs associated with the new legislation as reflected in the draft Impact Assessment.

There were several comments on the draft Regulations from Port Health Authorities (PHAs) on drafting detail and these have been acted upon where necessary.

Enforcement authorities were generally in support of the proposed control measures and the Regulations enforcing them for the increased protection they provided UK citizens, from exposure to harmful chemicals. They indicated that costs for familiarising themselves ("familiarisation costs") with the requirements of new legislation were underestimated. The PHAs asked for further guidance on consistent execution of the Regulations.

There was a general consensus amongst industry that familiarisation costs had been underestimated. Industry suggested that it would be unable to pass the additional costs associated with these controls on to Chinese exporters. Industry also highlighted the costs of storing consignments subjected to random 10% checks and held pending analytical results and the costs associated with sourcing relevant products from countries other than China, should they opt to do so. Industry also raised the possibility that the charity/voluntary sector could potentially be affected, although no comments were received from this sector.

Stakeholders were asked to provide evidence to support their views in relation to additional costs over and above their commercial activities of the proposed Regulations; however, none were able to quantify the additional costs in their comments or provide evidence to support their views.

A full summary of comments received in response to the consultation will be published on the FSA's website.

Enforcement

The purpose of The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011 is to provide enforcement authorities, e.g. Environmental Health Officers, Trading Standards Officers and Port Health Officers with the necessary powers to prevent non-compliant polyamide and melamine plastic kitchenware originating in or consigned from China from entering the market in Wales.

Statutory Review

The Minister for Health and Social Services has agreed to the Food Standards carrying out a review of these regulations within five years. The review period begins when the proposed Regulations that are the subject of this impact assessment come into force. In carrying out the review, the FSA is required to produce a report that will assess whether the Regulations achieved their intended objectives. The report will also assess if these objectives could be achieved by means that impose less regulation.

EU Guidance

The Commission has produced draft EU guidelines to provide guidance on the application of the EU Kitchenware Regulation to assist businesses and enforcement bodies. The Commission's Joint Research Centre (JRC) has also produced draft technical Guidelines²⁴ for laboratories on testing the migration of PAAs from polyamide kitchenware and for formaldehyde from melamine plastic kitchenware. The draft guidelines are currently under discussion with Member States, once agreed; they will be adopted and published. The guidelines, when published, will be available on the Commission's website at:

http://ec.europa.eu/food/food/chemicalsafety/foodcontact/index_en.htm

Risks

For option 1 'Do nothing' - the risk of not having the Regulations in place would mean that enforcement authorities would not have the necessary powers to enable them to enforce the EU Kitchenware Regulation. Therefore, the obligations to put in place the provisions for its enforcement, for offences to be prosecuted and for penalties for those found to be in breach of the EU Kitchenware Regulation will not be fulfilled. This would lead the UK Government being cited in infraction proceedings by the Commission and this in turn could

²⁴ The technical Guidelines produced by the JRC have been produced in collaboration with its EU official network of National Reference Laboratories and endorsed by the Commission's competent service DG Health and Consumers (DG SANCO) and its network of Member State Competent Authorities.

result in financial penalties being incurred. It would also leave the regulation of food contact materials in the UK deficient in comparison with the rest of the EU.

Consumer safety may also be compromised and the potential for consumers to be exposed to harmful levels of substances migrating from food contact materials to the food itself.

9. Due to the specific nature of this Regulation and the fact that the plastics sector is not a specified category in the Standard Industry Codes (SIC), we are likely to be overestimating the number of affected businesses. Because we are likely to be overestimating the number of businesses affected it will lead to an overestimation of the familiarisation costs to industry as the number of businesses affected drives the familiarisation cost.

The assumptions used to derive the annual costs assume that the number of imports of plastics from China will remain constant throughout the duration of this policy. It is likely that the number of imports of plastics from China will decline after the application of this regulation as a result of costs being imposed on industry, which may lead to plastic imports being sourced from other areas. However, we lack sufficient data to make the assumptions about future imports of plastics from China so are likely to be over estimating the ongoing costs of this policy.

We have had to make assumptions regarding the number of consignments that will be tested and therefore detained.

Specific Impact Tests

Competition Assessment

We have fully considered the questions posed in the Office of Fair Trading (OFT) competition assessment test²⁵ and conclude that the preferred policy option on the proposed Regulations that enforce the EU Kitchenware Regulation are unlikely to hinder the number or range of businesses or the ability for operators to compete. The proposals are unlikely to significantly affect competition and will apply equally to all importers and retailers of polyamide and melamine plastic kitchenware. The EU legislation is directly binding on all Member States and the businesses that trade within them. Charities and voluntary organisations are also unlikely to be affected by these proposals.

Small Firms Impact Test

Stakeholders, including the Department for Business Innovation and Skills (BIS), and the Federation of Small Businesses have been consulted throughout the negotiations on the EU Kitchenware Regulation, in an earlier informal consultation and throughout the formal consultation process. From responses to the consultation we understand that large business importers may be able

²⁵ http://www.offt.gov.uk/shared/oftr/reports/comp_policy/oftr876.pdf

recover some of the costs of testing and sampling from the Chinese exporters if products are found to be non-compliant but it will not be possible to recover costs if products are compliant with the regulation. Consultation responses further indicated that from SMEs cost recovery will not be possible at all even if products are found to be non-compliant due to their limited market power. In addition, the incremental costs resulting from this policy will account for a larger percentage of revenue for a smaller firm and it may lack the resources and scale to cope with the additional regulations compared to larger companies.

Sustainability

Impacts under the three pillars of sustainable development (environment, economic and social) have been and continue to be considered in the preparation of this Impact Assessment. Option 2 is the preferred option as it provides enforcement authorities the necessary powers to enforce the EU Kitchenware Regulation to ensure that polyamide and melamine plastic kitchenware entering the retail market in Wales are compliant with the that Regulation. This option will also provide a significant measure of control that would minimise the potential health risks to consumers.

Race/Gender/Disability equality issues

The FSA believes that the proposal will have no impact on race, gender or disability equality issues.