

Removal of the requirement to use the ‘Do Not Eat’ pictograph on active and intelligent food contact materials

Launch date: 13 July 2022

Respond by: 10 August 2022

This consultation will be of most interest to

This consultation will be of most interest to the food and packaging industries, particularly those involved in the national production and use of active or intelligent materials and articles that are intended, or reasonably expected, to come into contact with food. It will also be of interest to consumers.

Consultation subject

This concerns the ‘Do Not Eat’ pictograph on active or intelligent articles placed onto the Great Britain (GB) market. EU Law relating to food contact materials continues to apply in Northern Ireland, and under the current terms of the Protocol on Ireland/Northern Ireland (NIP), products placed on the Northern Ireland market will continue to use the EU ‘Do Not Eat’ pictograph.

Purpose of the consultation

The FSA is proposing to remove the requirement to use the ‘Do Not Eat’ pictograph on articles being placed on to the GB market. This consultation is seeking stakeholders

views on the proposed policy change in relation to the requirements for the 'Do Not Eat' pictograph for active or intelligent materials and articles onto the GB market.

How to respond

Responses to this consultation should be sent to tim.chandler@food.gov.uk

Details of consultation

Following the UK's exit from the EU and pending a final response from the European Commission (see below), the legislative requirement for the application of the 'Do Not Eat' pictograph to active or intelligent materials and articles placed on to the GB market is not appropriate if the EU confirms that it has ownership of the copyright of the pictograph. Accordingly, where the EU has copyright of the pictograph or is the pictograph holder, it is proposed that the GB requirement to include it (where it is technically possible) should be removed. This would be solely applicable for GB-based businesses producing active and intelligent materials for the GB market. The current mandatory requirement of applying the wording of 'DO NOT EAT' to relevant materials and articles will continue to apply.

Please note that this proposed amendment remains provisional whilst we obtain a definitive view from the European Commission.

Active or intelligent materials and articles produced for the Northern Ireland or EU market would need to continue to adhere to EU requirements, which will be to apply the 'Do Not Eat' pictograph where it is technically possible. In accordance with current EU requirements this would also be accompanied by the mandatory wording of 'DO NOT EAT'.

Northern Ireland-based businesses that are lawfully placing goods on to the Northern Ireland market in accordance with EU requirements will still be permitted to place onto the GB market as per the requirements.

It is important to note that this consultation does not concern all food contact materials, only those that are active or intelligent. Some examples include oxygen scavengers and

moisture absorbers that are inserted into packs of food. Further details can be obtained under the relevant legislation section.

Relevant legislation

Prior to leaving the EU the law covering active and intelligent materials intended to come into contact with food was covered under food contact material legislation. Following EU Exit, Regulation (EC) No 450/2009 on active and intelligent materials and articles intended to come into contact with food has been retained (subject to amendments) and now forms part of domestic food law, applicable in England, Scotland and Wales. Article 11 of retained Regulation (EC) No 450/2009 sets out specific labelling requirements. The legislation currently provides that, “to allow identification by the consumer of non-edible parts, active and intelligent materials and articles or parts thereof shall be labelled, whenever they are perceived as edible, with the words ‘DO NOT EAT’ (capitalised); and with the pictograph specified in the Regulation, where it is technically possible” (see the current required pictograph below as in retained law). The FSA proposes to remove this requirement regarding the pictograph.



DO NOT EAT

Issue

We propose to remove the requirement to apply, where technically possible, the ‘Do Not Eat’ pictograph to active and intelligent materials intended solely for the GB market where the EU has the copyright of the pictograph or is the copyright holder. The application of the wording of ‘DO NOT EAT’ will continue to remain a mandatory labelling requirement for active and intelligent materials and articles. As a result of this proposed change, further consequential amendments to retained Regulation (EC) No 450/2009 may also be needed, to reflect the removal of this requirement.

We understand that this proposal will also be of interest to consumers from a labelling perspective. We will consider the consultation responses and will proceed with the removal of the requirement to include the 'Do Not Eat' pictograph, where it is technically possible within retained law should this be the consensus view.

Impacts

The FSA has considered the option of replacing the image with a GB specific pictograph, which would present a potentially significant burden to businesses placing relevant products on to the market in GB and also create regulatory divergence across the UK with Northern Ireland continuing to apply the 'Do Not Eat' pictograph, as per the EU regulations, applicable under the NIP. The FSA assessed this to be disproportionate as the requirement to display a pictograph is not necessary for consumer safety, i.e. the wording 'DO NOT EAT' is a mandatory requirement whereas the inclusion of the pictograph is only mandatory where technically possible (for example, size and type of material). Introducing a new specific GB pictograph is potentially disruptive. Therefore the minimal intervention, removing the requirement, has been determined to be the most effective and least burdensome approach, whilst retaining a high level of safety for consumers.

We perceive the level of impact and burden of this proposed change, which is the minimum required intervention, to be extremely low. We have therefore not produced a full written Regulatory Impact Assessment.

Our assessment of the impact is based on the assumptions identified through initial FSA research, and previous discussions with stakeholders. These assumptions are:

- There will be one-off familiarisation costs to business operators that manufacture these materials and articles. We have estimated that it will take up to two hours for business operators to read the legislation and any accompanying guidance. We have also estimated that it will take up to two hours to disseminate this information to key staff. Based on the number of known GB-based business operators that produce active and intelligent materials and articles, the total familiarisation cost is £1,710 across England, Wales and Scotland.

- There will also be one-off familiarisation costs to enforcement bodies concerning the proposed amendments to retained Regulation (EC) No 450/2009, including any guidance that accompanies this. We have estimated that it will take up to two hours for enforcement bodies to familiarise themselves with the new requirements. We have also estimated that it will take up to two hours to disseminate this information to interested staff. The total familiarisation costs to enforcement bodies across England, Wales and Scotland is £53,217.
- We understand that only a small proportion of GB-based businesses will be affected by this change. We anticipate that there will only be a limited number of businesses that specialise in producing active or intelligent materials and articles for contact use.
- For GB-based business operators placing onto the GB market, they would only need to apply the mandatory wording. Although it is proposed that there will no longer be a requirement within legislation to include the ‘Do Not Eat’ pictograph where it is technically possible, this does not prevent an operator from continuing to apply it should they choose to. GB-based business operators should continue to remain aware that, where the EU retains the copyright of the pictograph it is therefore recommended that they assure themselves that they are adhering to the latest food and intellectual property law requirements.
- As this proposal is not a ban for using the pictograph (it is about removing the requirement to use it within the GB legislation), there will not be a transitional period. Instead, we would expect, in practice, business operators to have the opportunity to exhaust their remaining stock that displays the pictograph. As indicated in this consultation, continuing to place stock onto the GB market would be at the risk of the business operator. It is therefore recommended that any new requirements are adhered to concerning the production of new active and intelligent food contact materials for the GB market.
- As the application of the wording ‘DO NOT EAT’ will remain mandatory for all such active and intelligent materials and articles, we do not anticipate a

significant impact to consumers since the current pictograph is only applied where it is technically possible to do so. The current minimum requirement, which is to ensure that consumers are aware that these products are not food, is not impaired.

The FSA estimated familiarisation cost for England, Wales and Scotland is provided at Annex B.

We welcome stakeholders' views, and any supporting evidence wherever possible, on our assessment of the impact of this change and particularly on the assumptions stated above.

Engagement and Consultation Process

A four-week public consultation is being launched to provide interested parties with an opportunity to comment on the policy proposals for active and intelligent food contact materials. This consultation period is relatively short in comparison to the optimal length of twelve weeks. This shorter consultation is due to the need for the FSA to conclude the process with sufficient time to allow for the use of European Union (Withdrawal) Act 2018 ('EUWA') powers, which expire at the end of 2022. These powers would be used to implement the legislation in the event the consultation responses are supportive.

Any responses to the consultation will be given careful consideration and a summary of responses received will be published on the FSA website within three months of the consultation closing.

Prior to this consultation, the FSA approached a small number of GB-based business operators that were known to produce active or intelligent food contact materials and articles for the national market. At the time of this engagement, the FSA indicated that a change to the pictograph was likely to be required as the UK prepared to exit the European Union. Our initial approach did not formally set out the proposals. This full consultation now gives all interested parties the opportunity to submit their views on the latest proposals.

We have identified six specific questions below that we would like to receive stakeholders views on (where relevant). Other related stakeholder comments are also welcome.

Following the consultation we aim to take forward the necessary legislative changes and develop advice and guidance for stakeholders.

Questions asked in this consultation:

1. Do you currently use the pictograph on any of the active or intelligent materials and articles you produce? If you do, what type of materials and articles?

2. For businesses that currently produce materials and articles bearing the current pictograph, which markets (nationally and internationally) do you supply to?

3. Do you have any views or concerns with the proposed approach to removing the current requirement (i.e. where it is technically possible to apply) concerning the 'Do Not Eat' pictograph?

4. Do you anticipate any impacts to the trade of active and intelligent food contact materials, for example within the UK (between GB and Northern Ireland) and outside of the UK?

5. Do consumers in particular have any strong views about the proposal from a labelling perspective? What are your views on the need for a pictograph in circumstances where it would be technically possible to display?

6. Are there any other impacts or considerations resulting from removing this pictograph that we have not identified in this consultation? We welcome any other views or comments that you have in relation to this issue.

Other relevant documents

[Retained Regulation \(EC\) No 450/2009](#) on active and intelligent materials and articles intended to come into contact with food.

Responses

Responses are required by close 10 August 2022. Please state, in your response, whether you are responding as a private individual or on behalf of an

organisation/company (including details of any stakeholders your organisation represents).

Please send response to tim.chandler@food.gov.uk

Responses will be shared between the FSA and FSS. For information on how the FSA handles your personal data, please refer to the [Consultation privacy notice](#).

Further information

If you require a more accessible format of this document please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Tim Chandler
Food Additives, Flavourings and Contact Materials Branch
Food Policy Division

Annex A: List of interested parties

- EmcoUK
- Valspar
- O2Zero
- OxyFreeOxygenAbsorbers
- Elliott Absorbants
- Sirane

- Addmaster
- Parkside Flexibles
- Devro
- Paramount Packaging
- Dupont UK
- Active Packaging
- Sirap UK
- Synpac Limited
- Intertek
- ColorMatrix Group

Annex B: Estimated familiarisation costs for England, Wales and Scotland

-	Familiarisation time (h)	Cascading time (h)	No. of staff	Wage/hour	Estimated costs
EHOs	2.0	2.0	372	£25.13	£37,392
TSOs	2.0	2.0	174	£20.28	£14,115
Business Managers	2.0	2.0	15	£28.50	£1,710
Total	-	-	-	-	£53,217

Assumptions

One manager per business will need to familiarise themselves with the guidance and then cascade to other staff;

One EHO/TSO per Local Authority will need to familiarise themselves with the new guidance and then cascade to other staff;

All other staff will be informed by lead officers/ business managers through business as usual meetings;

Due to previous feedback, a familiarisation time of 2 hours has been estimated, plus a further 2 hours for dissemination to key staff.