

dti

**THE CERAMIC ARTICLES IN
CONTACT WITH FOOD (ENGLAND)
REGULATIONS 2006**

Government response to the
Consultation on proposals to
implement Directive
2005/31/EC

MARCH 2006

URN 06/899

Transposing Directive 2005/31/EC on ceramic articles intended to come into contact with foodstuffs

A summary of replies received to the DTI consultation paper of December 2005 on proposals to implement Directive 2005/31/EC in England.

The DTI's consultation paper on proposals to implement Directive 2005/31/EC in England was published in December 2005. Over 220 organisations were contacted with directions to the consultation document on the DTI website. Face-to-face meetings were also held with representatives of the Cookshop & Housewares Association, Wedgwood and the Food Standards Agency (FSA). The consultation closed on 28th February 2006.

We received only five written responses (two from the enforcement side, one from a large retailer, one from a small retailers representative and one from a small producer). This was not surprising given the low level of new burden being introduced. We are nevertheless grateful to those who did offer their views. Where these were made known to us we have also taken account of responses received to the analogous consultation exercises in Scotland, Wales and Northern Ireland, which in Scotland and Northern Ireland are not due to close until mid March. In addition, further messages were picked up from telephone conversations (mainly with retailers and lawyers), as well as from meetings with small retailers and a large producer (Wedgwood)

The following is a summary of the responses we received, together with the Government's reaction to these.

DTI Consumer & Competition Policy Directorate
March 2006

Introduction

This consultation focused on the draft Regulations that are intended to transpose Directive 2005/31/EC. The Directive amends Council Directive 84/500/EEC and the draft Regulations will replace the Ceramic Ware (Safety) Regulations 1988.

The aim of the Directive is to make it easier for producers, distributors and enforcement authorities to check that ceramic articles intended to come into contact with food comply with existing migration limits for cadmium and lead.

The new provisions include a requirement that ceramic products intended for, but not yet in contact with food, be accompanied at all marketing stages (including retail) by documentation stating that they comply with the rules applicable to them. There is also now a clear obligation on producers and importers to make available to enforcement authorities (on request) documentation demonstrating compliance with migration limits. Testing requirements have also changed, with performance criteria now determining what analytical methodologies can be used to test for migration compliance. The final amendment requires Member States to introduce a prohibition on the manufacture and importation of ceramic ware products that do not comply with these requirements. All these new provisions are to come into effect on 20th May 2007, though Member States are required by the Directive to permit the free trade of products complying with these requirements from 20th May 2006, hence the need to implement the Directive by that date.

The comments received generally supported the Government's view that very little additional burden was being introduced by the proposals. Where concern was evident, this tended to focus on the need for a proportionate application of the new requirements for small retailers and small potteries.

The following summary provides more detail on the comments received to individual questions highlighted in the consultation document, and also indicates the Government's response to these.

Q1. Do you agree with our assessment that meeting the declaration of compliance requirement will entail only negligible cost to businesses? Please quantify the additional costs of compliance.

From the few responses we did receive, and from other related correspondence and telephone conversations, it was evident that there was some misunderstanding about the purpose of this requirement. Some retailers (large and small) did not appear to realise that the declaration was not intended for consumers, but rather for the enforcement authorities and for businesses in the supply chain. The fear resulting from this misunderstanding was that products needing to be 'accompanied by a written declaration' meant that every cup and saucer available for sale as an individual item would have to have its own label carrying the declaration, which would have placed a significant burden on producers and retailers alike.

There was also some concern about the difficulty small retailers who normally acquire small quantities of product from cash and carry businesses would have in obtaining declarations for every item or range.

The Government's response

The main purpose of this requirement is to provide a means whereby the enforcement authorities can quickly check on the compliance of a product prior to sale without having to go back to the manufacturer, who might be based in another country. The manufacturer (or the importer into the Community) would be expected to provide the declaration, which could cover a large range of products (even the manufacturer's entire product range) with every consignment released on to the market. The requirement on distributors (including retailers) would be simply to retain copies of this documentation so that it was available for the authorities to inspect, and to provide copies with any further onward supply to other distributors. Distributors who did not receive a declaration when acquiring the product would have to produce their own (after having taking steps to ensure that the product did comply with requirements) before they could themselves supply the product. There would be no need to obtain a declaration when replacing like-for-like products for which a declaration was already held.

In the interests of proportionality, both the Government and the enforcement authorities agree that small retailers in the habit of acquiring small quantities from cash and carry outlets should not need to obtain declarations so long as they keep records of where they acquired the products, and in acquiring the products took reasonable steps to ensure that they were compliant. With this approach the authorities would still be able to maintain local contact with a documentary trail leading back to the manufacturer. This approach found favour with a group of small retailers when this was discussed during a face-to-face meeting.

Q2. Do you agree with our assessment that meeting the requirement to show enforcement authorities (on request) documentation demonstrating compliance with migration limits should not introduce any new costs for manufacturers or importers?

The English consultation received very little feedback on this point, but we were grateful to learn of comments received under the Scottish consultation.

This provision does not introduce any significant new burdens as there is already a legal requirement to comply with migration limits (which remain unchanged), and the steps one would already take to ensure this compliance – i.e. testing against British Standard BS 6748:1986, or using only certified lead/cadmium-free glazes and decoration materials – should generate sufficient documentation/evidence to meet this requirement. Nevertheless, it was clear that a number of small craft potters were concerned that the new requirement might call for a greater incidence of testing than was currently the case. Some who worked exclusively with lead/cadmium-free glazes and colours feared that testing would become a mandatory requirement for them for the first time and they were unsure what the cost of this would be.

There was also a question about what should be done with ceramic products produced at schools/evening classes etc that might subsequently be made available for sale to the public, and also with one-off antique replicas.

The Government's response

It was already clear from contact with the industry that this requirement would introduce no new burden for large and medium sized producers, who already systematically test their products as part of the normal production process. Indeed, producers exporting to the USA normally go way beyond Europe's requirements by testing to the far more stringent lead/cadmium migration requirements of California State's Proposition 65.

The possibility of any new burden being introduced here relates only to small-scale production (e.g. the craft potter), where the production process is more prone to variation than is the case with the larger producers and where the cost of frequent testing would be more difficult to accommodate.

Discussions with the European Commission and with the enforcement authorities reassured our view that a proportionate approach to introducing this requirement could be adopted for the smaller non-exporting producer. For example, it is felt that where only lead/cadmium free materials are used, and documentation is kept to demonstrate this, this would be sufficient to satisfy the enforcement authorities. Where use of such material could not be demonstrated we would consider it reasonable (and proportionate) to expect a smaller potter to select one or two representative samples from his production for testing each year. The cost of the test is typically around £25 (plus transport/p&p) per item, and there are currently 3 or 4 UKAS accredited facilities in the UK who can do the testing.

In considering school/evening class production we take the view that sample testing to the same level as the small potter would be less reassuring as one would expect an even greater variation in quality control. The funds available to schools and evening classes would likely be insufficient to meet the cost of wide scale testing, and therefore use of lead/cadmium-free materials should probably be recommended.

Unless it was made clear that an antique replica was unfit to come into contact with food it would be expected that a piece comprising the same materials (and having been fired) would need to be tested.

Q3. Do you agree with our assessment that a performance-based approach to compliance testing methods imposes no new burden on businesses, and may well carry with it some benefit for both businesses and enforcement authorities? Please quantify the benefits.

We received few responses on this point, and all of these agreed with our view that no new burdens were being introduced. One enforcement reply agreed that the liberalisation of testing methodology requirements might well bring some benefits, though these were not elaborated.

Q4. Do you agree that we have created the correct offences and defences, and that we have set appropriate penalties?

We received few responses to this question. The Port Health Authorities were concerned that the Regulations might be unenforceable at import because there were no effective control measures available to them in existing legislation.

The Government's response

The Port Health Authorities are seeking an extension of their existing powers in relation to materials and articles intended to be brought into contact with food, and in this case specifically in relation to ceramic materials and articles. However, this is an overarching issue for all imported food contact materials and articles and it is the Food Standards Agency that leads in that case. The Agency has therefore invited the Port Health Authorities to provide evidence as to why the present powers provided in the current legislation do not provide adequate safeguards for public health. This will be taken forward separately from the current implementation exercise.

Q5. Do you have any other comments that might aid the consultation process?

We received no substantive comments to this question.

Q6. We would appreciate your general views on whether we have correctly identified the main issues in our proposals for the implementation of the Directive.

Only the Port Health Authorities (PHAs) responded on this question. They were concerned that current customs codes would be insufficient to identify all the products that would be covered by these Regulations.

The Government's response

Product identification relies primarily on standard European customs codes. The European Commission is aware that existing codes do not perfectly match the products covered by the Directive and will bear this in mind when

next reviewing them. Until the codes are updated PHAs will make what use they can of existing codes and will enforce the new Regulations as their normal activities allow. The effectiveness of this approach to enforcement of the Regulations will be reviewed on an ongoing basis.

End

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