

2008 No. 56 (W.11)

FOOD, WALES

**The Plastic Materials and Articles
in Contact with Food (Lid Gaskets)
(Wales) Regulations 2008**

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Wales, provide for the execution and enforcement of Commission Regulation (EC) No 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods (OJ No. L92, 3.4.2007, p.9) (“the Commission Regulation”).

2. The Regulations —

- (a) designate the bodies having the duty to enforce these Regulations and the Commission Regulation (*regulation 3*);
- (b) provide that it is an offence to contravene the requirements of Article 1 of the Commission Regulation, which provides that lids containing gaskets made of plastic materials must comply with the detailed specifications set out in the Annex to that Regulation, and specify the maximum penalties on conviction (*regulation 4(1)(a) and (2)(a)*);
- (c) provide that it is a summary offence to obstruct, fail to give information to or give false information to anyone enforcing these Regulations and specify the maximum penalties on conviction (*regulation 4(1)(b),(c) and (d) and (2)(b)*);
- (d) provide that individuals responsible for the actions of a corporate body or a Scottish partnership may be co-prosecuted for offences committed by that body or partnership (*regulation 5*);
- (e) provide for the prosecution of a person who causes the commission of an offence under these Regulations by another person, whether

or not proceedings are started against the principal offender (*regulation 6*);

- (f) specify a time limit for commencing a prosecution (*regulation 7*);
- (g) provide for a defence to offences under these Regulations of exercising due diligence (*regulation 8*);
- (h) specify the procedure to be followed when sending a sample for analysis (*regulation 9*);
- (i) make provision for a reference sample to be analysed by the Laboratory of the Government Chemist (*regulation 10*); and
- (j) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (*regulation 11*).

3. A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Food Standards Agency, 11th Floor, Southgate House, Cardiff CF10 1EW.

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**The Plastic Materials and Articles
in Contact with Food (Lid Gaskets)
(Wales) Regulations 2008**

Made *14 January 2008*

Laid before the National Assembly for Wales

16 January 2008

Coming into force *8 February 2008*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2)(c), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990(1) and now vested in them(2).

In accordance with section 48(4A) of that Act, they have had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in

(1) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), “the 1999Act”. Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(2) Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672). Those Functions were transferred to Welsh Ministers by section 162 and Schedule 11, paragraph 30 of the Government of Wales Act 2006 (c.32).

matters of food safety⁽¹⁾, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. These Regulations are called the Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Wales) Regulations 2008, apply in relation to Wales and come into force on 8 February 2008.

Interpretation

2.—(1) In these Regulations —

“the Act” (“y Ddeddf”) means the Food Safety Act 1990;

“the Commission Regulation” (“Rheoliad y Comisiwn”) means Commission Regulation (EC) No. 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods⁽²⁾;

“authorised officer” (“swyddog awdurdodedig”) means any person who is authorised in writing, either generally or specially, by a food authority or as the case may be a port health authority to act in matters arising under these Regulations;

“food authority” (“awdurdod bwyd”) does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple) nor a port health authority;

“import” (“mewnforio”) means import in the course of a business from a place other than a Member State;

“lid” (“caead”) means a lid of the type mentioned in Article 1 of the Commission Regulation;

“port health authority” (“awdurdod iechyd porthladd”) means —

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984⁽³⁾ by section 7(1) of that Act), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of the

(1) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

(2) OJ No. L92, 3.4.2007, p.9. Recital 2 of the Regulation was corrected by a corrigendum, (OJ No. L97, 12.4.2007, p.70), which made a minor correction to a date forming part of the citation to an EC instrument in one of the recitals.

(3) 1984 c. 22.

Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act.

(2) Any other expression used in these Regulations and in the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation.

Enforcement

3. It is the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations and the Commission Regulation.

Offences and penalties

4.—(1) Any person who —

- (a) contravenes or fails to comply with the requirements of Article 1 of the Commission Regulation (requirements relating to lids sealed with gaskets containing certain plasticising substances);
- (b) intentionally obstructs any person acting in the execution of these Regulations;
- (c) without reasonable excuse, fails to give to any person acting in the execution of these Regulations or the Commission Regulation any assistance or information which that person may reasonably require; or
- (d) in purported compliance with any requirement mentioned in sub-paragraph (c), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Anyone guilty of an offence under these Regulations is liable —

- (a) in the case of an offence under paragraph (1)(a) —
 - (i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
 - (ii) on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding the statutory maximum or both;
- (b) in the case of an offence under paragraph 1(b), (c) or (d), on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale or both.

(3) Nothing in paragraph (1)(c) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him or her.

Offences by corporate bodies or Scottish partnerships

5.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of —

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person purporting to act in such a capacity,

that person as well as the body corporate will be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a partner, that person as well as the partnership shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Offences due to the act or default of a third party

6. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person will be guilty of the offence; and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.

Time limit for prosecutions

7. No prosecution for an offence under these Regulations is to be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

Defence of due diligence

8.—(1) In any proceedings for an offence under these Regulations it will, subject to paragraph (4), be a defence for the person accused to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or by a person under his or her control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4(1)(a) who did not —

- (a) prepare the lid in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

is to be taken to have established the defence provided by paragraph (1) if he or she satisfies the requirements of paragraph (3).

(3) A person satisfies the requirements of this paragraph if he or she proves —

- (a) that the commission of the offence was due to the act or default of some other person who was not under his or her control, or to reliance on information supplied by such a person;
- (b) that the placing on the market of which the alleged offence consisted was not a placing on the market under his or her name or mark;
- (c) that either —
 - (i) he or she carried out all such checks of the lid in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for him or her to rely on checks carried out by the person who supplied him or her with the lid in question; and
- (d) that he or she did not know and had no reason to suspect at the time the offence was committed that his or her act or omission would amount to an offence under regulation 4(1)(a).

(4) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the person accused will not without leave of the court be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where he or she has previously appeared before the court in connection with the alleged offence, within one month of his or her first such appearance,

he or she has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

Procedure where a sample is to be analysed

9.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers

it should be analysed will divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer will divide the sample into parts by putting the containers into three lots, and each lot is to be treated as being a part.

(3) The authorised officer will —

- (a) if necessary place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as reasonably practicable, give one part to the owner and notify him or her in writing that the sample will be analysed;
- (d) submit one part for analysis in accordance with section 30 of the Act; and
- (e) retain one part for future submission under regulation 10.

Secondary analysis by the Government Chemist

10.—(1) Where a sample has been retained under regulation 9 and —

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned above,

paragraphs (2) to (7) apply.

(2) The authorised officer —

- (a) may of his or her own volition; or
- (b) will —
 - (i) if requested by the prosecutor (if a person other than the authorised officer),
 - (ii) if the court so orders, or
 - (iii) (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist will analyse the part sent to him or her under paragraph (2) and send to the authorised officer a certificate specifying the result of the analysis.

(4) Any certificate given by the Government Chemist will be signed by him or her or on his or her behalf, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(5) The authorised officer will immediately on receipt supply the prosecutor (if a person other than the

authorised officer) and the defendant with a copy of the Government Chemist's certificate.

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

Application of various sections of the Food Safety Act 1990

11. The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof are to be construed as a reference to these Regulations —

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 30(8) (which relates to documentary evidence);
- (c) section 44 (protection of officers acting in good faith).

Amendment of the Food Safety (Sampling and Qualifications) Regulations 1990

12. In the Food Safety (Sampling and Qualifications) Regulations 1990(1), in Schedule 1 (provisions to which those Regulations do not apply), at the end add the title and reference of these Regulations.

Gwenda Thomas

Under authority of the Minister for Health and Social Services, one of the Welsh Ministers.

14 January 2008

(1) S.I. 1990/2463