Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Materials and Articles in Contact with Food (Scotland) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 243

FOOD

The Materials and Articles in Contact with Food (Scotland) Regulations 2005

Made - - - -	*28th April 2005*
Laid before the Scottish Parliament - - - -	*29th April 2005*
Coming into force - -	*21st May 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(2), 17(1) and (2), 26(1)(a) and (3), 31 and 48(1) of the Food Safety Act 1990(**1**), and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A)(**2**) of that Act to relevant advice given by the Food Standards Agency, hereby make the following Regulations:

PART 1

Preliminaries

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Materials and Articles in Contact with Food (Scotland) Regulations 2005 and shall come into force on 21st May 2005.

(2) These Regulations extend to Scotland only.

(**1**) 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 10(3); sections 16(2) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) and (2) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act shall be taken as pre commencement enactments for the purposes of the Scotland Act 1998 (c. 46) ("the 1998 Act") by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(**2**) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

Commencement Information

I1 Reg. 1 in force at 21.5.2005, see **reg. 1(1)**

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990;

"the Agency" means the Food Standards Agency;

"import" means import in the course of a business from a place other than a member State;

"plastics" means those materials and articles to which Commission Directive 2002/72/EC relating to plastic materials intended to come into contact with foodstuffs(**3**), as corrected by a corrigendum published on 13th February 2002(**4**) and as amended by Commission Directive 2004/1/EC(**5**) and Commission Directive 2004/19/EC(**6**) applies;

"preparation" in relation to food includes manufacture and any form of treatment or process;

"regenerated cellulose film" means a thin sheet material obtained from refined cellulose derived from unrecycled wood or cotton, with or without the addition of suitable substances, either in the mass or on one or both surfaces, but does not include synthetic casings of regenerated cellulose;

"the 1998 Regulations" means the Plastic Materials and Articles in Contact with Food Regulations 1998(**7**);

"the Community Regulation" means Regulation (EC) No. 1935/2004 of the European Parliament and of the Council on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC(**8**); and

"sell" includes offer or expose for sale or have in possession for sale, and "sale" and "sold" shall be construed accordingly.

(2) Any reference in these Regulations to a numbered Article is a reference to the Article bearing that number in the Community Regulation.

(3) Expressions used both in these Regulations and the Community Regulation have the same meaning in these Regulations as they have in the Community Regulation.

Commencement Information

I2 Reg. 2 in force at 21.5.2005, see **reg. 1(1)**

Scope

3. These Regulations do not apply to those materials and articles specified in Article 1.3.

(**3**) O.J. No. L 39, 13.2.03, p.1.
(**4**) O.J. No. L 220, 15.8.02, p.18.
(**5**) O.J. No. L 7, 13.1.04, p.45.
(**6**) O.J. No. L 71, 10.3.04, p.8.
(**7**) S.I. 1998/1376, as amended by S.S.I. 2000/431, 2002/498, 2003/9, 2004/524 and 2005/92.
(**8**) O.J. No. L 338, 13.11.04, p.4.

Commencement Information
I3 Reg. 3 in force at 21.5.2005, see **reg. 1(1)**

PART 2

General requirements for materials and articles

Enforcement of the Community Regulation

4. Subject to the provisions of Article 27 (transitional arrangements) any person who contravenes or fails to comply with any of the following provisions of the Community Regulation is guilty of an offence–

(a) Article 3 (general requirements);

(b) Article 4 (special requirements for active and intelligent materials and articles);

(c) Article 11.4 and 11.5 (provisions relating to Community authorisation);

(d) Article 15.1, 15.2, 15.3, 15.4, 15.7 and 15.8 (labelling);

(e) Article 16.1 (declaration of compliance); and

(f) on or after 27th October 2006, Article 17.2 (traceability).

Commencement Information
I4 Reg. 4 in force at 21.5.2005, see **reg. 1(1)**

Competent authorities for the purposes of the Community Regulation

5. The competent authority for the purposes of–

(a) Article 9 shall be the Agency; and

(b) Articles 16.1 and 17.2 shall be the Agency and the authority having responsibility for enforcement pursuant to regulation 12(1).

Commencement Information
I5 Reg. 5 in force at 21.5.2005, see **reg. 1(1)**

PART 3

Requirements for vinyl chloride

Limits and migration limits

6.—(1) Materials and articles which in their finished state are intended to come into contact with food, or are in contact with food and are intended for that purpose, which are manufactured with vinyl chloride polymers or copolymers–

(a) shall not contain vinyl chloride monomer in a quantity exceeding 1 milligram per kilogram of the material or article as measured by the method of analysis specified in regulation 7(1); and

(b) shall be manufactured in such a way that they do not transfer to foods with which they are in contact any quantity of vinyl chloride exceeding 0.01 milligrams of vinyl chloride per kilogram of the food as measured by the method of analysis specified in regulation 7(2).

(2) No person shall–

(a) sell;

(b) import; or

(c) use in the course of a business in connection with the storage, preparation, packaging, selling or serving of food,

any such material or article that does not comply with this regulation.

Commencement Information

I6 Reg. 6 in force at 21.5.2005, see **reg. 1(1)**

Methods of analysis

7.—(1) The method used in analysing any sample for the purpose of establishing the quantity of vinyl chloride monomer present in the material or article in order to determine whether it complies with regulation 6(1)(a) shall be the method specified in the Annex to Commission Directive No. 80/766/EEC laying down the Community method of analysis for the official control of the vinyl chloride monomer level in materials and articles which are intended to come into contact with foodstuffs(**9**).

(2) The method used in analysing any food for the purpose of establishing the quantity of vinyl chloride present in the food in order to determine whether a material or article which is or has been in contact with the food complies with regulation 6(1)(b) shall be the method specified in the Annex to Commission Directive No. 81/432/EEC laying down the Community method of analysis for the official control of vinyl chloride released by material and articles into foodstuffs(**10**).

Commencement Information

I7 Reg. 7 in force at 21.5.2005, see **reg. 1(1)**

PART 4

Requirements for regenerated cellulose film

Controls and limits

8.—(1) This Part applies to regenerated cellulose film which–

(a) constitutes a finished product in itself; or

(b) is part of a finished product containing other materials,

(**9**) O.J. No. L 213, 16.8.80, p.42.
(**10**) O.J. No. L 167, 24.6.81, p.6.

and is intended to come into contact with food, or by being used for that purpose does come into contact with food.

(2) Any reference in this regulation to Annex II is a reference to Annex II to Directive 93/10/EEC relating to materials and articles made of regenerated cellulose film intended to come into contact with food(**11**) as amended by Commission Directive 93/111/EC(**12**) and Commission Directive 2004/14/EC(**13**).

(3) Subject to paragraph (5) no person shall manufacture any regenerated cellulose film intended to come into contact with food using any substance or group of substances other than the substances named or described–

(a) in the first column (denominations) of Annex II in the case of–

(i) uncoated film; or

(ii) coated film where the coating is derived from cellulose; or

(b) in the first column of the First Part of Annex II in the case of film to be coated, where the coating will consist of plastics;

and other than in accordance with the conditions and restrictions specified in the corresponding entry in the second column of the appropriate Part of Annex II, as read with the preamble to that Annex.

(4) No person shall manufacture any coating to be applied to film referred to in paragraph (3)(b) using any substance or group of substances other than the substances listed in Schedules 1, 2 or 2A to the 1998 Regulations and other than in accordance with the appropriate requirements, restrictions and specifications contained in those Regulations and in the Schedules thereto.

(5) Substances other than those listed in Annex II may be used as colourants or adhesives in the manufacture of a film to which paragraph (3)(a) applies, provided that such film is manufactured in such a way that it does not transfer any of those substances to food in any detectable quantity.

(6) No person shall–

(a) sell;

(b) import; or

(c) use in the course of a business in connection with the storage, preparation, packaging, selling or serving of food,

any regenerated cellulose film which has been manufactured in contravention of paragraphs (3), (4) or (5) or which does not comply with paragraph (8).

(7) No person shall use in the course of a business in connection with the storage, preparation, packaging, serving or selling of food–

(a) where the food contains water physically free at the surface, any regenerated cellulose film which contains bis (2–hydroxyethyl) ether, ethanediol or both these substances;

(b) any regenerated cellulose film in such a way that any printed surface of that film comes into contact with food.

(8) Any material or article made of regenerated cellulose film, unless by its nature clearly intended to come into contact with food, shall be accompanied at a marketing stage other than the retail stage by a written declaration attesting that it complies with the legislation applicable to it.

(**11**) O.J. No. L 93, 17.4.93, p.27.
(**12**) O.J. No. L 310, 14.12.93, p.41.
(**13**) O.J. No L 27, 30.1.04, p.48.