WELSH STATUTORY INSTRUMENTS

2012 No. 2705 (W.291)

FOOD, WALES

The Materials and Articles in Contact with Food (Wales) Regulations 2012

Made - - - -	*27 October 2012*
Laid before the National Assembly for Wales - -	*30 October 2012*
Coming into force - -	*20 November 2012*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(1) and (2), 26(1)(a), (2)(a) and (3), 31 and 48(1) of the Food Safety Act 1990 [F1], and now vested in them [F2], as read with paragraph 1A of Schedule 2 to the European Communities Act 1972 [F3].

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for certain references to Commission Regulation (EC) No. 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food [F4] or to any Annex to the other EU instruments specified in regulation 2(3) to be construed as references to that Regulation or that Annex as amended from time to time.

In accordance with section 48(4A) of the 1990 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 matters of food safety [F5], there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

F1 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, S.I. 2004/2990 and S.I. 2004/3279.

F2 Functions formerly exercisable by "the Ministers" so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c. 32).

F3 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006, c. 51) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (2008 c. 7).

F4 OJ No. L384, 29.12.2006, p.75, amended by Commission Regulation (EC) No.282/2008 (OJ No. L86, 28.3.2008, p.9).

F5 OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny — Part Four (OJ No. L188, 18.7.2009, p.14).

PART 1

Preliminary

Title, application and commencement

1. The title of these Regulations is the Materials and Articles in Contact with Food (Wales) Regulations 2012, they apply in relation to Wales and come into force on 20 November 2012.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

F6 …

"Directive 2007/42/EC" ("*Cyfarwyddeb 2007/42/EC*") means Commission Directive 2007/42/EC relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs **F7**;

"Regulation 1935/2004" ("*Rheoliad 1935/2004*") 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**F8**;

"Regulation 1895/2005" ("*Rheoliad 1895/2005*") means Commission Regulation (EC) No. 1895/2005 on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food **F9**;

"Regulation 2023/2006" ("*Rheoliad 2023/2006*") means Commission Regulation (EC) No. 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food **F10**;

"Regulation 450/2009" ("*Rheoliad 450/2009*") means Commission Regulation (EC) No. 450/2009 on active and intelligent materials and articles intended to come into contact with food **F11**;

[F12"Regulation 10/2011" ("*Rheoliad 10/2011*") means Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food;**]**

[F13"Regulation 2018/213" ("*Rheoliad 2018/213*") means Commission Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials;**]**

"authorised officer" ("*swyddog awdurdodedig*") means any person, whether or not an officer of the authority concerned, who is authorised in writing by an authority having responsibility for execution and enforcement under regulation 20 to act in matters arising under these Regulations;

"food authority" ("*awdurdod bwyd*") does not include a port health authority;

"port health authority" ("*awdurdod iechyd porthladd*") means, in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984 [F14], a port health authority for that district constituted by order under section 2(4) of that Act;

"preparation" ("*paratoi*") includes manufacture and any form of treatment or process, and "prepare" ("*paratoi*") is to be construed accordingly.

(2) Expressions used in these Regulations and in Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 **[**[F15], Regulation 10/2011 or Regulation 2018/213**]** bear the same meaning in these Regulations as they bear in those Regulations.

(3) Any reference in these Regulations to Regulation 2023/2006 or to an Annex to Directive 2007/42/EC or Regulation 10/2011 is a reference to that Regulation or that Annex as amended from time to time.

F6 Words in reg. 2(1) omitted (31.12.2020) by The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/425), regs. 1(3), **3(2)**; 2020 c. 1, **Sch. 5 para. 1(1)**

F7 OJ No. L172, 30.6.2007, p.71. This Directive repealed and consolidated without further amendment Commission Directive 93/10/EEC as last amended by Commission Directive 2004/14/EC.

F8 OJ No. L338, 13.11.2004, p.4, amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14).

F9 OJ No. L302, 19.11.2005, p.28.

F10 OJ No. L384, 29.12.2006, p.75.

F11 OJ No. L135, 30.5.2009, p.3.

F12 Words in reg. 2(1) substituted (14.9.2017) by The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017 (S.I. 2017/832), regs. 1(3), **3**

F13 Words in reg. 2(1) inserted (6.9.2018) by The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2018 (S.I. 2018/913), regs. 1(3), **3(a)**

F14 1984 c. 22.

F15 Words in reg. 2(2) substituted (6.9.2018) by The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2018 (S.I. 2018/913), regs. 1(3), **3(b)**

Scope

3. The provisions of these Regulations do not apply in relation to those materials and articles specified in paragraph (3) of Article 1 (purpose and subject matter) of Regulation 1935/2004.

PART 2

General Requirements for Materials and Articles

Offences of contravening specified provisions of Regulation 1935/2004

4.—(1) No person may place on the market or use, in the course of a business in connection with the storage, preparation, packaging, sale or service of food any material or article that does not

comply with the requirements of Article 3(1) (general requirements) or Article 4(1), (2), (3) or (4) (special requirements for active and intelligent materials and articles).

(2) No person may place on the market any material or article that does not comply with the requirements of Article 3(2), 4(5) or (6) or 15(1), (3), (4), (7) or (8) as read with Article 15(2) (labelling).

(3) Any person who contravenes paragraph (1) or (2) or Article 11(4) or (5) (F16... authorisation) or 17(2) (traceability) is guilty of an offence.

(4) In this regulation a reference to a numbered Article is a reference to that Article in Regulation 1935/2004.

F16 Word in reg. 4(3) omitted (31.12.2020) by virtue of S.I. 2019/425, reg. 3(2A) (as inserted by The Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1581), regs. 1(2), **2(3)(a)**)

Offence of contravening Article 4 of Regulation 2023/2006

5. Any person who fails to comply with the requirements of Article 4 (conformity with good manufacturing practice) of Regulation 2023/2006 is guilty of an offence.

Competent authorities for the purposes of Regulation 1935/2004 and Regulation 2023/2006

6.—(1) The following bodies are designated as the competent authorities for the purposes of the provisions of Regulation 1935/2004 specified below—

F17(a) . . . . . .

(b) in respect of Articles **[**F18**16]** (declaration of compliance) and 17(2) (traceability), the Food Standards Agency, each food authority in its area and each port health authority in its district.

(2) The competent authority for the purposes of Article 6(2) (quality control system) and 7(3) (documentation) of Regulation 2023/2006 is each food authority in its area.

F17 Reg. 6(1)(a) omitted (31.12.2020) by virtue of S.I. 2019/425, reg. 3(2B)(a) (as inserted by The Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1581), regs. 1(2), **2(3)(a)**)

F18 Word in reg. 6(1)(b) substituted (31.12.2020) by S.I. 2019/425, reg. 3(2B)(b) (as inserted by The Food and Feed Hygiene and Safety (Miscellaneous Amendments and Saving Provision) (Wales) (EU Exit) Regulations 2020 (S.I. 2020/1581), regs. 1(2), **2(3)(a)**)

PART 3

Requirements for Active and Intelligent Materials and Articles

Offences of contravening specified provisions of Regulation 450/2009

7.—(1) Subject to the transitional provisions contained in Article 14 (entry into force and application) of Regulation 450/2009, any person who places on the market any active or intelligent material or article which does not comply with the requirements of Article 4 of that Regulation is guilty of an offence.

F19(2) . . . . . .

F19 Reg. 7(2) omitted (14.9.2017) by virtue of The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017 (S.I. 2017/832), regs. 1(3), **4**

Competent authorities for the purposes of Regulation 450/2009

8. The competent authorities for the purposes of Article 13 of Regulation 450/2009 are the Food Standards Agency, each food authority in its area and each port health authority in its district.

PART 4

Requirements for Ceramic Articles

Interpretation of this Part

9. In this Part—

(a) "ceramic article" ("*eitem geramig*") means an article to which Regulation 1935/2004 applies by virtue of its Article 1(2) as read with 1(3) that—

(i) is manufactured from a mixture of inorganic materials with a generally high argillaceous or silicate content to which small quantities of organic materials may have been added,

(ii) is first shaped, with the shape thus obtained having been permanently fixed by firing, and

(iii) may be glazed, enamelled and/or decorated; and

F20(b) . . . . . .

F20 Reg. 9(b) omitted (31.12.2020) by virtue of The Food and Feed Regulated Products (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/425), regs. 1(3), **3(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Limits for lead and cadmium and declaration of compliance

[F21 10.—(1) The quantities of lead and cadmium transferred from a ceramic article must not exceed the limits set out in paragraph (5) as read with paragraphs (4) and (6).

(2) Unless it is demonstrated that the materials used to make the ceramic article did not contain lead or cadmium, the quantities of lead and cadmium transferred from a ceramic article must be determined by means of a test, the conditions of which are specified in Schedule 3, using the method of analysis described in Schedule 4.

(3) No person may place on the market a ceramic article that does not comply with the requirements of paragraph (1) as read with paragraph (2).

(4) Where a ceramic article consists of a vessel fitted with a ceramic lid, the lead or cadmium limits (or both) which may not be exceeded (mg/dm^2 or mg/litre) must be that which applies to the vessel alone. The vessel alone and the inner surface of the lid must be tested separately and under the same conditions. The sum of the two lead or cadmium extraction levels obtained by this method must be related as appropriate to the surface area or the volume of the vessel alone.

(5) A ceramic article is to be recognised as satisfying the requirements of these Regulations relating to such articles if the quantities of lead and/or cadmium extracted during the test carried out under the conditions laid down in Schedule 3 and Schedule 4 do not exceed the following limits—