WELSH STATUTORY INSTRUMENTS

2011 No. 1605 (W.186)

FOOD, WALES

The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

Made - - - -	*28 June 2011*
Laid before the National Assembly for Wales - -	*30 June 2011*
Coming into force - -	*1 July 2011*

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

In so far as these Regulations cannot be made under the powers in the Food Safety Act 1990 specified above, the Welsh Ministers make these Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(**3**).

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food safety (including drink)(**4**).

In accordance with section 48(4A) of the Food Safety Act 1990 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(**5**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

(**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 1999 Act". Section 48 was also amended by S.I. 2004/2990. 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.

(**2**) Functions formerly exercisable by "the Ministers" (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales) 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) 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).

(**3**) 1972 c. 68.

(**4**) S.I. 2005/1971.

(**5**) 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).

Title, application and commencement

1.—(1) The title of these Regulations is the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011.

(2) These Regulations apply in relation to Wales and come into force on 1 July 2011.

Interpretation

2.—(1) In these Regulations —

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

"the Agency" ("*yr Asiantaeth*") means the Food Standards Agency;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EU) No. 284/2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China(**6**);

"food authority" ("*awdurdod bwyd*") has the meaning that it bears by virtue of section 5(1A) of the Act; and

"relevant product" ("*cynnyrch perthnasol*") means plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

(2) Any expression used in these Regulations and the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation and any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

(3) Where any functions under the Act are assigned —

(a) by an order under section 2 of the Public Health (Control of Disease) Act 1984(**7**), to a port health authority; or

(b) by an order under section 6 of the Public Health Act 1936(**8**), to a joint board for a united district;

any reference in these Regulations to a food authority must be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

Breach of conditions on import of plastic kitchenware from China

3.—(1) No person may place on the market in Wales any relevant product that has been imported into the European Union other than in compliance with the requirements of Article 3(1), (2) and (3) (import conditions).

(2) No person may place on the market in Wales any relevant product until —

(a) the checks specified in paragraph 1(a) and, as the case may be, paragraph 1(b) of Article 6 (controls at the first point of introduction) have been completed; and

(b) the food authority has issued a declaration in accordance with Article 3(4) indicating that the relevant product conforms and is thus acceptable for release into free circulation.

Offences and penalties

4. Any person who fails to comply with paragraph (1) or (2) of regulation 3 is guilty of an offence and liable —

(**6**) OJ No. L77, 23.3.2011, p.25.
(**7**) 1984 c. 22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990.
(**8**) 1936 c. 49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

Competent authorities

5.—(1) The competent authority for the purposes of Articles 3(1) and (4), 4, 6(1), 7 and 9 is each food authority in its area or united district.

(2) The competent authority for the purpose of Article 6(2) is the Agency.

Execution and enforcement

6.—(1) It is the duty of each food authority in its area or united district to execute and enforce the Commission Regulation and these Regulations.

(2) Each food authority must—

(a) immediately inform the Agency of the results of any laboratory analysis which it has caused to be carried out under Article 6(1) if the results of that analysis indicate non-compliance; and

(b) give the Agency such information and assistance as it may reasonably request in connection with the execution and enforcement of these Regulations.

(3) The Commission for Her Majesty's Revenue and Customs must carry out the functions given to customs authorities under Article 8.

Expenses arising from official controls

7.—(1) Expenses charged pursuant to Article 27(1) of Regulation 882/2004 by a food authority to an importer in connection with the checks mentioned in Article 6(1) are payable by the importer on the written demand of the food authority.

(2) Where a food authority identifies non-compliance—

(a) with the requirements of Article 3(1), (2) or (3) or Article 4; or

(b) following the checks mentioned in Article 6(1)(b),

expenses charged pursuant to Article 54(5) of Regulation 882/2004 by a food authority to an importer are payable by the importer on the written demand of the food authority.

(3) In paragraph (1) and (2) and in regulation 8(3), "Regulation 882/2004" ("Rheoliad 882/2004") means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(**9**).

Notices and actions in the case of non-compliance

8.—(1) If an importer presents a consignment of relevant product for import into Wales without submitting a declaration and accompanying laboratory report in accordance with the requirements of Article 3(1),(2) and (3), the food authority may by written notice require the importer to submit such a declaration within 14 days of the date of service of the notice.

(2) If the checks provided for in Article 6(1) indicate that —

(**9**) OJ No. L165, 30.4.2004, p. 1. The revised text is set out in a corrigendum (OJ No. L191, 28.5.2004, p.1). This Regulation was last amended by Commission Regulation (EU) No. 208/2011 amending Annex VII to Regulation (EC) 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No. 180/2008 and (EC) No. 737/2008 as regards lists and names of EU reference laboratories (OJ No.L58, 3.3.2011, p.29).