WELSH STATUTORY INSTRUMENTS

2008 No. 56 (W.11)

FOOD, WALES

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 matters of food safety(**3**), 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;

(**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).

(**3**) 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).

"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(**4**);

"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(**5**) 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 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;

(**4**) 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.
(**5**) 1984 c. 22.

(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 bel 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 —