WELSH STATUTORY INSTRUMENTS

# 2006 No. 1704 (W.166)

# FOOD, WALES

## The Ceramic Articles in Contact with Food (Wales) Regulations 2006

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|---|---|
| *Made - - - -* | *27 June 2006* |
| *Coming into force - -* | *30 June 2006* |

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by sections 16(2), 17(1), 26(1)(a), 26(2)(a) and (3), and 48(1) of the Food Safety Act 1990(**1**);

In accordance with section 48(4A)(**2**) of the Food Safety Act it has had regard to relevant advice given by the Food Standards Agency and consulted as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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**).

### Title, Commencement, Extent and Revocation

**1.**—(1) The title of these Regulations is the Ceramic Articles in Contact with Food (Wales) Regulations 2006, which come into force on 30 June 2006 except for regulation 3(3)(a) and (b) and 4 which come into force on 30 June 2007.

(2) These Regulations apply to Wales.

(3) In the Official Feed and Food Controls (Wales) Regulations 2006(**4**) sub-paragraph (b) of Schedule 3 (Definition of relevant food law) is omitted.

### Interpretation

**2.** In these Regulations—

"ceramic article" ("*eitem geramig*") means an article—

(a) 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.

(**1**) 1990 c. 16.
(**2**) Subsection (4A) was inserted by para. 21 of Sch. 5 to the Food Standards Act 1999 (c. 28).
(**3**) O.J. No L 31, 1/2/2002, p.1.
(**4**) S.I. 2006 No.590(W.66).

Such an article is first shaped and the shape thus obtained is permanently fixed by firing. It may be glazed, enamelled and/or decorated;

(b) which, in its finished state, is intended to come into contact with foodstuffs, or which is in contact with foodstuffs, and is intended for that purpose;

but does not include an article which is supplied as an antique;

"the Community" ("*y Gymuned*") means the member States and Norway, Iceland and Liechtenstein;

"enforcement authority" ("*awdurdod gorfodi*") means an authority mentioned in regulation 5;

"import" ("*mewnforio*") means the release into the UK for free circulation in the Community;

"place on the market" ("*rhoi ar y farchnad*") means the holding of ceramic articles for sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution and other forms of transfer themselves.

**Limits on the transfer of lead and cadmium**

**3.**—(1) The quantities of lead and cadmium transferred from a ceramic article must not exceed the limits laid down in Schedule 1.

(2) Compliance with paragraph (1) is to be determined by testing and analysis in accordance with Schedule 2 unless it is demonstrated that the materials used to make the ceramic articles did not contain lead or cadmium.

(3) No person may—

(a) manufacture,

(b) import, or

(c) place on the market,

a ceramic article which does not comply with the requirements in paragraph (1).

**Declaration of Compliance**

**4.**—(1) A manufacturer or seller of a ceramic article which is not yet in contact with food must provide a written declaration in accordance with Schedule 3 to accompany the article at the marketing stages up to and including the retail stage.

(2) The declaration must be issued by the manufacturer or by a seller established within the Community.

(3) The manufacturer or importer of a ceramic article into the Community must on request make available to an enforcement authority appropriate documentation to demonstrate compliance with the requirements of regulation 3(1) including—

(a) the results of analysis carried out,

(b) the test conditions, and

(c) the name and address of the laboratory that performed the testing, or

(d) evidence that the materials used to make the ceramic article did not contact lead or cadmium

(4) This regulation does not apply to a ceramic article which is second-hand.

**Enforcement**

**5.** The following authorities are to execute and enforce these Regulations—

(a) each food authority in its area;

(b) each port health authority in its district.

**Offences and penalties**

**6.**—(1) A person who contravenes a provision of regulations 3(3) or 4(1) or (3) is guilty of an offence

(2) A person guilty of an offence under paragraph (1) is liable

(a) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both; or

(b) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months or to both.

(3) In proceedings for an offence in respect of failure to comply with regulation 4 it is a defence to prove that the ceramic article to which the offence relates was first placed on the market in the Community before 20 May 2007.

**Application of the Food Safety Act 1990**

**7.**—(1) The following provisions of the Food Safety Act 1990(**5**) apply for the purposes of these Regulations, with reference in those provisions to the Act or a Part of it being construed as a reference to these Regulations—

(a) section 20 (offences due to fault of another person);

(b) section 21(1), (5) and (6) (defence of due diligence);

(c) section 33 (obstruction etc of officers);

(d) Section 34 of the Food Safety Act 1990 (time limit for prosecutions) applies to offences under regulations 6 as it applies to offences punishable under section 35(2).

(e) section 35(1)(**6**), (2) and (3)(b) (punishment of offences) in so far as it relates to offences under section 33 as applied by this regulation;

(f) section 36 (offences by bodies corporate);

(g) section 36A(**7**) (offences by Scottish partnerships);

(h) section 44 (protection of officers acting in good faith).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**8**).

*D. Elis-Thomas*
27 June 2006 The Presiding Officer of the National Assembly

(**5**) 1990 c. 16.
(**6**) Section 35(1) is amended by Sch. 26 para. 42 of the Criminal Justice Act 2003 (c. 44) from a date to be appointed.
(**7**) Section 36A was inserted by Sch. 5 para. 16 of the Food Standards Act 1990.
(**8**) 1998 c. 38.

SCHEDULE 1 Regulation 3(1)

**MAXIMUM QUANTITIES OF LEAD AND CADMIUM WHICH MAY BE TRANSFERRED FROM A CERAMIC ARTICLE (MIGRATION LIMITS)**

The quantity of lead and/or cadmium extracted during the test carried out under the conditions laid down in Schedule 2 must not exceed the following limits:

| | Lead | Cadmium |
|---|---|---|
| Category 1: articles which cannot be filled and articles which can be filled, the internal depth of which, measured from the lowest point to the horizontal plane passing through the upper rim, does not exceed 25 mm | 0.8 mg/dm$^2$ | 0.07 mg/dm$^2$ |
| Category 2: All other articles which can be filled | 4.0 mg/l | 0.3mg/l |
| Category 3: Cooking ware; packaging and storage vessels having a capacity of more than three litres | 1.5 mg/l | 0.1 mg/l |

Where a ceramic article does not exceed the above quantities by more than 50%, that article will nevertheless be recognised as satisfying the requirements of these Regulations if at least three other articles with the same shape, dimensions, decoration and glaze are subjected to a test carried out under the conditions laid down in Schedule 2 and the average quantities of lead and/or cadmium extracted from those articles do not exceed the limits set, with none of those articles exceeding those limits by more than 50%.

Where a ceramic article consists of a vessel fitted with a ceramic lid, the lead and/or cadmium limit which may not be exceeded (mg/dm$^2$ or mg/litre) will 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 and/or cadmium extraction levels obtained must be related as appropriate to the surface area or the volume of the vessel alone.

SCHEDULE 2 Regulation 3(2)

# PART I

## BASIC RULES FOR DETERMINING THE MIGRATION OF LEAD AND CADMIUM

**Test liquid (“simulant”)**

**1.** 4% (v/v) acetic acid, in a freshly prepared aqueous solution.

**Test conditions**

**2.**—(1) Carry out the test at a temperature of 22 ± 2° for a duration of 24 ± 0.5 hours.

(2) When the migration of lead is to be determined, cover the sample by an appropriate means of protection and expose it to the usual lighting conditions in a laboratory.