

## EXECUTIVE NOTE

### THE MATERIALS AND ARTICLES IN CONTACT WITH FOOD (SCOTLAND) AMENDMENT REGULATIONS 2009

S.S.I. 2009/426

#### 1. Description

- 1.1 The above instrument was made in exercise of the powers conferred by sections 16(2), 17(2), 26(1)(a), (2)(a) and (3) and 48(1) of the Food Safety Act 1990, and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

#### 2. Policy Objective

- 2.1 This instrument, by amending the Materials and Articles in Contact with Food (Scotland) Regulations 2007, provides for the enforcement in Scotland of certain provisions contained in Commission Regulation (EC) No 450/2009 (“the AIM Regulation”) on active and intelligent materials and articles intended to come into contact with food.
- 2.2 Active materials are those that are designed to react with the food or its immediate environment with which they are in contact so as to alter it in some way (e.g. improve keeping qualities), and intelligent materials react in such a way as to provide information about the food.

#### 3. Policy & legislative background

- *What is being done and why*

- 3.1 The purpose of making this instrument is to ensure that the provisions outlined above are in place by the deadline set out in the AIM Regulation and provide the necessary powers to enforcement authorities for the effective enforcement of the AIM Regulation.
- 3.2 The intention is to protect the consumer through adequate labelling and to protect them against accidentally eating non-consumable parts of packaging and, through requirements to declare the compliance of the material or article business to business along the supply chain, against food contamination by chemicals whose ingestion would carry serious long term and unacceptable risk to consumer health, in particular among vulnerable people.
- 3.3 The general principles on all food contact materials and articles intended to come into contact with foodstuffs are established in Regulation (EC) No. 1935/2004. This lays down the framework of regulation for all materials and articles intended to come into contact with food, including those classed as ‘active; and ‘intelligent’. The enforcement of provisions for that Regulation is implemented in Scotland by The Materials and Articles in Contact with Food (Scotland) Regulations 2007. This instrument will amend the 2007 Regulations to take into account certain provisions of the AIM Regulation.
- 3.4 These provisions relate to particular labelling and declarations requirements for goods placed on the market. They specifically concern the labelling of parts of the packaging that could be wrongly taken by some consumers to be edible, the written declaration of legal compliance to accompany active and intelligent materials and articles prior to retail sale, and the production, to enforcement authorities on request, of supporting documentation to substantiate the declaration of compliance.
- 3.5 These provisions need to be in place by 19th December 2009 to ensure that enforcement authorities have the necessary powers to act under the AIM Regulation at the time they become applicable throughout the European Community. The requirements of the remainder of the

AIM Regulation become applicable following adoption of the Community list of substances approved for use in active and intelligent materials, anticipated to be in July 2010.

#### **4. Territorial Extent and Application**

4.1 This instrument applies in relation to Scotland only. Separate but parallel legislation is being enacted for England, Northern Ireland and Wales.

#### **5. Consultation**

5.1 The Food Standards Agency (“the Agency”) held two informal consultations with stakeholders in 2006 and later in 2008. Neither consultation raised any pertinent issues about the cost implications in relation to the AIM Regulation from businesses or enforcement authorities.

5.2 The Agency held a four week consultation with stakeholders and enforcement authorities in 2009. Two hundred and ten stakeholders were consulted on these proposals. These included food industry organisations, those manufacturing food contact materials, consumer organisations, as well as those with other interests in food contact materials and local enforcement authorities.

5.3 One response was received from Aberdeen City Council to acknowledge receipt of the consultation.

#### **6. Guidance**

6.1 Guidance for business has not been developed as this is a temporary measure as the requirements on them arise from the European regulation and not this SSI. However, full guidance for all parties on the entirety of the EU and National regulations will be issued when the other provisions of the European Regulation are addressed by a full SSI that will replace the current 2007 regulations and this amending SSI by the middle of next year.

#### **7. Financial Effects**

7.1 The AIM regulation applies to all businesses as the provisions relate specifically to labelling of parts of the package, as well as the written declaration of legal compliance which should be shown to enforcement authorities upon request. The Regulation would also give local authorities responsibility for enforcing these provisions.

7.2 The primary business sector that will be affected by the regulatory proposals will be manufacturers, importers, converters and fillers of food contact materials and in particular, those manufacturers that use active and intelligent systems in their products. No comments were received from businesses in this instance. European representative bodies of industry sectors and consumers were routinely involved throughout the European negotiations.

7.3 All respondents were thanked for their comments and where required, responses were sent.

7.4 These proposals have no particular impact on charities or voluntary organisations; rural areas; nor on members of the ethnic communities or any particular racial group.

7.5 There may be an impact on the Agency in its role as the competent authority as defined by the proposed Regulations and as and when it carries out compliance surveys on goods on the market. This impact may involve having to carry out more research into the migration of substances from food contact materials, including work to establish methodologies for determining such migration and to ensure compliance with the legislation.

7.6 A Regulatory Impact Assessment has not been prepared for this instrument.

#### **8. Regulating small business**

8.1 The impact on small and medium sized businesses is unlikely to be significant. This view has been supported by industry following earlier consultations, when they indicated that the proposals would not disproportionately affect them, nor would they hinder competitiveness.

Such businesses are also encouraged to respond to issues which they feel may have an impact on their ability to compete in the wider market. To date no comments have been received from small businesses.

## **9. Monitoring & review**

9.1 Central and local authorities in Scotland routinely monitor foodstuffs on sale to the public to ensure compliance with the Regulations. The results of this work carried out by the Agency are published and are available on the agency's website at:

<http://www.food.gov.uk/science/research/researchinfo/contaminantsresearch/>

9.2 We shall therefore, routinely survey materials and articles on the market to ensure compliance with the Regulations. The Agency will work with enforcement authorities where problems or suspected infringements of the Regulations arise. The effectiveness of the Regulations will be also be monitored via feedback from stakeholders as part of the ongoing policy process and will be reviewed in March 2011.

## **10. Contact:**

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