

2004 No. 3113

FOOD, ENGLAND

**The Plastic Materials and Articles in Contact with Food
(Amendment) (England) Regulations 2004**

Made - - - - - *23rd November 2004*
Laid before Parliament *1st December 2004*
Coming into force *30th December 2004*

The Secretary of State, in exercise of the powers conferred on him by sections 16(2), 17(1), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990^(a) and now vested in him^(b), having had regard, in accordance with section 48(4A) of that Act, to relevant advice given by the Food Standards Agency, and after consultation 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^(c) and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

Title, application and commencement

1. These Regulations may be cited as the Plastic Materials and Articles in Contact with Food (Amendment) (England) Regulations 2004, shall apply in relation to England only and shall come into force on 30th December 2004.

Amendments to the Plastic Materials and Articles in Contact with Food Regulations 1998

2. The Plastic Materials and Articles in Contact with Food Regulations 1998^(d) shall be amended, in so far as they apply in relation to England, in accordance with regulations 3 to 6.

3. In regulation 2(1) (interpretation) —

- (a) at the end of the definition of “Commission Directive 2002/16” there shall be added “as amended by Commission Directive 2004/13/EC”^(e);

(a) 1990 c. 16.

(b) 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 and, in relation to Scotland, the Secretary of State) are now exercisable, in relation to England, by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28). Those functions, 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. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act. Section 17(1) was amended by paragraph 12(a), and section 48 by paragraph 21, of Schedule 5 to the 1999 Act. Regulation 13(4) of S.I. 2000/656 expressly authorises the Secretary of State to amend existing Regulations made by the Minister of Agriculture, Fisheries and Food (whether or not with others) under the Food Safety Act 1990.

(c) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

(d) S.I. 1998/1376, amended by S.I. 2000/3162, 2002/2364 and S.I. 2002/3008.

(e) OJ No. L27, 30.1.2004, p.46.

- (b) at the end of the definition of “the Directive” there shall be added “as amended by Commission Directive 2004/1/EC”(a).

4. In the following provisions, the figure “2006” shall be substituted for the figure “2005” —

- (a) regulation 4A(1)(a);
- (b) regulation 5(1)(b)(i);
- (c) regulation 8A(1);
- (d) section A of Part I of Schedule 1, at item 40 in column 4.

5. In Part I of Schedule 2, at item 27A in column 4 (restrictions and specifications), after the words “For use only as a blowing agent” there shall be added the words “Use prohibited as from 2nd August 2005”.

6. In regulation 10 (offences) —

- (a) for paragraph (19) there shall be substituted the following provision —

“(19) In any proceedings for an offence under regulation 3(1)(a) or (b) in relation to the requisite standards applicable to adhesives and materials and articles covered by a surface coating it shall be a defence to prove that —

- (a) the adhesive, material or article was brought into contact with food on or before 28th February 2003;
- (b) the date of filling (or subject to paragraph (24) of this regulation a coded indication of the date of filling) of the material or article concerned appeared on the adhesive, material or article at the time of sale; and
- (c) the labelling or marking with the particulars mentioned in subparagraph (b) at the time of sale complied with the requirements as regards labelling relating to durability contained in Article 2.1(a) of Directive 2000/13/EC of the European Parliament and of the Council.”(b);

- (b) paragraph (20) shall be omitted;

- (c) immediately after paragraph (22) there shall be added —

“(23) In any proceedings for an offence under regulation 3(1)(a) or (b) in relation to the sale as from 2nd August 2005 of a plastic material or article containing azodicarbonamide with reference number 36640 in Part I of Schedule 2 it shall be a defence to prove that —

- (a) the plastic material or article was brought into contact with food before 2nd August 2005;
- (b) the date of filling (or subject to paragraph (24) of this regulation a coded indication of the date of filling) of the plastic material or article concerned appeared on the plastic material or article at the time of sale; and
- (c) the labelling or marking with the particulars mentioned in subparagraph (b) at the time of sale complied with the requirements as regards labelling relating to durability contained in Article 2.1(a) of Directive 2000/13/EC of the European Parliament and the Council.

(24) For the purposes of paragraph (19)(b) and paragraph (23)(b) of this regulation the date signified by a coded indication shall have been made available on request to the Food Standards Agency and the enforcement authority.”.

(a) OJ No. L7, 13.1.2004, p.45.
(b) OJ No. L109, 6.5.2000, p.29.

Signed by authority of the Secretary of State for Health

23rd November 2004

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, further amend the Plastic Materials and Articles in Contact with Food Regulations 1998 (S.I. 1998/1376, “the 1998 Regulations”), which extend to the whole of Great Britain. These Regulations implement Commission Directive 2004/13/EC amending Commission Directive 2002/16/EC relating to the use of certain epoxy derivatives in materials and articles intended to come into contact with foodstuffs (OJ No. L51, 22.2.2002, p.27) and also implement Commission Directive 2004/1/EC amending Commission Directive 2002/72/EC in relation to the use of azodicarbonamide as a blowing agent (OJ No. L220, 15.8.2002, p.18).

2. The Regulations amend the 1998 Regulations by —

- (a) extending by a year the provisional authorisation of 2,2-bis(hydroxyphenyl)propane bis(2,3-epoxypropyl)ether (“BADGE”) (*regulation 4*);
- (b) prohibiting the use of the blowing agent azodicarbonamide as from 2nd August 2005 (*regulation 5*);
- (c) amending the defence available under regulation 10 paragraphs (19) and (20) of the 1998 Regulations to allow for a date code as an alternative to the date of filling itself appearing on materials and articles covered by a surface coating, the defence being conditional on the meaning of the code having been disclosed on request to the Food Standards Agency and the enforcement authority (*regulation 6(a) and (b)*);
- (d) creating a defence relating to azodicarbonamide used in plastic materials or articles brought into contact with food before 2nd August 2005 similar to that which applies to materials and articles covered by a surface coating (*regulation 6(c)*).

3. A regulatory impact assessment has been prepared for these Regulations and has been placed in the Library of each House of Parliament, together with a transposition note setting out how the main elements of Commission Directive 2004/1 and 2004/13/EC are transposed into domestic law by these Regulations. Copies may be obtained from the Chemical Safety Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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