
WELSH STATUTORY INSTRUMENTS

2007 No. 3252

**The Materials and Articles in Contact
with Food (Wales) Regulations 2007**

PART 5

General

Offences and penalties

13.—(1) Any person who —

- (a) contravenes the provisions of regulation 8(2), 10(3), (4), (6) or (7), or 11(1) or (3);
- (b) intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 2023/2006 or these Regulations or without reasonable excuse fails to provide any assistance or information that person may reasonably require; or
- (c) in purported compliance with any requirement mentioned in sub-paragraph (b), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Any person guilty of an offence under these Regulations is liable —

- (a) in the case of an offence mentioned in paragraph (1)(a) or (c) or in regulation 4 or 5 —
 - (i) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both;
 - (ii) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months or both; and
- (b) in the case of an offence mentioned in paragraph (1)(b) on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or both.

(3) Nothing in paragraph (1)(b) 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.

Enforcement

14.—(1) Each food authority in its area and each port health authority in its district will execute and enforce —

- (a) the provisions of Regulation 1935/2004 mentioned in regulation 4, and
- (b) subject to paragraph (3), these Regulations.

(2) The Food Standards Agency may also execute and enforce the provisions of Articles 16(1) and 17(2).

(3) Each food authority in its area will execute and enforce the provisions of Regulation 2023/2006 mentioned in regulation 5.

Offences by corporate bodies or Scottish partnerships

15.—(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 is 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 is 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

16. 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 is 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

17. 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.

General defences

18.—(1) In any proceedings for an offence under these Regulations it is, subject to paragraph (5), 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 him 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 or 13(1)(a) who did not —

- (a) prepare the material or article 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 that person satisfies the requirements of paragraphs (3) and (4).

(3) A person satisfies the requirements of this paragraph if that person proves —

- (a) that the commission of the offence was due to the act or default of some other person who was not under his or her control, or to reliance on information supplied by such a person;
- (b) that either —

- (i) he or she carried out all such checks of the material or article in question as were reasonable in all the circumstances, or
- (ii) it was reasonable in all the circumstances for that person to rely on checks carried out by the person who supplied him or her with that material or article; and

- (c) that he or she did not know and had no reason to suspect at the time the offence was committed that his or her act or omission would amount to an offence under these Regulations.

(4) A person satisfies the requirements of this paragraph if the offence is one of sale and he or she proves —

- (a) that the commission of the offence was due to the act or default of some other person who was not under his or her control, or to reliance on information supplied by such a person;
- (b) that the sale of which the offence consisted was not a sale under his or her name or mark; and
- (c) that he or she did not know and could not reasonably be expected to know at the time the offence was committed that his or her act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the person accused will not without leave of the court be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where he or she has previously appeared before the court in connection with the alleged offence, within one month of his or her first such appearance,

he or she has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

Procedure where a sample is to be analysed

19.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed is to divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer is to divide the sample into parts by putting the containers into three lots, and each lot is to be treated as being a part.

(3) The authorised officer will —

- (a) if necessary place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as is reasonably practicable, give one part to the owner and notify him in writing that the sample will be analysed;
- (d) submit one part for analysis in accordance with section 30 of the Act; and
- (e) retain one part for future submission under regulation 20.

Secondary analysis by the Government Chemist

20.—(1) Where a sample has been retained under regulation 19 and —

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned above,

paragraphs (2) to (7) apply.

(2) The authorised officer —

- (a) may of his or her own volition; or

(b) will —

- (i) if requested by the prosecutor (if a person other than the authorised officer);
- (ii) if the court so orders; or
- (iii) (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist will analyse the part sent to him or her under paragraph (2) and send to the authorised officer a certificate specifying the results of the analysis.

(4) Any certificate of the results of analysis transmitted by the Government Chemist will be signed by him or her or on his behalf, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(5) The authorised officer will immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist’s certificate of analysis.

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist’s charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation “defendant” includes a prospective defendant.

Application of various provisions of the Act

21.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof is to be construed as a reference to these Regulations —

- (a) section 2 (extending meaning of “sale” etc);
- (b) section 30(8) (which relates to documentary evidence).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference to the Act in subsection (1) is construed as including a reference to Regulation 1935/2004 or as appropriate to Regulation 2023/2006.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is construed as including a reference to Regulation 1935/2004 or, as appropriate Regulation 2023/2006, and to these Regulations —

- (a) section 3 (presumptions that food is intended for human consumption) with the modifications that the references to “sold” and “sale” is deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 44 (protection of officers acting in good faith).

Amendment of the Ceramic Articles in Contact with Food (Wales) Regulations 2006

22.—(1) The Ceramic Articles in Contact with Food (Wales) Regulations 2006(1) are amended in accordance with paragraph (2).

(2) In Schedule 3 (declaration of compliance), for sub-paragraph (5) of paragraph 1 substitute the following —

“(5) confirmation that the ceramic article or articles meet the relevant requirements in —

- (a) these Regulations; or
- (b)
 - (i) Council Directive [84/500/EEC](#) on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs⁽²⁾ as amended by Commission Directive [2005/31/EC](#)⁽³⁾; and
 - (ii) Regulation [\(EC\) No. 1935/2004](#) of the European Parliament and of the Council on materials and articles intended to come into contact with food and repealing Directives [80/590/EEC](#) and [89/109/EEC](#)⁽⁴⁾.”.

Amendment of the Food Safety (Sampling and Qualifications) Regulations 1990

23. In the Food Safety (Sampling and Qualifications) Regulations 1990⁽⁵⁾, in Schedule 1 (provisions to which those Regulations do not apply) for the title and reference of the Materials and Articles in Contact with Food Regulations 1987 substitute the title and reference of these Regulations.

Consequential amendments to the 2006 Regulations

24.—(1) The 2006 Regulations are amended in accordance with paragraphs (2) and (3).

(2) In paragraph (1) of regulation 2 (interpretation) omit the definition of “the 2005 Regulations”.

(3) In paragraph (1)(b) of regulation 11 (method of testing the capability of materials or articles to transfer constituents, and methods of analysis), for the expression “regulation 7(2) of the 2005 Regulations” substitute “regulation 9(2) of the Materials and Articles in Contact with Food (Wales) Regulations 2007⁽⁶⁾”.

Revocations

25. The following Regulations or parts thereof are revoked —

- (a) The Materials and Articles in Contact with Food (Wales) Regulations 2005;
- (b) Regulation 24 of the 2006 Regulations.

(2) OJ No. L277, 20.10.1984, p.12.

(3) OJ No. L110, 30.4.2005, p.36.

(4) OJ No. L338, 13.11.2004, p.4.

(5) [S.I. 1990/2463](#). Functions under these Regulations, 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 [\(c. 32\)](#).

(6) S.I.