
WELSH STATUTORY INSTRUMENTS

2008 No. 1682

**The Plastic Materials and Articles in Contact
with Food (Wales) (No.2) Regulations 2008**

PART 3

Execution and Enforcement

Enforcement

15. Each food authority in its area and each port health authority in its district must execute and enforce —

- (a) the provisions of Regulation 1895/2005 mentioned in regulation 12, and
- (b) these Regulations.

Offences and Penalties

16.—(1) Any person who —

- (a) contravenes or fails to comply with regulation 3(1), 4(1), 5(1), 12(2) to (5) or 14(1);
- (b) intentionally obstructs any person acting in the execution of Regulation 1895/2005 or these Regulations;
- (c) contravenes regulation 12(6), 14(3) or 21(3) or, without reasonable excuse, otherwise fails to give to any person acting in the execution of Regulation 1895/2005 or these Regulations 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) or (d) —
 - (i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
 - (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 any other offence under these Regulations 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 that person.

Offences by corporate bodies or Scottish partnerships

17.—(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 individual 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 partner as well as the partnership is deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Time limit for prosecutions

18. No prosecution for an offence under these Regulations may 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.

Offences due to the act or default of a third party

19. Where the commission by a person (A) of an offence under these Regulations is due to the act or default of some other person (B), person B is guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against person A.

Defence of exercising due diligence etc.

20.—(1) In any proceedings for an offence under these Regulations it is, subject to paragraph (5), a defence to prove that the person accused (“the accused”) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the control of the accused.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under these Regulations who did not —

- (a) prepare the plastic material or article or, as the case may be, 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 taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) and (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that —

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

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

- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under these Regulations.
- (4) The requirements of this paragraph are satisfied if the offence is one of sale and it is proved that —
 - (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reasonable reliance on information supplied by such a person;
 - (b) the sale of which the alleged offence consisted was not a sale under the name or mark of the accused; and
 - (c) the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the 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 accused is not without leave of the court entitled to rely on that defence unless —
 - (a) at least seven clear days before the hearing; and
 - (b) where the accused has previously appeared before the court in connection with the alleged offence, within one month of the first such appearance,the accused 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 the possession of the accused.
- (6) For the purposes of paragraph (2), “prepare” includes manufacture or subject to any form of treatment or process.

Transitional defence relating to PVC gaskets containing epoxidised soybean oil

- 21.—**(1) In any proceedings for an offence under regulation 3 concerning the sale of a glass jar—
- (a) which contains
 - (i) infant formulae or follow-on formulae as defined by Commission Directive [2006/141/EC\(1\)](#), or
 - (ii) processed cereal-based foods or baby foods for infants and young children as defined by Commission Directive [2006/125/EC\(2\)](#), and
 - (b) the lid of which is sealed by means of a PVC gasket containing epoxidised soybean oil having PM/Ref No. 88640 in Section A of Annex III,
- it is a defence to prove the matters set out in paragraph (2).
- (2) The matters to be proved are that —
- (a) the PVC gasket mentioned in paragraph (1)(b) was compliant with the relevant restrictions and specifications in column 4 at Item 259A of Part 1 of Schedule 2 to the Plastic Materials and Articles in Contact with Food (Wales) Regulations 2006(3);
 - (b) the glass jar was filled and sealed before 19 November 2006;
 - (c) the date of filling or a coded indication of that date was present on the jar or its lid at the time of sale; and

(1) OJ No. L401, 30.12.2006, p.1.

(2) OJ No. L339, 6.12.2006, p.16.

(3) S.I.2006/2982 (W.273)

- (d) the labelling or marking with the particulars mentioned in sub-paragraph (c) at the time of sale complied with the requirements relating to durability in Article 2(1)(a) of Directive [2000/13/EC](#) of the European Parliament and of the Council⁽⁴⁾.

(3) A person may not without reasonable excuse fail to comply with a request made by the enforcement authority to disclose the date signified by the coded indication mentioned in paragraph (2)(c).

Other transitional defences and savings

22.—(1) Notwithstanding the revocation of the 1998 Regulations made by regulation 25 of the Plastic Materials and Articles in Contact with Food (Wales) Regulations 2006 in relation to any plastic material or article —

- (a) manufactured before the 1 July 1998, the defence in regulation 3(3) of the 1998 Regulations;
- (b) manufactured or imported into the European Community before 1 January 2003, the defence in regulation 10(15) of the 1998 Regulations;
- (c) put into free circulation in the European Community before 30 November 2002, the defence in regulation 10(16) of the 1998 Regulations;
- (d) manufactured or imported into the European Community before 1 March 2004, the defence in regulation 10(21)(a) of the 1998 Regulations;
- (e) manufactured or imported into the European Community before 1 March 2003, the defence in regulation 10(21)(b) of the 1998 Regulations;
- (f) containing azodicarbonamide and brought into contact with food before 2 August 2005, the defence in regulation 10(23) of the 1998 Regulations; or
- (g) manufactured or imported into the European Community before 1 March 2006, the defence in regulation 10(25) of the 1998 Regulations;

must apply in relation to offences under these Regulations in like manner as it applied to offences under the equivalent provisions in those Regulations.

(2) In any proceedings for an offence under these Regulations other than an offence referred to in regulation 21(1), it is a defence to prove —

- (a) that the act constituting the alleged offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 19 November 2007; and
- (b) that the matter constituting the alleged offence would not otherwise have constituted an offence under these Regulations if the amendments to the Directive made by Commission Directive [2005/79/EC](#) had not been implemented in Wales at the time the matter occurred.

(3) In any proceedings for an offence under these Regulations other than an offence referred to in regulation 21(1), it is a defence to prove —

- (a) in the case of lids containing a gasket that do not comply with the restrictions and specifications for Ref. No.'s 30340, 30401, 56800, 76815, 76866, 88640 or 93760 contained in the Annex to Commission Regulation (EC) No. [372/2007](#) laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods⁽⁵⁾, that the derogation contained in Article 1 of Commission Regulation (EC) No. [597/2008](#) amending Commission Regulation (EC) No. [372/2007](#)⁽⁶⁾ is applicable; or

⁽⁴⁾ OJ No. L109, 6.5.2000, p.29, as last amended by Directive [2003/89/EC](#) (OJ No. L308, 25.11.2003, p.15).

⁽⁵⁾ OJ No. L92, 3.4.2007, p.9.

⁽⁶⁾ Commission Regulation (EC) No. [597/2008](#) (OJ No. L164, 25.6.2008, pp.12 -13).

- (b) in the case of lids containing a gasket that do not comply with the restrictions and specifications for Ref. No. 36640 (azodicarbonamide) contained in Annex III or in the case of plastic materials or articles which do not comply with the restrictions and specifications for phthalates under Ref. No.'s 74560, 74640, 74880, 75100 or 75105 contained in that Annex, that the act constituting the alleged offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 1 July 2008; or
- (c) in any case other than those mentioned in sub-paragraph (a) or (b), that the act constituting the alleged offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 1 May 2009; and
- (d) that the act constituting the alleged offence would not otherwise have constituted an offence under these Regulations if the amendments to the Directive made by Commission Directive [2007/19/EC](#) had not been implemented in Wales at the time the matter occurred.

Procedure where a sample is to be analysed

23.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed must 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 must divide the sample into parts by putting the containers into three lots, and each lot must be treated as being a part.

(3) The authorised officer must —

- (a) if necessary place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as reasonably practicable, give one part to the owner and notify the owner 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 24.

Secondary analysis by the Government Chemist

24.—(1) Where a sample has been retained under regulation 23 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 the officer's own volition; or
- (b) must —
 - (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 must analyse the part sent under paragraph (2) and send to the authorised officer a certificate specifying the results of the analysis.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

(5) The authorised officer must 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.