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WELSH STATUTORY INSTRUMENTS

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**2012 No. 2705 (W.291)**

**FOOD, WALES**

**The Materials and Articles in Contact  
with Food (Wales) Regulations 2012**

<i>Made</i>	- - - -	<i>27 October 2012</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>30 October 2012</i>
<i>Coming into force</i>	- -	<i>20 November 2012</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(1) and (2), 26(1)(a), (2)(a) and (3), 31 and 48(1) of the Food Safety Act 1990 <sup>M1</sup>, and now vested in them <sup>M2</sup>, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972 <sup>M3</sup>.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for certain references to Commission Regulation (EC) No. 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food <sup>M4</sup> or to any Annex to the other EU instruments specified in regulation 2(3) to be construed as references to that Regulation or that Annex as amended from time to time.

In accordance with section 48(4A) of the 1990 Act they have had regard to relevant advice given by the Food Standards Agency.

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 <sup>M5</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Marginal Citations**

**M1** 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c. 28), “the 1999 Act”. Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.

**M2** Functions formerly exercisable by “the Ministers” 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

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- 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the [Government of Wales Act 2006 \(2006 c. 32\)](#).
- M3** 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the [Legislative and Regulatory Reform Act 2006 \(2006, c. 51\)](#) and amended by Part 1 of Schedule 1 to the [European Union \(Amendment\) Act 2008 \(2008 c. 7\)](#).
- M4** OJ No. L384, 29.12.2006, p.75, amended by Commission Regulation (EC) No.282/2008 (OJ No. L86, 28.3.2008, p.9).
- M5** OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny — Part Four (OJ No. L188, 18.7.2009, p.14).

## PART 1

### Preliminary

#### Title, application and commencement

1. The title of these Regulations is the Materials and Articles in Contact with Food (Wales) Regulations 2012, they apply in relation to Wales and come into force on 20 November 2012.

#### Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“Directive [84/500/EEC](#)” (“*Cyfarwyddeb 84/500/EEC*”) means 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 <sup>M6</sup>;

“Directive [2007/42/EC](#)” (“*Cyfarwyddeb 2007/42/EC*”) means Commission Directive [2007/42/EC](#) relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs <sup>M7</sup>;

“Regulation 1935/2004” (“*Rheoliad 1935/2004*”) means 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](#)<sup>M8</sup>;

“Regulation 1895/2005” (“*Rheoliad 1895/2005*”) means Commission Regulation (EC) No. [1895/2005](#) on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food <sup>M9</sup>;

“Regulation 2023/2006” (“*Rheoliad 2023/2006*”) means Commission Regulation (EC) No. [2023/2006](#) on good manufacturing practice for materials and articles intended to come into contact with food <sup>M10</sup>;

“Regulation 450/2009” (“*Rheoliad 450/2009*”) means Commission Regulation (EC) No. [450/2009](#) on active and intelligent materials and articles intended to come into contact with food <sup>M11</sup>;

[<sup>F1</sup>“Regulation 10/2011” (“*Rheoliad 10/2011*”) means [Commission Regulation \(EU\) No. 10/2011](#) on plastic materials and articles intended to come into contact with food;]

“authorised officer” (“*swyddog awdurdodedig*”) means any person, whether or not an officer of the authority concerned, who is authorised in writing by an authority having responsibility

for execution and enforcement under regulation 20 to act in matters arising under these Regulations;

“food authority” (“*awdurdod bwyd*”) does not include a port health authority;

“port health authority” (“*awdurdod ieched porthladd*”) means, in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984<sup>M12</sup>, a port health authority for that district constituted by order under section 2(4) of that Act;

“preparation” (“*paratoi*”) includes manufacture and any form of treatment or process, and “prepare” (“*paratoi*”) is to be construed accordingly.

(2) Expressions used in these Regulations and in Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 or Regulation 10/2011 bear the same meaning in these Regulations as they bear in those Regulations.

(3) Any reference in these Regulations to Regulation 2023/2006 or to an Annex to Directive 2007/42/EC or Regulation 10/2011 is a reference to that Regulation or that Annex as amended from time to time.

#### Textual Amendments

- F1** Words in [reg. 2\(1\)](#) substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), 3

#### Marginal Citations

- M6** OJ No. L277, 20.10.1984, p.12, amended by Commission Directive 2005/31/EC (OJ No. L110, 30.4.2005, p.36).
- M7** OJ No. L172, 30.6.2007, p.71. This Directive repealed and consolidated without further amendment Commission Directive 93/10/EEC as last amended by Commission Directive 2004/14/EC.
- M8** OJ No. L338, 13.11.2004, p.4, amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14).
- M9** OJ No. L302, 19.11.2005, p.28.
- M10** OJ No. L384, 29.12.2006, p.75.
- M11** OJ No. L135, 30.5.2009, p.3.
- M12** 1984 c. 22.

#### Scope

3. The provisions of these Regulations do not apply in relation to those materials and articles specified in paragraph (3) of Article 1 (purpose and subject matter) of Regulation 1935/2004.

## PART 2

### General Requirements for Materials and Articles

#### Offences of contravening specified provisions of Regulation 1935/2004

4.—(1) No person may place on the market or use, in the course of a business in connection with the storage, preparation, packaging, sale or service of food any material or article that does not comply with the requirements of Article 3(1) (general requirements) or Article 4(1), (2), (3) or (4) (special requirements for active and intelligent materials and articles).

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*Changes to legislation: There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (Wales) Regulations 2012. (See end of Document for details)*

(2) No person may place on the market any material or article that does not comply with the requirements of Article 3(2), 4(5) or (6) or 15(1), (3), (4), (7) or (8) as read with Article 15(2) (labelling).

(3) Any person who contravenes paragraph (1) or (2) or Article 11(4) or (5) (Community authorisation) or 17(2) (traceability) is guilty of an offence.

(4) In this regulation a reference to a numbered Article is a reference to that Article in Regulation 1935/2004.

**Offence of contravening Article 4 of Regulation 2023/2006**

5. Any person who fails to comply with the requirements of Article 4 (conformity with good manufacturing practice) of Regulation 2023/2006 is guilty of an offence.

**Competent authorities for the purposes of Regulation 1935/2004 and Regulation 2023/2006**

6.—(1) The following bodies are designated as the competent authorities for the purposes of the provisions of Regulation 1935/2004 specified below—

- (a) in respect of Articles 9 (application for authorisation of a new substance) and 13 (competent authorities of Member States), the Food Standards Agency; and
- (b) in respect of Articles 16(1) (declaration of compliance) and 17(2) (traceability), the Food Standards Agency, each food authority in its area and each port health authority in its district.

(2) The competent authority for the purposes of Article 6(2) (quality control system) and 7(3) (documentation) of Regulation 2023/2006 is each food authority in its area.

**PART 3**

Requirements for Active and Intelligent Materials and Articles

**Offences of contravening specified provisions of Regulation 450/2009**

7.—(1) Subject to the transitional provisions contained in Article 14 (entry into force and application) of Regulation 450/2009, any person who places on the market any active or intelligent material or article which does not comply with the requirements of Article 4 of that Regulation is guilty of an offence.

<sup>F2</sup>(2) .....

**Textual Amendments**

**F2** Reg. 7(2) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), 4

**Competent authorities for the purposes of Regulation 450/2009**

8. The competent authorities for the purposes of Article 13 of Regulation 450/2009 are the Food Standards Agency, each food authority in its area and each port health authority in its district.

## PART 4

### Requirements for Ceramic Articles

#### Interpretation of this Part

##### 9. In this Part—

- (a) “ceramic article” (“*eitem geramig*”) means an article to which Regulation 1935/2004 applies by virtue of its Article 1(2) as read with 1(3) that—
- (i) is 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,
  - (ii) is first shaped, with the shape thus obtained having been permanently fixed by firing, and
  - (iii) may be glazed, enamelled and/or decorated; and
- (b) any reference to a numbered Article or Annex is a reference to that Article of or Annex to Directive [84/500/EEC](#).

#### Limits for lead and cadmium and declaration of compliance

10.—(1) The quantities of lead or cadmium transferred from a ceramic article must not exceed the limits laid down in Article 2(4) as read with Article 2(3) and (5).

(2) Unless it is demonstrated that the materials used to make the ceramic article did not contain lead or cadmium, compliance with paragraph (1) is to be determined by testing and analysis in accordance with Annexes I and II.

(3) No person may place on the market a ceramic article that does not comply with the requirements of paragraph (1) as read with paragraph (2).

(4) A person who places on the market a ceramic article that is not yet in contact with food must provide a written declaration complying with paragraph (5) to accompany the article at the marketing stages up to and including the retail stage.

(5) The declaration must be issued by the manufacturer or by a person established within the EU who placed the ceramic article on the market and must contain the information laid down in Annex III.

(6) A person who manufactures or, in the course of a business, imports into the EU a ceramic article must on request make available to an authorised officer appropriate documentation to demonstrate compliance with the requirements of paragraph (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.

(7) Paragraphs (4), (5) and (6) do not apply in relation to a ceramic article which is second-hand.

(8) The documentation specified in paragraph (6)(a), (b) and (c) is not required where documentary evidence is provided to show that the materials used to make the ceramic article did not contain lead or cadmium.

## PART 5

### Requirements for Regenerated Cellulose Film

#### Interpretation of this Part

11.—(1) In this Part—

- (a) “regenerated cellulose film” (“*caen cellwlos atgynyrchiedig*”) means a thin sheet material obtained from refined cellulose derived from unrecycled wood or cotton, with or without the addition of suitable substances, either in the mass or on one or both surfaces, but does not include synthetic casings of regenerated cellulose;
- (b) “URCF” (“*CCAH*”) means uncoated regenerated cellulose film;
- (c) “CRCF” (“*CCAG*”) means coated regenerated cellulose film with coating derived from cellulose; and
- (d) “PRCF” (“*CCAP*”) means coated regenerated cellulose film with coating consisting of plastics.

(2) This Part applies to regenerated cellulose film which—

- (a) constitutes a finished product in itself; or
- (b) is part of a finished product containing other materials,

and is intended to come into contact with food or, by being used for that purpose, does come into contact with food.

(3) Except in regulation 12(3), any reference in this Part to a numbered Annex is a reference to that Annex to Directive [2007/42/EC](#).

#### Controls and limits

12.—(1) URCF and CRCF may be manufactured using only the substances or groups of substances listed in Annex II (list of substances authorised in the manufacture of regenerated cellulose film) and subject to the restrictions set out in that Annex but, by way of derogation, substances other than those listed in Annex II may be used when these substances are employed either as—

- (a) dyes and pigments; or
- (b) adhesives,

provided that there is no trace of migration of the substances, detectable by a validated method, into or on to foodstuffs.

(2) PRCF may be manufactured, prior to coating, using only substances or groups of substances listed in the first part of Annex II and subject to the restrictions set out in that part.

(3) The coating to be applied to PRCF may be manufactured using only substances or groups of substances listed in Annex I to Regulation 10/2011 and subject to the restrictions in that Annex.

(4) Materials and articles made of PRCF must comply with Article 12 (overall migration limit) as read with Article 17 (expression of migration test results) and Article 18 (rules for assessing compliance with migration limits) of Regulation 10/2011.

(5) Printed surfaces of regenerated cellulose film must not come into contact with foodstuffs.

(6) Any material or article made of regenerated cellulose film that is not by its nature clearly intended to come into contact with food must, at a marketing stage other than the retail stage, be accompanied by a written declaration attesting that it complies with the legislation applicable to it.

(7) Where special conditions of use are indicated, the material or article made of regenerated cellulose film must be labelled accordingly.

(8) No person may place on the market any regenerated cellulose film which has been manufactured in contravention of the requirements of paragraphs (1) to (4), or which fails to comply with paragraphs (5)<sup>F3</sup>... or (7).

**Textual Amendments**

**F3** Word in reg. 12(8) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **5**

## PART 6

### Requirements for Plastic Materials and Articles

#### Interpretation of Part 6 and [<sup>F4</sup>Schedule 1]

13. [<sup>F5</sup>Except in regulation 14(1), any reference in this Part and in Schedule 1] to a numbered Article or Annex is a reference to that Article of or Annex to Regulation 10/2011.

**Textual Amendments**

**F4** Words in reg. 13 heading substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **6(a)**

**F5** Words in reg. 13 substituted (26.7.2018) by [The Food and Feed \(Miscellaneous Amendments and Revocations\) \(Wales\) Regulations 2018 \(S.I. 2018/806\)](#), regs. 1(3), **22(2)**

#### Offences of contravening specified provisions of Regulation 10/2011

14.—(1) Subject to the transitional arrangements set out in [<sup>F6</sup>Article 2 of [Commission Regulation \(EU\) No 1282/2011](#), Article 2 of [Commission Regulation \(EU\) No 1183/2012](#), Article 2 of [Commission Regulation \(EU\) No 202/2014](#), Article 2 of Commission Regulation (EU) 2015/174, Article 2 of Commission Regulation (EU) 2016/1416, Article 2 of Commission Regulation (EU) 2017/752, Article 2 of Commission Regulation (EU) 2018/79 and Article 6 of Commission Regulation (EU) 2018/831,] any person who places on the market a plastic material or article that fails to comply with a requirement of Regulation 10/2011 specified in column 1 of [<sup>F7</sup>Schedule 1] is guilty of an offence.

<sup>F8</sup>(2) .....

**Textual Amendments**

**F6** Words in reg. 14(1) substituted (26.7.2018) by [The Food and Feed \(Miscellaneous Amendments and Revocations\) \(Wales\) Regulations 2018 \(S.I. 2018/806\)](#), regs. 1(3), **22(3)**

**F7** Words in reg. 14(1) substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **7(a)**

**F8** Reg. 14(2) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **7(b)**

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**Competent authorities for the purposes of Regulation 10/2011**

[<sup>F9</sup>15. The competent authorities for the purposes of Articles 8 and 16(1) of Regulation 10/2011 are the Food Standards Agency, each food authority in its area and each port health authority in its district.]

**Textual Amendments**

**F9** Reg. 15 substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **8**

**PART 7**

Requirements for certain epoxy derivatives

**Restrictions on the use of certain epoxy derivatives (BADGE, BFDGE and NOGE)**

16.—(1) In this Part—

- (a) any reference to a numbered Article or Annex is a reference to that Article or Annex in Regulation 1895/2005; and
- (b) [<sup>F10</sup>paragraph (2) is] subject to Article 1(3) (scope) <sup>M13</sup>.

(2) [<sup>F11</sup>No] person may place on the market or use, in the course of a business in connection with the storage, preparation, packaging, sale or service of food—

- (a) any material or article in contravention of Article 3 (prohibition on use or presence of BFDGE) or Article 4 (prohibition on use or presence of NOGE); or
- (b) any material or article that fails to comply with the restrictions contained in Article 2 (BADGE) as read with Annex I (specific migration limit for BADGE and certain of its derivatives).

<sup>F12</sup>(3) .....

(4) Any person who contravenes paragraph (2) <sup>F13</sup>... is guilty of an offence.

**Textual Amendments**

**F10** Words in reg. 16(1)(b) substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **9(a)**

**F11** Word in reg. 16(2) substituted (26.7.2018) by [The Food and Feed \(Miscellaneous Amendments and Revocations\) \(Wales\) Regulations 2018 \(S.I. 2018/806\)](#), regs. 1(3), **22(4)**

**F12** Reg. 16(3) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **9(b)**

**F13** Words in reg. 16(4) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **9(c)**

**Marginal Citations**

**M13** Article 3 contains an exception relating to certain containers and storage tanks and pipelines belonging to them.

## **Competent authorities for the purposes of Regulation 1895/2005**

17. The competent authority for the purpose of Article 6(4) is each food authority in its area and each port health authority in its district.

## **PART 8**

### **Requirements for Vinyl chloride**

18.—(1) Materials and articles, other than those materials and articles controlled by Regulation 10/2011, which are manufactured with vinyl chloride polymers or copolymers—

- (a) must not contain vinyl chloride monomer in a quantity exceeding 1 milligram per kilogram of the material or article; and
- (b) must be manufactured in such a way that they do not transfer to foods with which they are in contact any quantity of vinyl chloride exceeding 0.01 milligrams of vinyl chloride per kilogram of food.

(2) No person may—

- (a) place on the market; or
- (b) use in the course of a business in connection with the storage, preparation, packaging, selling or service of food,

any material or article that does not comply with paragraph (1).

## **PART 9**

### **Enforcement**

#### **Offences and penalties**

19.—(1) Any person who contravenes the provisions of regulation 10(3)<sup>F14</sup>..., 12(8) or 18(2) is guilty of an offence.

(2) Any person who intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011 or these Regulations is guilty of an offence.

(3) Any person who, without reasonable excuse, fails to provide any assistance or information that person may reasonably require for the performance of their functions under the Regulations mentioned in paragraph (2)<sup>F15</sup>... is guilty of an offence.

(4) Any person who, in purported compliance with any requirement mentioned in paragraph (3), knowingly or recklessly supplies information that is false or misleading in any material particular, is guilty of an offence.

[<sup>F16</sup>(5) A person guilty of an offence is liable—

- (a) in the case of an offence created by paragraph (1) or (4) or by regulation 4(3), 5, 7(1), 14(1), or 16(4)—
  - (i) on conviction on indictment to a fine or to a term of imprisonment not exceeding two years or both, or
  - (ii) on summary conviction to a fine; and

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(b) in the case of an offence created by paragraph (2) or (3), on summary conviction to a fine not exceeding level 4 on the standard scale.]

(6) Nothing in paragraph (2) or (3) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate them.

#### Textual Amendments

- F14** Words in [reg. 19\(1\)](#) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), [regs. 1\(3\)](#), [10\(a\)](#)
- F15** Words in [reg. 19\(3\)](#) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), [regs. 1\(3\)](#), [10\(b\)](#)
- F16** [Reg. 19\(5\)](#) substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), [regs. 1\(3\)](#), [10\(c\)](#)

#### Execution and enforcement

**20.**—(1) Each food authority in its area and each port health authority in its district must execute and enforce—

- (a) Regulation 1935/2004, Regulation 1895/2005, Regulation 450/2009 and Regulation 10/2011; and
- (b) except in relation to the provisions referred to in paragraph (3), these Regulations.

[<sup>F17</sup>(2) The Food Standards Agency may also execute and enforce the provisions of—

- (a) Articles 16(1) and 17(2) of Regulation 1935/2004;
- (b) Article 13 of Regulation 450/2009; and
- (c) Article 16(1) of Regulation 10/2011.]

(3) Each food authority in its area must execute and enforce the provisions of Regulation 2023/2006 specified in regulation 5 and these Regulations.

#### Textual Amendments

- F17** [Reg. 20\(2\)](#) substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), [regs. 1\(3\)](#), [11](#)

#### Offences by corporate bodies or Scottish partnerships

**21.**—(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.

### Offences due to the act or default of a third party

22. 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

23.—(1) 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.

(2) Paragraph (1) does not apply to an offence under regulation <sup>F18</sup>...19(2) or (3).

#### Textual Amendments

**F18** Words in [reg. 23\(2\)](#) omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), 12

### General defences

24.—(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 regulation 4(3), 7(1), 14(1), 16(4) or 19(1) who did not import or prepare the material or article in respect of which the offence is alleged to have been committed is to be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) or (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 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 accused with that material or article; 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 placing on the market 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 reliance on information supplied by such a person;
- (b) the placing on the market of which the offence consisted was not done under the name or mark of the accused; and

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- (c) the accused did not know and could not reasonably be 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 to be 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.

### **Procedure where a sample is to be analysed**

**25.**—(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 is 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 26.

### **Secondary analysis by the Government Chemist**

**26.**—(1) Where a sample has been retained under regulation 25(3)(e) 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 in regulation 25,

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 accused,
 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.

(4) Any certificate of the results of analysis transmitted 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 accused 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 accused 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 accused to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation “the accused” (“*y cyhuddedig*”) includes a person against whom an authorised officer is intending to commence proceedings.

### Application of various provisions of the Act

[<sup>F19</sup>27.—(1) Section 10(1) and (2) of the Act (improvement notices) applies for the purposes of these Regulations with the modification (in the case of section 10(1)) set out in Part 1 of Schedule 2 for the purposes of—

(a) enabling an improvement notice to be served on a person requiring that person to comply with any of the following provisions—

(i) regulations 10(4), 10(6) and 12(6);

(ii) Article 16 of Regulation 1935/2004;

(iii) Article 5 of Regulation 1895/2005;

(iv) Articles 12 and 13 of Regulation 450/2009; and

(v) the second sentence of Article 8, Article 15 as read with Annex IV, and Article 16 of Regulation 10/2011; and

(b) making the failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) The provisions of the Act specified in column 1 of the table in Part 2 of Schedule 2 apply, with the modifications (if any) specified in column 2 of that table.

(3) Paragraphs (1) and (2) are without prejudice to the application of the Act to these Regulations for purposes other than those specified in paragraph (1).]

#### Textual Amendments

**F19** Reg. 27 substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **13**

## PART 10

### General and supplementary

#### Consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990

<sup>F20</sup>28. ....

**Status:** Point in time view as at 26/07/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (Wales) Regulations 2012. (See end of Document for details)

**Textual Amendments**

**F20** Reg. 28 omitted (26.7.2018) by virtue of [The Food and Feed \(Miscellaneous Amendments and Revocations\) \(Wales\) Regulations 2018 \(S.I. 2018/806\)](#), regs. 1(3), **22(5)**

**Amendment to the Food Labelling Regulations 1996**

<sup>F21</sup>**29.** . . . . .

**Textual Amendments**

**F21** Reg. 29 omitted (26.7.2018) by virtue of [The Food and Feed \(Miscellaneous Amendments and Revocations\) \(Wales\) Regulations 2018 \(S.I. 2018/806\)](#), regs. 1(3), **22(5)**

**Revocations**

**30.** The following Regulations are revoked—

- (a) The Ceramic Articles in Contact with Food (Wales) Regulations 2006 <sup>M14</sup>;
- (b) The Plastic Materials and Articles in Contact with Food (Wales) Regulations 2009 <sup>M15</sup>;
- (c) The Materials and Articles in Contact with Food (Wales) Regulations 2010 <sup>M16</sup>;
- (d) The Plastic Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2011 <sup>M17</sup>.

**Marginal Citations**

- M14** [S.I. 2006/1704 \(W.166\)](#), amended by [S.I. 2011/1043](#).
- M15** [S.I. 2009/481 \(W.49\)](#), amended by [S.I. 2010/2288 \(W.200\)](#).
- M16** [S.I. 2010/2288 \(W.200\)](#).
- M17** [S.I. 2011/233 \(W.45\)](#).

*Lesley Griffiths*  
Minister for Health and Social Services, one of  
the Welsh Ministers

[<sup>F22</sup>Schedule 1]

Regulation 14(1)

## Specified provisions of Regulation 10/2011

**Textual Amendments**

**F22** Sch. 1: Sch. renumbered as Sch. 1 (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **14(a)**

<i>Specified provision</i>	<i>Subject matter</i>
Article 4(e), as read with Articles 17 and 18	Prohibition on placing on the market plastic materials or articles if they do not meet specified compositional and declaration requirements
Article 5(1) and Annex I, as read with Article 6	Requirement, subject to certain derogations, to use only authorised substances in the manufacture of plastic layers in plastic materials and articles
Article 8, first sentence	General quality and purity standards that must be observed for substances used in the manufacture of plastic layers in plastic materials and articles
Article 9 as read with Annex I	Particular restrictions and specifications for substances used in the manufacture of plastic layers in plastic materials and articles
Article 10 as read with Annex II	General restrictions on plastic materials and articles
[ <sup>F23</sup> Article 11(1) and Annex I, as read with Article 11(3) and (4)]	Specific limits on the degree to which constituents of plastic materials and articles are permitted to migrate into foods
Article 12	Overall limits on the permitted level of migration of the constituents of plastic materials and articles into food simulants
Article 13(1), (3), (4) and (5) and Annex I as read with Article 13(2)	Particular restrictions and specifications for the composition of each plastic layer in plastic multi-layer materials and articles
Article 14(1) and (5) and Annex 1, as read with Article 14(2), (3) and (4)	Particular restrictions and specifications for the composition of each plastic layer in multi-material multi-layer materials and articles
<b>F24</b>	<b>F24</b>
...	...

**Textual Amendments**

**F23** Words in Sch. 1 substituted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **14(b)**

**Status:** Point in time view as at 26/07/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (Wales) Regulations 2012. (See end of Document for details)

**F24** Words in Sch. 1 omitted (14.9.2017) by virtue of [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), regs. 1(3), **14(c)**

## [F25] SCHEDULE 2

Regulation 27

### Textual Amendments

**F25** Sch. 2 inserted (14.9.2017) by [The Materials and Articles in Contact with Food \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/832\)](#), reg. 1(3), **Sch.**

## PART 1

### Modification of section 10(1)

1. For section 10(1) of the Act (improvement notices) substitute—

“(1) If an authorised officer has reasonable grounds for believing that a person is failing to comply with any provision specified in subsection (1A), the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the authorised officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure to so comply;
- (c) specify the measures which, in the authorised officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(1A) The provisions referred to in subsection (1) are—

- (a) regulations 10(4), 10(6) and 12(6) of the Materials and Articles in Contact with Food (Wales) Regulations 2012;
- (b) Article 16 of Regulation 1935/2004;
- (c) Article 5 of Regulation 1895/2005;
- (d) Articles 12 and 13 of Regulation 450/2009; and
- (e) the second sentence of Article 8, Article 15 as read with Annex IV, and Article 16 of Regulation 10/2011.”

## PART 2

## Application and modification of other provisions of the Act

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modification</i>
Section 2 (extended meaning of “sale” etc.)	For “this Act” (in each place it occurs) substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 3 (presumptions that food intended for human consumption)	In subsection (1), for “this Act” substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012, Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 and Regulation 10/2011”.
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 21(1) and (5) (defence of due diligence)	In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 30(6) and (8) (which relates to evidence of certificates given by a food analyst or examiner)	In subsection (8), for “this Act” substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 32 (powers of entry)	For “this Act” (in each place it occurs) substitute “the Materials and Articles in Contact with Food (Wales) Regulations 2012, Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 and Regulation 10/2011”.
Section 33 (obstruction etc. of officers)	In subsection (1), for “this Act” (in each place it occurs) substitute “section 10(1) of this Act as applied and modified by regulation 27 of, and Part 1 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 35(1) and (2) (punishment of offences)	In subsection (1), after “section 33(1) above” insert “, as applied and modified by regulation 27 of, and Part 2 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012,”.
	After subsection (1) insert—

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<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modification</i>
	“(1A) A person guilty of an offence under section 10(2), as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012 shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.”
	In subsection (2), in the opening words, for “any other offence under this Act” substitute “an offence under section 33(2), as applied by regulation 27 of, and Part 2 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012,”.
Section 36 (offences by bodies corporate)	In subsection (1), for “this Act” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 36A (offences by Scottish partnerships)	For “this Act” substitute “section 10(2) as applied by regulation 27 of the Materials and Articles in Contact with Food (Wales) Regulations 2012”.
Section 37(1) and (6) (appeals to a magistrates’ court)	For subsection (1) substitute—  “Any person who is aggrieved by a decision of an authorised officer to serve an improvement notice under section 10(1), as applied and modified by regulation 27 of, and Part 1 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012, may appeal to a magistrates’ court.”  In subsection (6)—  for “(3) or (4)” substitute “(1)”; and  in paragraph (a), omit “or to the sheriff”.
Section 39 (appeals against improvement notices)	For subsection (1) substitute—  “(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 27 of, and Part 1 of Schedule 2 to, the Materials and Articles in Contact with Food (Wales) Regulations 2012, the magistrates’ court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the magistrates’ court may in the circumstances think fit.”

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modification</i>
	In subsection (3), omit “for want of prosecution.”.]

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations provide for the implementation of the following Directives and the enforcement of the following EU Regulations—

- (a) Council Directive [78/142/EEC](#) on the approximation of the laws of the Member States relating to materials and articles which contain vinyl chloride monomer and are intended to come into contact with foodstuffs (OJ No. L44, 15.2.1978, p.15) (“Directive [78/142/EEC](#)”);
- (b) 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 (OJ No. L277, 20.10.1984, p.12) (“Directive [84/500/EEC](#)”);
- (c) Commission Directive [2007/42/EC](#) relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs (OJ No. L172, 30.6.2007, p.71) (“Directive [2007/42/EC](#)”);
- (d) 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](#) (OJ No. L338, 13.11.2004, p.4) (“Regulation 1935/2004”);
- (e) Commission Regulation (EC) No. [1895/2005](#) on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food (OJ No. L302, 19.11.2005, p.28) (“Regulation 1895/2005”);
- (f) Commission Regulation (EC) No. [2023/2006](#) on good manufacturing practice for materials and articles intended to come into contact with food (OJ No. L384, 29.12.2006, p.75) (“Regulation 2023/2006”);
- (g) Commission Regulation (EC) No. [450/2009](#) on active and intelligent materials and articles intended to come into contact with food (OJ No. L135, 30.5.2009, p.3) (“Regulation 450/2009”); and
- (h) Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food (OJ No. L12, 15.1.2011, p.1) (“Regulation 10/2011”).

2. These Regulations revoke the Plastic Materials and Articles in Contact with Food (Wales) Regulations 2009 (S.I. 2009/481 (W.49)). They also revoke and re-enact with certain amendments the provisions of the Ceramic Articles in Contact with Food (Wales) Regulations 2006 (S.I. 2006/1704 (W.166)) and the Materials and Articles in Contact with Food (Wales) Regulations 2010 (S.I. 2010/2288 (W.200)).

**Status:** Point in time view as at 26/07/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (Wales) Regulations 2012. (See end of Document for details)

3. These Regulations provide that references to a specified EU instrument or specified parts of it are to be construed as references to the instrument or parts of it as they may be amended from time to time (*regulation 2(3)*).

4. These Regulations do not apply to materials or articles outside the scope of Regulation 1935/2004 (*regulation 3*). The materials identified in that Regulation as being outside its scope are materials and articles supplied as antiques, covering or coating materials forming part of the food and which may be consumed with it and fixed public or private water supply equipment.

5. Part 2 of these Regulations contains provisions which make it an offence to contravene certain requirements of Regulation 1935/2004 (*regulation 4*) and Regulation 2023/2006 (*regulation 5*). Regulation 1935/2004 is the principal framework Regulation on materials and articles in contact with food.

6. Part 2 also provides for designation of the competent authorities for the various purposes identified in Regulations 1935/2004 and 2023/2006 (*regulation 6*).

7. Part 3 provides for the enforcement of specified provisions of Regulation 450/2009 (*regulation 7*) and designates the competent authorities for the purposes of that Regulation (*regulation 8*).

8. Part 4 implements Directive [84/500/EEC](#), and the definition of a ceramic article is set out in *regulation 9*. It provides that no person may place on the market a ceramic article that does not meet the specifications set out in the Directive (*regulation 10*). This regulation additionally contains requirements relating to documentary proof of compliance which apply to new but not to second hand ceramic articles.

9. Part 5 of these Regulations, which implements Directive [2007/42/EC](#), contains requirements relating to regenerated cellulose film and identifies the various types of such film to which the provisions apply (*regulation 11*). This Part, in *regulation 12*, contains conditions relating to the substances that may be used for the manufacture of regenerated cellulose film (*paragraphs (1) to (4)*), specifies that the printed surface of regenerated film must not come into contact with food (*paragraph (5)*) and specifies certain documentation and labelling requirements (*paragraphs (6) and (7)*).

10. Part 6 of these Regulations provides for the enforcement of Regulation 10/2011 and identifies those provisions of the EU Regulation which it constitutes an offence to contravene (*regulation 14 and the Schedule*). The competent authorities for the purposes of certain provisions of Regulation 10/2011 are designated in *regulation 15*.

11. Part 7 provides for the continuing enforcement of Regulation 1895/2005 which maintains a ban on the epoxy derivatives BFDGE and NOGE and restrictions on the use of BADGE (*regulation 16*). The competent authorities for the purpose of this EU Regulation are designated in *regulation 17*.

12. Part 8 maintains the controls on the use of vinyl chloride put in place by Directive [78/142/EEC](#) to the extent that those controls are not now effected by Regulation 10/2011 (*regulation 18*).

13. Part 9 contains enforcement and associated provisions that—

- (a) penalise contravention of these Regulations or obstruction of those enforcing them (*regulation 19*);
- (b) designate enforcement authorities for various functions under the Regulations (*regulation 20*);
- (c) provide that individuals responsible for the actions of a corporate body or a Scottish partnership may be co-prosecuted for offences committed by that body or partnership (*regulation 21*);

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**Changes to legislation:** There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (Wales) Regulations 2012. (See end of Document for details)

- (d) provide for the prosecution of a person who causes the commission of an offence by another person, whether or not proceedings are taken against the original offender (*regulation 22*);
- (e) specify a time limit for commencing a prosecution (*regulation 23*);
- (f) provide for a defence of due diligence to an offence under these Regulations (*regulation 24*);
- (g) specify the procedure to be followed when sending a sample for analysis (*regulation 25*);
- (h) make provision for a reference sample to be analysed by the Laboratory of the Government Chemist (*regulation 26*); and
- (i) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (*regulation 27*).

**14.** Part 10 contains general and supplementary provisions which—

- (a) make consequential amendments to Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990 (*regulation 28*);
- (b) maintain an amendment to the Food Labelling Regulations 1996 (S.I. 1996/1499) and provide for that amendment to expire on a date when directly applicable EU food labelling provisions take effect (*regulation 29*); and
- (c) provide for the revocation of specified Regulations (*regulation 30*).

**15.** The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Food Standards Agency at Food Standards Agency Wales, 11th Floor, Southgate House, Wood Street, Cardiff CF10 1EW.

**Status:**

Point in time view as at 26/07/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (Wales) Regulations 2012.