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WELSH STATUTORY INSTRUMENTS

2017 No. 832 (W. 202)

FOOD, WALES

The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Materials and Articles in Contact with Food (Wales) Regulations 2012 (S.I. 2012/2705 (W. 291)) ("the principal Regulations").

The amendments—

(a) provide for the continuing enforcement of Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food (OJ No L 12, 15.1.2011, p 1) ("Regulation 10/2011") as last amended by Commission Regulation (EU) 2017/752 amending and correcting Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food (OJ No L 113, 29.4.2017, p 18) by—

(i) replacing the definition of Regulation 10/2011 in the principal Regulations in order for references to Regulation 10/2011 to be references to that Regulation as amended (*regulation 3*); and

(ii) amending references to Regulation 10/2011 in the table in the Schedule to the principal Regulations to enforce amendments made to Regulation 10/2011 (*regulation 14(b)*);

(b) apply certain provisions of the Food Safety Act 1990 (1990 c. 16) ("the 1990 Act"), with modifications, to the principal Regulations (*regulations 13 and 15*). Section 10 of the 1990 Act is applied (with modifications) to enable improvement notices to be served to require compliance with any of the provisions listed in regulation 27(1)(a) of the principal Regulations as amended by these Regulations.

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The provisions, as applied, make the failure to comply with an improvement notice an offence. Consequential amendments are made—

(i) to provide that cases of non-compliance with specified provisions are to be dealt with by the service of improvement notices rather than by prosecutions (*regulations 4, 5, 7(b), 9, 10, 12 and 14(c)*);

(ii) to renumber the existing Schedule to the principal Regulations (*regulations 6, 7(a), 14(a) and 15*); and

(c) make minor amendments to clarify the competent authorities (*regulation 8*) and enforcement authorities (*regulation 11*).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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2017 No. 832 (W. 202)

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The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017

Made	*9 August 2017*
Laid before the National Assembly for Wales	*11 August 2017*
Coming into force	*14 September 2017*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(1) and (2), and 48(1) of the Food Safety Act 1990(**1**).

In accordance with section 48(4A)(**2**) of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency before making these Regulations.

There has been open and transparent public consultation during the preparation and evaluation of these Regulations 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

(**1**) 1990 c. 16. Section 16(2) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) ("the 1999 Act"). Section 17(1) and (2) was amended by paragraphs 8 and 12(a) of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 48 was amended by paragraph 8 of Schedule 5 to the 1999 Act. Functions formerly exercisable by the "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 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

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the European Food Safety Authority and laying down procedures in matters of food safety(**1**).

Title, application and commencement

1.—(1) The title of these Regulations is the Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2017.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 14 September 2017.

Amendment of the Materials and Articles in Contact with Food (Wales) Regulations 2012

2. The Materials and Articles in Contact with Food (Wales) Regulations 2012(**2**) are amended in accordance with regulations 3 to 15.

3. In regulation 2(1) (interpretation), for the definition of "Regulation 10/2011" substitute—

> ""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(**3**);".

4. In regulation 7 (offences of contravening specified provisions of Regulation 450/2009), omit paragraph (2).

5. In regulation 12(8) (controls and limits), omit ", (6)".

6. In regulation 13 (interpretation of Part 6 and the Schedule)—

(a) in the heading, for "the Schedule" substitute "Schedule 1"; and

(b) for "the Schedule" substitute "Schedule 1".

7. In regulation 14 (offences of contravening specified provisions of Regulation 10/2011)—

(a) in paragraph (1), for "the Schedule" substitute "Schedule 1"; and

(b) omit paragraph (2).

8. For regulation 15 (competent authorities for the purposes of Regulation 10/2011), substitute—

> "**15.** The competent authorities for the purposes of Articles 8 and 16(1) of Regulation 10/2011 are the Food Standards Agency, each

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(**1**) OJ No L 31, 1.2.2002, p 1, last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p 1).

(**2**) S.I. 2012/2705 (W. 291).

(**3**) This Regulation was last amended by Commission Regulation (EU) 2017/752 (OJ No L 113, 29.4.2017, p 18).

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food authority in its area and each port health authority in its district."

9. In regulation 16 (restrictions on the use of certain epoxy derivatives (BADGE, BFDGE and NOGE))—

(a) in paragraph (1)(b), for "paragraphs (2) and (3) are" substitute "paragraph (2) is";

(b) omit paragraph (3); and

(c) in paragraph (4), omit "or (3)".

10. In regulation 19 (offences and penalties)—

(a) in paragraph (1), omit "or (4)";

(b) in paragraph (3), omit "or fails to comply with regulation 10(6)";

(c) for paragraph (5) substitute—

"(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

(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."

11. In regulation 20 (execution and enforcement), for paragraph (2) substitute—

"(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."

12. In regulation 23(2) (time limit for prosecutions), omit "7(2), 14(2) or".

13. For regulation 27 (application of various provisions of the Act) substitute the following—

"**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—

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(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).”

14. In the Schedule (specified provisions of Regulation 10/2011)—

(a) renumber the Schedule as Schedule 1;

(b) for the text in the first column of the seventh row (which relates to Article 11) of the table, substitute “Article 11(1) and Annex I, as read with Article 11(3) and (4)”; and

(c) omit the entries in the final row of the table.

15. After Schedule 1 insert the Schedule 2 set out in the Schedule to these Regulations.

Rebecca Evans
Minister for Social Services and Public Health under authority of the Cabinet Secretary for Health, Well-being and Sport, one of the Welsh Ministers

9 August 2017

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SCHEDULE Regulation 15

Application of provisions of the Food Safety Act 1990

"SCHEDULE 2 Regulation 27

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."

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PART 2

Application and modification of other provisions of the Act

Column 1 *Provision of the Act*	*Column 2* *Modification*
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	For "this Act" (in each

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entry)	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— "(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

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	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’

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	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." In subsection (3), omit "for want of prosecution.".

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