WELSH STATUTORY INSTRUMENTS

2005 No. 1647

The Materials and Articles in Contact with Food (Wales) Regulations 2005

PART 5

General

Offences and penalties

11.—(1) Any person who contravenes the provisions of regulation 6(2), 8(3), (4), (6) or (7), or 9(1) or (3) is guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) or under regulation 4 is liable —

(a) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both;

(b) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months or to both.

Enforcement

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

(a) the provisions of Regulation 1935/2004 mentioned in regulation 4, and

(b) these Regulations.

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

Analysis by Government Chemist

13.—(1) The court before which any proceedings are taken under these Regulations may, if it thinks fit for the purposes of the proceedings, cause —

(a) any material or article which is the subject of the proceedings and which, if it has already been tested is capable of being further tested, or

(b) any food which has been in contact with any such material or article,

to be sent to the Government Chemist who shall carry out such testing as is appropriate and transmit to the court a certificate of the result, and the costs of the testing shall be paid by the prosecutor or the person charged as the court may order.

(2) If in a case where an appeal is brought no action has been taken under paragraph (1), the provisions of that paragraph shall apply in relation to the court by which the appeal is heard.

(3) Any certificate of the results of testing transmitted by the Government Chemist under this regulation shall be signed by or on behalf of the Government Chemist, but the testing may be carried out by any person under the direction of the person who signs the certificate.

(4) Any certificate transmitted by the Government Chemist in accordance with paragraph (3) shall be taken as evidence of the facts stated therein unless any party to the proceedings requests that the person by whom the certificate is signed be called as a witness.

(5) In this regulation the term "testing" includes examination and analysis, and "tested" shall be construed accordingly.

Application of various provisions of the Act

14.—(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 shall be construed as a reference to these Regulations —

(a) section 2 (extending meaning of "sale" etc);

(b) section 20 (offences due to fault of another person);

(c) section 21 (defence of due diligence) with the modification that in subsection (4) the references to "sale" shall be deemed to include references to "placing on the market";

(d) section 30(8) (which relates to documentary evidence);

(e) section 35(1) (punishment of offences) in so far as it relates to offences under section 33(1) as applied by paragraph (3) below;

(f) section 35(2) and (3) in so far as it relates to offences under section 33(2) as applied by paragraph (3) below;

(g) section 36 (offences by bodies corporate);

(h) section 36A (offences by Scottish partnerships).

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

(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 shall be construed as including a reference to Regulation 1935/2004 and these Regulations —

(a) section 3 (presumptions that food is intended for human consumption) with the modifications that the references to "sold" and "sale" shall be deemed to include references to "placed on the market" and "placing on the market" respectively;

(b) section 33(1) (obstruction etc. of officers);

(c) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" shall be deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b);

(d) section 44 (protection of officers acting in good faith).

(4) Section 34 of the Act (time limit for prosecutions) applies to offences under these Regulations as it applies to offences punishable under section 35(2) of the Act.

Amendments to the 1998 Regulations

15.—(1) The 1998 Regulations are amended in relation to Wales in accordance with paragraphs (2) to (6).

(2) In regulation 2 (interpretation) —

(a) omit the definition of "the 1987 Regulations";

(b) after the definition of "the 1992 Regulations" insert the following definition —

""the 2005 Regulations" means the Materials and Articles in Contact with Food (Wales) Regulations 2005(**1**);".

(3) In paragraph (1)(b) of regulation 6 (method of testing the capability of plastic materials or articles to transfer constituents and methods of analysis) for "regulation 14(2) of the 1987 Regulations" substitute "regulation 7(2) of the 2005 Regulations".

(4) In paragraph (1) of regulation 9 (enforcement) for "the 1987 Regulations" substitute "the 2005 Regulations".

(5) In regulation 11 (presumption as to food with which a plastic material or article, adhesive or material or article covered by a surface coating is to come into contact) for "the 1987 Regulations" substitute "Regulation (EC) No. 1935/2004 of the European Parliament and of the Council(**2**)".

(6) For regulation 12 (application of other provisions) substitute the following —

"**Application of other provisions**

12.—(1) The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act —

(a) section 3 (presumption that food is intended for human consumption);

(b) section 30(8) (relating to documentary evidence);

(c) section 44 (protection of officers acting in good faith).

(2) Regulation 13 of the 2005 Regulations shall apply in relation to proceedings taken under these Regulations as it does to proceedings taken under those Regulations.".

Revocations

16. The following Regulations or parts thereof are revoked in so far as they apply in relation to Wales —

(a) The Materials and Articles in Contact with Food Regulations 1987(**3**);

(b) Regulation 3 of The Food Safety (Export) Regulations 1991(**4**);

(c) The Materials and Articles in Contact with Food (Amendment) Regulations 1994(**5**).

(**1**) S.I. 2005/1647 (W.128).
(**2**) OJ No. L338, 13.11.2004, p.4.
(**3**) S.I. 1987/1523.
(**4**) S.I. 1991/1476.
(**5**) S.I. 1994/979.