

2018 No. 186

FOOD

**The Materials and Articles in Contact with Food (Amendment)
Regulations (Northern Ireland) 2018**

Made - - - - *31st October 2018*

Coming into operation - *29th November 2018*

The Department of Health(a), in exercise of the powers conferred by Articles 15(2), 16(1) and (2), 25(1)(a), (2)(a) and (3), and 47(2) of the Food Safety (Northern Ireland) Order 1991(b) makes the following Regulations.

In accordance with Article 47(3A) of that Order, it has 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(c), as last amended by Regulation (EC) No 652/2014 of the European Parliament and of the Council(d), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2018 and come into operation on 29th November 2018.

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

2. The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012(e) are amended in accordance with regulations 3 to 12.

3. In regulation 2 (interpretation)—

- (a) in the definition of “Directive 84/500/EEC” after “foodstuffs” insert “as last amended by Commission Directive 2005/31/EC”(f);

(a) Formerly the Department of Health, Social Services and Public Safety; see 2016 c.5 (N.I.), section 1(5)
(b) S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1663 (N.I. 12), paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R. 2004 Nos 482 and 505
(c) OJ No. L 31, 1.2.2002, p.1
(d) OJ No L 189, 27.6.2014, p 1
(e) S.R. 2012 No.384 as amended by S.R. 2017 No. 157
(f) OJ No. L110, 30.4.2005, p.36

- (b) in the definition of “Regulation 1935/2004” after “89/109/EEC” insert “as last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council”(a);
- (c) in the definition of “Regulation 2023/2006” after “food” insert “as last amended by Commission Regulation (EC) No 282/2008”(b);
- (d) in the definition of “Regulation 10/2011” for “Commission Regulation (EU) No. 2017/752” substitute “Commission Regulation (EU) 2018/831”(c)
- (e) after the definition of “Regulation 10/2011” insert—
 - ““Regulation 2018/213” means Commission Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials;”(d);
- (f) in paragraph (2), for “Regulation 450/2009 or Regulation 10/2011” substitute “Regulation 450/2009, Regulation 10/2011 or Regulation 2018/213”.

4. In regulation 13, for “In this Part and in the Schedule any reference” substitute “Except in regulation 14(1), any reference in this Part and in Schedule 1”.

5. In regulation 14(1), for “Article 22(4) and (5) and Article 23,” substitute “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; Article 6 of Commission Regulation (EU) 2018/213 and Article 2 of Commission Regulation (EU) 2018/831,”.

6. In regulation 16(2), for “Subject to Article 6(1), (2) and (4) (transitional provisions) a” substitute “A”.

7. After regulation 17 (competent authorities for the purposes of Regulation 1895/2005) insert—

“PART 7A

Requirements for bisphenol A in varnishes and coatings intended to come into contact with food

Interpretation of Part 7A

17A. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 2018/213.

Offences of contravening specified provisions of Regulation 2018/213

17B. Subject to the transitional provisions contained in Article 6, any person who places on the market a material or article that fails to comply with Article 2 is guilty of an offence.

Competent authorities for the purposes of Regulation 2018/213

17C. The competent authorities for the purposes of Article 4(3) are the Food Standards Agency and each district council in its district.”

8. In regulation 19 (offences and penalties)—

(a) OJ No. 188, 18.7.2009, p.14
 (b) OJ No. L86, 28.3.2008, p.9
 (c) OJ L 140, 6.6.2018, p. 35
 (d) OJ No L 41 14.2.2018 p.6

- (a) in paragraph (2), after “Regulation 10/2011,” insert “Regulation 2018/213”;
- (b) in paragraph (5)(a), for “or 16(4)” substitute “16(4) or 17B”.

9. In regulation 23(2) (general defences), after “16(4)” insert “, 17B”.

10. In regulation 26(1)(a) (application of various provisions of the Order)—

- (a) at the end of sub-paragraph (iv), delete “and”; and
- (b) after paragraph (v) insert “(vi) Article 4 of Regulation 2018/213; and”.

11. Omit regulations 27 and 28.

12. In Schedule 2, Part 1 (modification of Article 9(1)), paragraph 1, after Article 9(1A)(e) as applied,

- (a) at the end of paragraph (d), omit “and”;
- (b) at the end of paragraph (e), for “.” substitute “; and”;
- (c) after paragraph (e), insert—
 - “(f) Article 4 of Regulation 2018/213.”

Sealed with the official seal of the Department of Health on 31st October 2018.



Elizabeth Redmond
A senior officer of the Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012 (“the principal Regulation”) to provide for the enforcement of Commission Regulation (EU) 2018/213 (“Regulation 2018/213”) on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials (OJ L 41, 14.2.2018, p.6).

These Regulations amend the principal Regulations so as to—

- (a) extend the definitions of “Directive 84/500/EEC”, “Regulation 1935/2004”, “Regulation 2023/2006” and “Regulation 10/2011” to include a reference to the last amending EU Regulation (*regulation 3(a) to (d)*);
- (b) insert a definition of Regulation 2018/213 (*regulation 3 (e)*);
- (c) amend regulation 13 (Interpretation of Part 6 and Schedule 1) to exclude regulation 14(1) and Schedule 1 from its application (*regulation 4*);
- (d) amend regulation 14 (Offences of contravening specified provisions of Regulation 10/2011) to identify transitional arrangements provided for in a number of EU regulations, subject to which regulation 14 makes provision for offences for failure to comply with those requirements of Regulation 10/2011 listed in column 1 of Schedule 1 to the principal Regulations (*regulation 5*);
- (e) amend regulation 16 (Restrictions on the use of certain epoxy derivatives) at 16(2) to remove the reference to Article 6(1), (2) and (4) of Regulation 1895/2005 (transitional provisions which have expired) (*regulation 6*);
- (f) insert a Part 7A, comprising regulations 17A to 17C, to provide for the enforcement of provisions of Regulation 2018/213 on the use of bisphenol A (‘BPA’) in varnishes and coatings intended to come into contact with food for the purposes of Regulation 2018/213 (*regulation 7*);

Regulation 17A makes interpretative provision for Part 7A.

Regulation 17B provides that, subject to the transitional provisions contained in Article 6 of Regulation 2018/213, any person who places on the market a material or article which fails to comply with Article 2 of that Regulation is guilty of an offence. Article 2(1) provides that the migration rate of BPA into or onto food from varnishes and coatings shall not exceed 0,05 mg of BPA per kg of food (mg/kg). Article 2(2) permits no migration of BPA from varnishes and coatings intended to be in contact with infant formula, baby foods, products intended for young children etc.

Regulation 17C provides that the Food Standards Agency, and each district council in its district, are competent authorities for the purposes of Article 4(3) of Regulation 2018/213 (competent to request business operators to provide appropriate supporting documentation to demonstrate compliance with the written declaration required by Article 4(1) and Annex I to Regulation 2018/213).

- (g) amend Regulation 19 (Offences and penalties) to make it an offence to obstruct a person acting in the execution of Regulation 2018/213 (*regulation 8(a)*) and to provide for sentencing in relation to the offence created by inserted regulation 17B (*regulation 8(b)*);
- (h) amend regulation 23 (General defences) to include reference in paragraph (2) to the offence created by inserted regulation 17B (*regulation 9*);
- (i) amend regulation 2 (Application of various provisions of the Order) to enable an improvement notice under Article 9 of the Food Safety (Northern Ireland) Order 1991 (‘the Order’) to be served on a person, requiring that person to comply with Article 4 of Regulation 2018/213 (provision by business operators of a written declaration of compliance, permitting easy identification of varnishes and coatings, and provision of supporting documentation to the competent authority without delay and, in any event, within 10 days of request) (*regulation 10*);

- (j) omit regulation 27 (the regulations that it amended have since been revoked) and regulation 28 (its operative provisions have expired) (*regulation 11*); and
 - (k) amend Schedule 2, Part 1, to provide that the modification by Schedule 2 of Article 9(1) of the Order (improvement notices) applies to improvement notices served in relation to failure to comply with Article 4 of Regulation 2018/213 (*regulation 12*).
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