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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 524**

**FOOD**

**The Plastic Materials and Articles in Contact with  
Food Amendment (Scotland) Regulations 2004**

*Made* - - - - 2nd December 2004  
*Laid before the Scottish  
Parliament* - - - - 2nd December 2004  
*Coming into force* - - 30th December 2004

The Scottish Ministers, in exercise of the powers conferred by sections 16(2), 17(1), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990(1) and of all other powers enabling them in that behalf, having had regard, in accordance with section 48(4A)(2) of that Act, to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(3) of that Act, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Plastic Materials and Articles in Contact with Food Amendment (Scotland) Regulations 2004 and shall come into force on 30th December 2004.

(2) These Regulations extend to Scotland only.

**Amendments to the Plastic Materials and Articles in Contact with Food Regulations 1998**

2. The Plastic Materials and Articles in Contact with Food Regulations 1998(4) shall be amended in accordance with regulations 3 to 6.

3. In regulation 2(1) (interpretation)—

(a) at the end of the definition of “Commission Directive 2002/16” insert “as amended by Commission Directive [2004/13/EC](#)”(5);

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- (1) 1990 c. 16. Sections 16(2) and 48(1) were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (“the 1999 Act”); section 17(1) was amended by paragraphs 8 and 12 of Schedule 5 to the 1999 Act; section 26(3) was amended by Schedule 6 to the 1999 Act; amendments made by Schedule 5 to the 1999 Act which extend to Scotland shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (2) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- (3) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- (4) S.I. 1998/1376, amended by [S.S.I. 2000/431](#), [2002/498](#) and [2003/9](#).
- (5) O.J. No. L 27, 30.1.04, p.46.

- (b) at the end of the definition of “the Directive” insert “as amended by Commission Directive [2004/1/EC](#)”(6).
4. In the following provisions, for “2005” substitute “2006”–
- (a) regulation 4A(1)(a);
  - (b) regulation 5(1)(b)(i);
  - (c) regulation 8A(1);
  - (d) in section A of Part I of Schedule 1, at item 40 in column 4 (restrictions and specifications).
5. In regulation 10 (offences)–
- (a) in paragraph (16)(b) for “(17)” substitute “(18)”;
  - (b) for paragraph (19) substitute–
    - “(19) In any proceedings for an offence under regulation 3(1)(a) or (b) in relation to the requisite standards referable to adhesives and materials and articles covered by a surface coating, it shall be a defence to prove that–
    - (a) the adhesive, material or article was brought into contact with the food on or before 28th February 2003;
    - (b) (i) the date of filling appears, or  
(ii) a coded indication of that date appears,  
on the adhesive, material or article; and
    - (c) the labelling or marking of which at the time of sale complied with the requirements as regards labelling relating to durability contained in Article 2.1(a) of Directive [2000/13/EC](#) of the European Parliament and of the Council.”;
  - (c) delete paragraph (20); and
  - (d) immediately after paragraph (22) insert–
    - “(23) In any proceedings for an offence under regulation 3(1)(a) or (b) in relation to the use as from 2 August 2005, of a plastic material or article containing azodicarbonamide with reference number 36640 listed at item 27A in Part I of Schedule 2, it shall be a defence to prove that–
    - (a) the date of filling (or a coded indication of the date of filling) of the material or article concerned appeared on the material or article at the time of sale and was before 2nd August 2005; and
    - (b) the labelling or marking of which at the time of sale complied with the requirements as regards labelling relating to durability contained in Article 2.1(a) of Directive [2000/13/EC](#) of the European Parliament and the Council.
    - (24) The date signified by a coded indication referred to in paragraphs 19(b) and (23) (a) of this regulation shall be made available on request to the Food Standards Agency and the enforcement authority.”.
6. In Part I of Schedule 2, at item 27A in column 4 (restrictions and specifications), after “agent” insert “Use prohibited as from 2nd August 2005”.

St Andrew's House, Edinburgh  
2nd December 2004

*RHONA BRANKIN*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, further amend the Plastic Materials and Articles in Contact with Food Regulations 1998 (S.I.1998/1376, “the 1998 Regulations”), which extend to the whole of Great Britain.

The Regulations implement Commission Directive [2004/13/EC](#) amending Commission Directive [2002/16/EC](#) relating to the use of certain epoxy derivatives in materials and articles intended to come into contact with foodstuffs (O.J. No. L 51, 22.2.02, p.27) and also implement Commission Directive [2004/1/EC](#) amending Commission Directive [2002/72/EC](#) in relation to the use of azodicarbonamide as a blowing agent (O.J. No. L 220, 15.8.02, p.18).

The Regulations amend the 1998 Regulations by–

- (a) extending by a year the provisional authorisation of 2,2-bis (4-hydroxyphenyl)propane bis(2,3-epoxypropyl)ether (“BADGE”) (regulation 4);
- (b) prohibiting the use of the blowing agent azodicarbonamide as from 2nd August 2005 (regulation 6);
- (c) amending the defence available under regulation 10 paragraph (19) of the 1998 Regulations by :–
  - (i) clarifying that the defence is only available in relation to proceedings for the contravention of regulation 8A which sets out the requisite standards for the use of adhesives and materials and articles covered by a surface coating; and
  - (ii) the addition of a provision which allows as such a defence the use of a date code as an alternative to the date of filling itself appearing on such adhesives or materials and articles covered by a surface coating (regulation 5(b) and (c));
- (d) creating a defence relating to azodicarbonamide similar to that which applies to adhesives and materials and articles covered by a surface coating (regulation 5(d)); and
- (e) correcting a typographical error in the 1998 Regulations (regulation 5(a)).

A Regulatory Impact Assessment, which includes a compliance cost assessment of the effect which these Regulations are likely to have on business costs, has been prepared and has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.