

**2007 No. 433**

**FOOD**

**The Plastic Materials and Articles in Contact with Food  
(Lid Gaskets) (Scotland) Regulations 2007**

*Made* - - - - - *19th September 2007*

*Laid before the Scottish Parliament* *20th September 2007*

*Coming into force* - - - *29th October 2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990(a) and all other powers enabling them to do so.

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

There has been consultation 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).

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Scotland) Regulations 2007 and come into force on 29th October 2007.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

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(a) 1990 c.16; sections 16(2) and 48(1) were amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 8; section 17(2) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; section 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; amendments made by Schedule 5 of the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) 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 Scotland Act 1998. Insofar as not so transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(b) Section 48(4A) was inserted by the 1999 Act, section 40(1) and Schedule 5, paragraph 21.

(c) O.J. No. L 31, 1.2.02, p.1, as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) and Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 7.4.06, p.3).

“the Commission Regulation” means Commission Regulation (EC) No. 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods<sup>(a)</sup>;

“import” means import in the course of a business from a state other than a Member State; and

“lid” means a lid of the type mentioned in Article 1 of the Commission Regulation.

(2) Any other expression used in these Regulations and in the Commission Regulation has the same meaning in these Regulations as it has in the Commission Regulation.

### **Enforcement**

3. Each food authority within its area will execute and enforce these Regulations and the Commission Regulation.

### **Offences and penalties**

4.—(1) Any person who—

- (a) contravenes or fails to comply with the requirements of Article 1 of, as read with the Annex to, the Commission Regulation (requirements relating to lids sealed with gaskets containing certain plastic materials);
- (b) intentionally obstructs any person acting in the execution of these Regulations;
- (c) without reasonable excuse, fails to give to any person acting in the execution of these Regulations or the Commission Regulation any assistance or information which that person may reasonably require; or
- (d) in purported compliance with any requirement mentioned in sub-paragraph (c), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Any person convicted of an offence under these Regulations is liable—

- (a) in the case of an offence under paragraph (1)(a)—
  - (i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
  - (ii) on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding the statutory maximum or both;
- (b) in the case of an offence under paragraph 1(b), (c) or (d), to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale or both.

(3) Nothing in paragraph (1)(c) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

### **Time limit for prosecutions**

5.—(1) No prosecution for an offence under these Regulations may begin after the expiry of three years from the commission of the offence or 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to the knowledge of the prosecutor, whichever is the earlier.

(2) For the purposes of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the prosecutor’s opinion to warrant the proceedings came to the knowledge of the prosecutor, will be conclusive evidence of that fact.

(3) A certificate stating that matter and purporting to be so signed will be deemed to be so signed unless the contrary is proved.

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(a) O.J. No. L 92, 3.4.07, p.9. Recital 2 of the Regulation was corrected by a corrigendum (O.J. No. L 97, 12.4.07).

## **General defences**

6.—(1) In any proceedings for an offence under these Regulations it will, subject to paragraph (5), be a defence to prove that 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(1)(a) who did not—

- (a) prepare the lid in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

will be taken to have established the defence provided by paragraph (1) if the requirements of paragraph (3) or (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved—

- (a) that 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) that—
  - (i) the accused carried out all such checks of the lid 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 the lid in question; and
- (c) that the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the accused's 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—

- (a) that 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) that the placing on the market in respect of which the offence is alleged to have been committed was not a placing on the market under the accused's name or mark; and
- (c) that the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the accused's 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 will not without leave of the court be entitled to rely on that defence unless at the earlier of—

- (a) at least 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of the accused before a court in connection with the alleged offence,

the accused has served on the prosecutor a notice in writing 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**

7.—(1) An authorised officer who has procured a sample under section 29 (procurement of samples) of the Act for the purposes mentioned in regulation 3 and who considers it should be analysed will 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 will divide the sample into parts by putting the containers into three lots, and each lot will be treated as being a part.

(3) The authorised officer will—

- (a) if necessary, place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as 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 (analysis etc. of samples) of the Act; and
- (e) retain one part for future submission under regulation 8.

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

8.—(1) Where a sample has been retained under regulation 7 and—

- (a) a decision has been made to send a report to the procurator fiscal or proceedings have been commenced against a person for an offence under these Regulations; and
- (b) the result of the analysis carried out in accordance with regulation 7(3)(d) is to be adduced as evidence,

paragraphs (2) to (7) apply.

(2) The authorised officer—

- (a) may of the officer's own volition prior to a report being sent to the procurator fiscal; and
- (b) must—
  - (i) if requested by the prosecutor;
  - (ii) if the court so orders on the application of the prosecutor or the accused; or
  - (iii) if requested by the accused (subject to paragraph (7)),

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 where the analysis is carried out—

- (a) under paragraph (2)(a) or (b)(i) or (iii), provide the authorised officer; or
- (b) under paragraph 2(b)(ii), provide the prosecutor and the accused,

with a certificate of analysis.

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

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

(6) The authorised officer must immediately on receipt of the Government Chemist's certificate of analysis under paragraph (3)(a) supply the prosecutor and the accused with a copy.

(7) 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 in respect of the functions mentioned in paragraph (3), and in the absence of agreement by the accused to pay the fee the authorised officer may refuse to comply with the request.

(8) In this regulation "accused" includes a person in respect of whom the authorised officer intends to submit a report to the procurator fiscal.

### **Application of various sections of the Food Safety Act 1990**

9. The following provisions of the Act will apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof should be construed as a reference to these Regulations–

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 30(8) (which relates to documentary evidence);
- (d) section 36 (offences by bodies corporate);
- (e) section 36A (offences by Scottish partnerships); and
- (f) section 44 (protection of officers acting in good faith).

St Andrew's House,  
Edinburgh  
19th September 2007

*SHONA ROBISON*  
Authorised to sign by the Scottish Ministers

## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, provide for the execution and enforcement of Commission Regulation (EC) No. 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods (“the Commission Regulation”).

The Regulations—

- (a) designate the bodies having the duty to enforce these Regulations and the Commission Regulation (regulation 3);
- (b) make it a solemn or summary offence to contravene the requirements of Article 1 of the Commission Regulation, which provides that lids containing gaskets made of plastic materials must comply with the detailed specifications set out in the Annex to that Regulation (regulation 4(1)(a) and (2)(a));
- (c) make it a summary offence to obstruct, fail to give information to or give false information to anyone enforcing these Regulations (regulation 4(1)(b), (c) & (d) and (2)(b));
- (d) specify a time limit for commencing a prosecution (regulation 5);
- (e) provide for defences of a general nature, such as exercising due diligence etc., to alleged offences under these Regulations (regulation 6);
- (f) specify the procedure to be followed when sending a sample for analysis (regulation 7);
- (g) make provision for a reference sample to be analysed by the Government Chemist (regulation 8); and
- (h) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (regulation 9).

A full regulatory impact assessment of the effect that this instrument will have on business costs has been prepared and 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.



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