

EXECUTIVE NOTE TO
THE PLASTIC MATERIALS AND ARTICLES IN CONTACT WITH FOOD
(SCOTLAND) AMENDMENT REGULATIONS 2008
SSI 2008/261

Description

1. The above instrument was made in exercise of the powers conferred by sections 16(2), 17 (1) and (2), 26(1)(a) and 48(1) of the Food Safety Act 1990. The instrument is subject to negative resolution procedure.

2. Policy Objective

2.1 This instrument provides for the enforcement in Scotland of Commission Regulation (EC) No. 597/2008 (“the Commission Regulation”), which extends the transitional migration limits for certain plasticisers in sealing gaskets in food jar lids. Without this instrument it would not be possible to give full effect to the provisions of the Commission Regulation and permit the continuing use of the specified plasticisers at the current higher migration limits.

2.2 The instrument is likely to be a short-lived measure to last until 30th April 2009, when the Commission Regulations will expire unless further extended.

2.3 This instrument, also corrects minor errors in SSI 2008/127 that were detected after it had been made¹.

3. Matters of special interest

3.1 The instrument breaches the 21 day rule. It is essential from the business point of view that it comes into force by 30th June at the latest. If not, businesses in Scotland will not be able to take advantage of the continuation period for use of the specified plasticisers, since the Regulation that this instrument seeks to amend will otherwise revoke as of 1st July 2008. (More details are given below). The Commission Regulation was not published until 25 June 2008, and it was therefore impossible to make this statutory instrument until after that date.

4. Legislative Background

4.1 The Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Scotland) Regulations 2007 (S.S.I. 2007/433) provide for the enforcement of Regulation (EC) No. 372/2007, which lays down the transitional migration limits for certain plasticisers in gaskets in lids, intended to come into contact with food. The 2007 Regulations were to be a short-lived measure to last until June 2008, when the provisions of the European Regulation were due to expire. Beyond that the provisions of Commission Directive 2007/19/EC would have then imposed more stringent migration limits on the substances in question. As such, The Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2008 (S.S.I. 2008/127) would have revoked the 2007 lid gasket Regulations on 1st July 2008.

¹ The errors comprise

- properly refer to the specifications for azodicarbonamide in Annex III to Directive 2002/72
- correct all the references to “stimulants” within the regulations
- amend regulation 11(5) of the Materials and Articles Regulations to properly refer to regulation 13 of the Plastics regulations.

- 4.2 The Commission Regulation was produced at very short notice following internal discussions with Member States in response to pressure from businesses across the EU. Manufacturers of some speciality products (foods in oil, such as speciality pesto sauce and cheese and vegetables in oil and some eastern sauces), produced in some Member States and third countries were unable to find seals for the jars in which their food products were packaged that complied with the more stringent migration limits imposed by Directive 2007/19/EC. It is estimated that some 4 billion jars of these foods in oil could be affected across the EU. As a consequence of the late disclosure of this problem by the industry and the European Commission's solution, S.S.I. 2008/127 had already been made by the time we were aware of the Commission's intentions.
- 4.3 The Plastic Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2008 will give effect to the provisions of the Commission Regulation by extending the period during which higher migration limits are permitted in specified plasticisers used in the gaskets in food jar lids.

5. Policy Background

- 5.1 The Food Standards Agency ("the Agency"), as the UK's Regulatory authority is fully committed to fulfil its EU obligations and contribute significantly to the up-to-date means of protecting consumers from ingesting harmful levels of chemicals that could have migrated from materials and articles that were intended to be brought into contact with food. The UK was involved with the Commission and other Member States during the rapid development and adoption of the Commission Regulation and its rapid adoption into EU law. UK businesses are among those in the EU developing the new jar seal formulations. The statutory instrument presented here gives effect to the Commission Regulation and is not contentious, it provides for the continuing harmonisation of rules throughout the European Union. Failure to bring a measure in quickly enough will otherwise put our Regulations at odds with EC law and could jeopardise many speciality food products on the market that use these seals and affect consumer choice.

6. Consultation

- 6.1 The Agency fully consulted all stakeholders on the 2007 lid gasket Regulations. Two consultations were carried out by the Agency; a formal one in 2005 and an informal one in 2007 when these provisions were last amended. The consultation comments received at the time confirmed that the lid gasket Regulations did not have extra specific requirements that imposed any new financial burdens and fully supported the development of proportionate and workable legislation and enforcement policies. Whilst industry were originally content with the transitional migration limits and the period up to 30th June 2008, they however, realised that they needed more time, hence the need for the extension to April 2009. The primary business sector that will be affected by the regulatory proposals will be manufacturers of food contact plastics, in particular those companies that specifically manufacture gaskets for use in lids using the substances with restrictions laid down in the Commission Regulation. The ten month extension provided by the Commission Regulation gives those affected by its provisions more time in which to make their seal products compliant with lower migration limits. The measures contained in this instrument are consistent with the need to ensure consumers are being protected the new formulations being developed for these seal compounds use plasticisers that are inherently safer than the more contentious phthalate compounds that had been used before.

6.2 Due to the timing and the urgent nature of the Commission Regulation it has not been possible to carry out a lengthy consultation, as this is a simple change that works in favour of businesses, a full twelve week consultation on this occasion was in any event not considered necessary or appropriate. However, stakeholders have been informed of the extended provisions contained in the Commission Regulation via an interested parties letter, which invited recipients to comment thereon if they so wished.

6.3 Rural areas, members of ethnic communities of any particular racial group and disabled people are unaffected by these proposals. Charities and voluntary organisations are also unaffected by these proposals. This view is echoed by industry.

7. Other Administrations

7.1 This instrument extends to Scotland only. Separate but parallel legislation is being enacted for England, Wales and Northern Ireland.

8. Impact

8.1 As there will be no negative impact on businesses (or other sectors) from this measure, a Regulatory Impact Assessment has not been produced.

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