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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 30**

**The Plastic Materials and Articles in Contact  
with Food (Scotland) Regulations 2009**

**PART 3**

**EXECUTION AND ENFORCEMENT**

**Enforcement**

**15.** Each food authority shall execute and enforce—

- (a) the provisions of Regulation 1895/2005 referred to in regulation 12, and
- (b) these Regulations,

in its area.

**Offences and penalties**

**16.—(1)** Any person who—

- (a) contravenes or fails to comply with regulation 3(1), 4(1), 5(1), 12(2) to (5) or 14(1), (3) or (4);
- (b) intentionally obstructs any person acting in the execution of Regulation 1895/2005 or these Regulations;
- (c) fails to comply with regulation 12(6) or 18(3), or otherwise fails without reasonable excuse to give to any person acting in the execution of Regulation 1895/2005 or these Regulations 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) or (d)—
  - (i) on conviction on indictment to a term of imprisonment not exceeding 2 years or to a fine or both;
  - (ii) on summary conviction to a term of imprisonment not exceeding 12 months or to a fine not exceeding the statutory maximum or both;
- (b) in the case of any other offence under these Regulations, on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or to 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.

(4) No prosecution for an offence under these Regulations shall be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

(5) 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, shall be conclusive evidence of that fact.

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

### **General defences**

17.—(1) In any proceedings for an offence under these Regulations it shall, 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 accused's control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under these Regulations who did not—

- (a) prepare the plastic material or article or, as the case may be, the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

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

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

- (a) the commission of the offence was due to the act or default of some other person who was not under the accused's control, or to reliance on information supplied by such a person;
- (b) either—
  - (i) the accused carried out all such checks of the plastic material or article or material or article 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 plastic material or article or the material or article in question; and
- (c) 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 sale 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 accused's control, or to reasonable reliance on information supplied by such a person;
- (b) that the sale of which the alleged offence consisted was not a sale 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 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 shall not without leave of the court be entitled to rely on that defence unless by the earlier of—

- (a) a date 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.

(6) For the purposes of paragraph (2), “prepare” includes manufacture or subject to any form of treatment or process.

### **Transitional defence relating to PVC gaskets containing epoxidised soybean oil**

**18.—**(1) In any proceedings for an offence under regulation 3 concerning the sale of a glass jar—

- (a) which contains—
  - (i) infant formulae or follow on formulae as defined by Commission Directive [91/321/EC](#)(1); or
  - (ii) processed cereal based foods or baby foods for infants and young children as defined by Commission Directive [96/5/EC](#)(2); and
- (b) the lid of which is sealed by means of a PVC gasket containing epoxidised soybean oil having PM/Ref No 88640 in Section A of Annex III,

it is a defence to prove the matters set out in paragraph (2).

- (2) The matters to be proved are that—
  - (a) the PVC gasket mentioned in paragraph (1)(b) was compliant with the relevant restrictions and specifications in column 4 of item 259A of Part 1 of Schedule 2 to the Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2006(3);
  - (b) the glass jar was filled and sealed before 19th November 2006;
  - (c) the date of filling or a coded indication of that date was present on the jar or its lid at the time of sale; and
  - (d) the labelling or marking with the particulars mentioned in sub paragraph (c) at the time of sale complied with the requirements relating to durability in Article 2(1)(a) of Directive [2000/13/EC](#) of the European Parliament and of the Council on the approximation of the laws of the member States relating to the labelling, presentation and advertising of foodstuffs(4).
- (3) A person may not without reasonable excuse fail to comply with a request made by the food authority to disclose the date signified by the coded indication mentioned in paragraph (2)(c).

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(1) O.J. No. L 175, 4.7.1991, p.35; as amended by Commission Directive [96/4/EC](#) (O.J. No. L 49, 28.2.96, p.12), Commission Directive [1999/50/EC](#) (O.J. No. L 139, 2.6.1999, p.29) Commission Directive [2003/14/EC](#) (O.J. No. L 41, 14.2.03, p.37) and Commission Directive [2006/82/EC](#) (O.J. No. L 362, 20.12.06, p.94). Commission Directive [91/32/EC](#) was repealed by Commission Directive [2006/141/EC](#) (O.J. No. L 401, 30.12.06, p.1). The definitions of infant formulae and follow-on formulae remain the same (see pages 4 and 5 of Directive 2006/141).

(2) O.J. No. L 41, 14.2.03, p.37; as amended by Commission Directive [98/36/EC](#) (O.J. No. L 167, 12.2.98, p.23), Commission Directive [1999/39/EC](#) (O.J. No. L 124, 18.5.99, p.8) and Commission Directive [2003/13/EC](#) (O.J. No. L 41, 14.2.03, p.33). Commission Directive [96/5/EC](#) was repealed by Commission Directive 2006/125 (O.J. No. L 339, 6.12.06, p.16). The definitions of processed cereal-based foods or baby foods remain the same (see page 18 of Directive 2006/125).

(3) [S.S.I 2006/314](#); revoked by [S.S.I. 2006/517](#).

(4) O.J. No. L 109, 6.5.00, p.29; as corrected by a Corrigendum published on 25th May 2000 (O.J. No. L 124, 25.5.00, p.66), and as amended by Commission Directive [2001/101/EC](#) (O.J. No. L 310, 28.11.01, p.19), (which was itself amended by Commission Directive [2002/86/EC](#) (O.J. No. L 305, 7.11.02, p.19), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (O.J. No. L 236, 23.9.03, p.33)) and Directive [2003/89/EC](#) (O.J. No. L 308, 25.11.03, p.15).

**Procedure where a sample is to be analysed**

**19.**—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed shall 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 shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

(3) The authorised officer shall—

- (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 of the Act; and
- (e) retain one part for future submission under regulation 21.

**Secondary analysis by the Government Chemist**

**20.**—(1) Where a sample has been retained under regulation 19 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 19(3)(d) is to be adduced as evidence,

paragraphs (2) to (8) 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) shall—
  - (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 (5)),send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall 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 specifying the results of the analysis.

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

(5) 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.

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

(7) Any certificate transmitted by or on behalf of the Government Chemist in accordance with paragraph (6) shall be taken as sufficient 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.

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