

2009 No. 426

FOOD

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

<i>Made</i>	- - - -	<i>24th November 2009</i>
<i>Laid before the Scottish Parliament</i>		<i>26th November 2009</i>
<i>Coming into force</i>	- -	<i>19th December 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(2), 26(1)(a), (2)(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 the Food Safety Act 1990 the Scottish Ministers 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 and commencement

1. These Regulations may be cited as the Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2009 and come into force on 19th December 2009.

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- (a) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16 and 48(1) were amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), section 40(1) and Schedule 5, paragraph 8; section 17 was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12; section 26(3) was repealed in part by the 1999 Act, Schedule 6; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act should 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, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far 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 section 40(1) and paragraph 21 of Schedule 5 to the 1999 Act.
- (c) O.J. No. L31, 1.2.2002, p.1. The Regulation was amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 7, 13.1.04, p.45), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.06, p.3), Commission Regulation (EC) No. 202/2008 (O.J. No. L60, 5.3.2008, p.17) and Regulation (EC) 596/2009 of the European Parliament and of the Council (O.J. No. L 188, 18.7.2009, p.14).

Amendments to the Materials and Articles in Contact with Food (Scotland) Regulations 2007

2. The Materials and Articles in Contact with Food (Scotland) Regulations 2007(a) are amended in accordance with regulations 3 to 8.

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “import” for “a Member State” substitute “an EEA State”; and

(ii) after the definition of “Regulation 2023/2006” insert the following definition—

““Regulation 450/2009” means Commission Regulation (EC) No. 450/2009 on active and intelligent materials and articles intended to come into contact with food(b);”;

(b) omit paragraph (2).

4. After regulation 5 (enforcement of Regulation 2023/2006) insert—

“Enforcement of Regulation 450/2009

5A. Any person who contravenes any of the following provisions of Regulation 450/2009 is guilty of an offence—

(a) Article 4(f) (prohibition on the placing on the market of active and intelligent materials and articles that do not comply with labelling requirements);

(b) Article 11(1) and (2) (additional rules on labelling), as read with the 4th indent of Article 14;

(c) Article 12 (declaration of compliance); and

(d) Article 13 (supporting documentation).”.

5. After regulation 7 (competent authority for the purposes of Regulation 2023/2006), insert—

“Competent authorities for the purposes of Regulation 450/2009

7A. The competent authorities for the purposes of Article 13 of Regulation 450/2009 are the Food Standards Agency and the authority having responsibility for enforcement pursuant to regulation 15(1).”.

6. In regulation 13(1)(b) (offences and penalties), after “Regulation 2023/2006” insert “, Regulation 450/2009”.

7. For regulation 15 (enforcement) substitute—

“15.—(1) Subject to paragraph (2) it shall be the duty of each food authority within its area to execute and enforce—

(a) the provisions of Regulation 1935/2004 mentioned in regulation 4;

(b) the provisions of Regulation 2023/2006 mentioned in regulation 5;

(c) the provisions of Regulation 450/2009 mentioned in regulation 5A; and

(d) these Regulations.

(2) In addition the Food Standards Agency may, if it considers it appropriate to do so, execute and enforce the provisions of—

(a) Articles 16(1) and 17(2) of Regulation 1935/2004; and

(b) Article 13 of Regulation 450/2009.”.

(a) S.S.I. 2007/471, as amended by S.S.I. 2008/127 and 261 and 2009/30.

(b) O.J. No. L 135, 30.5.2009, p.3.

8. In regulation 18 (application of various provisions of the Act)—

- (a) in paragraph (2), for “Regulation 1935/2004 or, as appropriate, to Regulation 2023/2006” substitute “Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009, as appropriate”; and
- (b) in paragraph (3), for “Regulation 1935/2004 or, as appropriate, to Regulation 2023/2006” substitute “Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009, as appropriate”.

St Andrew’s House,
Edinburgh
24th November 2009

SHONA ROBISON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Materials and Articles in Contact with Food (Scotland) Regulations 2007 (“the principal Regulations”) in order to provide for the execution and enforcement of Commission Regulation (EC) No. 450/2009 on active and intelligent materials and articles intended to come into contact with food (“Regulation 450/2009”). The Regulations also amend the definition of “import” in the principal Regulations.

In detail, these Regulations amend the principal Regulations by—

- (a) inserting a definition of Regulation 450/2009 (*regulation 3(a)(i)*);
- (b) amending the definition of “import” to refer to products which come from outside the European Economic Area (*regulation 3(a)(ii)*);
- (c) making it an offence to contravene specified requirements of Regulation 450/2009 (*regulation 4*) and attaching penalties for such an offence (*regulation 6*);
- (d) specifying the competent authorities for the purposes of certain provisions of Regulation 450/2009 (*regulation 5*);
- (e) designating the enforcement authorities for the purposes of certain provisions of Regulation 450/2009 (*regulation 7*); and
- (f) providing that certain provisions of the Food Safety Act 1990 apply for the purposes of the enforcement of Regulation 450/2009 (*regulation 8*).

A Regulatory Impact Assessment has not been prepared for this instrument as any impact on business or the public or third sectors is unlikely to be significant.

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