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STATUTORY INSTRUMENTS

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**2009 No. 2938**

**FOOD, ENGLAND**

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

*Made* - - - - *3rd November 2009*  
*Laid before Parliament* *6th November 2009*  
*Coming into force* - - *19th December 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(2), 17(2), 26(1)(a) and (2)(a) and 48(1) of the Food Safety Act 1990<sup>(1)</sup>, and now vested in him<sup>(2)</sup>.

In accordance with section 48(4A) of the Food Safety Act 1990 he has had regard to relevant advice given by the Food Standards Agency.

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<sup>(3)</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Title and commencement**

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

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(1) 1990 c.16, section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), “the 1999 Act”. Section 48 was also amended by S.I. 2004/2990. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(2) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act, and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act.

(3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468 with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).

## **Amendments to the Materials and Articles in Contact with Food (England) Regulations 2007**

2. The Materials and Articles in Contact with Food (England) Regulations 2007(4) are amended in accordance with regulations 3 to 9.

3. In regulation 2 (interpretation) —

(a) in paragraph (1) —

(i) 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(5);”, and

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

(b) paragraph (2) is omitted.

4. After regulation 4 (enforcement of Regulation 1935/2004) insert the following as regulation 4A —

### **“Enforcement of Regulation 450/2009**

4A. 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 6 (competent authorities for the purposes of Regulation 1934/2004), insert the following as regulation 6A —

### **“Competent authorities for the purposes of Regulation 450/2009**

6A. 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 14(1).”.

6. In paragraph (2)(a) of regulation 13 (offences and penalties), for “regulation 4 or 5” substitute “regulation 4, 4A or 5”.

7. For regulation 14 (enforcement) substitute the following —

“14.—(1) Each food authority in its area and each port health authority in its district shall execute and enforce —

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

(b) the provisions of Regulation 450/2009 mentioned in regulation 4A; and

(c) subject to paragraph (3), these Regulations.

(2) The Food Standards Agency may execute and enforce the provisions of —

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

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(4) [S.I. 2007/2790](#), as amended by [S.I. 2008/916](#) and [S.I. 2009/205](#).

(5) OJ No. L135, 30.5.2009, p.3.

(b) Article 13 of Regulation 450/2009.

(3) Each food authority in its area shall execute and enforce the provisions of Regulation 2023/2006 mentioned in regulation 5.”

**8.** In paragraph (2) of regulation 18 (general defences), for “regulation 4 or 13(1)(a)” substitute “regulation 4, 4A or 13(1)(a)”.

**9.** In regulation 21 (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 Regulation 2023/2006,” substitute “Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009 as appropriate”.

Signed by authority of the Secretary of State for Health

3rd November 2009

*Gillian Merron*  
Minister of State,  
Department of Health

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## EXPLANATORY NOTE

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

1. These Regulations further amend the Materials and Articles in Contact with Food (England) Regulations 2007 (S.I. 2007/2790 as previously amended by S.I. 2008/916 and S.I. 2009/205) (“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 (OJ No. L135, 30.5.2009, p.3) (“Regulation 450/2009”). The Regulations also amend the way import is defined in the principal Regulations.

2. 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*), attaching penalties for such an offence (*regulation 6*), and providing for a defence in certain circumstances (*regulation 8*);
- (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 9*).

3. A full impact assessment has not been produced for this instrument as no impact in the private or voluntary sectors is foreseen.