

2011 No. 100

FOOD

**The Plastic Materials and Articles in Contact with Food
(Scotland) Amendment Regulations 2011**

Made - - - - *10th February 2011*

Laid before the Scottish Parliament *14th February 2011*

Coming into force - - *1st March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(1), 26(1)(a) and (2)(a) 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, 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 Plastic Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2011 and come into force on 1st March 2011.

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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(2), 17(1) and 48(1) were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c.28). Section 17(1) was also amended by paragraph 12 of Schedule 5 to the 1999 Act. Section 48(4) is disappplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990. By virtue of section 40(2) of the 1999 Act, amendments made by Schedule 5 to that Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46). 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 transferred, and in so far as relating to food (including drink) including the primary production of food, relevant 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 paragraph 21 of Schedule 5 to the 1999 Act.
- (c) O.J. L 31, 1.2.2002, p.1, as 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/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (O.J. L 188, 18.7.2009, p.14).

Amendment to the Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2009

2.—(1) The Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2009(a) are amended as follows.

(2) After regulation 18 (transitional defence relating to PVC gaskets containing epoxidised soybean oil), insert—

“Transitional defences relating to infant feeding bottles containing Bisphenol A

18A.—(1) In any proceedings for an offence under regulation 3 in connection with the sale or import into the EU of a polycarbonate infant feeding bottle which fails to meet the required standard it is a defence to prove that the plastic material or article—

- (a) was placed on the market or as the case may be imported into the EU before 1st June 2011; and
- (b) complied with these Regulations as they stood immediately before the amendment made to Annex II to the Directive by Commission Directive 2011/8/EU.

(2) In any proceedings for an offence under regulation 4 in connection with the use of Bisphenol A in the manufacture of a polycarbonate infant feeding bottle it is a defence to prove that the plastic material or article—

- (a) was manufactured before 1st March 2011; and
- (b) complied with these Regulations as they stood immediately before the amendment made to Annex II to the Directive by Commission Directive 2011/8/EU.

(3) In this regulation, Commission Directive 2011/8/EU means Commission Directive 2011/8/EU amending Directive 2002/72/EC as regards the restriction of use of Bisphenol A in plastic infant feeding bottles(b).”.

SHONA ROBISON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th February 2011

(a) S.S.I. 2009/30, as amended by S.S.I. 2010/327.

(b) O.J. L 26, 29.1.2011, p.11.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Plastic Materials and Articles in Contact with Food (Scotland) Regulations 2009 (“the principal Regulations”) in order to provide for the implementation of transitional arrangements contained in Commission Directive 2011/8/EU amending Directive 2002/72/EC as regards the restriction of use of Bisphenol A in plastic infant feeding bottles (“the new Commission Directive”).

The new Commission Directive contains a prohibition on the manufacture, sale and import of plastic feeding bottles for infants that are manufactured using Bisphenol A, together with transitional provisions for phasing in this prohibition. The principal Regulations contain (at regulation 2(5)) an ambulatory reference which has the effect of implementing the prohibition.

These Regulations amend the principal Regulations to provide for the implementation of the transitional arrangements in the new Commission Directive (regulation 2(2)).

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ and online at www.legislation.gov.uk.

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