

**Explanatory Memorandum
The Plastic Materials and Articles in Contact with Food (Wales) (No. 2)
Regulations 2008**

**This Explanatory Memorandum has been prepared by the Food Standards Agency
Wales and is laid before the National Assembly for Wales in accordance with
Standing Order 24.1.**

1. Description

1.1 This instrument provides for the enforcement in Wales of a Commission Regulation (EC) 597/2008, which extends the transitional migration limits for certain plasticisers in sealing gaskets in food jar lids to permit the continuing use of the specified plasticisers at the current higher migration limits until 30th April 2009.

1.2 The instrument revokes the Plastic Materials and Articles in Contact with Food (Wales) Regulations 2008 and re-enacts their provisions, amended to take into account the provisions of Commission Regulation (EC) 587/2008 and corrects two erroneous references in WSI 2008/1237 (W.124).

2. Matters of special interest to the Subordinate Legislation Committee

2.1 The instrument breaches the 21 day rule. The European Commission has adopted an amending Regulation to Commission Regulation (EC) No. 372/2007. That 2007 Regulation lays down transitional migration limits for plasticisers used in gaskets in food jar lids. The amending European Regulation extends until 30 April 2009, the period in which higher migration limits will be allowed for the specified plasticisers set out in Regulation (EC) No. 372/2007: the previous deadline had been set at 30th June 2008. It is essential from the business point of view that it comes into force by 30th June at the latest. If not, then businesses in Wales will not be able to take advantage of the continuation period for the use of the specified plasticisers.

2.2 The Commission Regulation EC 597/2008 was published in the Official Journal of the European Union on 25 June 2008. States are required under European Law to transpose and implement the provisions of Commission Regulation 20 days following publication in the Official Journal of the European Commission. Parallel Regulations will come into force in England, Scotland and Northern Ireland

3. Legislative Background

3.1 Welsh Ministers have the required powers under section 16(2) and 17(1) and 2 and 26(1)(a), 2(a) and (3), 31 and 48 (1) of the Food Safety Act 1990. Powers under the Food Safety Act were transferred from the National Assembly for Wales to Welsh Ministers under the provisions of the Government of Wales Act 2006. The Regulations are subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 It is the purpose and intention that the law on food in contact with materials and articles should protect consumers from any harmful health effect arising from the routine ingestion of substances that may have migrated into food from those material and articles. The European Commission's Standing Committee on Food Chain and Animal Health has adopted a proposal to amend Commission Regulation (EC) No. 372/2007. That 2007 Regulation lays down transitional migration limits for plasticisers used in gaskets in food jar lids. The amending European Regulation extends until the 30th April 2009, the period in which higher migration limits will be allowed for the specified plasticisers set out in Regulation (EC) 372/2007. The previous deadline had been set at the 30th June 2008.

4.2 The extension provides industry with more time to make its seal products compliant with the more stringent rules set out in Commission Directive 2007/19/EC. Lid manufacturers have been unable to develop formulations that comply with the lower migration limits for the specified plasticisers in the time they had originally requested. These new formulations move away from the use of other less desirable plasticisers. It is essential that this S.I comes into force by 30th June 2008. If not, it would mean an inconsistent approach to enforcement; this could affect a small number of domestic businesses in Wales, who will not be able to take advantage of the continuation period for use of the specified plasticisers, and could lose out to foreign competition; or there could be an interruption of the supply in certain niche food products. It would also be confusing for manufacturers as different rules relating to plastics in contact with foodstuffs would apply in Wales to the rest of the UK.

4.3 The Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Wales) Regulations 2008 (WSI. 2008/56 (W.11)) 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 2008 Regulations were to be a short lived measure to last until 30 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 (Wales) Regulations 2008 (WSI. 2008/1237 (W.124)) would have revoked the 2008 lid gasket Regulations on 1st July 2008. The legislation also aims to provide the enforcement authorities and industry with one set of harmonised rules. The proposed Regulations will apply to Wales. The policy being enacted through these proposals in relation to the EU harmonised legislation applies across the United Kingdom. In consequence, similar, parallel legislation will be made in Scotland, England and Northern Ireland.

5. Implementation

5.1 It is intended that regulation 30(a) of these Regulations should come into force on 30 June 2008 with the remainder of the instrument coming into force on 1 July 2008. Parallel legislation is also being made to come into force in England, Scotland and Northern Ireland on 30 June/1 July 2008.

6. Consultation

6.1 During the course of negotiations on the original European Commission proposals, the Food Standards Agency fully consulted all stakeholders on the 2008 Lid Gasket Regulations. Two consultations were carried out by the Agency; a formal one in October 2005 and again in June 2007. These stakeholders ranged from food industry organisations to sector specific, such as those manufacturers of food in contact with plastics and more specifically those companies involved in the manufacture of gaskets used in lids intended to come into contact with food. 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 in contact with 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, and a reasonable interval was allowed for responses or queries. No responses were received in Wales.

6.3 In relation to the implementation of Commission Directive 2007/19/ EC as the Plastic Materials and Articles in Contact with Food (Wales) Regulations 2008, two formal consultations on the proposals were carried out with interested parties in Wales. The first consultation exercise commenced in October 2007, the second in February 2008 which concluded on 21 March 2008. The second consultation was conducted to ensure stakeholders had the opportunity to comment on the insertion of the remaining transitional provisions of the amending Directive, which provide for the date by which goods complying with the provisions of the Directive may be placed on the market and dates from which non-compliant goods will be prohibited from manufacture or import into the European Community. Over 205 interested parties in Wales were consulted on the proposals, these ranged from sector specific organisations, such as those representing industry sectors, to those with a wider interest in food in contact with plastics. The Agency also consulted enforcement authorities, the Department for Business and Regulatory Reform, Enterprise Directorate, consumer organisations and other non-governmental organisations. No comments were received in Wales.

6.4 Rural areas and members of the ethnic communities of any particular racial group are unaffected by these proposals. Charities and voluntary organisations are also unaffected by these proposals.

7. Regulatory Impact Assessment

7.1 As there will be no negative impact on businesses (or other sectors) from this measure a Regulatory Impact Assessment has not been included in this Explanatory Memorandum.