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WELSH STATUTORY INSTRUMENTS

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**2018 No. 913 (W. 179)**

**FOOD, WALES**

**The Materials and Articles in Contact with  
Food (Wales) (Amendment) Regulations 2018**

<i>Made</i>	- - - -	<i>30 July 2018</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>1 August 2018</i>
<i>Coming into force</i>	- -	<i>6 September 2018</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(2), 17(1) and (2), 26(1)(a), (2)(a) and (3) and 48(1) of the Food Safety Act 1990(1).

In accordance with section 48(4A)(2) of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency before making these Regulations.

There has been open and transparent public consultation during the preparation and evaluation of these Regulations 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(3).

**Title, application and commencement**

1.—(1) The title of these Regulations is the Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2018.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 6 September 2018.

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(1) 1990 c. 16. Section 16(2) was amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 17(1) and (2) was amended by paragraphs 8 and 12(a) of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 48(1) was amended by paragraph 8 of Schedule 5 to the 1999 Act. Functions formerly exercisable by the “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(3) OJ No L 31, 1.2.2002, p. 1, as last amended by Commission Regulation (EU) 2017/228 (OJ No L 35, 10.2.2017, p. 10).

## **Amendment of the Materials and Articles in Contact with Food (Wales) Regulations 2012**

2. The Materials and Articles in Contact with Food (Wales) Regulations 2012(4) are amended in accordance with regulations 3 to 9.

3. In regulation 2 (interpretation)—

(a) in paragraph (1), after the definition of “Regulation 10/2011”, insert the following definition—

““Regulation 2018/213” (“*Rheoliad 2018/213*”) means Commission Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials(5);”;

(b) in paragraph (2), for “or Regulation 10/2011” substitute “, Regulation 10/2011 or Regulation 2018/213”.

4. In regulation 14(1) (offences of contravening specified provisions of Regulation 10/2011), for “and Article 6 of Commission Regulation (EU) 2018/831,” substitute “, Article 2 of Commission Regulation (EU) 2018/831(6) and Article 6 of Regulation 2018/213(7).”.

5. After regulation 17 (competent authorities for the purposes of Regulation 1895/2005) insert—

### **“PART 7A**

#### **Requirements for bisphenol A in varnishes and coatings intended to come into contact with food**

##### **Interpretation of Part 7A**

17A. In this Part any reference to a numbered Article is a reference to the Article so numbered in Regulation 2018/213.

##### **Offences of contravening specified provisions of Regulation 2018/213**

17B. Subject to the transitional provisions contained in Article 6, any person who places on the market a material or article that fails to comply with Article 2 is guilty of an offence.

##### **Competent authorities for the purposes of Regulation 2018/213**

17C. The competent authorities for the purposes of Article 4(3) are the Food Standards Agency and each food authority in its area.”

6. In regulation 19 (offences and penalties)—

(a) in paragraph (2), after “Regulation 10/2011” insert “, Regulation 2018/213”;

(b) in paragraph (5)(a), for “or 16(4)” substitute “16(4) or 17B”.

7. In regulation 24(2) (general defences), after “16(4)” insert “, 17B”.

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(4) [S.I. 2012/2705 \(W. 291\)](#), amended by [S.I. 2017/832 \(W. 202\)](#).

(5) OJ No L 41, 14.2.2018, p. 6.

(6) Commission Regulation (EU) 2018/831 amending Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food (OJ No L 140, 6.6.2018, p. 35). Article 2 provides that plastic materials and articles complying with Regulation 10/2011 as applicable before the entry into force of Regulation 2018/831 on 26 June 2018 may be placed on the market until 26 June 2019 and may remain on the market after that date until the exhaustion of stocks.

(7) Article 6 provides that plastic materials and articles that were lawfully placed on the market before 6 September 2018 may remain on the market until the exhaustion of stocks.

8. In regulation 27(1)(a) (application of various provisions of the Act)—
  - (a) at the end of paragraph (iv), omit “and”;
  - (b) after paragraph (v), insert—
    - “(vi) Article 4 of Regulation 2018/213; and”.
9. In Schedule 2, in Part 1 (modification of section 10(1)), in section 10(1A) as applied—
  - (a) at the end of paragraph (d), omit “and”;
  - (b) at the end of paragraph (e), for “.” substitute “; and”;
  - (c) after paragraph (e), insert—
    - “(f) Article 4 of Regulation 2018/213.”

30 July 2018

*Vaughan Gething*  
Cabinet Secretary for Health and Social  
Services, one of the Welsh Ministers

## EXPLANATORY NOTE

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

These Regulations amend the Materials and Articles in Contact with Food (Wales) Regulations 2012 (S.I. 2012/2705 (W. 291)) (“the principal Regulations”) to provide for the enforcement of Commission Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials (OJ No L 41, 14.2.2018, p. 6) (“Regulation 2018/213”).

Regulation 4 amends regulation 14 of the principal Regulations to enforce the transitional provision provided for in Article 6 of Regulation 2018/213. A person is not guilty of the offence of failing to comply with a requirement of Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food (OJ No L 12, 15.1.2011, p. 1) specified in column 1 of Schedule 1 of the principal Regulations if the plastic material or article was lawfully placed on the market before 6 September 2018. Such products may remain on the market until exhaustion of stocks.

Regulation 5 inserts new regulations 17A to 17C into the principal Regulations to provide for the enforcement of the provisions of Regulation 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food. New regulation 17B provides that subject to the transitional provision in Article 6 of Regulation 2018/213, any person who places on the market a material or article that fails to comply with Article 2 of that Regulation is guilty of an offence. Article 2 provides that no bisphenol A may be released from varnishes or coatings specifically intended to come into contact with foods for babies, infants or young children and that, in relation to all other varnishes and coatings intended to come into contact with food, no more than 0.05mg of bisphenol A may be released per kg of food with which they are in contact. New regulation 17C provides that the Food Standards Agency is the competent authority for the purposes of Article 4(3) of Regulation 2018/213.

Regulations 6 and 7 amend the principal Regulations to provide that a person who intentionally obstructs any person acting in the execution of Regulation 2018/213 commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale. A person guilty of the offence of failing to comply with Article 2 of Regulation 2018/213 is liable on conviction on indictment to an unlimited fine or to a term of imprisonment not exceeding two years, or both, or on summary conviction, to an unlimited fine.

Regulations 8 and 9 amend the principal Regulations to enable an authorised officer of the enforcement authority to serve an improvement notice to require a person to comply with Article 4 of Regulation 2018/213. Article 4 requires business operators to ensure that varnished or coated materials and articles intended to come into contact with food are accompanied by a written declaration of compliance with Regulation 2018/213.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Food Standards Agency at Food Standards Agency Wales, 11<sup>th</sup> Floor, Southgate House, Wood Street, Cardiff, CF10 1EW or from the Agency’s website at [www.food.gov.uk](http://www.food.gov.uk).