

Explanatory Memorandum to the Material and Articles in Contact with Food (Wales) (Amendment) Regulations 2009

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.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Material and Articles in Contact with Food (Wales) (Amendment) Regulations 2009.

GWENDA THOMAS, Deputy Minister for Health and Social Services
23 NOVEMBER 2009

1. Description

1.1 The purpose of this Statutory Instrument is to amend the Materials and Articles in Contact with Food (Wales) Regulations 2007 and provide for the enforcement in Wales of certain provisions contained in Commission Regulation (EC) No. 450/2009 (“the AIM Regulation”) on active and intelligent materials and articles intended to come into contact with food.

1.2 Active materials and articles are those that are intended to extend the shelf-life or to maintain or improve the condition of packaged food. They are designed to deliberately incorporate components that would release or absorb substances into or from the packaged food or the environment surrounding the food. Intelligent materials and articles monitor the condition of the packaged food or the environment surrounding the food in such a way as to provide information about the food. .

2. Matters of special interest to the Subordinate Legislation Committee

2.1 None.

3. Legislative Background

3.1 Welsh Ministers have the powers to make the proposed Regulations pursuant to sections 16(2), 17 (2), 26(1)(a) and (2)(a), and 48(1) of the Food Safety Act 1990. Functions transferred to the National Assembly for Wales are now exercisable by Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006

3.2 The general principles on all food contact materials and articles intended to come into contact with foodstuffs are established in Regulation (EC) No. 1935/2004¹. This lays down the framework of regulation for all materials and articles intended to come into contact with food, including those classed as ‘active; and ‘intelligent’. The enforcement of provisions for that Regulation are implemented in Wales by The Materials and Articles in Contact with Food (Wales) Regulations 2007. This Statutory Instrument will amend the 2007 Regulations to take into account certain provisions of the AIM Regulation, and follows the negative procedure.

3.3 These provisions relate to particular labelling and declarations requirements for goods placed on the market. They specifically concern the labelling of parts of the packaging that could be wrongly taken by some consumers to be edible, the written declaration of legal compliance to accompany active and intelligent materials and articles prior to retail sale, and the production, to enforcement

¹ OJ No. L338, 13.11.2004

authorities on request, of supporting documentation to substantiate the declaration of compliance.

3.4 These provisions need to be in place by 19th December 2009 to ensure that enforcement authorities have the necessary powers to act under the AIM Regulation at the time they become applicable throughout the European Community. The requirements of the remainder of the AIM Regulation become applicable following adoption of the Community list of substances approved for use in active and intelligent materials, anticipated to be in July 2010.

4. Purpose and intended effect of the legislation

4.1 The purpose of making this instrument is to ensure that the provisions outlined above are in place by the deadline set out in the AIM Regulation and provide the necessary powers to enforcement authorities for the effective enforcement of the AIM Regulation.

4.2 The intention is to protect the consumer through adequate labelling and to protect them against accidentally eating non-consumable parts of packaging and, through requirements to declare the compliance of the material or article business to business along the supply chain, against food contamination by chemicals whose ingestion would carry serious long term and unacceptable risk to consumer health, in particular among vulnerable people.

4.3 The AIM regulation applies to all businesses as the provisions relate specifically to labelling of parts of the package, as well as the written declaration of legal compliance which should be shown to enforcement authorities upon request. The Regulation would also give local authorities and port health authorities' responsibility for enforcing these provisions.

4.4 The primary business sector that will be affected by the regulatory proposals will be manufacturers, importers, converters and fillers of food contact materials and in particular, those manufacturers that use active and intelligent systems in their products. No comments were received from businesses in this instance. European representative bodies of industry sectors and consumers were routinely involved throughout the European negotiations.

4.5 The impact on small and medium sized businesses is unlikely to be significant. This view has been supported by industry following earlier consultations, when they indicated that the proposals would not disproportionately affect them, nor would they hinder competitiveness. Such businesses are also encouraged to respond to issues which they feel may have an impact on their ability to compete in the wider market. To date no comments have been received from small businesses on these proposed regulations.

4.6 There may also be an impact on the Agency in its role as the competent authority as defined by the proposed Regulations and as and when it carries out compliance surveys on goods on the market. This impact may involve having to carry out more research into the migration of substances from food contact

materials, including work to establish methodologies for determining such migration and to ensure compliance with the legislation.

4.7 Central and local authorities in Wales routinely monitor foodstuffs on sale to the public to ensure compliance with the Regulations. The results of this work carried out by the Agency are published and are openly available on the agency's website at:

<http://www.food.gov.uk/science/research/researchinfo/contaminantsresearch/>

4.8 The Agency shall therefore, routinely survey materials and articles on the market to ensure compliance with the Regulations and will work with enforcement authorities where problems arise or suspected infringements of the Regulations arise. The effectiveness of the Regulations will be also be monitored via feedback from stakeholders as part of the ongoing policy process and will be reviewed in March 2011.

5. Consultation

5.1 The Food Standards Agency fully consulted all stakeholders throughout the UK on the proposed Regulations. Public consultation exercises with stakeholders were conducted in 2006, 2008 and 2009. There were no pertinent issues raised in any of the consultation exercises about the cost implications in relation to the AIM Regulation from businesses or enforcement authorities. Several comments were raised in the 2008 consultation on points of detail that were noted and where they did not affect overall UK negotiating lines, were raised in discussions with the Commission and other EU Member States resulting in small changes being made to the text of the AIM Regulation.

5.2 Within Wales over two hundred stakeholders were consulted. These ranged from food industry organisations to sector specific organisations, consumer organisations, those manufacturing food contact materials, enforcement authorities and the National Assembly. There were no responses to either of the public consultations held within Wales.

6. Regulatory Impact Assessment

6.1 The Agency has not produced a Regulatory Impact Assessment (RIA) as the proposed legislation imposes no significant impact on Wales. Public consultation exercises with stakeholders were conducted in 2006, 2008 and 2009. There were no pertinent issues raised in any of the consultation exercises about any significant impact on Wales or the cost implications in relation to these proposed Regulations. The proposed legislation imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors.