

# **Statutory Instruments**

## **S.I. No. 139 of 2006**

**European Communities (Plastics and other materials) (Contact with food) Regulations 2006**

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## S.I. No. 139 of 2006

### European Communities (Plastics and other materials) (Contact with food) Regulations 2006

I, Mary Coughlan, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Council Directive No. 78/142/EEC of 30 January 1978<sup>1</sup>, Commission Directive No. 80/766/EEC of 8 July 1980<sup>2</sup> and Commission Directive No. 81/432/EEC of 29 April 1981<sup>3</sup>, Council Directive No. 84/500/EEC of 15 October 2004<sup>4</sup> as amended by Commission Directive No. 2005/31/EC of 29 April 2005<sup>5</sup>, Commission Directive No. 93/10/EEC of 15 March 1993<sup>6</sup> as amended by Commission Directive 93/111/EC of 10 December 1993<sup>7</sup> and Commission Directive No. 2004/14 /EC of 29 January 2004<sup>8</sup>, Commission Directive No. 93/11/EEC of 5 March 1993<sup>9</sup>, Council Directive 2002/72/EC of 6 August 2002<sup>10</sup> as amended by Commission Directive 2004/1/EC of 6 January 2004<sup>11</sup>, Commission Directive No. 2004/19/EC of 1 March 2004<sup>12</sup> and, from 19 November 2006, Commission Directive 2005/79/EC of 18 November 2005<sup>13</sup> and full effect to Regulation (EC) No. 1935/2004 of the European Parliament and of the Council of 27 October 2004<sup>14</sup> and Commission Regulation (EC) No. 1895/2005 of 18 November 2005<sup>15</sup>, hereby make the following regulations-

#### Citation

1. These Regulations may be cited as the European Communities (Plastics and other materials) (Contact with food) Regulations 2006.

#### Interpretation

2.(1) In these Regulations-

“authorised officer” means –

- (a) a person who immediately before the making of these Regulations was an authorised officer within the meaning of the Regulations revoked by Regulation 15(a) of these Regulations,

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<sup>1</sup> O.J. No. L 44 of 15.02.1978, p.15.

<sup>2</sup> O.J. No. L 213 of 16.8.1980, p. 42.

<sup>3</sup> O.J. No. L 167 of 24.6.1981, p. 6.

<sup>4</sup> O.J. No. L. 277 of 20.10.1984, p. 12.

<sup>5</sup> O.J. No. L 110 of 30.4.2005, p. 36..

<sup>6</sup> O.J. No. L 93 of 17.4.1993, p. 27.

<sup>7</sup> O.J. No. L 310 of 14.12.1993, p. 41.

<sup>8</sup> O.J. No. L 27 of 30.1.2004, p. 48.

<sup>9</sup> O.J. No. L 93 of 17.4.1993, p. 37.

<sup>10</sup> O.J. No. L 220 of 15.8.2002, p. 18.

<sup>11</sup> O.J. No. L 7 of 13.1.2004, p. 45.

<sup>12</sup> O.J. No. L 71 of 10.3.2004, p. 8.

<sup>13</sup> O.J. No. L 302 of 19.11.2005, p. 35.

<sup>14</sup> O.J. No. L 338 of 13.11.2004, p. 4.

<sup>15</sup> O.J. No. L 302 of 19.11.2005, p. 28.

- (b) an authorised officer within the meaning of the Food Safety Authority of Ireland Act 1998 (No. 49 of 1998),
- (c) a person appointed under Regulation 7,
- (d) a member of the Garda Síochána, or
- (e) an officer of Customs and Excise;

“cellulose film Directive” means Commission Directive No. 93/10/EEC of 15 March 1993 as amended by Commission Directive 1993/111/EC of 10 December 1993 and Commission Directive No. 2004/14 /EC of 29 January 2004;

“ceramics Directive” means Council Directive No. 84/500/EEC of 15 October 2004 as amended by Commission Directive No. 2005/31/EC of 29 April 2005;

“epoxy derivatives Regulation” means Commission Regulation (EC) No. 1895/2005 of 18 November 2005;

“framework Regulation” means Regulation (EC) No. 1935/2004 of the European Parliament and of the Council of 27 October 2004;

“manufacture” means total or partial manufacture and includes processing, compounding, formulating, filling, dividing up, packing, labelling and presentation;

“official agency” means an official agency within the meaning of the Food Safety Authority of Ireland Act 1998 (No. 49 of 1998);

“plastics Directive” means Council Directive 2002/72/EC of 6 August 2002 as amended by Commission Directive 2004/1/EC of 6 January 2004, Commission Directive No. 2004/19/EC of 1 March 2004 and, from 19 November 2005, Commission Directive 2005/79/EC of 18 November 2005;

“sell” includes offer, expose or keep for sale, invite an offer to buy, or distribute for reward and cognate words shall be construed accordingly;

“supply” includes giving without payment;

“vinyl chloride Directive” means Council Directive No. 78/142/EEC of 30 January 1978, Commission Directive No. 88/766/EEC of 8 July 1980 and Commission Directive No. 81/432/EEC of 29 April 1981.

- (2) A word or expression that is used in the cellulose film Directive, the ceramics Directive, the epoxy derivatives Regulation, the framework Regulation, the

plastics Directive or the vinyl chloride Directive and that is also used in these Regulations has, in these Regulations, the same meaning as in act of the institution of the European Communities in which the word or expression occurs.

### **cellulose film**

3.(1) This Regulation applies to-

- (a) uncoated regenerated cellulose film (hereafter in this Regulation referred to as “type 1 film”),
  - (b) coated regenerated cellulose film with coating derived from cellulose (hereafter in this Regulation referred to as “type 2 film”), and
  - (c) coated regenerated cellulose film with coating consisting of plastic (hereafter in this Regulation referred to as “type 3 film”).
- (2) A person shall not cause or permit a printed surface of regenerated cellulose film to come in contact with a foodstuff.
- (3) A person shall not sell or supply a material or article that consists of or contains regenerated cellulose film in respect of which special conditions of use are indicated, unless the material or article is labelled with the special conditions of use.
- (4) A person shall not manufacture, sell, supply, import, engage in trade in or use in the course of a business in connection with the storage, preparation, packaging, sale, supply or serving of a foodstuff type 1 film or type 2 film unless the film is manufactured-
- (a) in accordance with Annex II to the cellulose film Directive using only a substance or group of substances listed in that Annex, or
  - (b) using a substance not listed in Annex II to the cellulose film Directive when the substance is used as a dye, pigment or adhesive, provided there is no trace of migration of the substance onto or into a foodstuff.
- (5) A person shall not manufacture, sell, supply, import, engage in trade in or use in the course of a business in connection with the storage, preparation, packaging, sale, supply or serving of a foodstuff type 3 film unless -
- (a) the film is manufactured in accordance with Annex II to the cellulose film Directive, prior to coating,

using a substance or group of substances listed in that Annex,

- (b) the material or article made of type 3 film complies with Articles 2, 7 and 8 of the plastics Directive, and
- (c) the material or article made of type 3 film is coated with material manufactured in accordance with Annexes II to VI of the plastics Directive from substances or groups of substances listed in those Annexes.

## **Ceramics**

4.(1) A person shall not manufacture, sell, supply, import, engage in trade in or use in the course of a business in connection with the storage, preparation, packaging, sale, supply or serving of a foodstuff a ceramic article which in its finished state is-

- (a) intended to come in contact with a foodstuff, or
- (b) in contact with a foodstuff and is intended for a purpose related to a foodstuff,

which transfers, or may transfer, to a foodstuff a quantity of lead or cadmium in excess of the limits laid down in Article 2(4) of the ceramics Directive or which does not comply with Article 2A of the ceramics Directive.

(2) The requirement in paragraph (1) to comply with Article 2A of the ceramics Directive shall apply from 20 May 2007.

## **Plastics**

5.(1) A person shall not manufacture, sell or supply a plastic intended to come into contact with a foodstuff unless the monomer or other starting material is listed in Section A of Annex II to the plastics Directive in accordance with the restrictions specified in that Annex and, from 19 November 2005, Commission Directive 2005/79/EC of 18 November 2005.

(2) A person shall not, in the manufacture of a plastic intended to come into contact with a foodstuff, fail to comply with Articles 2, 4, 5, 5a, 6 or 9 of the plastics Directive.

(3) From 1 March 2006, a person shall not import a plastic intended to come into contact with a foodstuff unless the plastic conforms to this Regulation.

## **Vinyl chloride monomer**

6. A person shall not manufacture, sell, supply, import or use in the course of a business in connection with the storage, preparation, packaging, sale, supply or serving of a foodstuff a material or article prepared with a vinyl chloride polymer or copolymer and which contains vinyl chloride monomer exceeding 1 milligram per kilogram of the material or article.

### **Authorised officers**

- 7.(1) The Food Safety Authority of Ireland, an official agency or Director of Consumer Affairs may, by instrument in writing, appoint such and so many of his, her or it's officers as he, she or it thinks fit to be authorised officers for the purpose of some or all of the functions conferred by these Regulations as may be specified in the instrument.
- (2) The Food Safety Authority of Ireland, an official agency or Director of Consumer Affairs may terminate the appointment of an authorised officer appointed by him, her or it whether or not the appointment was for a fixed period.
- (3) An appointment as an authorised officer ceases-
  - (a) if it is terminated pursuant to paragraph 4,
  - (b) if it is for a fixed period, on the expiry of that period, or
  - (c) if the person appointed is an officer of the Food Safety Authority of Ireland, an official agency or Director of Consumer Affairs, upon him or her ceasing to be such an officer.
- (4) Nothing in paragraph (3) is to be construed so as to prevent the Food Safety Authority of Ireland, an official agency or Director of Consumer Affairs from reappointing as an authorised officer a person to whom that paragraph relates.
- (5) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, an officer of Customs and Excise or a member of the Garda Síochána shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to the person.

### **Powers of authorised officers**

8. (1) An authorised officer or a person employed by or acting on the authority of the Commission of the European Communities accompanied by an authorised officer, if the authorised officer has reasonable cause to suspect that –
  - (a) food or a material or article to which these Regulations apply is present, has been present or may be present on a premises,
  - (b) food or a material or article to which these Regulations apply is or has been processed, stored or otherwise dealt with on a premises,

(c) a document relating to food or a material or article to which these Regulations apply is present, was present or may be present on a premises, or

(d) an offence is being or has been committed under these Regulations,

may enter the premises and he or she may –

- (i) search the premises,
- (ii) stop a person, vehicle, vessel or container,
- (iii) board and search a vehicle, vessel or container,
- (iv) search a person, where the authorised officer considers it necessary,
- (v) examine food or a material or article to which these Regulations apply, vehicle, vessel, container or other thing that may contain, consist of or contain food or a material or article to which these Regulations apply,
- (vi) take, without payment, samples of food or a material or article to which these Regulations apply as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as is necessary) any food, a material or article to which these Regulations apply, vehicle or container,
- (viii) require the production of a document or thing relating to food, a material or article to which these Regulations apply, vehicle, vessel or container,
- (ix) retain a document or thing (for so long as is necessary),
- (x) dispose of, or require the owner or person in charge of or in possession of food or a material or article to which these Regulations apply to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, the food or a material or article to

which these Regulations apply) in a manner that the authorised officer sees fit,

- (xi) give a direction to, or request information of, a person regarding food, a material or article to which these Regulations apply, or a premises as he or she considers necessary,
  - (xii) require the name and address of a person and the name and address of any other relevant person including the person to whom food or a material or article to which these Regulations apply is being delivered or who is causing it to be delivered,
  - (xiii) require of a person the ownership, identity and origin of food or a material or article to which these Regulations apply,
  - (xiv) mark or otherwise identify food, a material or article to which these Regulations apply or a specimen taken under subparagraph (vi), or
  - (xv) require of a person any information required by the epoxy Regulation or the plastics Directives be made available to the competent authorities.
- (2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 9 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.
- (3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.
- (4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.
- (5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of food



or a material or article to which these Regulations apply as may be specified by the authorised officer.

- (7) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

### **Search warrant**

9.(1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting-

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was food or a material or article to which these Regulations apply or equipment or other thing made used or adapted for use (including manufacture and transport) in connection with food or a material or article to which these Regulations apply
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on the premises,

the judge may issue a search warrant.

- (2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.
- (3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

### **Fixed penalty notice**

10.(1) If an officer of the Food Safety Authority of Ireland, an official agency or Director of Consumer Affairs authorised in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing on that person stating that –

- (a) the person is alleged to have committed the offence,

- (b) the person may during the period of 28 days on the date of the notice make to the registering authority a payment of €100 accompanied by the notice, and
  - (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) If notice is given under paragraph (1) —
- (a) a person to whom the notice applies may, during the period specified in the notice, make to the registering authority at the address specified in the notice the payment specified in the notice accompanied by the notice,
  - (b) the registering authority may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
  - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

**Evidence on certificate etc.**

11. In proceedings for an offence under these Regulations, a certificate purported to be signed by a person employed at a laboratory where a sample taken under these Regulations is analysed stating the capacity in which the person is employed and stating —
- (a) that the person received a sample,
  - (b) that, for the period specified in the certificate, the person had the sample in his or her possession,
  - (c) that the person gave the sample to another person named in the certificate, or
  - (d) the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner, specified in the certificate,

is (without proof of the signature of the person or that he or she is employed at the laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

### **Obstruction etc.**

12. A person shall not-
- (a) obstruct or impede an authorised officer in the exercise of his or her powers under Regulation 9,
  - (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 9,
  - (c) in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 9 -
    - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
    - (ii) fail to disclose a material particular,
  - (d) tamper or otherwise interfere with a sample taken under Regulation 9, or
  - (e) aid or abet a contravention of the framework Regulation, the epoxy derivatives Regulation or these Regulations.

### **Offences**

- 13.(1) A person who, by act or omission contravenes-
- (a) Article 3, 4, 15 or 16 (1) (subject to Article 27) of the framework Regulation,
  - (b) from 27 October 2006, Article 17 of the framework Regulation,
  - (c) Article 2, 3, 4 or 5 of the epoxy derivatives Regulation, or
  - (d) Regulation 3, 4, 5, 6, 7 or 12 of these Regulations,
- commits an offence and is liable on conviction to a fine not exceeding €5,000 or to imprisonment for a period not exceeding 6 months or to both.
- (2) An offence under paragraph (1) may be prosecuted by the Director of Consumer Affairs, an official agency or the Food Safety Authority of Ireland.

- (3) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported to act in any such capacity, that person, as well as the body corporate, commits offence and is liable to be proceeded against and punished as if he or she was guilty of the offence.
- (4) If the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

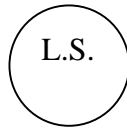
## **Revocations**

14. The following are revoked-

- (a) European Communities (Materials and Articles intended to come into contact with Foodstuffs) Regulations 1991 (S.I. No. 307 of 1991),
- (b) European Communities (Materials and Articles intended to come into contact with Foodstuffs) (Amendment) Regulations 1993 (S.I. No. 295 of 1993),
- (c) European Communities (Materials and Articles intended to come into contact with Foodstuffs) (Amendment) (No. 2) Regulations 1994 (S.I. No. 93 of 1994),
- (d) European Communities (Materials and Articles intended to come into contact with Foodstuffs) (Amendment) Regulations 1996 (S.I. No. 226 of 1996),
- (e) European Communities (Materials and Articles intended to come into contact with Foodstuffs) (Amendment) 1997 (S.I. No. 335 of 1997),
- (f) European Communities (Materials and Articles intended to come into contact with Foodstuffs) (Amendment) Regulations 1998 (S.I. No. 278 of 1998),
- (g) European Communities (Materials and Articles intended to come into contact with Foodstuffs) (Amendment) Regulations 2000 (S.I. No. 475 of 2000),
- (h) European Communities (Materials and Articles intended to come into contact with Foodstuffs) Regulations 2002 (S.I. No. 542 of 2002),

- (i) European Communities (Materials and Articles intended to come into contact with Foodstuffs) Regulations 2003 (S.I. No. 76 of 2003),
- (j) European Communities (Materials and Articles intended to come into contact with Foodstuffs) Regulations 2005 (S.I. No. 232 of 2005), and
- (k) European Communities (Materials and Articles intended to come into contact with Foodstuffs) Regulations 2005 (S.I. No. 544 of 2005).

**GIVEN** under my Official Seal,  
28<sup>th</sup> March 2006



Mary Coughlan  
Minister for Agriculture and  
Food

## **EXPLANATORY NOTE**

*(This note is not part of the instrument and does not purport to be a legal interpretation.)*

This Order gives effect to Council Directive No. 78/142/EEC of 30 January 1978, Commission Directive No. 80/766/EEC of 8 July 1980 and Commission Directive No. 81/432/EEC of 29 April 1981, Council Directive No. 84/500/EEC of 15 October 2004 as amended by Commission Directive No. 2005/31/EC of 29 April 2005, Commission Directive No. 93/10/EEC of 15 March 1993 as amended by Commission Directive 93/111/EC of 10 December 1993 and Commission Directive No. 2004/14/EC of 29 January 2004, Commission Directive No. 93/11/EEC of 5 March 1993, Council Directive 2002/72/EC of 6 August 2002 as amended by Commission Directive 2004/1/EC of 6 January 2004, Commission Directive No. 2004/19/EC of 1 March 2004 and, from 19 November 2006, Commission Directive 2005/79/EC of 18 November 2005 and full effect to Regulation (EC) No. 1935/2004 of the European Parliament and of the Council of 27 October 2004 and Commission Regulation (EC) No. 1895/2005 of 18 November 2005 relating to plastic materials and articles intended to come into contact with foodstuffs.