

**2019 No. 32**

**FOOD**

**The Materials and Articles in Contact with Food (Scotland)  
Amendment Regulations 2019**

<i>Made</i>	- - - -	<i>5th February 2019</i>
<i>Laid before the Scottish Parliament</i>		<i>7th February 2019</i>
<i>Coming into force</i>	- -	<i>28th March 2019</i>

The Scottish 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(a) and all other powers enabling them to do so.

In accordance with section 48(4A) of the Food Safety Act 1990(b), the Scottish Ministers have had regard to relevant advice given by Food Standards Scotland.

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 Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2019 and come into force on 28 March 2019.

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

2. The Materials and Articles in Contact with Food (Scotland) Regulations 2012(d) are amended in accordance with regulations 3 to 11.

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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 (2), and 48(1) were amended by paragraph 8 of schedule 5 of the Food Standards Act 1999 (c.28) (“the 1999 Act”). Section 17(1) was also amended by paragraph 12(a) of schedule 5 of the 1999 Act. Section 26(3) was amended by paragraph 1 of schedule 6 of the 1999 Act. By virtue of section 40(2) of the 1999 Act, amendments made by schedule 5 of that Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”). 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 S.I. 2005/849.
- (b) Section 48(4A) was inserted by paragraph 21 of schedule 5 of the 1999 Act. The reference in that subsection to the Food Standards Agency is, by virtue of section 48(6) of the 1990 Act, to be read as a reference to Food Standards Scotland. Section 48(6) was inserted by paragraph 3(11) of the Food (Scotland) Act 2015 (asp 1).
- (c) OJ L 31, 1.2.2002, p.1. Section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by regulation 5(b) of S.I. 2004/2990.
- (d) S.S.I. 2012/318.

**3. In regulation 2 (interpretation)—**

(a) in paragraph (1)—

(i) at the end of the definition of “Regulation 10/2011” add “, as amended by Commission Regulation (EU) 2016/1416(a)”, and

(ii) after the definition of “Regulation 10/2011”, insert the following definition—

““Regulation 2018/213” means Commission Regulation (EU) No. 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(b);”, and

(b) for paragraph (2) substitute—

“(2) Expressions used in these Regulations and in Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011, or Regulation 2018/213 bear the same meaning in these Regulations as they bear in those Regulations.”.

**4. For regulation 15 (competent authorities for the purposes of Regulation 10/2011) substitute—**

**“Competent authorities for the purposes of Regulation 10/2011**

**15.** The competent authorities for the purposes of Regulation 10/2011 are—

(a) Article 8 (general requirement on substances), and

(b) Article 16(1) (supporting documents),

are Food Standards Scotland and each food authority in its area.”.

**5. After regulation 17 insert —**

**“PART 7A**

**Requirements for bisphenol A**

**Interpretation of Part 7A**

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

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

**17B.** Subject to Article 6, no person shall place on the market any varnished or coated material or article that does not comply with the requirements of Article 2.

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

**17C.** The national competent authority for the purposes of Article 4(3) is Food Standards Scotland and each food authority in its area.”.

**6. In regulation 19 (offences and penalties)—**

(a) in paragraph (1) after “12(8)” insert “, 17B”,

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

(c) in paragraph (3) after “that” insert “a”.

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(a) OJ L 230, 25.8.2016, p.22.

(b) OJ L 41, 14.2.2018, p.6.

- 7.** In regulation 20 (execution and enforcement)—
- (a) in paragraph (1)(a) for “and Regulation 10/2011” substitute “, Regulation 10/2011 and Regulation 2018/213”, and
  - (b) in paragraph (2)—
    - (i) after sub-paragraph (a) omit “and”,
    - (ii) in sub-paragraph (b) for “Regulation 450/2009.” substitute “Regulation 450/2009,”, and
    - (iii) after sub -paragraph (b) add—
      - “(c) Article 16(1) of Regulation 10/2011, and
      - (d) Article 4(3) of Regulation 2018/213.”.
- 8.** In regulation 23(2) (time limit for prosecutions) for “or 19(2) or (3)” substitute “, 19(2), (3) or (4)”.
- 9.** In regulation 24(2) (general defences) after “16(4)” insert “, 17B”.
- 10.** In regulation 27 (application of various provisions of the Act)—
- (a) in paragraph (2) for “or Regulation 10/2011” substitute “, Regulation 10/2011 or Regulation 2018/213”, and
  - (b) in paragraph (3) for “or Regulation 10/2011” substitute “, Regulation 10/2011 or Regulation 2018/213”.
- 11.** In the table in schedule 1 (specified provisions of regulation 10/2011) in the first column (specified provision) for “Article 11(1) and (2) and Annex I, as read with Article 11(3)” substitute “Article 11(1) and Annex I, as read with Article 11(3) and (4)”.

*JOE FITZPATRICK*  
Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
5th February 2019

## EXPLANATORY NOTE

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

These Regulations amend the Materials and Articles in Contact with Food (Scotland) Regulations 2012 (“the 2012 Regulations”). These Regulations provide for the enforcement of Commission Regulation (EU) 2018/213 (“Regulation 2018/213”) on the use of bisphenol A (“BPA”) in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as it applies to the use of that substance in plastic food contact materials (OJ L 41, 14.2.2018, p.6). These Regulations also make other minor amendments.

These Regulations amend the 2012 Regulations as follows—

- a) amendments in relation to definitions of EU legislation (regulation 3);
- b) amendment to regulation 15 in relation to competent authorities (regulation 4);
- c) inserting a new Part 7A, comprising regulations 17A to 17C, to provide for the enforcement of provisions of Regulation 2018/213 on the use of BPA in varnishes and coatings intended to come into contact with food for the purposes of Regulation 2018/213 (regulation 5);
- d) amendment to regulation 19 (offences and penalties) to make it an offence to obstruct a person acting in the execution of powers under Regulation 2018/213 and to provide for sentencing in relation to the offence created by inserted regulation 17B (regulation 6);
- e) amendment to regulation 20 (execution and enforcement) to include reference to Regulation 10/2011 and Regulation 2018/213 (regulation 7);
- f) amendment to regulation 23 (time limit for prosecutions) to cover provision in regulation 19(4) (regulation 8);
- g) amendment to regulation 24 (general defences) to include reference to the offence created by new regulation 17B (regulation 9);
- h) amendment to regulation 27 to include reference to Regulation 2018/213 (regulation 10);
- i) amendment to the schedule (regulation 11).

A full Business and Regulatory Impact Assessment of the effect these Regulations will have on the costs of business, the voluntary sector and the public sector has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Food Standards Scotland, Pilgrim House, Old Ford Road, Aberdeen, AB11 5RL.

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