

1994 No. 222

## EUROPEAN COMMUNITIES

## PUBLIC HEALTH

**The Marketing and Use of Dangerous Substances Regulations (Northern Ireland) 1994***Made* . . . . . 17th June 1994*Coming into operation* . . . . . 1st August 1994

The Department of the Environment, being a department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to restrictions on the marketing and use of certain dangerous substances and preparations, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:

*Citation and commencement*

1. These Regulations may be cited as the Marketing and Use of Dangerous Substances Regulations (Northern Ireland) 1994 and shall come into operation on 1st August 1994.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

“dangerous substance” means a substance which is—

(a) a PCB;

(b) a PCT; or

(c) preparations, including waste oils, with a PCB or PCT content higher than 0.005 per cent. by weight;

“the Department” means the Department of the Environment;

“the Directive” means Council Directive 76/769/EEC(d);

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(a) S.I. 1992/1711

(b) 1972 c. 68

(c) 1954 c. 33 (N.I.)

(d) O.J. No. L262, 27.9.76, p. 201. Relevant amending Directives are Council Directives 79/663/EEC (O.J. No. L197, 3.8.79, p. 37), 82/806/EEC (O.J. No. L339, 1.12.82, p. 55), 82/828/EEC (O.J. No. L350, 10.12.82, p. 34), 83/264/EEC (O.J. No. L147, 6.6.83, p. 9), 83/478/EEC (O.J. No. L263, 24.9.83, p. 33), 85/467/EEC (O.J. No. L269, 11.10.85, p. 56), 85/610/EEC (O.J. No. L375, 31.12.85, p. 1), 89/677/EEC (O.J. No. L398, 30.12.89, p. 19), 91/173/EEC (O.J. No. L85, 5.4.91, p. 34), 91/338/EEC (O.J. No. L186, 12.7.91, p. 59), 91/339/EEC (O.J. No. L186, 12.7.91, p. 64), and 91/659/EEC (O.J. No. L363, 31.12.91, p. 36)

- “large condenser” means a condenser having a total weight of 1 kilogramme or more;
- “PCB” means any polychlorinated biphenyl other than a dichlorinated biphenyl;
- “PCT” means any polychlorinated terphenyl;
- “preparations” and “substances” have the meanings assigned by Article 1.3 of the Directive; and
- “small condenser” means a condenser having a total weight less than 1 kilogramme.

### *Exceptions*

3. These Regulations shall not apply to—
- (a) the carriage of dangerous substances by rail, road, inland waterway, sea or air, or
  - (b) the export of dangerous substances to a destination in the territory of a state which is not a member State, or
  - (c) the holding of dangerous substances in transit, provided that during that time they undergo no processing and are available for examination by customs officers of the United Kingdom, or
  - (d) the marketing or use of dangerous substances for research and development or analysis purposes.

### *Prohibition of use of dangerous substances*

4.—(1) Subject to paragraph (2), no person shall use any dangerous substance.

- (2) Paragraph (1) shall not apply to the use of any dangerous substance—
- (a) in the equipment or plant, or for the purposes specified in the Schedule, provided that the equipment or plant was in service prior to 30th June 1986, or
  - (b) for supplementing, in the normal conditions of maintenance of equipment, the level of liquids containing PCBs in properly functioning existing plant purchased before 30th June 1986, or
  - (c) for the purposes of, or in the course of, any process which has been approved by the Department, in consequence of an application made in accordance with regulation 5, as a process by means of which a dangerous substance will be converted into a substance which is not prohibited by the Directive as amended and which will not, in the opinion of the Department, constitute a danger to health or the environment.

### *Approvals under regulation 4(2)(c)*

5. Any person seeking approval of a process under regulation 4(2)(c) shall submit his application in writing to the Department at least 3 months before it is proposed to commence that process, or such shorter period as the Department may in the circumstances of the particular case allow.

*Prohibition of marketing of dangerous substances*

6. No person shall place on the second hand market, other than for disposal, dangerous substances or equipment, plant or fluids containing dangerous substances.

*Offences*

7.—(1) A person who contravenes regulation 4 or 6 shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £2,000(a), and on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

(2) Where a person is charged with an offence under these Regulations, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Sealed with the Official Seal of the Department of the Environment on  
17th June 1994.

(L.S.)

*R. W. Rogers*

Assistant Secretary

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(a) See para 1(1)(d) of Sch. 2 to 1972 c. 68 read with Arts. 5 and 8 of the Fines and Penalties (Northern Ireland) Order 1984 (S.I. 1984/703 (N.I. 3)) as amended by Sch. 4 to S.R. 1984 No. 253

**Equipment and plant and purposes referred to in Regulation 4**

1. Closed-system electrical equipment, transformers, resistors and inductors.
2. Large condensers.
3. Small condensers, the PCB content of which does not contain more than—
  - (a) 43 per cent. of chlorine, and
  - (b) 3.5 per cent. of pentachlorinated or more highly chlorinated biphenyls.
4. Use in a heat-transmitting fluid in a closed-circuit heat-transfer installation (other than an installation for processing foodstuffs, feedingstuffs or pharmaceutical or veterinary products) where the PCB content of that fluid does not exceed 0.1 per cent. by weight.
5. Use in any hydraulic fluid employed in any underground mining equipment.

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**EXPLANATORY NOTE**

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

These Regulations give effect to certain requirements of Council Directive 76/769/EEC (O.J. No. L262, 27.9.76, p. 201), as amended, which relate to restrictions on the marketing and use of polychlorinated biphenyls (PCBs) and polychlorinated terphenyls (PCTs). Council Directive 83/478/EEC (O.J. No. L263, 24.9.83, p. 33) redesignated the Annex to the 1976 Directive as Annex 1. Council Directive 85/467 (O.J. No. L269, 11.10.85, p. 56) provided for the phasing out of the use of PCBs and PCTs, and Council Directive 89/677 (O.J. No. L398, 30. 12.89, p. 19) reduced the allowable concentration of PCBs and PCTs in preparations.

Regulation 2 defines "dangerous substance" as a substance which is a PCB or PCT, or a preparation (as defined in that regulation) or a waste oil with a PCB or PCT content of more than 0.005 per cent. by weight.

Regulation 3 sets out certain operations to which the Regulations do not apply.

Regulation 4, read with the Schedule, prohibits the use of dangerous substances, subject to certain exceptions. In particular the Department is given power to exempt any manufacturing process by means of which a dangerous substance will cease to be a substance which is prohibited by Directive 76/769/EEC as amended and which will not in its opinion constitute a danger to health or the environment (regulation 4(2)(c)). The continued use of dangerous substances is not prohibited where the use is one included in the Schedule to these Regulations but only if the equipment, plant or fluid containing the dangerous substance was in service before 30th June 1986 (regulation 4(2)(a)).

Regulation 5 lays down procedural requirements regarding exemptions under regulation 4(2)(c) (which relates to certain powers of the Department to approve processes).

Regulation 6 prohibits the second hand marketing, other than for disposal, of dangerous substances or equipment, plant or fluids containing them.

Regulation 7 makes it a criminal offence to contravene regulations 4 or 6, the penalty for which, on summary conviction, is a fine not exceeding £2,000. On conviction on indictment the penalty is a fine, or a term of imprisonment not exceeding 2 years, or both. It also provides that it shall be a defence for an accused person to prove that he took all reasonable steps and exercised all due diligence to avoid committing an offence.

These Regulations replace, with certain amendments, the provisions of the Control of Pollution (Supply and Use of Injurious Substances) Regulations 1986 (S.I. 1986/902) which have ceased to have effect in Northern Ireland by virtue of the repeal by section 162 of, and Part IX of Schedule 16 to, the Environmental Protection Act 1990 (1990 c. 43) of section 100 of the Control of Pollution Act 1974 (1974 c. 40) under which they were made.

Copies of the Official Journal of the European Communities containing the above-mentioned Directives may be obtained from Her Majesty's Stationery Office, 16 Arthur Street, Belfast BT1 4GD.