

2003 No. 548

EUROPEAN COMMUNITIES

PUBLIC HEALTH

**The Marketing and Use of Dangerous Substances (No. 4)
Regulations (Northern Ireland) 2003**

Made - - - - - 23rd December 2003

*Coming into operation in accordance with regulation 1(2)
and (3)*

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, makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Marketing and Use of Dangerous Substances (No. 4) Regulations (Northern Ireland) 2003.

(2) Regulations 1, 2, 3, 4 and 7 shall come into operation on 6th January 2004.

(3) Regulations 5, 6 and 8 shall come into operation on 30th June 2004.

Interpretation

2.—(1) Expressions used in these Regulations which are also used in Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as amended by European Parliament and Council Directive 2002/45/EC(c) and European Commission Directive 2003/02/EC(d), shall have the meaning they bear in that Directive.

(2) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Scope

3. These regulations do not apply to –

(a) S.I. 1992/1711

(b) 1972 c. 68

(c) O.J. No. L177, 6.7.2002, p. 21

(d) O.J. No. L4, 9.1.2003, p. 9

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

- (a) the placing on the market or use of dangerous substances or preparations for research and development or analysis purposes;
- (b) the carriage of dangerous substances or preparations by rail, road, inland waterway, sea or air;
- (c) dangerous substances or preparations exported to a country which is not a Member State of the European Community, or to Norway, Iceland or Liechtenstein;
- (d) dangerous substances or preparations in transit and subject to customs inspection, provided that they undergo no processing.

Prohibition on the placing on the market of short chain chlorinated paraffins

4. A person shall not place short chain chlorinated paraffins (alkanes, C₁₀-C₁₃) on the market for use as substances, or as constituents of other substances or preparations in concentrations higher than 1% either in metalworking or for fat liquoring of leather.

Restrictions on the marketing and use of arsenic compounds

5.—(1) Subject to regulation 6, arsenic compounds may not be used as substances or constituents of preparations intended for use –

- (a) to prevent the fouling by micro-organisms, plants or animals of –
 - (i) the hulls of boats,
 - (ii) cages, floats, nets and any other appliances or equipment used for fish or shellfish farming,
 - (iii) any totally or partly submerged appliances or equipment;
- (b) in the preservation of wood;
- (c) in the treatment of industrial waters, irrespective of their use.

(2) Subject to regulation 6, wood treated with a substance or preparation containing an arsenic compound for the purpose of preserving the wood may not be placed on the market.

Permitted marketing and use of arsenic compounds

6.—(1) Subject to paragraphs (3) and (4), solutions of inorganic compounds of the copper, chromium, arsenic (CCA) type C may be used as substances or preparations in the preservation of wood in industrial installations using vacuum or pressure to impregnate wood.

(2) Subject to paragraph (3), wood treated with CCA solutions in industrial installations in accordance with paragraph (1) may be placed on the market but not before fixation of the preservative is completed.

(3) Wood treated with CCA solutions in industrial installations in accordance with paragraph (1) may be placed on the market for professional and industrial use provided that the structural integrity of the wood is required for human or livestock safety and skin contact by the general public during its service life is unlikely –

- (a) as structural timber in public and agricultural buildings, office buildings, and industrial premises;
- (b) in bridges and bridgework;
- (c) as constructional timber in freshwater areas and brackish waters e.g. jetties and bridges;
- (d) as noise barriers;
- (e) in avalanche control;
- (f) in highway safety fencing and barriers;
- (g) as debarked round conifer livestock fence posts;
- (h) in earth retaining structures;
- (i) as electric power transmission and telecommunications poles; or
- (j) as underground railway sleepers.

(4) Subject to paragraph (5), wood treated in accordance with paragraph (1) may not be used:

- (a) in residential or domestic constructions, whatever the purpose;
- (b) in any application where there is a risk of repeated skin contact;
- (c) in marine waters;
- (d) for agricultural purposes other than for livestock fence posts and structural uses in accordance with paragraph (3); or
- (e) in any application where the treated wood may come into contact with intermediate or finished products intended for human or animal consumption.

(5) Paragraph 4 does not apply to wood in place before 30th June 2004.

(6) Without prejudice to the application of other rules and regulations on the classification, packaging and labelling of dangerous substances and preparations, all treated wood placed on the market pursuant to this regulation shall be individually labelled using the following words –

“For professional and industrial installation and use only, contains arsenic”.

(7) In addition, all wood placed on the market in packs shall bear a label stating –

“Wear gloves when handling this wood. Wear a dust mask and eye protection when cutting or otherwise crafting this wood. Waste from this wood shall be treated as hazardous by an authorised undertaking”.

Offences and penalties

7.—(1) Any person who contravenes regulations 4, 5, or 6, or causes or permits another person to contravene those regulations, shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be liable:

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) Where an offence under this regulation committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body or any person who was purporting to act in such a capacity, he is also guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where the affairs of the body corporate are managed by its members, paragraph (3) applies to acts and defaults of a member in connection with his management functions as if he was a director.

Amendment of regulations

8. In regulation 6 of the Marketing and Use of Dangerous Substances (No. 2) Regulations (Northern Ireland) 1994^(a) the words “arsenic compounds” shall be deleted.

Sealed with the Official Seal of the Department of the Environment on 23rd December 2003.

(L.S.)

Judena Goldring

A senior officer of the Department of the Environment

(a) S.R. 1994 No. 223

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations give effect to European Parliament and Council Directive 2002/45/EC which amended for the twentieth time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations. They also give effect to European Commission Directive 2003/02/EC relating to restrictions on the marketing and use of arsenic (tenth adaptation to technical progress to Council Directive 76/769/EEC).

Regulation 3 sets out exclusions to the restrictions on the placing on the market and use of dangerous substances and preparations under the Regulations.

Regulation 4 prohibits the placing on the market from 6th January 2004 of short chain chlorinated paraffins in concentrations greater than 1% for use in metalworking or for fat liquoring of leather.

Regulation 5 prohibits, from 30th June 2004, the use of arsenic compounds as substances or constituents of preparations intended for use: (i) to prevent the fouling of certain aquatic structures and equipment by micro-organisms, plants or animals; (ii) in the preservation of wood; and (iii) in the treatment of industrial waters. The placing on the market of wood treated with substances or preparations containing arsenic compounds is also prohibited.

Regulation 6 contains derogations to the restrictions in regulation 5, such that inorganic compounds of the copper, chromium, arsenic (CCA) type C may be used as substances and preparations in the preservation of wood in industrial installations using vacuum or pressure to impregnate wood. Wood so treated may not be placed on the market before fixation of the preservative is completed. Wood treated with CCA solutions in industrial installations may be placed on the market for certain professional and industrial uses specified in regulation 6(3) and subject to certain conditions, set out in regulation 6(4), (6) and (7). The restrictions on the use of wood treated with CCA solutions in regulation 6(4) do not apply to wood in place before 30th June 2004.

Regulation 7 makes it a criminal offence to contravene regulations 4, 5, and 6 and specifies the penalties for such an offence.

Regulation 8 amends regulation 6 of the Marketing and Use of Dangerous Substances (No. 2) Regulations (Northern Ireland) 1994.

Copies of the relevant Directives may be obtained from the Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD.

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