

2004 No. 509

EUROPEAN COMMUNITIES

PUBLIC HEALTH

**The Marketing and Use of Dangerous Substances (No. 4)
Regulations (Northern Ireland) 2004**

Made - - - - - 10th December 2004

Coming into operation 1st January 2005

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 upon it by that section and of every other power enabling it in that behalf, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Marketing and Use of Dangerous Substances (No. 4) Regulations (Northern Ireland) 2004 and shall come into operation on 1st January 2005.

Interpretation

2.—(1) In these Regulations –

“octabromodiphenyl ether” means diphenylether, octabromo derivative $C_{12}H_2Br_8O$;

“pentabromodiphenyl ether” means diphenylether, pentabromo derivative $C_{12}H_5Br_5O$.

(2) 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(c), as last amended by Commission Directive 2004/98/EC amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of pentabromodiphenyl ether in aircraft emergency evacuation systems for the purpose of adapting its Annex I to technical progress(d), shall have the meaning they bear in that Directive.

(3) 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 shall not apply to –

(a) S.I. 1992/1711
(b) 1972 c. 68
(c) O.J. No. L262, 27.9.1976, p. 201
(d) O.J. No. L305, 1.10.2004, p. 63
(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; and
- (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 and use of pentabromodiphenyl ether

4.—(1) Subject to paragraph (3), a person shall not place on the market –

- (a) pentabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass;
- (b) any articles which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass; or
- (c) any articles which include any flame-retarded parts which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass.

(2) Subject to paragraph (3), a person shall not use pentabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass.

(3) This regulation shall not apply to aircraft emergency evacuation systems until 31st March 2006.

Prohibition on the placing on the market and use of octabromodiphenyl ether

5.—(1) A person shall not place on the market –

- (a) octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass;
- (b) any articles which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass; or
- (c) any articles which include any flame-retarded parts which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass.

(2) A person shall not use octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass.

Offences and penalties

6.—(1) Any person who contravenes regulation 4 or 5, or causes or permits another person to contravene either of 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; or
- (b) on conviction of indictment, to a fine.

(3) For the purposes of this regulation, section 20(2) of the Interpretation Act (NI) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Revocations

7. The Marketing and Use of Dangerous Substances (No. 2) Regulations (Northern Ireland) 2004(a) are hereby revoked.

(a) S.R. 2004 No. 125

Sealed with the Official Seal of the Department of the Environment on 10th December 2004.

(L.S.)

Ian Maye

A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations give effect to European Parliament and Council Directive 2003/11/EC and Commission Directive 2004/98/EC on pentabromodiphenyl ether and octabromodiphenyl ether. These Directives make amendment to 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. These regulations revoke and replace the Marketing and Use of Dangerous Substances (No. 2) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 125) which previously gave effect to Directive 2003/11/EC.

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(1)(a) prohibits the placing on the market of pentabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass. Regulation 4(1)(b) prohibits the placing on the market of any articles which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass. Regulation 4(1)(c) prohibits the placing on the market of any articles which include any flame retardant parts which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass. The use of pentabromodiphenyl ether in concentrations higher than 0.1% by mass is also prohibited (regulation 4(2)). Regulation 4 will not apply to aircraft emergency evacuation systems until 31st March 2006.

Regulation 5(1)(a) prohibits the placing on the market of octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass. Regulation 5(1)(b) prohibits the placing on the market of any articles which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass. Regulation 5(1)(c) prohibits the placing on the market of any articles which include any flame retardant parts which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass. The use of octabromodiphenyl ether in concentrations higher than 0.1% by mass is also prohibited (regulation 5(2)).

Regulation 6 makes it an offence to contravene either regulation 4 or 5 and specifies the maximum penalties for such an offence.

Regulation 7 revokes S.R. 2004 No. 125.

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

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