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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 238**

**The Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009**

**PART 1**

**INTRODUCTION**

**Citation and commencement**

1. These Regulations may be cited as the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 and shall come into operation on 27th July 2009.

**Interpretation**

2.—(1) In these Regulations—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978;

“aerosol dispenser” means an article which consists of a non-reusable receptacle containing a gas compressed, liquefied or dissolved under pressure, with or without liquid, paste or powder and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state;

“the approved classification and labelling guide” means the guide approved by the Executive for the purposes of these Regulations and entitled “Approved Classification and Labelling Guide (Sixth Edition)” approved by the Board of the Health and Safety Executive on 3rd March 2009<sup>(1)</sup>, as revised or re-issued from time to time;

“category of danger” means, in relation to a dangerous substance or dangerous preparation, one of the categories of danger specified in column 1 of Schedule 1;

“the CLP Regulation” means Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No. 1907/2006, of which Articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third sub-paragraphs and Annexes I to VII are as amended from time to time;

“Community workplace exposure limit” means, in respect of a substance, an exposure limit for that substance established in a Community instrument;

“dangerous preparation” means a preparation which is in one or more of the categories of danger specified in column 1 of Schedule 1;

“dangerous substance” means a substance—

(a) which is listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation; or

(b) which, if it is not so listed, is in one or more of the categories of danger specified in column 1 of Schedule 1;

“EC number” means—

- (a) in the case of a dangerous substance that appears in Table 3.2 of part 3 of Annex VI of the CLP Regulation, the EC number specified in that list;
- (b) in the case of a dangerous substance that is not included in Table 3.2 of part 3 of Annex VI of the CLP Regulation or for which an EC number is not given in that list, the number for that substance specified in EINECS; or
- (c) in the case of a dangerous substance that is not a phase-in substance within the meaning of REACH, the number for that substance if it is listed in ELINCS;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993 and adopted as respects the United Kingdom by the European Economic Area Act 1993(2);

“EEA State” means a state which is a contracting party to the EEA Agreement;

“EINECS” means the European Inventory of Existing Commercial Chemical Substances(3);

“ELINCS” means the European List of Notified Chemical Substances(4);

“enforcing authority” shall be construed in accordance with regulation 14;

“the Executive” means the Health and Safety Executive for Northern Ireland;

“indication of danger” means, in relation to a dangerous substance or dangerous preparation, one or more of the indications of danger referred to in column 1 of Schedule 2 and—

- (a) in the case of a dangerous substance listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation, it is one or more of the indications of danger specified for that substance by a symbol-letter in that list;
- (b) in the case of any other dangerous substance or a dangerous preparation, it is one or more indications of danger determined in accordance with the classification of that substance or preparation in accordance with regulation 4 and the approved classification and labelling guide;

“plant protection product” has the same meaning as it has in regulation 2(1) of the Plant Protection Products Regulations;

“the Plant Protection Products Regulations” means the Plant Protection Products Regulations (Northern Ireland) 2005(5);

“preparation” means a mixture or solution composed of two or more substances;

“radioactive substance” means a substance which contains one or more radionuclides whose activity or concentration cannot be disregarded as far as radiation protection is concerned;

“receptacle” means a container together with any material, wrapping and component, including any closure or fastener, associated with the container which enables the container to perform its containment function;

“REACH” means Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals;

“risk phrase” means a risk phrase listed in Annex III of Council Directive 67/548/EEC;

“safety phrase” means a safety phrase listed in Annex IV of Council Directive 67/548/EEC;

(2) 1993 c. 51

(3) O.J. No. C146A, 15.6.90, p.1

(4) O.J. No. C130, 10.5.93, p.1

(5) S.R. 2005 No. 526

“substance” means a chemical element and its compounds in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

“supply” in relation to a substance or preparation means making that substance or preparation available to another person and includes importation of the substance or preparation into Northern Ireland; and

“territorial sea” means the territorial sea of the United Kingdom adjacent to Northern Ireland and “within the territorial sea” includes on, over and under it.

(2) In these Regulations, “package” means—

(a) subject to paragraph (3), the package in which a dangerous substance, dangerous preparation or preparation specified in regulation 11(3) is supplied, including the receptacle containing the dangerous substance or preparation in question; or

(b) a pallet or other device which enables more than one receptacle to be handled as a unit,

but does not include a container used to transport the dangerous substance or preparation unless that container is retained by the person to whom the dangerous substance or preparation is supplied for the purpose of storing that dangerous substance or preparation, and related expressions shall be construed accordingly.

(3) In the case of supply by way of retail sale, a package does not include any paper or plastic bag or other form of outer wrapping in which the package is placed when it is presented to the purchaser.

(4) In these Regulations—

(a) where reference is made to a quantity of a dangerous substance or dangerous preparation expressed in litres, that reference shall mean—

(i) in the case of a liquid, the volume in litres of that liquid;

(ii) in the case of a compressed gas, the volume in litres of the receptacle containing that gas; and

(iii) in the case of a compressed gas dissolved in a solvent, liquefied gas or solid, the same number of kilograms of that gas or solid; and

(b) for the purposes of aggregation, one kilogram of a solid shall be deemed to be equivalent to one litre of liquid or gas.

(5) In these Regulations—

(a) a risk phrase may be designated by the letter “R” followed by a distinguishing number or combination of numbers; and

(b) a safety phrase may be designated by the letter “S” followed by a distinguishing number or combination of numbers.

(6) The Interpretation Act (Northern Ireland) 1954(6) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

## **Application**

3.—(1) Subject to paragraphs (2) to (6), these Regulations shall apply to any dangerous substance or dangerous preparation.

(2) These Regulations shall not apply to a substance or preparation which is—

- (a) intended for use as a medicinal product within the meaning of section 130 of the Medicines Act 1968(7);
  - (b) intended for use as a veterinary medical product within the meaning of regulation 2(1) of the Veterinary Medicines Regulations 2008(8);
  - (c) intended for use as an investigational medical product within the meaning of the Medicines for Human Use (Clinical Trials) Regulations 2004(9);
  - (d) specified in an order made under section 104 or 105 of the Medicines Act 1968(10) which is for the time being in force and which directs that specified provisions of that Act shall have effect in relation to medicinal products within the meaning of that Act;
  - (e) a controlled drug within the meaning of the Misuse of Drugs Act 1971(11) except that these Regulations shall apply to drugs which are excepted from section 4(1)(b) of that Act (which makes it unlawful to supply a controlled drug) by Regulations made under section 7(1)(a) of that Act;
  - (f) a cosmetic product within the meaning of the Cosmetic Products (Safety) Regulations 2008(12);
  - (g) in the form of waste to which the Waste Management Licensing Regulations (Northern Ireland) 2003(13) or the Hazardous Waste Regulations (Northern Ireland) 2005(14) apply;
  - (h) intended for use as food within the meaning of Article 2(2) of the Food Safety (Northern Ireland) Order 1991(15);
  - (i) intended for use as feeding stuff within the meaning of section 66(1) of the Agriculture Act 1970(16);
  - (j) a radioactive substance or a preparation containing radioactive substances; or
  - (k) a medical device within the meaning of the Medical Devices Regulations 2002(17) which is invasive or used in direct contact with the human body,
- in the finished state, intended for the final user.
- (3) These Regulations shall not apply to—
- (a) a substance or preparation which is a sample taken by an authority responsible for the enforcement of any requirement imposed by or under any enactment;
  - (b) a substance or preparation which is under customs control; or
  - (c) subject to Regulation (EC) No. 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals(18), of which Annexes I and V are as amended from time to time, a substance or a preparation which is intended for export to a country which is not an EEA State.
- (4) Regulations 6 to 11 shall only apply to substances and preparations which are supplied in packages.

(7) 1968 c. 67

(8) S.I. 2008/2297

(9) S.I. 2004/1031

(10) 1968 c. 67, as amended by S.I. 2004/1031, S.I. 2008/2297 and S.I. 2006/2407

(11) 1971 c. 38

(12) S.I. 2008/1284

(13) S.R. 2003 No. 493, as amended by S.R. 2006 No. 280, S.R. 2006 No. 489 and S.R. 2008 No. 18

(14) S.R. 2005 No. 300

(15) S.I. 1991/762 (N.I. 7)

(16) 1970 c. 40, as amended by regulation 3(1)(a) of S.R. 2005 No. 545

(17) S.I. 2002/618

(18) O.J. No. L204, 31.7.08, p.1

(5) These Regulations shall not apply to a substance to which the Explosives Acts (Northern Ireland) 1875 to 1970<sup>(19)</sup>, the Explosives (Northern Ireland) Order 1972<sup>(20)</sup>, the Explosive Substances (Hazard Information) Regulations (Northern Ireland) 2000<sup>(21)</sup> or the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006<sup>(22)</sup>.

(6) These Regulations shall not apply to the carriage of substances or preparations by rail, road, inland waterway, sea or air.

## PART 2

### GENERAL REQUIREMENTS

#### **Classification of dangerous substances and dangerous preparations**

4.—(1) No person shall supply a dangerous substance or dangerous preparation unless it has been classified in accordance with paragraphs (2) to (7).

(2) The classification of a dangerous substance which is listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation shall be the classification for that substance specified in that list.

(3) A dangerous substance which—

- (a) is not a phase-in substance within the meaning of REACH; and
- (b) is not listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation; and
- (c) has been registered in accordance with Title II of REACH,

shall be classified in conformity with that registration.

(4) Subject to paragraph (5), a dangerous substance which is not classified in accordance with paragraph (2) or (3) shall be classified—

- (a) by ascertaining which of the properties specified in Column 2 of Schedule 1 applies to the dangerous substance and by placing the dangerous substance in one or more of the categories of danger specified in the corresponding entry in Column 1 of that Schedule;
- (b) by assigning to the dangerous substance the appropriate risk phrases by the use of the criteria set out in the approved classification and labelling guide; and
- (c) where it is proposed to classify a dangerous substance in the category of danger carcinogenic, mutagenic or toxic for reproduction, by an assessment of the evidence by a competent person.

(5) Before a dangerous substance is classified in accordance with paragraph (4), persons carrying out the classification shall make themselves aware of all relevant and accessible data which may exist in relation to the dangerous substance in question.

(6) Where a manufacturer, distributor or importer has classified a substance, in accordance with the provisions of paragraph (4), as a dangerous substance in the category of danger carcinogenic, mutagenic or toxic for reproduction, that person shall send to the Executive as soon as possible a document—

- (a) summarising the information on which the classification was based; and
- (b) including all relevant references and unpublished data,

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<sup>(19)</sup> 1875 c. 17; 1924 c. 5 (N.I.); 1970 c. 10 (N.I.)

<sup>(20)</sup> S.I. 1972/730 (N.I. 3)

<sup>(21)</sup> S.I. 2000/1646

<sup>(22)</sup> S.R. 2006 No. 425

unless that document has already been sent to the relevant authority in another EEA State in which the dangerous substance has been supplied.

(7) A dangerous preparation shall be classified in accordance with Schedule 3 and, where applicable, by use of the criteria contained in the approved classification and labelling guide.

### **Safety data sheets for substances and preparations**

5. The requirements for safety data sheets in Article 31 of REACH shall apply as set out in that Article.

### **Packaging of dangerous substances, dangerous preparations and certain specified preparations**

6.—(1) No person shall supply a dangerous substance or a dangerous preparation or a preparation specified in regulation 11(3) unless its packaging satisfies the following requirements—

- (a) subject to paragraph (2), the receptacle containing the dangerous substance or dangerous preparation is designed and constructed so that its contents cannot escape;
- (b) the materials constituting the packaging and fastenings are not susceptible to adverse attack by the contents or liable to form dangerous compounds with the contents;
- (c) the packaging and fastenings are strong and solid throughout to ensure that they will not loosen and will meet the normal stresses and strains of handling; and
- (d) any replaceable fastening fitted to the receptacle containing the dangerous substance or dangerous preparation is designed so that the receptacle can be repeatedly refastened without the contents of the receptacle escaping.

(2) Paragraph (1)(a) shall not apply where a special safety device is fitted to the receptacle.

(3) Packaging and fastenings shall be deemed to comply with the requirements of paragraphs (1) (a) to (c) if they comply with the relevant requirements of—

- (a) the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2006(23);
- (b) the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997(24);  
or
- (c) the Air Navigation (Dangerous Goods) Regulations 2002(25).

### **Labelling of dangerous substances and dangerous preparations**

7.—(1) Subject to paragraphs (5) to (9) and regulation 8, no person shall supply a dangerous substance or dangerous preparation unless the particulars specified in paragraph (2) relating to a dangerous substance or paragraph (3) relating to a dangerous preparation are clearly shown in accordance with the requirements of regulation 10—

- (a) on the receptacle containing the dangerous substance or dangerous preparation; and
- (b) if that receptacle is inside one or more layers of packaging, on any such layer which is likely to be the outermost layer of packaging during the supply or use of the dangerous substance or dangerous preparation, unless such packaging permits the particulars shown on the receptacle or other packaging to be clearly seen.

(2) The particulars required under paragraph (1) in relation to a dangerous substance shall be—

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(23) S.R. 2006 No. 173, as amended by S.R. 2006 No. 205, S.R. 2006 No. 525 and S.R. 2007 No. 31; revoked in part by S.R. 2007 No. 62

(24) S.I. 1997/2367, as amended by S.I. 2004/2110

(25) S.I. 2002/2786, as amended by S.I. 2008/2429

- (a) the name, full address and telephone number of a person in an EEA State who is responsible for supplying the substance, whether the person be its manufacturer, importer or distributor;
  - (b) the name of the substance being—
    - (i) where the substance appears in Table 3.2 of part 3 of Annex VI of the CLP Regulation, the name or one of the names listed therein for that substance; or
    - (ii) where the substance does not appear in Table 3.2 of part 3 of Annex VI of the CLP Regulation, an internationally recognised name; and
  - (c) the following particulars ascertained in accordance with Part I of Schedule 4, namely—
    - (i) any indications of danger together with corresponding symbols;
    - (ii) the risk phrases, set out in full;
    - (iii) the safety phrases, set out in full; and
    - (iv) any EC number and, in the case of a substance which is listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation, the words “EC label”.
- (3) The particulars required under paragraph (1) in relation to a dangerous preparation shall be—
- (a) the name, full address and telephone number of a person in an EEA State who is responsible for supplying the preparation, whether that person be its manufacturer, importer or distributor;
  - (b) the trade name or other designation of the preparation; and
  - (c) the following particulars ascertained in accordance with Part I of Schedule 4, namely—
    - (i) identification of the constituents of the preparation which result in it being classified as a dangerous preparation,
    - (ii) any indications of danger together with corresponding symbols,
    - (iii) the risk phrases, set out in full,
    - (iv) the safety phrases, set out in full, and
    - (v) in the case of a preparation intended for sale to the general public, the nominal quantity (nominal mass or nominal volume).
- (4) Without prejudice to paragraph 3 of Schedule 3 to the Plant Protection Products Regulations, indications such as “non-toxic”, “non-harmful”, “non-polluting”, “ecological” or any other statement indicating that the dangerous substance or preparation is not dangerous or that is likely to lead to underestimation of the dangers of the dangerous substance or dangerous preparation shall not appear on the package.
- (5) Where paragraph (6) applies, the packaging of a dangerous substance or dangerous preparation classified in one or more of the categories of danger “harmful”, “extremely flammable”, “highly flammable”, “flammable”, “irritant” or “oxidising” shall not be required to be labelled in respect of that hazardous property.
- (6) This paragraph shall apply where the package contains such small quantities of that substance or preparation that there is no foreseeable risk, under conditions of supply, use and disposal, arising from that hazardous property to persons handling that substance or preparation to other persons.
- (7) The packaging of a dangerous preparation classified in the category of danger “dangerous for the environment” (with or without the “N” symbol) shall not be required to be labelled in respect of its environmental hazard in accordance with this regulation provided that it contains such small quantities of that preparation that there is no foreseeable risk, under conditions of supply, use and disposal, to the environment.

(8) Where the package in which a dangerous substance is supplied does not contain more than 125 millilitres of that substance the risk phrases and safety phrases need not be shown if the dangerous substance is classified only in one or more of the categories of danger—

- (a) “highly flammable”, “flammable”, “oxidising” or “irritant”; or
- (b) “harmful”, provided the dangerous substance is not sold to the general public.

(9) Where the package in which a dangerous preparation is supplied does not contain more than 125 millilitres of that preparation—

- (a) the risk phrases and safety phrases need not be shown if the dangerous preparation is classified only in one or more of the categories of danger—
  - (i) “irritant” (except those assigned the risk phrase R41);
  - (ii) “dangerous for the environment” and assigned the “N” symbol;
  - (iii) “oxidising”; or
  - (iv) “highly flammable”; and
- (b) the safety phrases need not be shown if the dangerous preparation is classified only in one or more of the categories of danger—
  - (i) “flammable”; or
  - (ii) “dangerous for the environment” and not assigned the “N” symbol.

(10) Where a dangerous substance or dangerous preparation is required to be labelled in accordance with these Regulations and is so labelled, that labelling shall be deemed to satisfy the requirements of—

- (a) section 5 of the Petroleum (Consolidation) Act (Northern Ireland) 1929<sup>(26)</sup> including that section as applied to any dangerous substance by an order made under section 19 of that Act; and
- (b) regulation 10 of the Dangerous Substances and Explosive Atmospheres Regulations (Northern Ireland) 2003<sup>(27)</sup>.

### **Labelling of single receptacles and receptacles in outer packagings**

**8.—**(1) Where except for this regulation a package would be required to show the particulars required by regulation 7 and to be labelled and marked in accordance with any of the national or international transport rules, it shall be sufficient compliance with regulation 7 if the package shows the particulars specified in paragraphs (2) or (3) of this regulation.

(2) Where the package consists of only a single receptacle, the specified particulars are—

- (a) the particulars required by—
  - (i) paragraph (2)(a), (b), (c)(ii), (iii) and (iv) in the case of substances; and
  - (ii) paragraph (3)(a), (b), (c)(i), (iii), (iv) and (v) in the case of preparations,of regulation 7 in accordance with regulation 10;
- (b) the labels and markings required by whichever of the national or international transport rules is appropriate; and
- (c) where a substance or preparation has been classified as dangerous for the environment, the appropriate indication of danger and the danger symbol from Schedule 2 in accordance with regulation 10.

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<sup>(26)</sup> 1929 c. 13 (N.I.)

<sup>(27)</sup> S.R. 2003 No. 152, as amended by S.R. 2006 No. 173



(3) Where the package consists of one or more receptacles in outer packagings, the particulars specified are the labels and markings required by whichever of the national or international transport rules is appropriate.

(4) For the purpose of this regulation and regulation 9(3)—

(a) the national transport rules are—

- (i) the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997;
- (ii) the Air Navigation (Dangerous Goods) Regulations 2002<sup>(28)</sup>; and
- (iii) the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2006; and

(b) the international transport rules are—

- (i) the European Agreement concerning the International Carriage of Dangerous Goods by Road signed at Geneva on 30th September 1957, as revised or reissued from time to time<sup>(29)</sup>;
- (ii) the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway, as revised or re-issued from time to time<sup>(30)</sup>;
- (iii) the Technical Instructions for the Safe Transport of Dangerous Goods by Air, as revised or re-issued from time to time<sup>(31)</sup>;
- (iv) the International Maritime Dangerous Goods Code, as revised or re-issued from time to time<sup>(32)</sup>; and
- (v) the Regulation concerning the International Carriage of Dangerous Goods by Rail including its Annex which together form Appendix C to the Convention concerning the International Carriage by Rail<sup>(33)</sup>, as revised or re-issued from time to time.

### **Particular labelling requirements for certain preparations**

9.—(1) In the case of preparations to which Part II of Schedule 4 applies, the appropriate provisions of that Part shall have effect to regulate the labelling of such preparations.

(2) Subject to paragraph (3), no person shall supply a preparation to which section B or C of Part II of Schedule 4 applies unless the trade name or other designation of that preparation and the name, full address and telephone number of a person in an EEA State who is responsible for supplying that preparation (whether the person is its manufacturer, importer or distributor) are clearly shown in accordance with the requirements of regulation 10—

(a) on the receptacle containing that preparation; and

(b) if that receptacle is inside one or more layers of packaging, on any such layer which is likely to be the outermost layer of packaging during the supply or use of that preparation, unless such packaging permits the particulars shown on the receptacle or other packaging to be clearly seen.

(3) Where a package would be required to be labelled and marked in accordance with any of the national or international transport rules listed in regulation 8(4) and the package consists of one or more receptacles in outer packagings, it shall be sufficient compliance with paragraph (2) if the package shows the labels and markings required by whichever of the national or international rules is appropriate.

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<sup>(28)</sup> S.I. 2002/2786, as amended by S.I. 2008/1943 and S.I. 2008/2429

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<sup>(30)</sup> Current edition (2009): ISBN 978-92-1-139134-3

<sup>(31)</sup> Current edition (2009): ISBN 9789292311766

<sup>(32)</sup> Current edition (2008): ISBN 978-92-801-4241-9

<sup>(33)</sup> Current edition (2009): ISBN 9788086206394

(4) The supplier of an aerosol dispenser which contains a dangerous substance or dangerous preparation which has been classified in the category of danger “flammable”, “highly flammable” or “extremely flammable” may choose to omit from the label—

- (a) in the case of a dangerous substance, the particulars referred to in paragraphs (i) to (iii) of regulation 7(2)(c) which relate to that category of danger; and
- (b) in the case of a dangerous preparation, the particulars referred to in paragraphs (ii) to (iv) of regulation 7(3)(c) which relate to that category of danger,

provided the conditions specified in paragraph (5) are satisfied.

(5) The conditions referred to in paragraph (4) are that the supplier—

- (a) is in possession of evidence which shows that the contents of the aerosol dispenser do not present a risk of ignition under normal or reasonably foreseeable conditions of use; and
- (b) identifies the quantity of flammable material contained in the aerosol dispenser in the form of the following inscription on the label—

“X% by mass of the contents are flammable”.

(6) In the case of a plant protection product approved under the Plant Protection Products Regulations or a product approved under the Control of Pesticides Regulations (Northern Ireland) 1987(34), the labelling information required by these Regulations shall be accompanied by the wording “To avoid risks to man and the environment, comply with the instructions for use”.

### Methods of marking or labelling packages

10.—(1) Any package which is required to be labelled in accordance with regulations 7 to 9 may carry the particulars required to be on the label clearly and indelibly marked on a part of that package reserved for that purpose and, unless the context otherwise requires, any reference in these Regulations to a label includes a reference to that part of the package so reserved.

(2) Subject to paragraph (7), any label required to be carried on a package shall be securely fixed to the package with its entire surface in contact with it and the label shall be clearly and indelibly printed.

(3) The colour and nature of the marking shall be such that any symbol and the wording stand out clearly from the background and the wording shall be of such size and spacing as to be easily read.

(4) The package shall be so labelled that the particulars can be read horizontally when the package is set down normally.

(5) Subject to paragraph (7), the dimensions of the label required under regulation 7 shall be as follows—

<i>Capacity of package</i>	<i>Dimensions of label</i>
(a) (a) not exceeding 3 litres	if possible at least 52 × 74 millimetres
(b) (b) exceeding 3 litres but not exceeding 50 litres	at least 74 × 105 millimetres
(c) (c) exceeding 50 litres but not exceeding 500 litres	at least 105 × 148 millimetres
(d) (d) exceeding 500 litres	at least 148 × 210 millimetres

(6) A symbol required to be shown in accordance with regulation 7(2)(c)(i) or 7(3)(c)(ii) and specified in Column 3 of Schedule 2 shall be printed in black on an orange-yellow background and

its size (including the orange-yellow background) shall be at least equal to an area of one-tenth of that of a label which complies with paragraph (5) and shall not in any case be less than 100 square millimetres.

(7) If the package is an awkward shape or so small that it is unsuitable to attach a label complying with paragraphs (2) and (5), the label shall be attached in some other appropriate manner.

### **Child resistant fastenings, tactile warning devices and other consumer protection measures**

**11.**—(1) The British and International Standards referred to in this regulation are further described in Schedule 5.

(2) Subject to paragraphs (4) and (5), no person shall supply to the general public a substance or a preparation specified in paragraph (3) in a receptacle of any size fitted with—

- (a) a replaceable closure unless the packaging complies with the requirements of BS EN 28317; or ISO 8317; or
- (b) a non-replaceable closure unless the packaging complies with the requirements of EN 862.

(3) The substances and preparations referred to in paragraph (2) are—

- (a) dangerous substances and dangerous preparations which are required to be labelled with the indication of danger “very toxic”, “toxic” or “corrosive”;
- (b) preparations containing methanol in a concentration equal to or more than 3% by weight;
- (c) preparations containing dichloromethane in a concentration equal to or more than 1% by weight;
- (d) substances which are assigned the risk phrase R65 in Table 3.2 of part 3 of Annex VI of the CLP Regulation, except where such a substance is supplied in an aerosol dispenser or a container fitted with a sealed spray attachment; and
- (e) substances and preparations which are assigned the risk phrase R65 and are classified and labelled according to the approved classification and labelling guide, except where such a substance or preparation is supplied in an aerosol dispenser or a container fitted with a sealed spray attachment.

(4) Paragraph (2) shall not apply if the person supplying the substance or preparation in question can show that it is obvious that the packaging in which the substance or preparation is supplied is sufficiently safe for children because they cannot obtain access to the contents without the help of a tool.

(5) If the packaging, in which a substance or preparation specified in paragraph (3) is supplied to the general public, was approved on or before 31 May 1993 by the British Standards Institution as complying with the requirements of BS 6652, that packaging shall be deemed to comply with the requirements of BS EN 28317.

(6) No person shall supply a dangerous preparation or a preparation specified in paragraph (3) to the general public if the packaging in which that preparation is supplied has—

- (a) either a shape or a designation or both likely to attract or arouse the active curiosity of children or to mislead consumers; or
- (b) either a presentation or a designation or both used for—
  - (i) human or animal foodstuffs,
  - (ii) medicinal products, or
  - (iii) cosmetic products.

(7) Subject to paragraph (9), no person shall supply to the general public a dangerous substance or a dangerous preparation specified in paragraph (8) in a receptacle of any size, unless the packaging

in which that dangerous substance or dangerous preparation is supplied carries a tactile warning of danger in accordance with EN ISO 11683.

(8) The dangerous substances and the dangerous preparations referred to in paragraph (7) are those which are required to be labelled with one or more of the following indications of danger, namely—

- (a) “very toxic”;
- (b) “toxic”;
- (c) “corrosive”;
- (d) “harmful”;
- (e) “extremely flammable”; or
- (f) “highly flammable”.

(9) Paragraph (7) shall not apply to an aerosol dispenser which is classified and labelled only with the indication of danger “extremely flammable” or “highly flammable”.

(10) For the purpose of ascertaining whether there has been a contravention of paragraph (2), a duly authorised officer of the enforcing authority may require the person supplying a substance or a preparation to which that paragraph applies to provide the duly authorised officer with a certificate from a qualified test house stating that—

- (a) the closure is such that it is not necessary to test to BS EN 28317 or ISO 8317; or
- (b) the closure has been tested and found to conform to BS EN 28317 or ISO 8317.

(11) In this regulation, and in regulation 12, “qualified test house” means a laboratory that conforms to BS 7501 or EN 45 000.

### **Retention of data for dangerous preparations**

**12.**—(1) The person who is responsible for first supplying a dangerous preparation shall maintain a record of the information—

- (a) used for the purposes of classifying that dangerous preparation in accordance with regulation 4;
- (b) used for the purposes of labelling that dangerous preparation in accordance with regulation 7; and
- (c) relating to any child resistant fastening or any tactile warning which forms part of the packaging in which the dangerous preparation in question is contained in accordance with regulation 11,

for at least 3 years after the date on which the dangerous preparation was supplied by that person for the last time.

(2) When requested by the enforcing authority to do so, a person referred to in paragraph (1) shall make the record, or a copy of the record, maintained by the person in accordance with that paragraph, available to the enforcing authority within 28 days of the date of the request.

(3) When requested to do so by the enforcing authority, a person who supplies a dangerous preparation shall provide to the enforcing authority a copy of any certificate issued by a qualified test house.

### **Transitional provisions for dangerous substances, dangerous preparations and certain specified preparations**

**13.**—(1) Regulation 4 shall not have effect on or after 1st June 2015.

(2) Where a substance has been classified, labelled and packaged in accordance with the CLP Regulation, regulations 6 to 11 shall not apply to that substance.

(3) Where a preparation has been classified, labelled and packaged in accordance with the CLP Regulation, regulations 6 to 11 shall not apply to that preparation.

(4) Insofar as they relate to substances, regulations 6 to 11 shall not have effect on or after 1st December 2010.

(5) Insofar as they relate to preparations, regulations 6 to 11 shall not have effect on or after 1st June 2015.

(6) Regulation 12 shall not apply on or after 1st June 2018.

## PART 3

### MISCELLANEOUS

#### Enforcement

14.—(1) To the extent that they would not otherwise do so, Articles—

- (a) 18 to 30 (approval of codes of practice; enforcement; indemnification of inspectors; power to obtain information and restrictions on disclosure of information);
- (b) 31 to 39 (provisions as to offences); and
- (c) 43(2) (civil liability),

of the 1978 Order shall apply to these Regulations and the CLP Regulation as if these Regulations and the CLP Regulation were health and safety Regulations for the purposes of that Order, except that those Articles shall not apply to duties placed by the CLP Regulation on the competent authority or the Member State.

(2) Any function of the Health and Safety Executive for Northern Ireland under any other provision of the 1978 Order under or in respect of health and safety Regulations (including their enforcement) shall be exercisable as if these Regulations and the CLP Regulation were health and safety Regulations for the purposes of that Order to the extent that they would not otherwise do so.

(3) Notwithstanding regulation 4 of the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999<sup>(35)</sup> and subject to paragraphs (4) and (5), the enforcing authority for these Regulations and the CLP Regulation shall be the Executive.

(4) Subject to paragraph (5), where a substance or preparation is supplied, or a substance, mixture or article falling within the meaning of and the provisions of the CLP Regulation is placed on the market within the meaning of the CLP Regulation in or from premises which are registered under section 75 of the Medicines Act 1968<sup>(36)</sup>, the enforcing authority shall be the Department of Health, Social Services and Public Safety.

(5) The enforcing authority for these Regulations and the CLP Regulation shall be the district council for the area in which are situated the premises in or from which such substance or preparation is supplied or such a substance, mixture or article is placed on the market—

- (a) where a substance or preparation is supplied or a substance, mixture or article falling within the meaning of and the provisions of the CLP Regulation is placed on the market within the meaning of the CLP Regulation other than in the circumstances referred to in paragraph (4)

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<sup>(35)</sup> S.R. 1999 No. 90, as amended by S.R. 2000 No. 375, S.R. 2003 No. 33, S.R. 2006 No. 205, S.R. 2006 No. 425, S.R. 2007 No. 31 and S.R. 2007 No. 291

<sup>(36)</sup> 1968 c. 67; section 75(8) was amended by S.I. 1968/1699

- (i) in or from any shop, mobile vehicle, market stall or other retail outlet, or
- (ii) otherwise to members of the public, including by way of free sample, prize or mail order;
- (b) for regulation 11;
- (c) for Articles 35(2) and 48 of the CLP Regulation.

(6) In every case where, by virtue of this regulation and the CLP Regulation, these Regulations and the CLP Regulation are enforced by the Department of Health, Social Services and Public Safety or by a district council, they shall be enforced as if they were safety regulations made under section 11 of the Consumer Protection Act 1987(37) and the provisions of section 12 of that Act shall apply to these Regulations and the CLP Regulation as if they were safety regulations for the purposes of that Act and as if the maximum period of imprisonment on summary conviction specified in subsection (5) thereof were 3 months instead of 6 months.

### **Defence**

15. In any proceedings for an offence for a contravention of any of the provisions of these Regulations and the CLP Regulation it shall be a defence for the person charged to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **Application within the territorial sea**

16. Within the territorial sea these Regulations and the CLP Regulation shall apply only to and in relation to an activity to which any of paragraphs 2 to 6 of Schedule 6 applies.

### **Revocations and amendments**

17. The Regulations specified in the Table in Schedule 7 are amended in accordance with the provisions of that Table.

18. The Regulations specified in the Tables in Schedule 8 shall be revoked to the extent specified in those Tables.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 18th June 2009.

L.S.

*M. Bohill*  
A senior officer of the  
Department of Enterprise, Trade and Investment