STATUTORY RULES OF NORTHERN IRELAND

2010 No. 163

HEALTH AND SAFETY

The Biocidal Products (Amendment) Regulations (Northern Ireland) 2010

Made - - - -	*22nd April 2010*
Coming into operation -	*19th May 2010*

The Department of Enterprise, Trade and Investment(**a**), being the Department concerned(**b**), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**c**) ("the 1972 Act") and Articles 17(1), (2), (3) and (5)(**d**), 40(2) and (4) and 55(2) of, and paragraphs 1(1), (4) and (5), 3(1), 12(1), 14(1) and 15 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**e**) ("the 1978 Order").

The Department was designated(**f**) for the purposes of section 2(2) of the 1972 Act in relation to the notification and control of substances and to measures relating to biocides.

The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A) of the 1978 Order(**g**) after the Executive had carried out consultations in accordance with Article 46(3)(**h**) of the 1978 Order.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Biocidal Products (Amendment) Regulations (Northern Ireland) 2010 and come into operation on 19th May 2010.

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

(**a**) Formerly the Department of Economic Development; see S.I. 1999/283 (N.I. 1), Article 3(5); that Department was formerly the Department of Manpower Services, see S.I. 1982/846 (N.I. 11), Article 3
(**b**) See Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**c**) 1972 c. 68: the enabling powers conferred by section 2(2) were extended by virtue of section 1 of the European Economic Area Act 1993 (c. 51). Schedule 2 was amended by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51)
(**d**) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(**e**) S.I. 1978/1039 (N.I. 9): the general purposes of Part II referred to in Article 17(1) were extended by S.I. 1992/1728 (N.I. 17), Articles 3(1) and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraph 19
(**f**) S.I. 1981/1536 for the designation in relation to the notification and control of substances and S.I. 1999/2788 in relation to measures relating to biocides
(**g**) Article 13(1A) was substituted by S.I. 1998/2795 (N.I. 18), Article 4
(**h**) Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18 and the Health Protection Agency Act 2004 (c. 17), Schedule 3 paragraph 10
(**i**) 1954 c. 33 (N.I.), as amended by S.I. 1999/663

Amendment of the Biocidal Products Regulations (Northern Ireland) 2001

2.—(1) The Biocidal Products Regulations (Northern Ireland) 2001(**a**) shall be amended in accordance with the following paragraphs.

(2) In regulation 2(1)—

(a) after the definition of "feedingstuff", insert—

""the fifth review regulation" means Commission Regulation (EC) No. 1451/2007(**b**);";

(b) in the definition of "new active substance", substitute "fifth" for "second";

(c) for the definition of "placing on the market" substitute—

""placing on the market" means—

(a) any supply, whether in return for payment or not, within Northern Ireland; or

(b) importation of a biocidal product into Northern Ireland; or

(c) any subsequent storage other than storage followed by—

(i) consignment from the customs territory of the European Community; or

(ii) disposal,

and "on the market" shall be construed accordingly;"; and

(d) omit the definition of "the second review regulation".

(3) In regulation 3—

(a) in paragraph (3) for "that that" substitute "that the"; and

(b) in paragraph (7)(b), for "in paragraph 8 of Schedule 4 to the PPP Regulations" substitute "in paragraph 12 of Schedule 4 to the PPP Regulations".

(4) In regulation 3A—

(a) in paragraph (1), for "which contains no active substances other than existing active substances" substitute "where all the active substances in that product are existing active substances.";

(b) for paragraph (2) substitute—

"(2) Subject to paragraph (4), paragraph (1) shall cease to apply on 14th May 2014"; and

(c) after paragraph (3) insert—

"(4) Where a decision under Article 16(2) to include an existing active substance in Annex I or IA sets a date for compliance with Article 16(3) which is later than 14th May 2014, paragraph (1) shall continue to apply in relation to biocidal products that include that active substance until the date set in that decision.".

(5) In regulation 23, for each reference to "2010", wherever it appears, substitute "2014".

(6) In regulation 24, for each reference to "2010", wherever it appears, substitute "2014".

(7) In Schedule 2—

(a) omit paragraph (g) and (k); and

(b) after paragraph (r), insert—

"(s) the Medical Devices Regulations 2002(**c**);

(t) the Plant Protection Products Regulations (Northern Ireland) 2005(**d**).".

(8) In Schedule 12—

(a) in paragraph 1, for the definition of "COPR biocidal product", substitute—

(**a**) S.R. 2001 No. 422, as amended by S.R. 2002 No. 302, S.I. 2003/429, S.I. 2005/2451, S.R. 2007 No. 190 and S.R. 2009 No. 238

(**b**) O.J. No. L325/3, 11.12.2007, p.1

(**c**) S.I. 2002/618

(**d**) S.R. 2005 No. 526, as amended by S.R. 2006 No. 278, S.R. 2007 No. 251, S.R. 2008 No. 85 and amended and revoked in part by S.R. 2008 No. 499

""COPR biocidal product" means any substance, preparation or organism prepared or used for any of the purposes listed in regulation 3(1) of COPR 1987, which is not a plant protection product and "plant protection product" has the same meaning as in regulation 2(1) of the Plant Protection Products Regulations (Northern Ireland) 2005"; and;

(b) after paragraph 1, insert—

"**1A.** This Schedule applies only in relation to a biocidal product where all the active substances in that product are existing active substances.";

(c) in paragraph 2A, for "the first sub-paragraph of Article 4.2 of the second review regulation" substitute "Article 4.1 of the fifth review regulation";

(d) in paragraph 5, for "not later than 3 months after that decision takes effect" substitute "not later than the date that decision takes effect"; and

(e) in paragraph 8, for "not later than 3 months" substitute "not later than 2 months".

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 22 April 2010.

L.S.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Biocidal Products Regulations (Northern Ireland) 2001 (S.R. 2001 No. 422) ("the 2001 Regulations") to make further provision as regards Northern Ireland for the implementation of Directive 98/8/EC of the European Parliament and Council (O.J. No. L123, 24.4.98, p.1.) concerning the placing of biocidal products on the market.

2. These Regulations—

(a) implement Directive 2009/107/EC of the European Parliament and of the Council of 16 September 2009 amending Directive 98/8/EC concerning the placing of biocidal products on the market as regards the extension of certain time periods ("the Amending Directive");

(b) update references and make minor corrections in the 2001 Regulations; and

(c) take account of developments that require further amendment to the 2001 Regulations.

3. The main changes made by these Regulations are set out in the following paragraphs.

4. Regulation 2(2) amends the definitions of "new active substance" and "placing on the market". It also inserts a definition of "the fifth review regulation" and removes the definition of "the second review regulation".

5. Regulation 2(3) makes a minor amendment and corrects a cross reference.

6. Regulation 2(4) amends time periods.

7. Regulation 2(5) extends the data protection periods for active substances from 14th May 2010 to 14th May 2014.

8. Regulation 2(6) extends the data protection periods for biocidal products from 14th May 2010 to 14th May 2014.

9. Regulation 2(7) adds the Medical Devices Regulations 2002 and the Plant Protection Products Regulations (Northern Ireland) 2005 to Schedule 2 and removes the Medical Devices Regulations 1994 and the Plant Protection Products Regulations (Northern Ireland) 1995.

10. Regulation 2(8) clarifies that a biocidal product can only remain on the UK market under its existing national authorisation if all the active substances within it are existing active substances and changes specific time periods.

11. In Great Britain the corresponding Regulations are the Biocidal Products (Amendment) Regulations 2010 (S.I. 2010/745).

12. A transposition note in relation to the implementation of the Amending Directive has been prepared. A copy may be obtained from the Health and Safety Executive for Northern Ireland, 83 Ladas Drive, Belfast, BT6 9FR.

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