
STATUTORY INSTRUMENTS

1998 No. 2406

CONSUMER PROTECTION

The Pencils and Graphic Instruments (Safety) Regulations 1998

Made - - - - 26th September 1998

Laid before Parliament 6th October 1998

Coming into force - - 9th November 1998

Whereas the Secretary of State has, in accordance with section 11(5) of the Consumer Protection Act 1987(1), consulted such organisations as appear to him to be representative of interests substantially affected by these Regulations, such other persons as he considers appropriate and the Health and Safety Commission:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 11 of the said Act read with article 6 of the Consumer Protection Act 1987 (Commencement No. 1) Order 1987(2), hereby makes the following Regulations:—

Title, commencement and application

1.—(1) These Regulations may be cited as the Pencils and Graphic Instruments (Safety) Regulations 1998 and shall come into force on 9th November 1998.

(2) These Regulations shall not apply to any pencil, pen, brush, crayon, chalk or other similar article (including any pencil-lead for a propelling pencil) previously supplied before 1st August 1974.

Revocation

2. The Pencils and Graphic Instruments (Safety) Regulations 1974(3) and the Pencils and Graphic Instruments (Safety) Regulations (Northern Ireland) 1975(4) are revoked.

Interpretation

3.—(1) In these Regulations—

“brush” does not include any brush which measures more than 12mm across the breadth of the end of the ferrule;

(1) 1987 c. 43.
(2) S.I. 1987/1680.
(3) S.I. 1974/226.
(4) S.R. (N.I.) 1975 No. 40.

“BS EN 71–3” means the British Standard Specification for the safety of toys – Part 3: migration of certain elements BS EN 71–3: 1995 published by the British Standards Institution on 15th June 1995⁽⁵⁾;

“paint” includes lacquer, varnish and other similar preparations;

“soluble”, in relation to an element or compound contained in a coating or substance, means capable of being dissolved by the method described in the Schedule; and

“supply” includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and cognate expressions shall be construed accordingly⁽⁶⁾.

(2) A reference in these Regulations to BS EN 71–3 is a reference to that standard as it has effect when these Regulations are made, provided that where that standard is amended or revised after these Regulations are made and the amendment or revision is approved by the Secretary of State, that reference shall be construed at any time after such approval as a reference to that standard as so amended or revised.

(3) For the purpose of these Regulations, BS EN 71–3 shall be read as though–

(a) it applied to the articles to which these Regulations apply; and

(b) every reference to 1,1,1–trichloroethane were a reference to *n*-heptane.

(4) The requirements of regulations 4(2) and 5(2) below shall be satisfied if the pencil, pen, brush, crayon, chalk or other article conforms to any standard or specification recognised for use in a member State of the European Economic Community or any other State within the European Economic Area, provided that conformity to such a standard or specification provides a level of safety at least equivalent to that which would be provided by compliance with those requirements, and any reference to those requirements shall be construed accordingly.

(5) Unless the contrary intention appears, any reference in these Regulations to a numbered paragraph is a reference to the paragraph so numbered in the regulation in which the reference appears.

Requirements relating to coatings of paint on pencils, pens and brushes

4.—(1) Subject to paragraph (3), no person shall supply a pencil, pen or brush which fails to satisfy the requirements of paragraph (2).

(2) The requirements of this paragraph are that a pencil, pen or brush shall not have any coating of paint which–

(a) contains soluble arsenic, cadmium, hexavalent chromium or mercury, or any soluble compound of arsenic, cadmium, hexavalent chromium or mercury, so that the proportion (by weight) of the element calculated as such exceeds 100mg/kg of that coating;

(b) contains soluble antimony or lead, or any soluble compound of antimony or lead, so that the proportion (by weight) of the element calculated as such exceeds 250mg/kg of that coating; or

(c) contains soluble barium, or any soluble compound of barium, so that the proportion (by weight) of the element calculated as such exceeds 1000mg/kg of that coating.

(3) Paragraph (1) shall not prohibit the supply of any pencil, pen or brush which fails to satisfy the requirements of paragraph (2) if, although it has a coating of paint which contains an element or compound referred to in paragraph (2), the element or compound contained in the coating is not capable of being dissolved by following the sample removal/preparation procedure in BS EN 71–3 appropriate to the coating in question.

⁽⁵⁾ ISBN 0 580 24215 3.

⁽⁶⁾ The provisions of section 46 of the Consumer Protection Act 1987 (c. 43), relating to the meaning of “supply”, apply for the purposes of these Regulations.

Requirements relating to substances used in pencils, crayons, chalk and other similar articles

5.—(1) Subject to paragraph (3), no person shall supply a pencil, crayon, chalk or other similar article (including any pencil-lead for a propelling pencil) which fails to satisfy the requirements of paragraph (2).

(2) The requirements of this paragraph are that a pencil, crayon, chalk or other similar article (including any pencil-lead for a propelling pencil) shall not consist of or contain any substance—

- (a) in the form of a pencil-lead or stick; and
- (b) intended to leave a trace of the substance when the pencil, crayon, chalk or other article is used for writing, drawing or marking,

which—

- (i) contains soluble arsenic, cadmium, hexavalent chromium or mercury, or any soluble compound of arsenic, cadmium, hexavalent chromium or mercury, so that the proportion (by weight) of the element calculated as such exceeds 100mg/kg of that substance;
- (ii) contains soluble antimony or lead, or any soluble compound of antimony or lead, so that the proportion (by weight) of the element calculated as such exceeds 250mg/kg of that substance; or
- (iii) contains soluble barium, or any soluble compound of barium, so that the proportion (by weight) of the element calculated as such exceeds 1000mg/kg of that substance.

(3) Paragraph (1) shall not prohibit the supply of any pencil, crayon, chalk or other similar article (including any pencil-lead for a propelling pencil) which fails to satisfy the requirements of paragraph (2) if, although it consists of or contains a substance referred to in paragraph (2) which contains an element or compound also referred to in that paragraph, the element or compound contained in the substance is not capable of being dissolved by following the sample removal/preparation procedure in BS EN 71–3 appropriate to the substance in question.

26th September 1998

Kim Howells
Parliamentary Under-Secretary of State for
Competition and Consumer Affairs,
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 3(1)

METHOD OF DISSOLVING SOLUBLE MATTER CONTAINED IN ANY COATING OR SUBSTANCE

1. In the case of a sample (other than a sample of coating) containing any wax, oil or other similar matter, that wax, oil or matter shall first be removed using *n*-heptane.
2. A sample of the coating or substance, as the case may be, shall be so comminuted as to be capable of passing through a sieve of wire cloth of 0.5mm (500 micron) aperture.
3. The comminuted sample shall be added to fifty times its weight of an aqueous solution (at a temperature not lower than 20°C nor higher than 22°C) of hydrochloric acid containing 0.25 per cent. by weight of hydrogen chloride (0.07M HCl), and the mixture shall be shaken for one minute. The mixture shall then be tested for acidity and, if its pH value is more than 1.5, an aqueous solution of hydrochloric acid containing 7.3 per cent. by weight of hydrogen chloride (2M HCl) shall be added drop by drop (the mixture being shaken after each drop is added) until the pH value is 1.5 or less. The mixture shall then be shaken continuously for one hour.
4. After shaking, the mixture shall be allowed to stand for one hour, and shall then be filtered. The resulting solution shall then be analysed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the Pencils and Graphic Instruments (Safety) Regulations 1974 (“the 1974 Regulations”) and the Pencils and Graphic Instruments (Safety) Regulations (Northern Ireland) 1975 (“the 1975 Regulations”) and re-enact their provisions with modifications.

The Regulations prohibit the supply, offering to supply, agreeing to supply, exposing for supply and possessing for supply of pencils and other graphic instruments which fail to satisfy certain safety requirements (regulations 4(1) and 5(1)).

Regulation 4 contains requirements for pencils, pens and brushes. They must not be coated with any paint, lacquer, varnish or similar preparation which contains particular soluble elements and compounds in specified concentrations.

Regulation 5 contains further requirements for pencils as well as requirements for crayons, chalk and similar articles (including pencil-leads for propelling pencils). The parts intended for writing, drawing or marking must not contain particular soluble elements and compounds in specified concentrations.

The Regulations provide for a method to determine whether the elements and compounds in question are soluble (regulation 3(1) and the Schedule). The method differs from that in the 1974 and 1975 Regulations in that it specifies *n*-heptane as the degreasing agent rather than 1,1,1-trichloroethane.

Regulation 3(4) provides that the requirements referred to above are to be regarded as satisfied where a pencil or other graphic instrument conforms to a standard or specification recognised for use in a member State of the European Community or any other State within the European Economic Area, so long as that standard or specification provides for an equivalent level of safety.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Moreover, the prohibitions on supply, offering to supply, agreeing to supply, exposing for supply and possessing for supply contained in these Regulations do not apply where the potentially dangerous elements or compounds are incapable of being dissolved following the appropriate method in Part 3 of British Standard EN 71–3 (regulations 4(3) and 5(3)).

The Regulations do not apply to pencils, pens, brushes, crayons, chalk or similar articles previously supplied before 1st August 1974 (regulation 1(2)) or, by virtue of regulation 2(3) of the Toys (Safety) Regulations 1995 (S.I. 1995/204), to articles which are toys to which those Regulations apply.

The Regulations were notified in draft to the European Commission in accordance with Council Directive 83/189/EEC (O.J. No. L109, 26.4.1983, p.8), as amended.

Copies of British Standard EN 71–3 are available from any of the sales outlets operated by the British Standards Institution (BSI), by post from BSI at 389 Chiswick High Road, London W4 4AL and from any of the bookshops operated by the Stationery Office Limited.