

2003 No. 3274

ENVIRONMENTAL PROTECTION

The Environmental Protection (Controls on Dangerous Substances) Regulations 2003

Made - - - - - 13th December 2003

Laid before Parliament 15th December 2003

Coming into force

*for the purpose of regulations 4,
7 and 9(1) 6th January 2004*

*for the purpose of regulations 5,
6 and 9(2) 30th June 2004*

The Secretary of State for Environment, Food and Rural Affairs, being a Minister 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 her by the said section 2(2)(c), makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Protection (Controls on Dangerous Substances) Regulations 2003 and shall extend to Great Britain.

(2) Regulations 1, 2, 3, 4, 7 and 9(2) and regulation 8 insofar as it relates to regulations 4 and 7 shall come into force on 6th January 2004.

(3) Regulations 5, 6 and 9(1) and regulation 8 insofar as it relates to regulations 5 and 6 shall come into force on 30th June 2004.

Interpretation

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(d) as last amended by Directive 2003/11/EC of the Parliament and of the Council(e), shall have the meaning they bear in the Directive.

(a) S.I. 1992/1711.

(b) 1972, c. 68.

(c) The power of the Minister to make regulations in relation to matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998.

(d) OJ No. L262, 27.9.1976, p.201.

(e) OJ No. L42, 15.2.2003, p.45. Other relevant amending instruments are Commission Directive 2001/91/EC (OJ No. L286, 30.10.2001, p. 27), Directive 2002/45/EC of the European Parliament and of the Council (OJ No. L177, 6.7.2002, p.21) and Commission Directive 2003/2/EC (OJ No. L4, 9.1.2003, p.9).

Scope

3. These Regulations do not apply to—
 - (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 nor 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. No person shall place short chain chlorinated paraffins (alkanes, C₁₀-C₁₃, chloro) 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 and treated wood

6.—(1) 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 if vacuum or pressure is used to impregnate the wood with the solution.

(2) Subject to the conditions in 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) The conditions referred to in paragraph (2) are that—
 - (a) the wood is placed on the market for professional and industrial use;
 - (b) in the use for which the wood is placed on the market, the structural integrity of the wood is required for human or livestock safety;
 - (c) in the use for which the wood is placed on the market, skin contact by the general public during its service life is unlikely; and
 - (d) the wood is placed on the market for any of the following uses—
 - (i) as structural timber in public and agricultural buildings, office buildings, and industrial premises;
 - (ii) in bridges and bridgework;
 - (iii) as constructional timber in freshwater areas and brackish waters eg jetties and bridges;
 - (iv) as noise barriers;
 - (v) in avalanche control;
 - (vi) in highway safety fencing and barriers;
 - (vii) as debarked round conifer livestock fence posts;
 - (viii) in earth retaining structures;
 - (ix) as electric power transmission and telecommunications poles; or

(x) 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, save that such wood may be used for livestock fence posts or for the structural uses set out in paragraph (3)(d), 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; 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 30 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”.

Prohibition on the use of hexachloroethane in the manufacturing and processing of non-ferrous metals

7. No person shall use hexachloroethane in the manufacturing or processing of non-ferrous metals.

Offences and penalties

8.—(1) Any person who contravenes regulation 4, 5, 6 or 7, 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 paragraph (1) committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(4) In paragraph (3) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(5) If the affairs of a body corporate are managed by its members, paragraph (3) shall apply 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.

(6) Where an offence under paragraph (1) arising from a contravention of regulation 4, 5, 6 or 7 is committed by a partnership in Scotland and is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(7) In paragraph (6) “partner” includes a person purporting to act as a partner.

Amendment and revocation of Regulations

9.—(1) In regulation 5 of the Environmental Protection (Controls on Injurious Substances) Regulations 1992**(a)** the word “arsenic” wherever it appears is deleted.

(2) The Environmental Protection (Controls on Hexachloroethane) Regulations 2003**(b)** are hereby revoked.

13th December 2003

Alun Michael
Minister of State
Department for Environment, Food and Rural Affairs

(a) S.I. 1992/31.
(b) S.I. 2003/602.

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 2003/2/EC relating to restrictions on the marketing and use of arsenic (tenth adaptation to technical progress to Council Directive 76/769/EEC). They revoke the Environmental Protection (Controls on Hexachloroethane) Regulations 2003, S.I. 2003/602 and re-enact the prohibition contained in those Regulations. These Regulations extend to Great Britain.

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 30 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 professional and industrial uses specified in regulation 6(3) and subject to conditions specified in regulations 6(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 30 June 2004.

Regulation 7 prohibits, from 6th January 2003, the use of hexachloroethane in the manufacturing or processing of non-ferrous metals. This re-enacts a prohibition in S.I. 2003/602, which entered into force on 30th June 2003.

Regulation 8 makes it a criminal offence to contravene regulations 4, 5, 6 or 7 and specifies the penalties for such an offence.

Regulation 9 amends regulation 5 of the Environmental Protection (Controls on Injurious Substances) Regulations 1992, S.I. 1992/31 and revokes the Environmental Protection (Controls on Hexachloroethane) Regulations 2003, S.I. 2003/602.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business and a Transposition Note in relation to these Regulations have been prepared and placed in the library of each House of Parliament. Copies of either of these documents can be obtained from Defra, Chemicals and GM Policy Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

2003 No. 3274

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Controls on Dangerous
Substances) Regulations 2003**

£2.00

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1663 01/2004 131663 19585

ISBN 0-11-048438-X



9 780110 484389