

2004 No. 1816

ENVIRONMENTAL PROTECTION

**The Controls on Nonylphenol and Nonylphenol Ethoxylate
Regulations 2004**

<i>Made</i> - - - -	<i>13th July 2004</i>
<i>Laid before Parliament</i>	<i>15th July 2004</i>
<i>Coming into force</i> - -	<i>17th January 2005</i>

The Secretary of State, 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, and in exercise of the powers conferred upon her by section 2(2) of that Act(c), makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Controls on Nonylphenol and Nonylphenol Ethoxylate Regulations 2004 and shall come into force on 17th January 2005.

(2) These Regulations extend to Great Britain.

Interpretation

2.—(1) In these Regulations—

“nonylphenol” means nonylphenol $C_6H_4(OH)C_9H_{19}$; and

“nonylphenol ethoxylate” means nonylphenol ethoxylate $(C_2H_4O)_nC_{15}H_{24}O$.

(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 2003/53/EC of the European Parliament and of the Council amending for the 26th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (nonylphenol, nonylphenol ethoxylate and cement)(e), shall have the meaning they bear in that Directive.

Scope

3.—(1) These Regulations do not apply to—

(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. L178, 17.7.2003, p. 24.

- (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; and
- (d) dangerous substances or preparations in transit and subject to customs inspection, provided that they undergo no processing.

(2) These regulations shall not prohibit the placing on the market or use of any pesticides or biocidal products containing nonylphenol ethoxylate as a co-formulant if, and to the extent to which, such placing on the market or use is authorised by a relevant approval.

(3) In paragraph (2), a “relevant approval” means a valid approval granted before 17th July 2003 under—

- (a) the Control of Pesticides Regulations 1986(a);
- (b) the Plant Protection Products Regulations 2003(b);
- (c) the Plant Protection Products (Scotland) Regulations 2003(c);
- (d) the Control of Pesticides Regulations (Northern Ireland) 1987(d); or
- (e) the Plant Protection Products Regulations (Northern Ireland) 2004(e).

Prohibition on the placing on the market and use of nonylphenol and nonylphenol ethoxylate

4. No person shall place on the market or use nonylphenol or nonylphenol ethoxylate as a substance or constituent of preparations in concentrations equal to or higher than 0.1% by mass for any of the following purposes—

- (a) industrial or institutional cleaning, other than—
 - (i) controlled closed dry cleaning systems where the washing liquid is recycled or incinerated; and
 - (ii) cleaning systems with special treatment where the washing liquid is recycled or incinerated;
- (b) domestic cleaning;
- (c) textiles or leather processing, other than—
 - (i) processing with no release into waste water; and
 - (ii) systems with special treatment where the process water is pre-treated to remove the organic fraction completely prior to biological waste water treatment (such as degreasing of sheepskin);
- (d) emulsifier in agricultural teat dips;
- (e) metal working, other than uses in controlled closed systems where the washing liquid is recycled or incinerated;
- (f) manufacturing of pulp or paper;
- (g) cosmetic products;
- (h) other personal care products, other than spermicide; or

(a) S.I. 1986/1510. As amended by the Control of Pesticides (Amendment) Regulations 1997 (S.I. 1997/188), the Registration of Homeopathic Veterinary Medicinal Products Regulations 1997 (S.I. 1997/322) and the Biocidal Products Regulations 2001 (S.I. 2001/880).

(b) S.I. 2003/3241.

(c) S.S.I. 2003/579.

(d) S.R. 1987/414. As amended by the Food Safety (Northern Ireland) Order 1991 (Consequential Modifications) Order (Northern Ireland) 1991 (S.R. 1991/203), the Control of Pesticides (Amendment) Regulations (Northern Ireland) 1997 (S.R. 1997/469) and the Biocidal Products Regulations (Northern Ireland) 2001 (S.R. 2001/422).

(e) S.R. 2004/126.

- (i) co-formulants in pesticides or biocides.

Offences and penalties

5.—(1) Any person who contravenes regulation 4, or causes or permits another person to contravene that regulation, 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 to imprisonment not exceeding three months; and
- (b) on conviction on indictment, to a fine or to imprisonment not exceeding two years or to both.

(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) committed by a Scottish partnership is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

- (a) is a partner; or
- (b) purports to act in that capacity,

that person as well as the Scottish partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

Date: 13th July 2004

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to European Parliament and Council Directive 2003/53/EC (on nonylphenol, nonylphenol ethoxylate and cement) insofar as it relates to nonylphenol and nonylphenol ethoxylate (“the restricted substances”). This Directive makes amendments 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 extend to Great Britain and come into force on 17th January 2005.

Regulation 3 sets out exclusions from the scope of the Regulations.

Regulation 4 places restrictions on the placing on the market or the use of either of the restricted substances for certain specified purposes.

Regulation 5 makes it an offence to contravene regulation 4 (regulation 5(1)) and specifies the maximum penalties for such an offence (regulation 5(2)). It also provides that where an offence is committed by a body corporate or a Scottish partnership, specified individuals may also be guilty of that offence if it were committed with that person’s consent or connivance, or as a result of their neglect (regulation 5(3)-(6)).

A Regulatory Impact Assessment 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.

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