
STATUTORY INSTRUMENTS

2004 No. 3278

ENVIRONMENTAL PROTECTION

**The Controls On Pentabromodiphenyl Ether And
Octabromodiphenyl Ether (No. 2) Regulations 2004**

Made - - - - *9th December 2004*
Laid before Parliament *10th December 2004*
Coming into force - - *1st January 2005*

The Secretary of State for Environment, Food and Rural Affairs, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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⁽³⁾, makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Controls on Pentabromodiphenyl Ether and Octabromodiphenyl Ether (No. 2) Regulations 2004 and shall come into force on 1st January 2005.

(2) These Regulations extend to Great Britain.

Interpretation

2.—(1) In these Regulations—

“octabromodiphenyl ether” means diphenylether, octabromo derivative $C_{12}H_2Br_8O$; and

“pentabromodiphenyl ether” means diphenylether, pentabromo derivative $C_{12}H_5Br_5O$.

(2) Expressions used in these Regulations have the same meaning as 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⁽⁴⁾ as last amended by Commission Directive [2004/98/EC](#)⁽⁵⁾.

(1) S.I.1992/1711.

(2) 1972 c. 68.

(3) 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.

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

(5) OJ No. L305, 1.10.2004, p. 63.

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; and
 - (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 and use of pentabromodiphenyl ether

- 4.—(1) Subject to paragraph (3), no person shall place on the market—
- (a) pentabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass;
 - (b) any articles which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass; or
 - (c) any articles which include any flame-retarded parts which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass.
- (2) Subject to paragraph (3), no person shall use pentabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass.
- (3) This Regulation shall not apply to aircraft emergency evacuation systems before 31st March 2006.

Prohibition on the placing on the market and use of octabromodiphenyl ether

- 5.—(1) No person shall place on the market—
- (a) octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass;
 - (b) any articles which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass; or
 - (c) any articles which include any flame-retarded parts which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass.
- (2) No person shall use octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass.

Offences and penalties

- 6.—(1) Any person who contravenes regulation 4 or 5, or causes or permits another person to contravene either of 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 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.

Revocations

7. The Controls On Pentabromodiphenyl Ether And Octabromodiphenyl Ether Regulations 2004(6) are revoked.

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

9th December 2004

(6) S.I. 2004/371.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to European Parliament and Council Directive [2003/11/EC](#) and Commission Directive [2004/98/EC](#) on pentabromodiphenyl ether and octabromodiphenyl ether. These Directives make 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 revoke and replace the Controls On Pentabromodiphenyl Ether And Octabromodiphenyl Ether Regulations 2004 ([S.I 2004/371](#)) which previously gave effect to Directive 2003/11EC. These Regulations extend to Great Britain and come into force on 1st January 2005.

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

Regulation 4(1)(a) prohibits the placing on the market of pentabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass. Regulation 4(1)(b) prohibits the placing on the market of any articles which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass. Regulation 4(1)(c) prohibits the placing on the market of any articles which include any flame retardant parts which contain pentabromodiphenyl ether in concentrations higher than 0.1% by mass. The use of pentabromodiphenyl ether in concentrations higher than 0.1% by mass is also prohibited (regulation 4(2)). Regulation 4 will not apply to aircraft emergency evacuation systems before 31st March 2006.

Regulation 5(1)(a) prohibits the placing on the market of octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass. Regulation 5(1)(b) prohibits the placing on the market of any articles which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass. Regulation 5(1)(c) prohibits the placing on the market of any articles which include any flame retardant parts which contain octabromodiphenyl ether in concentrations higher than 0.1% by mass. The use of octabromodiphenyl ether in concentrations higher than 0.1% by mass is also prohibited (regulation 5(2)).

Regulation 6 makes it an offence to contravene either of regulation 4 or 5 (regulation 6(1)) and specifies the maximum penalties for such an offence (regulation 6(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 6(3)-(6)).

Regulation 7 revokes [S.I 2004/371](#).

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.