

2005 No. 928

HEALTH AND SAFETY

**The Export and Import of Dangerous Chemicals Regulations
2005**

<i>Made</i> - - - -	<i>23rd March 2005</i>
<i>Laid before Parliament</i>	<i>1st April 2005</i>
<i>Coming into force</i> - -	<i>22nd April 2005</i>

The Secretary of State, being the Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the control of the import and export of goods(b), the notification and control of substances(c), the regulation and control of classification, packaging and labelling of dangerous substances and preparations(d), and measures relating to consumer protection(e), in exercise of the powers conferred on him by that section(f) hereby makes the following Regulations:

Citation, Commencement and interpretation

1.—(1) These Regulations, which extend to Great Britain, may be cited as the Export and Import of Dangerous Chemicals Regulations 2005 and shall come into force on 22nd April 2005.

(2) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(g);

“the Commission” means the Health and Safety Commission established under section 10 of the 1974 Act;

“the Executive” means the Health and Safety Executive established under section 10 of the 1974 Act; and

“the Regulation” means Regulation (EC) No. 304/2003 of the European Parliament and of the Council of 28th January 2003 concerning the export and import of dangerous chemicals(h), as amended by Commission Regulation (EC) No. 1213/2003 of 7th July 2003(i) and Commission Regulation (EC) No. 775/2004 of 26th April 2004(j)

(a) 1972 c. 68.

(b) S.I. 1983/1706.

(c) S.I. 1981/1536.

(d) S.I. 1976/897.

(e) S.I. 1993/2661.

(f) As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c. 46), which provides that, despite the transfer to the Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(g) 1974 c. 37, sections 25A and 27A were inserted by the Consumer Protection Act 1987 (c. 43) Schedule 3, paragraphs 3 and 4, and sections 28(1)(a) and 33(1)(h) were amended by the Consumer Protection Act 1987 Schedule 3, paragraphs 5 and 6.

(h) O.J. No. L 63, 6.3.2003, p.1.

(i) O.J. No. L 169, 8.7.2003, p.27.

(j) O.J. No. L 123, 27.4.2004, p.27.

Appointment of designated authorities

2. The Commission shall be the designated national authority—
- (a) to act for the performance of the administrative functions required by the Regulation, in accordance with Article 4 thereof; and
 - (b) that shall have the responsibility of controlling the import and export of chemicals listed in Annex I of the Regulation, in accordance with Article 17 thereof.

False or misleading information

3. An exporter or importer shall not provide information pursuant to the requirements of any Article of the Regulation knowing it to be false or misleading in a material particular, or being reckless as to whether it is false or misleading in a material particular.

Enforcement and offences

4.—(1) Subject to paragraph (5), it shall be the duty of the Executive to make adequate arrangements for the enforcement of the Regulation and of these Regulations, and accordingly a reference to the enforcing authority in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraphs (5) and (6), the provisions of the 1974 Act specified in paragraph (3) shall apply for the purposes of the enforcement in Great Britain of the Regulation and these Regulations as if they were health and safety regulations for the purposes of that Act, and any function of the Commission under any provision of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if the Regulation and these Regulations were health and safety regulations for the purposes of that Act.

(3) The provisions of the 1974 Act referred to in paragraph (2) are—

- (a) sections 19 and 20 (appointment and powers of inspectors);
- (b) sections 25A to 28 (Customs power to detain imports, power to indemnify inspectors, power to obtain information, information provided by Customs, and restrictions on disclosure of information); and
- (c) sections 33 to 42 (provisions as to offences).

(4) For the purposes of paragraph (2)—

- (a) section 25A of the 1974 Act shall have effect as if in subsection (1) of that section, after the word “substance”, there were inserted the words “or any article bound for export or any substance bound for export”; and
- (b) section 27A of the 1974 Act shall have effect as if in subsection (1) of that section, after the word “imports”, there were inserted the words “or exports”.

(5) Contravention of Article 14(2) of the Regulation, which prohibits the export of chemicals and articles the use of which is prohibited in the Community for the protection of human health or the environment, as listed in Annex V of the Regulation, shall be subject to enforcement under the Customs and Excise Management Act 1979(a), and not as a contravention of a health and safety regulation.

(6) A failure to discharge a duty placed—

- (a) by the Regulation on a designated national authority; or
- (b) by these Regulations on the Executive,

shall not be an offence under section 33(1)(c) of the 1974 Act.

(a) 1979 c. 2.

Revocation and Amendments

5.—(1) The Export of Dangerous Chemicals Regulations 1992(a) are revoked.

(2) In the Notification of New Substances Regulations 1993(b) in sub-paragraph (i) of regulation 3(2) for the reference “Council Regulation EC 2455/92 on the export notification and information exchange of dangerous substances” substitute the reference “Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals”.

(3) In the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002(c) in sub-paragraph (c) of regulation 3(4) for the reference “Council Regulation EC 2455/92 on the export notification and information exchange of dangerous substances” substitute the reference “Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals”.

Signed by authority of the Secretary of State.

23rd March 2005

Jane Kennedy
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply to Great Britain, make provisions which are necessary for the operation in Great Britain of Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals (O.J. No. L63, 6.3.2003, p.1) as amended by Commission Regulation (EC) No. 1213/2003 of 7th July 2003 (O.J. No. L 169, 8.7.2003, p.27) and Commission Regulation (EC) No. 775/2004 of 26th April 2004 (O.J. No. L 123, 27.4.2004, p.27) (“the Regulation”). They revoke and replace the Export of Dangerous Chemicals Regulations 1992 (S.I. 1992/2415).

2. The main purposes of the Regulation are to implement within the European Community the Rotterdam Convention on the prior informed consent (PIC) procedure for certain hazardous chemicals and pesticides in international trade signed by the Community on 11th September 1998, to establish a similar procedure for chemicals which qualify for PIC status, and to maintain in force a common export notification procedure for chemicals either banned for use or whose use is severely restricted within the Community. The chemicals concerned are listed in Annex I Parts 1, 2 and 3 to the Regulation, whose Article 22 provides for the review of Annex I by the European Commission at least every year. Article 22 further provides for the making of amendments to Annex I, and also to Annexes II, III, IV and VI which give particulars for administrative requirements under the regulation, to be delegated to the European Commission. The European Commission acts as the central administrative authority for all member states for contact with other parties to the Convention and with non-parties. Designated national authorities are to be appointed to administer the Regulation within each member state.

(a) S.I. 1992/2415.

(b) S.I. 1993/3050.

(c) S.I. 2002/1689, as amended by S.I. 2004/568.

3. Other provisions of the Regulation concern export close to expiry date, packaging, labelling, safety information, storage information, information on quantities traded, information and assistance to developing countries and transit information. The export of chemicals whose use is prohibited within the Community for the protection of human health or the environment, listed in Annex V, is prohibited.

4. Article 16(1) of the Regulation provides that chemicals for export shall be subject to the measures on packaging and labelling established in, or pursuant to, inter alia Directives 67/548/EEC, 1999/45/EC, 91/414/EEC and 98/8/EC. The provisions of the named Directives have been incorporated into the law of Great Britain by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689, as amended by S.I. 2004/568), the Plant Protection Products Regulations 2003 (S.I. 2003/3241, as amended by S.I. 2004/1810), the Plant Protection Products (Scotland) Regulations (S.S.I. 2003/579, as amended by S.S.I. 2004/368), and the Biocidal Products Regulations 2001 (S.I. 2001/880, as amended by S.I. 2003/429).

5. Regulation 2 appoints the Health and Safety Commission to be the designated national authority to act for the performance of the administrative functions required by the Regulation, in accordance with its Article 4, and to be the designated national authority that shall have the responsibility of controlling the import and export of chemicals listed in Annex I to the Regulation, in accordance with its Article 17.

6. Regulations 3 and 4 provide for the enforcement of the Regulation and these Regulations. Regulation 4(1) places on the Health and Safety Executive the duty to arrange for their enforcement, and 4(2), (3) and (4) provide that the enforcement and offences provisions of the Health and Safety at Work Act 1974 (1974 c. 37) shall apply to them as if they were health and safety regulations made under section 15 of that Act, subject to paragraph 4(5) which provides that breach of the export restriction in Article 14(2) shall be subject to enforcement under the Customs and Excise Management Act 1979 (1979 c.2), and not as a contravention of a health and safety regulation.

7. No Regulatory Impact Assessment has been prepared in relation to these Regulations.

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