

EXPLANATORY MEMORANDUM TO
THE COSMETIC PRODUCTS ENFORCEMENT REGULATIONS 2013

2013 No. 1478

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 The purpose of the instrument is to provide for the enforcement of European Regulation (EC) No. 1223/2009 on Cosmetic Products. (recast) (“the EU Regulation”) (OJ No L342, 22.12.2009 p59) and repeal the Cosmetic Products (Safety) Regulations 2008 (S.I.2008/1284) (as amended) (“the 2008 Regulations”).
 - 2.2 The EU Regulation applies in respect of all cosmetic products that are made available on the EU market after 11 July 2013 and is directly applicable in all Member States, meaning that no domestic regulation is required in order for the obligations to have effect.
 - 2.3 However, domestic regulation is needed in order to enforce the EU Regulation and to provide certain limited labelling requirements.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Context**
 - 4.1 This instrument is being made in order to enforce the EU Regulation. The EU Regulation replaces Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products (as amended) (“the Directive”), which is implemented in the United Kingdom by the 2008 Regulations.
 - 4.2 This instrument repeals the 2008 Regulations. However because the Commission Directives on testing and sampling of cosmetics implemented by Schedule 10 of the 2008 Regulations still apply, these are now implemented in Schedule 3 to this instrument.

5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Cosmetic Products Enforcement Regulations 2013 are compatible with the Convention rights.

7. Policy background

- 7.1 The EU Regulation regulates the safety of cosmetic products by listing restricted and banned substances, and providing positive lists of preservatives, colorants and UV filters. These provisions are largely unchanged from the Directive. In addition, the EU Regulation clarifies the role of a 'responsible person' and a distributor in ensuring compliance with the relevant obligations, requires all cosmetic products to be notified to the European Commission rather than to national authorities and more clearly describes the product information file. It also introduces a concept of Serious Undesirable Effects, which have to be reported, and defines nanomaterials, which also have to be reported.
- 7.2 The Cosmetic Products Enforcement Regulations 2013 ("the Enforcement Regulations") create enforcement powers, offences and penalties within the United Kingdom, in relation to the EU Regulation. The offences, penalties and enforcement provisions of the Enforcement Regulations are similar to those in the Cosmetic Products (Safety) Regulations 2008 and the Consumer Protection Act 1987. However, it has been necessary to expand the offences and penalties to reflect the broader scope of the EU Regulation.
- 7.3 In addition, some updates to penalties and enforcement powers have been made in order to reflect developments in the wider regulatory context, and the Government's policy in relation to safeguards for powers of entry. Key changes to penalties include increasing the maximum levels of fine from £5,000 to £20,000 for some offences, and a doubling of the maximum imprisonment sentence on indictment for the most serious offences to 12 months. This reflects the current levels of penalties in the UK's General Product Safety Regulations 2005 which covers consumer goods and therefore provides consistency.
- 7.4 Another key change relates to the powers of an enforcement officer to enter premises in order to ascertain whether there has been compliance with the regulations. Powers of entry no longer extend to premises used wholly or mainly as a private dwelling. Also before entering the premises, an enforcement officer must give reasonable notice unless this notice would reasonably be supposed to defeat the

purposes of entry. These measures reflect the Government's position on safeguards for powers to enter premises.

7.5 The Enforcement Regulations also contain one provision specific to the making available of cosmetics. This sets out the labelling requirements for cosmetic products which are not pre-packaged, are pre-packaged at the point of sale or are pre-packaged for immediate sale.

7.6 The Enforcement Regulations also make a number of minor consequential amendments to other instruments.

8. Consultation outcome

8.1 The Department for Business, Innovation and Skills carried out an eight week public consultation starting on 15 March 2013. There were ten responses to the consultation. All but one, from a micro-business, were supportive of the Enforcement Regulations. BIS has also worked closely with Trading Standards Services (the enforcement authority) and the Cosmetic Toiletry and Perfumery Association on the provisions in the Enforcement Regulations.

9. Guidance

9.1 BIS will be producing guidance on the Enforcement Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 No impact assessment has been prepared because these Regulations have a negligible impact on the costs of business.

11. Regulating small business

11.1 The legislation applies to small business. The Government considers that the legislation is not expected to impose a disproportionate cost to small firms.

12. Monitoring & review

12.1 Regulation 26 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following each review it will fall to the Secretary of State to consider whether the Enforcement Regulations should remain

as they are, or be revoked or be amended. A further instrument would be needed to revoke the Enforcement Regulations or to amend them.

13. Contact

- 13.1 Tony Eden-Brown at the Department for Business, Innovation and Skills Tel: 020-7215 0360 or email: tony.edenbrown@bis.gsi.gov.uk can answer any queries regarding the instrument.