

**2013 No. 2919**

**CONSUMER PROTECTION**

**ENVIRONMENTAL PROTECTION**

**HEALTH AND SAFETY**

**The REACH Enforcement (Amendment) Regulations 2013**

<i>Made</i> - - - -	<i>16th November 2013</i>
<i>Laid before Parliament</i>	<i>20th November 2013</i>
<i>Coming into force</i> - -	<i>16th December 2013</i>

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to persistent organic pollutants, dangerous substances, preparations and chemicals.

These Regulations are made by the Secretary of State in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, that Act.

It appears to the Secretary of State that it is expedient for references to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals(c) to be construed as references to that Regulation as amended from time to time.

**Citation and commencement**

**1. These Regulations—**

- (a) may be cited as the REACH Enforcement (Amendment) Regulations 2013; and
- (b) come into force on 16<sup>th</sup> December 2013.

**Amendment of the REACH Enforcement Regulations 2008**

**2. The REACH Enforcement Regulations 2008(d) are amended as follows.**

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- (a) S.I. 2006/608, to which there is an amendment not relevant to these Regulations.
  - (b) 1972 c. 68. Section 2(2) is amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). The power of the Minister to make regulations in relation to devolved matters is preserved as regards Scotland by section 57(1) of the Scotland Act 1998 (c. 46) and as regards Wales by paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32).
  - (c) OJ No L 396, 30.12.2006, p1, as last amended by Commission Regulation (EU) No 348/2013 (OJ No L 108, 18.4.2013, p1). There are relevant corrigenda, OJ No L 136, 29.5.2007, p3 and OJ No L 36, 5.2.2009, p84.
  - (d) S.I. 2008/2852, amended by S.I. 2010/1513; there are other amending instruments but none is relevant.

### **Regulation 2 (interpretation)**

3.—(1) In regulation 2(1) for the definition of “REACH” substitute—

““REACH” means Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals as amended from time to time;”.

(2) In regulation 2(2) —

(a) before the definition of “authorised person” insert—

““asbestos-containing article” means an article in its entirety containing any of the asbestos fibres listed at point 6 of Annex XVII to REACH;

“asbestos exemption certificate” has the meaning given in paragraph 2 of Schedule 5A;”;

(b) in the definition of “enforcing authority” after sub-paragraph (f) insert—

“(fa) the Office of Rail Regulation;”;

(c) after the definition of “enforcing authority” insert—

““the Executive” means—

(a) in Great Britain, the Health and Safety Executive;

(b) in Northern Ireland, the Health and Safety Executive for Northern Ireland;”;

(d) after the definition of “offshore installation” insert—

““railway” means—

(a) except in Northern Ireland, any system of transport the operation of which is specified in regulation 3(2) of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006(a);

(b) in relation to Northern Ireland, any railway or tramway which in either case is used for the carriage of persons or goods;”.

### **Regulation 6 (health and safety enforcement)**

4. In regulation 6—

(a) for paragraph (1) substitute—

“(1) This regulation applies where the Executive is jointly under an enforcement duty with any of the following enforcing authorities, whether or not any other enforcing authority is also under an enforcement duty in respect of the same listed REACH provision—

(a) a local (health and safety) authority;

(b) the Office of Rail Regulation.”;

(b) omit paragraph (5).

### **Regulation 8A (placing asbestos-containing articles on the market)**

5. After regulation 8 insert—

#### **“Placing asbestos-containing articles on the market**

**8A.**—(1) A person who places an asbestos-containing article on the market does not breach the restriction on this activity provided for by Article 67 of REACH where—

(a) this is done in accordance with an asbestos exemption certificate; and

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(a) S.I. 2006/557. Relevant amending instruments are S.I. 2007/1573 and 2008/2323.

- (b) the asbestos-containing article was installed or in service before 1st January 2005.
- (2) Schedule 5A (placing asbestos-containing articles on the market) has effect.”.

**Insertion of Part 8**

6. After regulation 23, insert—

**“PART 8**  
**Review**

**Review of these Regulations**

24.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations in relation to England;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review, the Secretary of State must, so far as is reasonable, have regard to how REACH (which is enforced by means of these Regulations) is enforced in other member States.

(3) The report must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which the objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 16<sup>th</sup> December 2013.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

**Amendment of Schedule 1 (table of REACH provisions)**

7.—(1) The table in Schedule 1 is amended as follows.

(2) In the second column (subject matter)—

- (a) for “preparations”, in each place occurring, substitute “mixtures”;
- (b) for “preparation”, in each place occurring, substitute “mixture”.

(3) In the entries relating to Article 31(2)-(9), in the second column of the ninth entry (requirement to provide a safety data sheet free of charge either electronically or on paper), after “paper” insert “, and by no later than the date on which the substance or mixture is first supplied”.

(4) After the entries relating to Article 31(2)-(9), insert—

“Article 31(10)(a)	Requirement on a supplier to include the	The Health and Safety Executive.	The Health and Safety Executive.	The Health and Safety Executive for Northern	The Health and Safety Executive.
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(a) Article 31(10) of REACH was inserted by Article 57(2)(b) of Regulation (EC) No. 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ No L 353, 31.12.2008, p1).

	classification of substances or mixtures in a safety data sheet.			Ireland.	The Health and Safety Executive for Northern Ireland.”;
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(5) In the entry relating to Article 33(2) for “Local (health and safety) authorities”, in each place occurring, substitute “Local (consumer safety) authorities”.

(6) In the entry relating to Article 67(1), in the third and fourth columns (enforcing authorities for England and Wales and for Scotland), after “Local (health and safety) authorities.” insert “The Office of Rail Regulation.”.

(7) Omit the entries relating to Article 113(1) and (3).

**Schedule 2 (functions of enforcing authorities)**

8. In Schedule 2, after paragraph 5 insert—

“6.—(1) Subject to sub-paragraph (2), the functions of the Office of Rail Regulation are to—

- (a) secure the health, safety and welfare of persons at work;
- (b) protect others against risks to health and safety in connection with the activities of persons at work;
- (c) control the manufacture and placing on the market of articles and substances.

(2) The functions of the Office of Rail Regulation—

- (a) only apply in relation to the manufacture, placing on the market and use of asbestos fibres in so far as this relates to the operation of a railway; and
- (b) do not apply in relation to Northern Ireland.

(3) In sub-paragraph (2) “operation of a railway” has the meaning given in regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006.”.

**Schedule 3 (health and safety enforcement)**

9. In Schedule 3—

- (a) in paragraph 1 of Part 1 omit sub-paragraphs (f) and (r) (definitions of the “Executive” and “railway”); and
- (b) after Part 4 insert—

**“PART 5**

**The Office of Rail Regulation**

1. The Office of Rail Regulation must perform the joint enforcement duty on behalf of the Executive in relation to Article 67 of REACH in so far as this relates to its functions in paragraph 6 of Schedule 2.”.

**Schedule 5 (marketing and use of leaded paints)**

10. In Schedule 5, Part 1, paragraph 8, in the definition of “leaded paint”, for “lead carbons” substitute “lead carbonates”.

## Schedule 5A

11. After Schedule 5 insert the Schedule set out in the Schedule (new Schedule 5A to the REACH Enforcement Regulations 2008) to these Regulations.

## Schedule 6 (powers of enforcement)

12. In Schedule 6—

- (a) in the heading to Part 2, after “Northern Ireland” insert “, the Office of Rail Regulation”;
- (b) in Part 2, Section 1—
  - (i) after paragraph 9 insert—

“9A. The powers of an authorised person acting on behalf of the Office of Rail Regulation—

- (a) do not include the powers in paragraph 1(m) or (n);
  - (b) only apply in relation to non-domestic premises.”;
  - (ii) omit paragraph 10; and
- (c) in Part 2, Section 2, after paragraph 19 insert—

“20. This section does not apply to an authorised person acting on behalf of the Office of Rail Regulation.”.

## Schedule 7 (authorisations)

13. In Schedule 7, in Section 3—

- (a) in the heading, after “Executive” insert “, the Office of Rail Regulation”;
- (b) omit the “or” after paragraph 3(a);
- (c) after paragraph 3(b) insert “or” and the following paragraph—

“(c) the Office of Rail Regulation.”.

## Schedule 8 (appeals)

14. In Schedule 8, in Part 1, after paragraph 6 insert—

“7. The appeal body may—

- (a) appoint a person, with or without payment, to determine the appeal;
- (b) refer any matter involved in the appeal to such person as that body may appoint for that purpose, with or without payment.”.

## Revocations

15. The Asbestos Products (Safety) Regulations 1985(a) and the Asbestos Products (Safety) (Amendment) Regulations 1987(b) are revoked.

16th November 2013

*de Mauley*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

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(a) S.I. 1985/2042.  
(b) S.I. 1987/1979.

## SCHEDULE

Regulation 11

### New Schedule 5A to the REACH Enforcement Regulations 2008

#### “SCHEDULE 5A

Regulation 8A(2)

#### Placing asbestos-containing articles on the market

1. For the purposes of this Schedule “exempting authority” means—
  - (a) the Executive;
  - (b) the Office of Rail Regulation;
  - (c) in relation to matters outside the functions of the Executive and the Office of Rail Regulation, the competent authority.
2. An exempting authority may issue a certificate in writing exempting a person or class of persons from the prohibition on the placing on the market of asbestos-containing articles provided for by Article 67 of REACH (“asbestos exemption certificate”) in relation to—
  - (a) an activity or a class of activities;
  - (b) an asbestos-containing article or a class of such articles.
3. An asbestos exemption certificate—
  - (a) must include conditions ensuring a high level of protection of human health;
  - (b) may be subject to a limit of time;
  - (c) may be varied or revoked by a notice in writing; and
  - (d) may be issued jointly by more than one exempting authority.
4. An exempting authority must not issue an asbestos exemption certificate unless it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it, having regard to the circumstances of the case, and in particular to—
  - (a) the conditions which it proposes to attach to the exemption; and
  - (b) any other requirements imposed by or under any enactments which apply to the case.”

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the REACH Enforcement Regulations 2008 (S.I. 2008/2852) (“the 2008 Regulations”).

The 2008 Regulations provide for the enforcement in the United Kingdom of Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ No L 396, 30.12.2006, p1, as read with corrigenda published in OJ No L 136, 29.5.2007, p3 and OJ No L 36, 5.2.2009, p84) (“the REACH Regulation”).

Regulation 3(1) inserts an updated definition of “REACH” in regulation 2 of the 2008 Regulations, which includes future amendments to the REACH Regulation.

Regulations 3(2), 4, 7 to 9, 12 and 13 provide for the inclusion of the Office of Rail Regulation as a new enforcing authority under the 2008 Regulations.

Regulations 5 and 11 insert a new regulation 8A and Schedule 5A into the 2008 Regulations. These provide for the exercise of a derogation for the marketing of articles containing asbestos

fibres as set out in entry 6 of Annex XVII to the REACH Regulation (Annex XVII was amended by Commission Regulation (EC) No 552/2009 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (OJ No L 164, 26.6.2009, p7)). The new regulation 8A allows the marketing of articles containing asbestos which were installed or in service before 1st January 2005 where this is done in accordance with an asbestos exemption certificate. Asbestos exemption certificates may be issued by the Health and Safety Executive, the Health and Safety Executive for Northern Ireland, the Office of Rail Regulation or the competent authority, in accordance with the requirements in the new Schedule 5A.

Regulation 6 inserts a new regulation 24 in the 2008 Regulations requiring the Secretary of State to conduct regular reviews of the operation of those Regulations in England, and set out the conclusions of that review in a published report every five years, starting from the coming into force date of this instrument.

Regulations 7 and 10 make minor updating amendments to the 2008 Regulations that reflect changes made to the REACH Regulation since the 2008 Regulations came into force.

Regulation 15 revokes instruments that implemented Council Directive No 76/769/EEC (OJ No L 262, 27.9.1976, p201) (as amended) which is now repealed by Article 139 of REACH.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Chemicals and Nanotechnology team, Department for Environment, Food and Rural Affairs, Area 2A, Nobel House, 17 Smith Square, London SW1P 3JR and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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£5.75

UK2013111816 11/2013 19585

<http://www.legislation.gov.uk/id/uksi/2013/2919>

ISBN 978-0-11-110616-7



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