

2005 No. 2469

PUBLIC HEALTH

The Detergents Regulations 2005

Made - - - - *4th September 2005*

Laid before Parliament *7th September 2005*

Coming into force - - *8th October 2005*

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State for Environment, Food and Rural Affairs has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures for safety and consumer protection as respects, among other products, detergents and any provisions concerning the composition, labelling, marketing, classification or description of, among other products, detergents(b).

The Secretary of State for Environment, Food and Rural Affairs makes the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the Detergents Regulations 2005, apply throughout the United Kingdom and shall come into force on 8th October 2005.

Interpretation

2.—(1) In these Regulations—

“contravention” includes a failure to comply;

“controlled product” means a detergent or a surfactant;

“premises” includes any place, structure or means of transport and, in particular, includes—

- (a) any land (with or without buildings);
- (b) any installation on land (including the foreshore and other land intermittently covered by water) and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof);
- (c) any tent or movable structure; and
- (d) any vehicle, vessel, aircraft or hovercraft; and

(a) 1972 c.68. As regards functions transferred to the Scottish Ministers by the Scotland Act 1998 (c.46), these Regulations extend to Scotland pursuant to section 57(1) of that Act.
(b) See article 2 of and the Schedule to the European Communities (Designation) Order 1972 (S.I. 1972/1811).

“Regulation 648/2004” means Regulation (EC) No 648/2004 of the European Parliament and of the Council on detergents^(a).

(2) In these Regulations, terms used in Regulation 648/2004 shall have the same meaning as in that Regulation.

Competent authority

3.—(1) The Secretary of State shall be the competent authority in the United Kingdom for the purposes of Regulation 648/2004.

(2) The Secretary of State shall also be responsible for the discharge in the United Kingdom of the following functions—

- (a) those assigned to Member States by Articles 8 and 15(1) of Regulation 648/2004; and
- (b) those reserved to Member States by the second sub-paragraph of Article 9(3) of that Regulation.

Enforcement authorities

4.—(1) In England, the enforcement authorities for the purposes of the enforcement and execution of these Regulations shall be—

- (a) as respects each London borough, the council of that borough;
- (b) as respects each district in a metropolitan county, the council of that district;
- (c) as respects each district in a non-metropolitan county—
 - (i) where the county functions have been transferred to the council of that district under a structural change (as defined in section 14(1)(a) of the Local Government Act 1992^(b)), the council of that district, and
 - (ii) in any other case, the council of the county;
- (d) as respects the City of London (except the Temples), the Common Council of the City of London;
- (e) as respects the Inner Temple, the Sub-Treasurer;
- (f) as respects the Middle Temple, the Under Treasurer;
- (g) as respects the Isles of Scilly, the Council of the Isles of Scilly; and
- (h) as respects each port, in relation to imported controlled products, the port health authority of that port.

(2) In Wales, the enforcement authorities for the purposes of the enforcement and execution of these Regulations shall be—

- (a) as respects each county, the council of that county; and
- (b) as respects each county borough, the council of that county borough.

(3) In Scotland, the enforcement authorities for the purposes of the enforcement and execution of these Regulations shall be, as regards each of their areas, the councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(c).

(4) In Northern Ireland, the enforcement authorities for the purposes of the enforcement and execution of these Regulations shall be, as regards each district, the council of that district.

(5) In this regulation, the references to the purposes of enforcement and execution do not include either—

- (a) the purposes of the competent authority under regulation 3(1); or
- (b) the purposes of discharging the functions specified in regulation 3(2).

(a) OJ No L 104, 8.4.2004, p.1.
(b) 1992 c.19.
(c) 1994 c.39.

Authorised officers

5.—(1) Any person appointed as such by the Secretary of State shall be an authorised officer for the purposes of these Regulations.

(2) Any person appointed as such by an enforcement authority designated in regulation 4 shall be an authorised officer for the purposes of these Regulations within the area for which that enforcement authority is responsible in accordance with regulation 4.

Provision in English of information required by Regulation 648/2004

6. Where Regulation 648/2004 requires the provision of information in relation to a controlled product, such requirement shall be deemed not to have been met unless the information is provided in the English language.

Contravention of Regulation 648/2004

7.—(1) Any manufacturer who places on the market any controlled product shall be guilty of an offence unless—

- (a) the controlled product complies with Article 3(1) of Regulation 648/2004, and
- (b) he complies with Article 3(2) of that Regulation.

(2) Any manufacturer who fails to comply with Article 9 of Regulation 648/2004 shall be guilty of an offence.

(3) Any manufacturer who fails to comply with a request of the type referred to in the second sub-paragraph of Article 9(3) of Regulation 648/2004 shall be guilty of an offence.

Provisional restrictions and prohibitions

8. Any person who contravenes any restriction or prohibition imposed under Article 15 of Regulation 648/2004 (or who causes or permits any other person so to do) shall be guilty of an offence.

Enforcement notices

9.—(1) This regulation applies where an authorised officer has come to the opinion on reasonable grounds that there has been a contravention of regulation 6, 7 or 8 or of a directly applicable provision of Regulation 648/2004 in relation to a controlled product.

(2) The authorised officer may serve a notice in writing on one or more of the following persons—

- (a) the manufacturer of the controlled product;
- (b) the owner of the controlled product; and
- (c) any person appearing to him to be in possession or charge of the controlled product.

(3) Any notice served under paragraph (2) must specify—

- (a) the basis upon which the authorised officer has reached his opinion,
- (b) the action required to be taken by the person upon whom the notice is served, and
- (c) the period within which such action must be taken.

(4) The action specified in accordance with paragraph (3)(b)–

- (a) must be action that will either—
 - (i) where the contravention is capable of being remedied, remedy the contravention; or
 - (ii) permit the controlled product to be made available to third parties in such a state and manner that there would have been no contravention of these Regulations had it been placed on the market in that state and manner; and
- (b) may include one or more of the following—

- (i) recovery of the controlled product from the market in the United Kingdom;
- (ii) where the controlled product had been imported into the United Kingdom, re-exportation of the controlled product from the United Kingdom;
- (iii) disposal of the controlled product; and
- (iv) disposal of anything treated with the controlled product.

(5) The period specified in accordance with paragraph (3)(c) must not be less than 14 days, except in an emergency.

(6) Any person who contravenes the provisions of a notice served under paragraph (2) (or who causes or permits any other person to do) shall be guilty of an offence.

Seizure and disposal of contravening products

10.—(1) This regulation applies where an authorised officer has come to the opinion on reasonable grounds that there has been a contravention of regulation 6, 7 or 8 or of a directly applicable provision of Regulation 648/2004 in relation to a controlled product.

(2) An authorised officer shall have the power to seize, dispose of or seize and dispose of the controlled product.

(3) An authorised officer shall also have the power to seize, dispose of or seize and dispose of anything treated with the controlled product.

(4) Before taking any action under paragraph (2) or (3), the authorised officer shall serve notice of his intention so to do upon the person appearing to him to be in possession or charge of the controlled product.

(5) Any notice served under paragraph (4) must specify the basis upon which the authorised officer has reached his opinion and the action required to be taken by the person upon whom the notice is served and the period after which he intends to take the action in question.

(6) The period specified in accordance with paragraph (5) must not be less than 7 days, except in an emergency.

Power of entry

11. An authorised officer shall have the right at all reasonable hours to enter any premises (excluding premises used only as a dwelling) for the purpose of ascertaining whether there is or has been on the premises any contravention, or any evidence of a contravention, of regulation 6, 7 or 8 or of a directly applicable provision of Regulation 648/2004 in relation to a controlled product.

Issue of warrants in support of power of entry: England and Wales

12.—(1) If a justice of the peace is satisfied on sworn information in writing that there is reasonable ground for entry into any premises in England and Wales (excluding premises used only as a dwelling) for any such purpose as is mentioned in regulation 11 and that either—

- (a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice of the peace may by warrant authorise an authorised officer to enter the premises in accordance with the warrant and, if need be, by reasonable force.

(2) Every warrant granted under paragraph (1) shall continue in force for a period of one month.

Issue of warrants in support of power of entry: Scotland

13.—(1) If a sheriff, magistrate or justice of the peace is satisfied on sworn evidence that there is reasonable ground for entry into any premises in Scotland (excluding premises used only as a dwelling) for any such purpose as is mentioned in regulation 11 and that either—

- (a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the sheriff, magistrate or justice of the peace may by warrant authorise an authorised officer to enter the premises in accordance with the warrant and, if need be, by reasonable force.

(2) Every warrant granted under paragraph (1) shall continue in force for a period of one month.

Issue of warrants in support of power of entry: Northern Ireland

14.—(1) If a lay magistrate is satisfied on sworn complaint in writing that there is reasonable ground for entry into any premises in Northern Ireland (excluding premises used only as a dwelling) for any such purpose as is mentioned in regulation 11 and that either—

- (a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the lay magistrate may by warrant authorise an authorised officer to enter the premises in accordance with the warrant and, if need be, by reasonable force.

(2) Every warrant granted under paragraph (1) shall continue in force for a period of one month.

Power of entry: supplemental

15. An authorised officer entering any premises in accordance with regulation 11 or under the authority of a warrant issued under regulation 12, 13 or 14 (as the case may be)—

- (a) shall, if requested so to do, produce evidence of his authority,
- (b) may take with him such other persons as he considers necessary, and
- (c) on leaving any unoccupied premises which he has entered under the authority of a warrant, shall leave them as effectively secured against unauthorised entry as he found them.

Powers of inspection, sampling and seizure

16.—(1) An authorised officer entering any premises in accordance with regulation 11 or under the authority of a warrant issued under regulation 12, 13 or 14 (as the case may be) may do one or more of the following things—

- (a) inspect any substance present on those premises that he reasonably suspects to be or to contain any controlled product;
- (b) take samples (and, if necessary, send the samples for laboratory testing) from any substance present on those premises that he reasonably suspects to be or to contain any controlled product;
- (c) subject to paragraphs (2) and (3), inspect and take copies of any relevant business records (including electronic records) in whatever form they are held;
- (d) seize and detain any such records (including electronic records) which he has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations; and

(e) take photographs of the premises, any articles on them or both.

(2) In relation to premises in England or Wales, the power to inspect relevant business records under paragraph (1)(c) shall not extend to material which is either excluded or special procedure material under sections 11 and 14 of the Police and Criminal Evidence Act 1984(a).

(3) In relation to premises in Northern Ireland, the power to inspect relevant business records under paragraph (1)(c) shall not extend to material which is either excluded material or special procedure material under articles 13 and 16 of the Police and Criminal Evidence (Northern Ireland) Order 1989(b).

Protection of officers acting in good faith

17.—(1) No authorised officer shall be personally liable in respect of any act done by him—

- (a) in the execution or purported execution of these Regulations; and
- (b) within the scope of his employment,

if he did that act in the honest belief that his duty under these Regulations required or entitled him to do it.

(2) Nothing in paragraph (1) shall be construed as relieving the Secretary of State (in the case of an authorised officer appointed by her) or the relevant enforcement authority (in the case of an authorised officer appointed by an enforcement authority designated in regulation 4) from any liability in respect of the acts of an authorised officer.

(3) Where an action has been brought against an authorised officer in respect of an act done by him—

- (a) in the execution or purported execution of these Regulations; and
- (b) outside the scope of his employment,

the Secretary of State (in the case of an authorised officer appointed by her) or the relevant enforcement authority (in the case of an authorised officer appointed by an enforcement authority designated in regulation 4) may indemnify him against the whole or part of any damages which he has been ordered to pay or any costs which he may have incurred if the appointor is satisfied that the authorised officer honestly believed that the act complained of was within the scope of the authorised officer's employment.

Obstruction etc

18.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of these Regulations;
- (b) without reasonable cause, fails to give any person acting in execution of these Regulations any assistance or information which that person may reasonably require of him for the purpose of carrying out his functions under these Regulations; or
- (c) furnishes to any person acting in the execution of these Regulations any information which he knows to be false or misleading,

shall be guilty of an offence.

(2) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him, his spouse or his civil partner.

Unlawful disclosure of information contained in datasheets

19. Any person who receives a datasheet for a controlled product in accordance with Article 9(3) of Regulation 648/2004 and who either—

- (a) fails to keep the information contained in the datasheet confidential, or

(a) 1984 c.60.

(b) S.I. 1989/1341 (N.I. 12).

(b) uses the information for any purpose other than a medical one,
shall be guilty of an offence.

Offences due to fault of third person

20. Where the commission by any person of an offence under any of the provisions of these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Offences by bodies corporate

21.—(1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1), “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Offences by Scottish partnerships

22. Where a Scottish partnership is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any of the partners, or
- (b) any person who was purporting to act in such capacity,

he as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

Defence of due diligence

23.—(1) In any proceedings for an offence under any provision of these Regulations it shall, subject to paragraph (2), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance;

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(3) In paragraph (2), any reference to appearing before a court shall be construed as including a reference to being brought before a court.

Penalties

24.—(1) Subject to paragraph (2), a person guilty of an offence against any provision of these Regulations shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, up to three months imprisonment or both; or
- (b) on conviction on indictment to a fine, up to 2 years imprisonment or both.

(2) A person guilty of an offence against regulation 18(1) (obstruction etc) or 19 (unlawful disclosure of information contained in datasheets) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Appeals against notices etc: England and Wales

25.—(1) The provisions of this regulation shall apply to England and Wales only.

(2) Any person who is aggrieved by a decision of an authorised officer to serve any notice under these Regulations may appeal to a magistrates' court.

(3) The procedure on an appeal to a magistrates' court under paragraph (2) shall be by way of complaint, and the Magistrates' Court Act 1980(a) shall apply to the proceedings.

(4) The period within which an appeal under paragraph (2) may be brought shall be one month from the date on which the notice was served and the making of the complaint shall be deemed for the purposes of this paragraph to be the bringing of the appeal.

(5) On an appeal under this regulation, the court may either cancel or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court may in the circumstances think fit.

Appeals against notices etc: Scotland

26.—(1) The provisions of this regulation shall apply to Scotland only.

(2) Any person who is aggrieved by a decision of an authorised officer to serve any notice under these Regulations may appeal to the sheriff.

(3) The procedure on an appeal to the sheriff under paragraph (2) shall be by way of summary application.

(4) The period within which an appeal under paragraph (2) may be brought shall be one month from the date on which the notice was served.

(5) On an appeal under this regulation, the sheriff may either cancel or affirm the notice and, if he affirms the notice, he may do so either in its original form or with such modifications as he may in the circumstances think fit.

Appeals against notices etc: Northern Ireland

27.—(1) The provisions of this regulation shall apply to Northern Ireland only.

(2) Any person who is aggrieved by a decision of an authorised officer to serve any notice under these Regulations may appeal to a court of summary jurisdiction.

(3) An appeal to a court of summary jurisdiction under paragraph (2) shall be initiated by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(b) and the provisions of that Part shall apply accordingly.

(4) The period within which an appeal under paragraph (2) may be brought shall be one month from the date on which the notice was served.

(a) 1980 c.43: sections 51 and 52 have been substituted by the Courts Act 2003 (c.39), section 47.

(b) S.I. 1981/1675 (N.I. 26).

(5) On an appeal under this regulation, the court may either cancel or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court may in the circumstances think fit.

Revocation of the Detergents (Composition) Regulations 1978 and enactments amending to those Regulations

28. The following instruments are revoked—

- (a) the Detergents (Composition) Regulations 1978(a);
- (b) the Detergents (Composition) (Amendment) Regulations 1984(b); and
- (c) the Detergents (Composition) (Amendment) Regulations 1986(c).

4th September 2005

Bach
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs

(a) S.I. 1978/564.
(b) S.I. 1984/1369.
(c) S.I. 1986/560.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations provide for the enforcement in the United Kingdom of Regulation (EC) No 648/2004 of the European Parliament and of the Council on detergents (OJ No L 104, 8.4.2004, p.1), which is referred to in these Regulations and in this Note as “Regulation 648/2004” – see regulation 2(1). Regulation 648/2004 is directly applicable in the United Kingdom (and elsewhere in the European Union) but these Regulations provide for measures to be taken to enforce Regulation 648/2004 and for penalties for breach of Regulation 648/2004.

Regulation 648/2004 applies to detergents and surfactants and regulation 2(1) defines the term “controlled product” to apply to both detergents and surfactants. Regulation 2(1) also provides for the terms “contravention” and “premises” to have extended definitions when used in the Regulations.

Regulation 2(2) provides that terms (such as “detergent”, “surfactant”, “place on the market” and “manufacturer”) that are used in Regulation 648/2004 shall have the same meaning in these Regulations.

Regulation 3 designates the Secretary of State as the UK competent authority for the purposes of Regulation 648/2004. At the time of publication, it is envisaged that this role will be carried out through the Pesticides Safety Directorate, an executive agency of the Department for Environment, Food and Rural Affairs.

Regulation 4 establishes the enforcement authorities for the purposes of the Regulations. In England, Scotland and Wales, this power is conferred on local authorities and it is envisaged that it will be exercised by trading standards officers (except in the case of certain unitary authorities, where it may be exercised by environmental health officers instead). In Northern Ireland, the power is conferred on district councils and it is envisaged that it will be exercised by the councils’ Environmental Health Services.

Regulation 5 provides for the Secretary of State to appoint authorised officers to enforce these Regulations throughout the UK and also provides for the local authorities designated as enforcement authorities in regulation 4 to appoint authorised officers to enforce these Regulations within their areas.

Regulation 6 provides that any information required under Regulation 648/2004 must be provided in English if the requirements of Regulation 648/2004 are to be treated as having been met.

Regulation 7(1) makes it an offence to place a detergent or surfactant on the market in the UK unless all of the requirements in Regulation 648/2004 (such as composition, labelling, etc) are met – see Article 3(1) of Regulation 648/2004. Regulation 7(2) also makes it an offence not to comply with the information requirements imposed by Article 9 of Regulation 648/2004.

Regulation 8, as read with regulation 3(2), provides for the Secretary of State to impose provisional restrictions or prohibitions on the sale and/or use of detergents (but not surfactants) in order to protect human health, animal health and the environment and makes it an offence to breach any such restriction or prohibition.

Regulations 9 and 10 provide for authorised officers to serve notices, take action and impose requirements in order to deal with contraventions and make it an offence to fail to comply with a notice or requirement. These powers apply both in relation to contraventions of these Regulations and also of directly applicable provisions of Regulation 648/2004, which would be relevant where a product that does not meet the requirements of Regulation 648/2004 is placed on the market in another Member State but subsequently imported into the United Kingdom.

Regulation 11 gives a power of entry to authorised officers and regulations 12, 13 and 14 provide for warrants to be issued in support of the power of entry. Regulation 15 makes supplemental provisions relating to the exercise of a power of entry.

Regulation 16 gives authorised officers exercising a power of entry additional powers to inspect and sample detergents and surfactants (and substances suspected of being or containing detergents or surfactants), to inspect business records and to copy such records or seize and detain them for use as evidence and to take photographs for use as evidence.

Regulation 17 grants limited immunity to authorised officers carrying out their enforcement functions but provides that the Secretary of State or the local authority who appointed the authorised officer may be liable instead or may indemnify an authorised officer.

Regulation 18 makes it an offence to obstruct or fail to co-operate with an authorised officer or to provide false or misleading information.

Regulation 19 makes it an offence for medical personnel and public employees who receive ingredient datasheets to breach confidentiality in the information contained in the datasheets or to use the information for non-medical purposes.

Regulations 20, 21 and 22 provide for offences involving third parties, bodies corporate and Scottish partnerships.

Regulation 23 provides for a defence of due diligence.

Regulation 24 provides for the mode of trial and maximum penalties for offences against these Regulations—

- (a) An offence against either regulation 18(1) (obstruction etc) or regulation 19 (unlawful disclosure of information contained in datasheets) can only be tried without a jury and the maximum penalty that can be imposed following a conviction for such an offence after a summary trial is a fine at level 5 on the standard scale (currently, £5000).
- (b) Any other offence against these Regulations can be tried either with or without a jury and the maximum penalties are as follows—
 - (i) following a conviction after a summary trial, the maximum penalty that can be imposed is a fine of up to the statutory maximum (currently, £5,000) and/or a prison sentence of up to three months;
 - (ii) following a conviction after a jury trial, the maximum penalty that can be imposed is an unlimited fine and/or a prison sentence of up to two years.

Regulations 25, 26 and 27 provide for a right of appeal against any enforcement measures taken by the Secretary of State or an authorised officer.

Regulation 28 revokes the legislation that implemented the former Detergents Directives (which are themselves repealed by Regulation 648/2004).

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