

**EXPLANATORY MEMORANDUM TO
THE PACKAGING (ESSENTIAL REQUIREMENTS) (AMENDMENT)
REGULATIONS 2009**

SI 2009 No. 1504

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

2. **Purpose of the instrument**

2.1 This instrument amends the Packaging (Essential Requirements) Regulations 2003 (“the 2003 Regulations”) to continue an exemption regarding heavy metal concentration levels in plastic crates and pallets.

3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

This instrument is being made to give effect to the Commission Decision of 24 March 2009 (2009/292/EC) (OJ L79/44) (“the Commission Decision”), establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste, (notified under document number C (2009)1959) (“the Directive”).

The Directive is designed to minimise the creation of packaging waste material and to promote recovery, re-use and recycling of packaging in the EU. The Directive has both single market and environmental goals, setting “essential requirements” which packaging must meet to be placed on the EU market. This includes limits on heavy metals in packaging (these are Cadmium, Mercury, Lead and Hexavalent Chromium which may not exceed 100 ppm by weight on/after 30 June 2001). The Directive was transposed by the 2003 Regulations.

Commission Decision 1999/177/EC made under Article 11(3) of the Directive established the conditions for a time limited derogation for plastic crates and pallets regarding the heavy metal concentration limits which expired on 4 March 2009. This derogation was introduced because a considerable amount of plastic crates and pallets containing heavy metals, whose concentration levels exceeded those allowed by the Directive, were still on the market. It was felt that industry lacked the capacity to replace all of these plastic crates & pallets and there was a high risk that they might be disposed of via land fill or incineration, with harmful affects on health and the environment. An extension

of the derogation would allow Industry time to replace these plastic pallets, using the best available techniques.

In 2008, the derogation was reviewed by the Commission and, following scientific reports, the Commission have issued a further derogation without a time limit. The Commission propose to review the functioning of the system, and the progress made, in phasing out these plastic crates and pallets containing heavy metals, after 5 years.

This amendment to the 2003 Regulations simply removes the time limit to the derogation and does not introduce any new administrative burdens or new obligations on Business.

Because the Commission Decision was made after the expiry of the present derogation and an amendment to the 2003 Regulations cannot have retrospective effect a provision has been included to ensure that no proceedings or enforcement action shall be taken in respect of a breach of regulation 6(1) of the 2003 Regulations between the 4th March and the coming into force of these regulations provided the requirements set out in regulation 6(3)(a) and Schedule II to the 2003 Regulations were complied with.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This instrument is necessary to give effect to the Commission Decision so that the expiry date of 4 March 2009, for the derogation for plastic crates and pallets regarding the heavy metal concentration limits, is removed.

7.2 The Department does not intend to consolidate the Packaging (Essential Requirements) Regulations 2003.

8. Consultation outcome

8.1 No new consultation has been considered necessary because of the nature of the amendment.

9. Guidance

9.1 BERR Government Guidance Notes are available on the 2003 Regulations, dated December 2008 (URN 08/1177) and will be updated to reflect the changes to the Regulations.

10. Impact

10.1 There is no new impact on business, charities or voluntary bodies and this change represents business as usual.

10.2 The impact on the public sector is negligible and this change represents business as usual.

10.3 A Regulatory Impact Assessment prepared in August 2000 for the derogation for plastic crates and plastic pallets in relation to heavy metal concentration levels, is attached to this memorandum and remains relevant, given that the extension of the derogation time limit does not introduce any additional impacts on businesses.

10.4 A summary of the European Commission's DG ENV scientific report dated 17 September 2008 is attached to this memorandum, which supports this decision.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 This is helpful to business and especially smaller businesses, as the extended derogation (ref OJ L79/44) will continue to minimise the impact of the requirements on firms employing fewer than 20 people. It will give smaller businesses time to consider, adapt and source more eco friendly and hopefully cheaper replacement materials, enabling them to phase out plastic crates and pallets containing heavy metals, before the Commission's review in 5 years. The UK Government will play its part in actively working with industry to achieve alternatives.

11.3 Rationale: this derogation was reviewed by the Commission in December 2008 and scientific reports were submitted to them, recommending that the current derogation should be continued, with the recommendation that the Commission review the functioning of the system and the progress made in phasing out these plastic crates and pallets containing heavy metals after 5 years.

12. Monitoring & review

12.1 This regulation has resulted from a Commission Decision to remove the time limit on their derogation on heavy metals in plastic crates and pallets. The Commission intend to review the functioning of the system and the progress made in phasing out plastic crates and pallets containing heavy metals in 5 years.

13. Contact

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