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## EXPLANATORY NOTE

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

These Regulations revoke and re-enact with amendments the Detergents Regulations 2005. Regulation (EC) No 648/2004 of the European Parliament and of the Council on detergents (OJ No L104, 8.4.2004, p.1) (“Regulation 648/2004”) is directly applicable in the United Kingdom; and these Regulations provide for measures to be taken to enforce Regulation 648/2004 and for penalties for breach of that Regulation.

These Regulations allow the UK competent authority to assess applications for derogation and to charge fees to recover the economic cost of the work undertaken; the fees are outlined in Schedule 1 to these Regulations. This provision was not included in the Detergent Regulations 2005.

These Regulations also introduce a prohibition on the placing on the market of certain laundry detergents under Article 14 of Regulation 648/2004, being for the purposes of reducing pollution in water and contributing to the United Kingdom's achievement of the objectives of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for community action in the field of water policy (OJ No L327, 22.12.2000, p.1) (“Directive 2000/60/EC”).

Regulation 648/2004 applies to detergents and surfactants and regulation 2(1) defines the term “controlled product” to apply to detergents and surfactants. Regulation 2(1) defines other key terms.

Regulation 2(2) provides that terms used in the Regulations have the same meaning as those used in Regulation 648/2004.

Regulation 3 designates the Secretary of State as the UK competent authority for the purposes of Regulation 648/2004. The Chemicals Regulation Directorate of the Health and Safety Executive will carry out the role of the competent authority on behalf of the Secretary of State.

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 standard officers or environmental health officers, depending on the nature of the local authority. In Northern Ireland, the power is conferred on district councils and it is envisaged that it will be exercised by the council's 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 specified in regulation 4 as enforcement authorities 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 7(3) makes it an offence for a manufacturer not to comply with Article 9(3) of Regulation 648/2004.

Regulation 8 provides that a manufacturer must pay a fee (as set out in Schedule 1) to the competent authority each time an application for a derogation to place a controlled product on the market is submitted.

Regulation 9 introduces a prohibition on phosphates in detergents under Article 14 of Regulation 648/2004. The prohibition concerns the placing on the market of a laundry detergent intended for use in domestic laundry, if it has a weight of inorganic phosphate expressed as phosphorus greater than 0.4% of the weight of the detergent. This prohibition was introduced for

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the purposes of reducing pollution in water and contributing to the United Kingdom's achievement of the objectives of Directive [2000/60/EC](#).

Regulation 10 provides that enforcement authorities must enforce the duties in Regulation 648/2004 specified in Schedule 2 to these Regulations.

Regulation 11 and 12 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 contravention of these Regulations and also 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 is subsequently imported into the United Kingdom.

Regulation 13 gives a power of entry to authorised officers, and regulations 14, 15 and 16 provide for warrants to be issued in support of the power of entry. Regulation 17 makes supplemental provisions relating to the exercise of a power of entry.

Regulation 18 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 19 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 20 makes it an offence to obstruct or fail to co-operate with an authorised officer or to provide false or misleading information.

Regulation 21 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 22, 23 and 24 provide for offences involving third parties, bodies corporate, partnerships and unincorporated associations.

Regulation 25 provides for a defence of due diligence.

Regulation 26 provides for the mode of trial and maximum penalties for offences against these Regulations.

An offence against regulation 9 (prohibition on the sale of certain detergents) can be tried either with or without a jury and the maximum penalties are as follows—

- (a) 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);
- (b) following a conviction after a jury trial, the maximum penalty that can be imposed is an unlimited fine.

An offence against either regulation 20(1) (obstruction etc) or regulation 21 (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, £5,000).

Any other offence against these Regulations can be tried either with or without a jury and the maximum penalties are as follows—

- (a) 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;
- (b) 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 27, 28 and 29 provide for a right of appeal against any enforcement measures taken by the Secretary of State or an authorised officer.

Regulation 30 revokes the Detergents Regulations 2005.

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Impact assessments have been produced for the prohibition on the placing on the market of certain laundry detergents. These are available from the Water Quality Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.

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