

EXPLANATORY MEMORANDUM TO
THE REACH ENFORCEMENT (AMENDMENT) REGULATIONS 2014
2014 No. 2882

1. This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra), with the assistance of the Health and Safety Executive (HSE), and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument gives effect to an optional derogation in the EU REACH Regulation¹ to allow the supply and professional use in the UK of paint strippers based on the solvent dichloromethane (DCM). Without the instrument professional use of such paint strippers would be banned.

3. Matters of special interest

3.1 None.

4. Legislative Context

4.1 Worldwide there have been a number of deaths from use of paint strippers based on dichloromethane (DCM), particularly where they have been used without adequate ventilation, leading to narcotic effects.

4.2 The harmful effects of DCM and the availability of alternatives in many circumstances led to a Europe-wide restriction² on the supply and use of DCM-based paint strippers by consumers and by professionals outside industrial installations with appropriate control measures.

4.3 The restriction includes a derogation for EU member states to allow supply to, and use by, professionals outside industrial installations provided that appropriate control measures are put in place by member states. The UK wishes to take advantage of the derogation.

4.4 In determining how to take up the derogation, various options were assessed. In line with better regulation principles, the first options considered were non-legislative, e.g. industry-based training and assessment of competence. However, it was decided that such an approach would not incorporate the degree of Government involvement in the approval of competency required to invoke the derogation. The European Commission also confirmed that member states wanting to take advantage of the

¹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning Registration, Evaluation, Authorisation and Restriction of Chemicals.

² This restriction was originally given effect in Commission Decision No. 455/2009/EC, which amended Council Directive 76/769/EEC and which was adopted on 6 May 2009. The restriction was later incorporated into Annex XVII of the REACH Regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals) (EC) No 1907/2006 by Commission Regulation (EU) No. 276/2010 of 31 March 2010.

derogation must create a specific legal basis to do so. It was concluded that a non-regulatory approach would not satisfy the terms of the derogation. Furthermore, the general requirements for training and competence in existing domestic chemicals legislation, such as the Control of Chemicals Hazardous to Health Regulations, would not fulfil the requirement for specific training in DCM-based paint strippers required by the derogation.

4.5 The instrument therefore makes provision for the control measures necessary to give effect to the derogation and to ensure safe use, in line with UK Government policy to take full advantage of available derogations in EU law, where appropriate, for the benefit of UK industry.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 In Great Britain, occupational health and safety is a reserved matter and so formal agreement is not required from the Scottish Parliament or Welsh Assembly. Scottish and Welsh Government officials have, however, been consulted.

5.3. Occupational health and safety is devolved in Northern Ireland. Agreement from the Northern Ireland Assembly is therefore required.

6. European Convention on Human Rights

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

7. Policy background

7.1 The policy objective of REACH is a single market in the supply and use of chemicals on the basis of a high level of protection for people and the environment.

7.2 Consultation with suppliers and users of paint strippers indicated a need to retain professional use of DCM-based paint strippers. DCM-based paint strippers provide advantages compared to the available alternatives in certain situations. For example, the perceived ineffectiveness of alternatives has led to evidence of grinding or burning lead paint or paint with carcinogenic properties, increasing the risk of worker ill health. Furthermore, its capacity to effectively remove paint without damaging the substrate is valuable in the heritage sector, and its capacity to remove paint quickly also provides advantages in certain situations.

7.3 A comprehensive accreditation scheme for training providers, administered by Government, was also considered. However this was rejected because of the relatively high costs for UK businesses and Government.

7.4 As consultation confirmed a willingness on the part of suppliers and users of paint strippers containing DCM to establish the necessary training courses, the policy option taken forward is an open market for the provision of training together with a Government-approved competency assessment. In practice, HSE will issue a certificate of competence to professional users who have completed training and

passed a competence-based assessment of the safe use of DCM-based paint strippers. Professionals with a certificate of competence will then be able to purchase and use DCM-based paint strippers. The proposed instrument implements this policy objective by way of an amendment to the REACH Enforcement Regulations 2008 (SI 2008/2852). The instrument uses to the greatest extent possible the wording of the derogation and does not go beyond the terms of the derogation.

7.5 The proposed instrument is of interest to those using paint strippers professionally, but we do not consider that it raises important legal or political issues.

8. Consultation outcome

8.1 During 2011 - 2012 HSE conducted a comprehensive pre-consultation to assess wider industry opinion on making use of the DCM derogation. During this informal process HSE identified key stakeholders including those supplying DCM-based paint strippers and alternative formulations as well as various users of DCM (and the trade bodies representing these users) including painters, decorators, conservators, and those in the transport sector such as the aerospace and maritime sectors.

8.2 The Home Affairs Committee and the Reducing Regulation sub-Committee agreed an eight-week formal consultation. HSE published the consultation document on its website, and drew attention to the consultation on its homepage. HSE sent the consultation document to all stakeholders identified during the extensive pre-consultation, and notified all who have registered with HSE to receive notification of consultations. Bodies with a general interest such as the TUC and Federation for Small Business were also contacted and alerted to the consultation. Public consultation ended on 3rd January 2014.

8.3 A large majority of respondees (27 out of 30) supported taking up the derogation and provided examples where DCM-based products were not only essential for certain paint stripping tasks, but in many cases safer than alternative procedures. Two respondees (both manufacturers of DCM alternatives) considered that professional use of DCM-based paint strippers could not be justified.

8.4 Overall, the respondents to the public consultation confirmed that DCM-based paint strippers can be used safely so long as professionals are trained and competent in the use of appropriate control measures.

9. Guidance

9.1 In partnership with industry stakeholders, including trade associations such as the Painter and Decorators Association (PDA) and training bodies such as Construction Skills, guidance will be developed on the essential elements of training that professionals wishing to use DCM-based paint-stripper are required to undertake. Furthermore, internal guidance for HSE inspectors will be publicly available on the HSE website.

10. Impact

10.1 The impact on business, charities or voluntary bodies arising from the amendment to the REACH Enforcement Regulations 2008 (SI 2008/2852) is expected to be negligible. The instrument is expected to result in savings estimated at £2.3 million per annum, or £19 million in total (discounted at 3.5% over 10 years) as DCM-based paint strippers are typically cheaper than alternatives and require fewer applications. These savings will outweigh total one-off costs of around £1m to professionals from undertaking the required training and testing.

10.2 The impact on the public sector is also expected to be negligible.

10.3 A regulatory impact assessment is attached to this memorandum.

11. Regulating small business

11.1 The instrument applies to small business.

11.2 To minimise the impact on companies employing up to 20 people, the instrument assists small businesses such as painters and decorators and artisan craftsman by enabling them to continue to use DCM-based paint strippers which would otherwise be banned. To further minimise the burdens on small business HSE will provide the competency test without cost.

11.3 Businesses employing up to 20 people have been consulted on the proposed policy through trade associations, including the PDA. The mechanisms set out in the proposed instrument have been developed to ensure that they provide the lightest form of control on businesses, including small businesses, while fulfilling the legislative requirements necessary to give effect to the derogation. In practice, professionals with a certificate of competence, issued by the HSE after training, will be able to purchase and use DCM-based paint strippers. As the specified requirements for training and competence must be set out in domestic legislation, the only alternatives for small business to this proposal are a more costly accredited training and permissioning system or maintaining the ban on professional use of DCM-based paint strippers. Public consultation indicated that the HSE competency assessment system was the preferred option for small businesses.

12. Monitoring & review

12.1 The REACH Enforcement Regulations 2008 (SI 2008/2852)³ place a duty on the Secretary of State to review those Regulations within five years of commencement, to publish the findings, and to repeat a review every five years. As the review will cover the whole of those Regulations, a specific duty to review the DCM-based paint strippers amendment is unnecessary.

12.2 The DCM competence system will be subject to internal review on a 2-yearly basis to ensure that the process is working effectively. Success criteria will include the use of DCM-based paint strippers where appropriate with few, if any, fatalities or instances of significant ill-health in professional users.

³ Regulation 24.

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