

2008 No. 2108

HEALTH AND SAFETY

**The Export and Import of Dangerous Chemicals Regulations
2008**

<i>Made</i>	- - - -	<i>5th August 2008</i>
<i>Laid before Parliament</i>		<i>8th August 2008</i>
<i>Coming into force</i>	- -	<i>3rd September 2008</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the control of the import and export of goods(b), the notification and control of substances(c), the regulation and control of classification, packaging and labelling of dangerous substances and preparations(d), and measures relating to consumer protection(e).

The Secretary of State makes these Regulations in exercise of the powers conferred on him by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act(f).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for the references in—

- (a) these Regulations;
- (b) the Notification of New Substances Regulations 1993(g);
- (c) the Notification of New Substances Regulations (Northern Ireland) 1994(h);
- (d) the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002(i); and
- (e) the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2002(j)

(a) 1972 c.68. As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c.46), which provides that, despite the transfer to the Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(b) S.I. 1983/1706.

(c) S.I. 1981/1536.

(d) S.I. 1976/897.

(e) S.I. 1993/2661.

(f) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(g) S.I. 1993/3050.

(h) S.R. 1994 No. 6.

(i) S.I. 2002/1689, to which there are amendments not relevant to these Regulations.

(j) S.R. 2002 No.301, to which there are amendments not relevant to these Regulations.

to the Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals^(a) to be construed as including references to Annexes I and V of that Regulation as those Annexes are amended from time to time.

Citation, commencement and interpretation

1.—(1) These Regulations, which extend to the United Kingdom, may be cited as the Export and Import of Dangerous Chemicals Regulations 2008 and shall come into force on 3rd September 2008.

(2) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974^(b);

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978^(c);

“the Great Britain Executive” means the Health and Safety Executive established under section 10 of the 1974 Act;

“the Northern Ireland Executive” means the Health and Safety Executive for Northern Ireland established under Article 12 of the 1978 Order; and

“the Regulation” means Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals, of which Annexes I and V are as amended from time to time.

Appointment of designated national authorities

2. The Great Britain Executive and the Northern Ireland Executive shall be the designated national authorities—

(a) to act for the performance of the administrative functions required by the Regulation, in accordance with Article 4 of the Regulation; and

(b) to have the responsibility for controlling the import and export of chemicals listed in Annex I of the Regulation, in accordance with Article 17 of the Regulation.

False or misleading information

3. An exporter or importer shall not provide information pursuant to the requirements of any Article of the Regulation knowing it to be false or misleading in a material particular, or being reckless as to whether it is false or misleading in a material particular.

Enforcement and offences

4.—(1) Subject to paragraph (8), it shall be the duty of the Great Britain Executive and the Northern Ireland Executive to make adequate arrangements for the enforcement of the Regulation and of these Regulations, and accordingly references to the enforcing authority in the provisions applied for those purposes by paragraphs (3) and (6) shall be construed as references to the Great Britain Executive and the Northern Ireland Executive.

(2) Subject to paragraphs (8) and (9), the provisions of the 1974 Act specified in paragraph (3) shall apply for the purposes of the enforcement in Great Britain of the Regulation and these Regulations as if the Regulation and these Regulations were health and safety regulations for the purposes of that Act, and any function of the Great Britain Executive under any provision of the 1974 Act shall be exercisable as if the Regulation and these Regulations were health and safety regulations for the purposes of that Act.

(a) OJ No L 204, 31.7.08, p1.

(b) 1974 c. 37, as amended by S.I. 2008/960.

(c) S.I. 1978/1039 (N.I. 9).

- (3) The provisions of the 1974 Act referred to in paragraph (2) are—
- (a) sections 19 and 20 (appointment and powers of inspectors);
 - (b) sections 25A to 28 (Customs power to detain imports, power to indemnify inspectors, power to obtain information, information provided by Customs, and restrictions on disclosure of information); and
 - (c) sections 33 to 42 (provisions as to offences).
- (4) For the purposes of paragraph (2)—
- (a) section 25A of the 1974 Act shall have effect as if in subsection (1) of that section, after the word “substance”, there were inserted the words “or any article bound for export or any substance bound for export”; and
 - (b) section 27A of the 1974 Act shall have effect as if in subsection (1) of that section, after the word “imports”, there were inserted the words “or exports”.
- (5) Subject to paragraphs (8) and (9), the provisions of the 1978 Order specified in paragraph (6) shall apply for the purposes of the enforcement in Northern Ireland of the Regulation and these Regulations as if the Regulation and these Regulations were health and safety regulations for the purposes of that Order, and any function of the Northern Ireland Executive under any provision of the 1978 Order shall be exercisable as if the Regulation and these Regulations were health and safety regulations for the purposes of that Order.
- (6) The provisions of the 1978 Order referred to in paragraph 5 are—
- (a) Articles 21 and 22 (appointment and powers of inspectors);
 - (b) Articles 27A to 30 (Customs power to detain imports, power to indemnify inspectors, power to obtain information, information provided by Customs, and restrictions on disclosure of information); and
 - (c) Articles 31 to 39 (provisions as to offences).
- (7) For the purposes of paragraph (5)—
- (a) Article 27A of the 1978 Order shall have effect as if in paragraph (1) of that Article, after the word “substance”, there were inserted the words “or any article bound for export or any substance bound for export”; and
 - (b) Article 29A of the 1978 Order shall have effect as if in paragraph (1) of that Article, after the word “imports”, there were inserted the words “or exports”.
- (8) Contravention of Article 14(2) of the Regulation, which prohibits the export of chemicals and articles the use of which is prohibited in the Community for the protection of human health or the environment, as listed in Annex V of the Regulation, shall be subject to enforcement under the Customs and Excise Management Act 1979(a).
- (9) A failure to discharge a duty placed—
- (a) by the Regulation on a designated national authority; or
 - (b) by these Regulations on the Great Britain Executive or the Northern Ireland Executive,
- shall not be an offence under section 33(1)(c) of the 1974 Act or under Article 31(1)(c) of the 1978 Order.

Revocation and amendments

5.—(1) The Export and Import of Dangerous Chemicals Regulations 2005(b), the Export of Dangerous Chemicals Regulations (Northern Ireland) 1992(c) and the Export of Dangerous Chemicals (Amendment) Regulations (Northern Ireland) 1999(d) are revoked.

(a) 1979 c.2
(b) S.I. 2005/928.
(c) S.R. 1992 No.460.
(d) S.R. 1999 No.127

(2) In the Notification of New Substances Regulations 1993(a) in sub-paragraph (i) of regulation 3(2) for “Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals” substitute “Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals, Annexes I and V of which are as amended from time to time”.

(3) In the Notification of New Substances Regulations (Northern Ireland) 1994(b) in regulation 3(2)(h) for “Council Regulation EC 2455/92 on the export notification and information exchange of dangerous substances” substitute “Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals, Annexes I and V of which are as amended from time to time”.

(4) In the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002(c) in sub-paragraph (c) of regulation 3(4) for “Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals” substitute “Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals, Annexes I and V of which are as amended from time to time”.

(5) In the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2002(d), in sub-paragraph (c) of regulation 3(4) for “Council Regulation EC 2455/92 on the export notification and information exchange of dangerous substances” substitute “Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals, Annexes I and V of which are as amended from time to time”.

Signed by authority of the Secretary of State for Work and Pensions.

James Plaskitt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

5th August 2008

(a) S.I. 1993/3050.

(b) S.R. 1994 No. 6.

(c) S.I. 2002/1689, to which there are amendments not relevant to these Regulations.

(d) S.R. 2002 No.301, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make provision for the operation of Regulation (EC) No 689/2008 of the European Parliament and of the Council concerning the export and import of dangerous chemicals (OJ No L 204, 31.7.08, p1.) (“the Regulation”). They revoke and replace the Export and Import of Dangerous Chemicals Regulations 2005 (S.I. 2005/928), the Export of Dangerous Chemicals Regulations (Northern Ireland) 1992 (S.R. 1992/460) and the Export of Dangerous Chemicals (Amendment) Regulations (Northern Ireland) 1999 (S.R. 1999/127).

2. The 2005 Regulations made provision in Great Britain for the operation of Regulation (EC) No 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals (OJ No L63, 6.3.2003, p 1) as amended by Commission Regulation (EC) No 1213/2003 of 7th July 2003 (OJ No L 169, 8.7.2003, p27) and Commission Regulation (EC) No 775/2004 of 26th April 2004 (OJ No L 123, 27.4.2004, p27). These EC Regulations implemented within the European Community the Rotterdam Convention on the prior informed consent (PIC) procedure for certain hazardous chemicals and pesticides in international trade signed by the Community on 11th September 1998.

3. In its judgment of 10 January 2006 in Case C-178/03 (Commission v. Parliament and Council) (ECR [2006], I-107), the Court of Justice of the European Communities annulled Regulation (EC) No 304/2003 as it was based solely on Article 175(1) of the Treaty Establishing the European Community, ruling that both Articles 133 and 175(1) were the appropriate legal bases. However, the Court also ruled that the effects of Regulation (EC) No 304/2003 were to be maintained until the adoption of a new Regulation founded on the appropriate legal bases. The new Regulation is based on both Articles 133 and 175(1). Further elements have been incorporated into the Regulation following a report submitted by the European Commission to the European Parliament and the Council on the operation of Regulation (EC) No 304/2003 identifying a number of technical amendments that appeared to be necessary.

4. The main purposes of the Regulation are to implement within the European Community the Rotterdam Convention, to establish a similar procedure for chemicals which qualify for PIC status and to maintain in force a common export notification procedure for chemicals either banned for use or whose use is severely restricted within the Community. The chemicals concerned are listed in Annex I Parts 1, 2 and 3 to the Regulation, whose Article 22 provides for the review of Annex I by the European Commission at least every year. Article 22 further provides for the making of amendments to Annex I, and also to Annexes II, III, IV and VI which give particulars for administrative requirements under the Regulation, to be delegated to the European Commission. The European Commission acts as the central administrative authority for all member states for contact with other parties to the Convention and with non-parties. Designated national authorities are to be appointed to administer the Regulation within each member state.

5. Other provisions of the Regulation concern export close to expiry date, packaging, labelling, safety information, storage information, information on quantities traded, information and assistance to developing countries and transit information. The export of chemicals, listed in Annex V, whose use is prohibited within the Community for the protection of human health or the environment is prohibited.

6. Article 16(1) of the Regulation provides that chemicals for export shall be subject to the measures on packaging and labelling established in, or pursuant to, inter alia, Directives 67/548/EEC, 1999/45/EC, 91/414/EEC and 98/8/EC. The provisions of the named Directives have been incorporated into the law of the United Kingdom by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689, as amended by S.I. 2004/568 and S.I. 2005/2571), the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2002 (S.R. 2002/301, as amended by S.R. 2005/463 and S.R. 2006/173), the Plant Protection Products Regulations 2005 (S.I. 2005/1435, as amended by S.I. 2007/1941), the Plant Protection Products Regulations (Northern Ireland) 2005 (S.R. 2005/526, as amended by S.R. 2008/85), the Plant Protection Products (Scotland) Regulations (S.S.I. 2005/331, as amended by

S.S.I 2006/576), the Biocidal Products Regulations 2001 (SI. 2001/880, as amended by S.I. 2003/429, S.I. 2005/2451 and S.I. 2007/293) and the Biocidal Products Regulations (Northern Ireland) (S.R. 2001/422, as amended by S.I. 2003/429, S.I. 2005/2451 and S.R. 2007/190).

7. Regulation 2 appoints the Health and Safety Executive and the Health and Safety Executive for Northern Ireland to be the designated national authorities to perform the administrative functions required by the Regulation, in accordance with its Article 4, and to be the designated national authorities with responsibility for controlling the import and export of chemicals listed in Annex I to the Regulation, in accordance with its Article 17.

8. Regulations 3 and 4 provide for the enforcement of the Regulation and these Regulations. In regulation 4, paragraph (1) places on the Health and Safety Executive and the Health and Safety Executive for Northern Ireland the duty to arrange for their enforcement, and paragraphs (2) to (7) provide that the enforcement and offences provisions of the Health and Safety at Work etc. Act 1974 (1974 c.37) and the Health and Safety at Work (Northern Ireland) Order 1978 applies to them as if the Regulation and these Regulations were health and safety regulations made under section 15 of that Act, or Article 17 of that Order, subject to paragraph (8) which provides that breach of the export prohibition in Article 14(2) is subject to enforcement under the Customs and Excise Management Act 1979 (1979 c.2).

9. No Regulatory Impact Assessment has been prepared in relation to these Regulations as they have no impact on costs for businesses, charities or voluntary bodies.

STATUTORY INSTRUMENTS

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