2004 No. 371

ENVIRONMENTAL PROTECTION

The Controls On Pentabromodiphenyl Ether And Octabromodiphenyl Ether Regulations 2004

Made - - - - -	*12th February 2004*
Laid before Parliament	*16th February 2004*
Coming into force - -	*15th August 2004*

The Secretary of State for Environment, Food and Rural Affairs, being a Minister designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to measures relating to restrictions on the marketing and use of certain dangerous substances and preparations, and in exercise of the powers conferred upon her by section 2(2) of that Act(**c**), makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Controls on Pentabromodiphenyl Ether and Octabromodiphenyl Ether Regulations 2004 and shall come into force on 15th August 2004.

(2) These Regulations extend to Great Britain.

Interpretation

2.—(1) In these Regulations—

"octabromodiphenyl ether" means diphenylether, octabromo derivative $C_{12}H_2Br_8O$; and

"pentabromodiphenyl ether" means diphenylether, pentabromo derivative $C_{12}H_5Br_5O$.

(2) Expressions used in these Regulations which are also used in Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations(**d**), as last amended by Directive 2003/11/EC of the European Parliament and of the Council amending for the 24th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (pentabromodiphenyl ether, octabromodiphenyl ether)(**e**), shall have the meaning they bear in that Directive.

Scope

3. These Regulations do not apply to—

(a) the placing on the market or use of dangerous substances or preparations for research and development or analysis purposes;

(**a**) S.I. 1992/1711.
(**b**) 1972 c. 68.
(**c**) The power of the Minister to make regulations in relation to matters in or as regards Scotland is preserved by section 57(1) of the Scotland Act 1998.
(**d**) OJ No. L262, 27.9.1976, p. 201.
(**e**) OJ No. L42, 15.2.2003, p. 45.

(b) the carriage of dangerous substances or preparations by rail, road, inland waterway, sea or air;

(c) dangerous substances or preparations exported to a country which is not a Member State of the European Community nor Norway, Iceland or Liechtenstein; and

(d) dangerous substances or preparations in transit and subject to customs inspection, provided that they undergo no processing.

Prohibition on the placing on the market and use of pentabromodiphenyl ether and octabromodiphenyl ether

4.—(1) No person shall place on the market—

(a) pentabromodiphenyl ether or octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass;

(b) any articles which contain pentabromodiphenyl ether or octabromodiphenyl ether in concentrations higher than 0.1% by mass; or

(c) any articles which include any flame-retarded parts which contain pentabromodiphenyl ether or octabromodiphenyl ether in concentrations higher than 0.1% by mass.

(2) No person shall use pentabromodiphenyl ether or octabromodiphenyl ether as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass.

Offences and penalties

5.—(1) Any person who contravenes regulation 4, or causes or permits another person to contravene that regulation, shall be guilty of an offence.

(2) Any person guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment not exceeding three months; and

(b) on conviction on indictment, to a fine or to imprisonment not exceeding two years or to both.

(3) Where an offence under paragraph (1) committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

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

(4) In paragraph (3) "officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(5) If the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) Where an offence under paragraph (1) committed by a Scottish partnership is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(a) is a partner; or

(b) purports to act in that capacity,

that person as well as the Scottish partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

Alun Michael
Minister of State
12th February 2004 Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to European Parliament and Council Directive 2003/11/EC on pentabromodiphenyl ether and octabromodiphenyl ether ("the restricted substances"). This Directive makes amendments to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations. These Regulations extend to Great Britain and come into force on 15th August 2004.

Regulation 3 sets out exclusions from the scope of the Regulations.

Regulation 4(1)(a) prohibits the placing on the market of either of the restricted substances as a substance or as a constituent of substances or of preparations in concentrations higher than 0.1% by mass. Regulation 4(1)(b) prohibits the placing on the market of any articles which contain either of the restricted substances in concentrations higher than 0.1% by mass. Regulation 4(1)(c) prohibits the placing on the market of any articles which include any flame retardant parts which contain either of the restricted substances in concentrations higher than 0.1% by mass. The use of the restricted substances in concentrations higher than 0.1% by mass is also prohibited (regulation 4(2)).

Regulation 5 makes it an offence to contravene regulation 4 (regulation 5(1)) and specifies the maximum penalties for such an offence (regulation 5(2)). It also provides that where an offence is committed by a body corporate or a Scottish partnership, specified individuals may also be guilty of that offence if it were committed with that person's consent or connivance, or as a result of their neglect (regulation 5(3)-(6)).

A Regulatory Impact Assessment and a Transposition Note in relation to these Regulations have been prepared and placed in the library of each House of Parliament. Copies of either of these documents can be obtained from Defra, Chemicals and GM Policy Division, Ashdown House, 123 Victoria Street, London SW1E 6DE.

STATUTORY INSTRUMENTS

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