EXPLANATORY MEMORANDUM TO

THE COSMETICS (SAFETY) (AMENDMENT) (No 3) REGULATIONS 2006

2006 No. 2907

1. This explanatory memorandum has been prepared by the Department of Trade & Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The draft Regulations amends a drafting error in the Cosmetic Products (Safety) (Amendment) (No. 2) Regulations 2006 (SI 2006/2231) which prohibited the placing on the market or the supply of certain substances in hair dyes after 31st November 2006. The draft Regulations correct that date to 30th November 2006.

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

3.1 The Cosmetic Products (Safety) (Amendment) (No.2) Regulations 2006 were the subject of a request for a memorandum from the Committee, dated 18th October 2006. The DTI submitted a memorandum in response on 24th October 2006.

4. Legislative Background

4.1 These Regulations are made under section 11 of the Consumer Protection Act 1987 to implement the Directive.

5. Extent

5.1 Consumer safety is a reserved matter and therefore the Regulations will apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 A consultation exercise was conducted from 31 July –7 August 2006 on the draft of Cosmetic Products (Safety) (Amendment) (No. 2) Regulations 2006 (SI 2006/2231). The consultation document was sent to manufacturers, trade associations, consumer groups, individuals and other interested parties. The consultation document was also published on the DTI website at:
http://www.dti.gov.uk/consultations/page32644.html

8. Regulatory Impact

8.1 A Regulatory Impact Assessment was prepared for Cosmetic Products (Safety) (Amendment) (No. 2) Regulations 2006 (SI 2006/2231) and a copy is attached to this memorandum.

9. Contact

9.1 Ian Parsons at the Consumer and Competition Policy Directorate, Department of Trade and Industry, tel 020 7215 0360 or e-mail: ian.parsons@dti.gsi.gov.uk can answer any queries regarding the instrument.

DEPARTMENT OF TRADE AND INDUSTRY
November 2006

Regulatory Impact Assessment

Amendment No2 to The Cosmetic Products (Safety) Regulations 2006

Proposal

To transpose Commission Directive 2006/65/EC into UK Law.
Purpose and intended effect of measure

Objective

The primary aim of the Cosmetic Products (Safety) Regulations 2004 (as amended) is to protect public health by requiring cosmetic products to meet the provisions of the Regulations, including restricting the use of certain cosmetic ingredients. The Commission Directive forms part of the strategy on hair dyes to ensure that only safe substances are used in finished hair dye products. Therefore 22 substances, numbered 1212-1233 are added to the list of banned ingredients in Annex II, 4 substances are deleted from column g of Part 2 of Annex III and the date of restriction on the other substances listed is amended to 31.12.2007.

Risk Assessment

Options

Option (i): to fully implement the provisions of the proposed Directive, if adopted.

Option (ii): to request industry to adopt voluntary measures

Option (iii): to do nothing

Option (i) is the recommended option. The proposed Directive is consistent with UK policy and practice on these issues. It guarantees a high level of consumer safety, restricting the use of ingredients identified as carcinogenic.

Option (ii) under the Cosmetics Directive, substances used as ingredients in cosmetic products are subject to approval by the Scientific Committee. Those not allowed or allowed with restrictions are in a positive schedule. Voluntary measures would not guarantee knowledge of the restrictions on use of the ingredients.

Option (iii) would not make the information available. This could possibly mislead manufacturers and consumers as to the safety of these particular ingredients.

Benefits

Economic

The Directive bans the use of certain substances from use in hair dyes. Certain hair dyes have been identified as being potentially carcinogenic and the continued use of all hair dyes has to be supported by scientific data and safety assessments. The 22 substances being banned are not being supported by the cosmetics industry. The extension on the restriction on other substances allows for their continued use in hair dyes until the safety assessments on them have been fully evaluated.

Environmental

No specific benefits to the environment have been identified.

Social

The Directives if adopted will improve consumer protection. The hair dyes strategy is aimed at assessing all substances that can be used in hair dyes and banning from use those that are identified as being potentially carcinogenic.

Costs

The banned substances are not used by manufacturers. The ban will not impose additional costs in the reformulation of certain finished products. There would be no additional costs for consumers. The extension of the restriction on the other substances allows manufacturers to continue to use them while the safety assessment process is completed.

Equity & Fairness

The overriding consideration of the Directive is the safety of consumers. The Directive will impact equally across the particular sectors of industry affected and will be implemented in all Member States.

Consultation with small business: the Small Firms Impact Test

On the advice of the Small Business Service, stage one of the Small Firms Impact Test was carried out by contacting small businesses and the industry trade association. We were unable to identify any disproportionate impact on small firms as a result of this proposal. Nevertheless if, during the proposed consultation we identify impacts or unintended consequences of the proposal on small firms, further work to assess this impact will be undertaken and the position reviewed.

Competition Assessment

Stage One of the Competition Assessment was undertaken. When applying the Competition Assessment filter, the results indicated that, as the proposed Directive would not introduce any new restrictions, it is unlikely to have the effect of distorting or removing competition in the market. The Directives, if adopted, would not serve as a barrier to entry for potential entrants nor impose substantially more cost on some firms than others.

Enforcement & Sanctions

The Cosmetic Products (Safety) Regulations 2004, which are amended by these Regulations, are enforced by local authorities' trading standards departments. It is the responsibility of the manufacturers of cosmetic products made in the EU or importers of finished cosmetic products to ensure that products comply with the Regulations.

Consultation

Within Government

The relevant interested department, the Department of Health was consulted about these proposals during the consultation exercise.

Public Consultation

Because of the 1 September implementation date, DTI conducted a short consultation for the implementation of the Cosmetic Product (Safety) (Amendment) (No 2) Regulations 2006, contacting key stakeholders such as the Cosmetics, Perfumers and Toiletries Association and those who have responded to consultations to previous amendments to the Cosmetic Regulations.

Summary & Recommendation

Our recommendation is that the option chosen offers the best level of public health protection by making the Regulation.

Our legal obligations under the Treaty of Rome compel us to implement this Directive into UK law.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Minister responsible

Malcolm Wicks
Minster for Energy

15th August 2006

Contact Point

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