

Health and Safety Commission Paper		HSC/05/14	
Meeting Date:	8 February 2005	Open Gov. Status:	Fully Open
Type of Paper:	Below the line	Paper File Ref:	
Exemptions:	None		

## HEALTH AND SAFETY COMMISSION

### Proposals for The Export and Import of Dangerous Chemicals

#### Regulations 2005

#### A Paper by Graham Tompkins

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Cleared by Jonathan Rees on 14/01/2005

#### Issue

1. Report on the consultation for new enforcement Regulations to replace the Export of Dangerous Chemicals Regulations 1992 - SI No 2415, and agreement to proceed.

#### Timing

2. Routine.

#### Recommendation

3. You are invited to:

- (i) note the outcome of the consultation on The Export and Import of Dangerous Chemicals Regulations 2005;
- (ii) agree to submit the draft Regulations (Annex A) to the Minister for Work; and
- (iii) agree that the Chair should write as drafted (Annex B) to the Minister for Work.

#### Background

4. Following agreement amongst EU Member States EC Regulation 304/2003 was published in the Official Journal in January 2003. The new Regulation replaces EC Regulation 2455/92 that established a common system of notification and information transfer for certain dangerous chemicals due for export to third countries. EC Regulation 304/2003 is a direct acting measure which requires no legislation in the UK for implementation. However MS do have to make enforcement arrangements and this is the purpose of the proposed UK Regulations which were subject to consultation.

5. Annex 1 of EC Regulation 304/2003 is a list of substances that are banned from use or severely restricted within the Community. Regulation 304/2003 requires an exporter to submit a notification to the National Authority of the importing country (via HSE) before they export any of these substances. Annex 1 is to be updated at least once a year, in practice it is anticipated that this will in fact happen twice a year. Following the consultation, HSE Solicitors sought Law Officers advice about the drafting of an enforcement regulation that could take account of amendments to Annex1 without being itself updated. However, we were advised that we cannot draft such a regulation. We will therefore, issue amending regulations following adaptations to Annex1.

## **ARGUMENT**

6. The consultation exercise elicited 11 responses from individual companies, trade associations, trade unions, public sector bodies and private individuals of which three made no comments; five made exclusive comments in relation to EC304/2003; three made multiple comments ranging from, the proposal to grant HSE powers to comments on the explanatory note and background of the CD.

7. Although the comments relating to EC 304/2003 are outside the scope of the consultation they provide us with valuable views in relation to future guidance and the maintenance of the EU scheme.

8. Octel Corporation was the only company to comments on the issue under consultation (i.e. the enforcement arrangements). They argued that UK regulations were premature and unnecessary. We have explained to the company that this is not the case; we are treaty bound to set in place the arrangements to a strict deadline.

9. There were no comments on the detail of the proposed regulations. Overall therefore we propose:

1. to reply to each respondent on the comments made.
2. to reflect concerns over the basic EC regulation and guidance in our future negotiating line when these are discussed in the EC.
3. to recommend progression of the draft regulations without change.

## **Consultation**

10. The Regulation requires limited duties to be undertaken by HM Customs and Excise. Officials and Lawyers of Customs and Excise have been consulted and have agreed to the arrangements.

## **Presentation**

11. The Regulations will be publicised with a press release.

## **Costs and Benefits**

12. As discussed in the paper that commissioned the consultation we did not consider a Regulatory Impact Assessment (RIA) necessary as the proposed Regulations are cost neutral and will not introduce any new requirements.

## **Financial/Resource Implications for HSE**

13. We have a legal obligation to amend these Regulations in light of changes to Annex 1. This will involve a limited amount of policy and lawyer resource; approximately £12,000 following each adaptation to Annex 1. This can be contained within existing provision.

14. There has been no enforcement activity in the 11 years of the previous system and no change is foreseen.

**Environmental Implications**

15. None

**Action**

16. You are invited to agree the recommendations at paragraph 3.

## STATUTORY INSTRUMENTS

2005 No. XXX

## HEALTH AND SAFETY

The Export and Import of Dangerous Chemicals  
Regulations 2005*Made* - - - - *Day Month 2005**Laid before Parliament* *Day Month 2005**Coming into force* - - *Day Month 2005*

The Secretary of State, being the 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), in exercise of the powers conferred on him by that section(f) hereby makes the following Regulations:

**Citation, Commencement and interpretation**

1.—(1) These Regulations, which extend to Great Britain, may be cited as the Export and Import of Dangerous Chemicals Regulations 2005 and shall come into force on [ ] 2005.

(2) In these Regulations—

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

“the Commission” means the Health and Safety Commission established under section 10 of the 1974 Act;

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

“the Regulation” means Regulation (EC) No. 304/2003 of the European Parliament and of the Council of 28<sup>th</sup> January 2003 concerning the export and import of dangerous chemicals(h), as amended by Commission Regulation (EC) No. 1213/2003 of 7<sup>th</sup> July 2003(i) and Commission Regulation (EC) No. 775/2004 of 26<sup>th</sup> April 2004(j).

(a) 1972 c. 68.

(b) S.I. 1983/1706.

(c) S.I. 1981/1536.

(d) S.I. 1976/897.

(e) S.I. 1993/2661.

(f) 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.

(g) 1974 c. 37, sections 25A and 27A were inserted by the Consumer Protection Act 1987 (c. 43) Schedule 3, paragraphs 3 and 4, and sections 28(1)(a) and 33(1)(h) were amended by the Consumer Protection Act 1987 Schedule 3, paragraphs 5 and 6.

(h) O.J. No. L 63, 6.3.2003, p.1.

(i) O.J. No. L 169, 8.7.2003, p.27.

(j) O.J. No. L 123, 27.4.2004, p.27.

## **Appointment of designated authorities**

2. The Commission shall be the designated national authority—
- (a) to act for the performance of the administrative functions required by the Regulation, in accordance with Article 4 thereof; and
  - (b) that shall have the responsibility of controlling the import and export of chemicals listed in Annex I of the Regulation, in accordance with Article 17 thereof.

## **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 (5), it shall be the duty of the Executive to make adequate arrangements for the enforcement of the Regulation and of these Regulations, and accordingly a reference to the enforcing authority in the provisions applied for those purposes by paragraph (3) shall be construed as a reference to the Executive.

(2) Subject to paragraphs (5) and (6), 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 they were health and safety regulations for the purposes of that Act, and any function of the Commission under any provision of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if the Regulation and these Regulations were health and safety regulations for the purposes of that Act.

(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) 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), and not as a contravention of a health and safety regulation.

(6) A failure to discharge a duty placed—

- (a) by the Regulation on a designated national authority; or
- (b) by these Regulations on the Executive,

shall not be an offence under section 33(1)(c) of the 1974 Act.

## **Revocation and Amendments**

5.—(1) The Export of Dangerous Chemicals Regulations 1992(b) are revoked.

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(a) 1979 c. 2.

(b) S.I. 1992/2415.

(2) In the Notification of New Substances Regulations 1993<sup>(a)</sup> in sub-paragraph (i) of regulation 3(2) for the reference “Council Regulation EC 2455/92 on the export notification and information exchange of dangerous substances” substitute the reference “Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals”.

(3) In the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002<sup>(b)</sup> in sub-paragraph (c) of regulation 3(4) for the reference “Council Regulation EC 2455/92 on the export notification and information exchange of dangerous substances” substitute the reference “Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals”.

Signed by authority of the Secretary of State.

Day Month 2005

*Jane Kennedy*  
Minister of State,  
Department for Work and Pensions

#### **EXPLANATORY NOTE**

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

**1.** These Regulations, which apply to Great Britain, make provisions which are necessary for the operation in Great Britain of Regulation (EC) No. 304/2003 of the European Parliament and of the Council concerning the export and import of dangerous chemicals (O.J. No. L63, 6.3.2003, p.1) as amended by Commission Regulation (EC) No. 1213/2003 of 7<sup>th</sup> July 2003 (O.J. No. L 169, 8.7.2003, p.27) and Commission Regulation (EC) No. 775/2004 of 26<sup>th</sup> April 2004 (O.J. No. L 123, 27.4.2004, p.27) (“the Regulation”). They revoke and replace the Export of Dangerous Chemicals Regulations 1992 (S.I. 1992/2415).

**2.** The main purposes of the Regulation are to implement 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 11<sup>th</sup> September 1998, 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.

**3.** 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 whose use is prohibited within the Community for the protection of human health or the environment, listed in Annex V, is prohibited.

**4.** 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

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<sup>(a)</sup> S.I. 1993/3050.

<sup>(b)</sup> S.I. 2002/1689, as amended by S.I. 2004/568.

Great Britain by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689, as amended by S.I. 2004/568), the Plant Protection Products Regulations 2003 (S.I. 2003/3241, as amended by S.I. 2004/1810), the Plant Protection Products (Scotland) Regulations (S.S.I. 2003/579, as amended by S.S.I. 2004/368), and the Biocidal Products Regulations 2001 (S.I. 2001/880, as amended by S.I. 2003/429).

**5.** Regulation 2 appoints the Health and Safety Commission to be the designated national authority to act for the performance of the administrative functions required by the Regulation, in accordance with its Article 4, and to be the designated national authority that shall have the responsibility of controlling the import and export of chemicals listed in Annex I to the Regulation, in accordance with its Article 17.

**6.** Regulations 3 and 4 provide for the enforcement of the Regulation and these Regulations. Regulation 4(1) places on the Health and Safety Executive the duty to arrange for their enforcement, and 4(2), (3) and (4) provide that the enforcement and offences provisions of the Health and Safety at Work Act 1974 (1974 c. 37) shall apply to them as if they were health and safety regulations made under section 15 of that Act, subject to paragraph 4(5) which provides that breach of the export restriction in Article 14(2) shall be subject to enforcement under the Customs and Excise Management Act 1979 (1979 c.2), and not as a contravention of a health and safety regulation.

**7.** No Regulatory Impact Assessment has been prepared in relation to these Regulations.

Jane Kennedy  
Minister for Work

**Proposal for the Export and Import of Dangerous Chemicals Regulations 2005**

At its meeting on 8 February 05 the Health and Safety Commission agreed to recommend to you proposals relating to the import and export of dangerous chemicals. Draft Regulations and an explanatory memorandum accompany this letter.

The proposed Regulations provide enforcement powers in relation to EC Regulation 304/2003, which is already binding in the UK. I understand Northern Ireland is intending to implement similar penalties.

During the consultation only a small number of responses were received. Comments related primarily to the EU Regulation rather than the UK enforcing regulation. A Regulatory Impact Assessment (RIA) was not necessary as the proposed new Regulations are cost neutral and will not introduce any new requirements.

On behalf of the Commission I ask you to sign the attached draft Regulations to give them legal effect.

HSC Chair

## **EXPLANATORY MEMORANDUM**

### **PROPOSALS FOR THE EXPORT AND IMPORT OF DANGEROUS CHEMICALS REGULATIONS 2005**

#### **Background**

EC Regulation 304/2003 replaced 2455/92 on the 7 March 03. The new Regulation maintains the control measures of 2455/92 and implements a number of new measures sufficient to allow the European Community to;

- (i) implement the Rotterdam Convention - an internationally recognised scheme agreed 1998 for the application of the Prior Informed Consent (PIC) procedure, for certain hazardous chemicals and pesticides in international trade; and
- (ii) reinforce the existing controls by including-
  - (a) the separation of chemicals into sub-categories for pesticides and industrial chemicals for professional and consumer use;
  - (b) banning the export of substances from the Community that are banned for use within the Community;
  - (c) requiring chemicals to be exported at least six months before their expiry date;
  - (d) extending the requirements of information exchange and technical assistance, and
  - (e) adding 22 substances banned or severely restricted within the Community to the list requiring export notification.

#### **What will the Regulations do?**

The Export and Import of Dangerous Chemicals 2005 will make any breach of the requirements or prohibitions imposed on the exporter by EC 304/2003; or a failure to produce the information required under the new Regulation subject to the enforcement penalties of the 1974 Health and Safety at Work etc Act.

#### **Why do we need the Regulations?**

EC Regulation 304/2003 is already binding in the UK. The Regulations will implement enforcement provisions (as required by Article 18 of the EC Regulation) for non-compliance of the provisions of the EC Regulation in Great Britain.

#### **What will they Cost?**

The new Regulations are *cost neutral*, there are no extra cost or benefit implications.

#### **Could the desired effect be achieved by other means?**

No. The Export and Import of Dangerous Chemicals 2005 is required to implement the measures and requirements of EC 304/2003 in GB.

**Who will be affected by the Regulations and why?**

The Regulation requires limited duties to be undertaken by HM Customs and Excise. Officials and Lawyers of Customs and Excise have been consulted and have agreed to enforce them.

**Timing**

Because the new Regulations are cost neutral the issue of a transitional period does not arise. Therefore it is proposed that the Regulation should come into force 21 days after they are laid in Parliament.