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HEALTH AND SAFETY COMMISSION

Renegotiating the European Regulation 304/2003/EC concerning the export and import of certain dangerous chemicals

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Issue

1. In November, the European Commission expects to produce a proposal revising Regulation 304/2003/EC concerning the export and import of certain dangerous chemicals. HSE will lead negotiations for the UK.
2. The 2003 Regulation had a three-year review clause, which will allow Member States to make changes in light of practical experience. This coincides with the European Court of Justice's decision in January that the Regulation's Treaty base should be broadened. There are no legal implications because the existing Regulation remains in force.

Timing

3. Routine

Recommendation

4. That the Commission note the information provided

Background

The UN Treaty

5. Regulation 304/2003 is a directly acting Regulation that needs no UK implementing legislation. This Regulation ratifies in the EU the United Nations' (UN) Rotterdam Convention on "Prior Informed Consent" (PIC).
6. PIC includes a list of chemicals (largely pesticides) that are subject to a protocol (the PIC list).
7. Under PIC, countries into whose jurisdiction the listed chemicals are being imported are given information about them and can forbid the informing country to export them
8. Companies exporting certain dangerous chemicals must abide by a protocol and packaging and labelling requirements
9. Member States, when negotiating 304/2003/EC, pressed the European Commission to change the Treaty base from Article 175 (environmental) to Article 133 (external trade). The European Commission changed it, but appealed the decision to the European Court of Justice. The Court ruled that the Treaty base

should be based both on environmental and external trade provisions. The new proposal will amend the Treaty base.

The European Union's Proposed Regulation

10. Although Regulation 304/2003/EC does not need to be implemented, it does require the UK to appoint a Designated National Authority (to manage the scheme) and to provide penalties for non-compliance. HSE is the UK DNA and shares the enforcement responsibility with HM Revenue and Customs.
11. In 304/2003/EC, the European Union went beyond the requirements of the Rotterdam Convention, resulting in additional burdens to industry. Early drafts of the proposed amended Regulation indicate that the European Commission intends to align the new Regulation more closely with the Rotterdam Convention, altering a process that has caused industry undue expense and frustration.
12. Although the new Regulation will act directly on Member States, we will still have to prepare new Enforcement Regulations that will allow HSE and HM Revenue and Customs to continue to enforce this Regulation and will re-appoint HSE as the Designated National Authority (the Competent Authority).

Consultation

13. HSE will consult the 20 or so companies that have notified exports to the UK DNA. HSE will also consult with Trade Unions, the Chemical Industries' Association and other relevant trade associations.
14. In developing the UK negotiating strategy, HSE will involve all relevant Government Departments, the devolved administrations who now have an interest because of the change of Treaty base and particularly DfID, Defra and DTI.

Presentation

15. There are no presentation issues.

Costs and Benefits

16. In the past, if a substance were illegally imported into the UK (under PIC), and the exporting company refused to remove the substance, Government would either have to destroy it or allow the import. The safe destruction of thousands/hundreds of tonnes of dangerous chemicals can be expensive. With the new EC Regulation we will need again to implement penalties for non-compliance. Under the enforcement provision we intend to explore the possibility of including a power to require the importer to pay for the destruction in such circumstances.
17. Although enforcing Regulations may shift the cost of disposal from the Government to the importer, we do not envisage the new Regulation will create any new costs. We are drafting a Consultation Document and RIA.

Environmental Implications

18. The new Treaty base will now include the Environment. This will mean that Devolved Administrations will now have a direct interest.