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# Proposals for the Export and Import of Dangerous Chemicals Regulations 2004

This consultative document is issued by the Health and Safety Commission in compliance with its duty to consult, under section 50(3) of the Health and Safety at Work etc. Act 1974, bodies which appear to it to be appropriate before submitting proposals for the making of Regulations and the issue of Approved Codes of Practice.

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to reach him no later than **2 July 2004**

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this consultative document will be lodged with the Health and Safety Executive's Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fee to cover costs.

Responses to this consultative document are invited on the basis that anyone submitting them agrees to their response being dealt with in this way. Responses, or part of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases, a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

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CONSULTATIVE  
DOCUMENT



**CONSULTATIVE DOCUMENT ON PROPOSALS FOR THE EXPORT  
AND IMPORT OF DANGEROUS CHEMICALS REGULATIONS 2004**

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## **PROPOSALS FOR THE EXPORT AND IMPORT OF DANGEROUS CHEMICALS REGULATIONS 2004**

### **INTRODUCTION**

1. This Consultative Document seeks comments on new Regulations proposed by the Health and Safety Commission to replace, The Export of Dangerous Chemicals Regulations 1992 (S.I. No 2415). The new Regulations will be known as The Export and Import of Dangerous Chemicals Regulations 2004.

### **BACKGROUND**

2. The Export of Dangerous Chemicals Regulations 1992 came into force on 29 November 1992. The Regulations set the enforcement penalties necessary to implement EC Regulation 2455/92 - The export and import of certain dangerous chemicals.

3. Regulation 2455/92 implemented a joint United Nations Environment Programme (UNEP) and the Food and Agriculture Organisation of the United Nation (FAO) scheme on trade in certain dangerous chemicals. The aim of the scheme was to address concerns over exports of dangerous chemicals to developing countries, which may not have adequate controls on the import and sales of such chemicals.

4. Regulation 2455/92 introduced three main control measures -

- (i) an export notification system for chemicals banned or severely restricted within the Community;
- (ii) participation in the UNEP/FAO Prior Informed Consent (PIC) procedure, and
- (iii) exported chemicals must be packaged and labeled to at least the standard of EU legislation.

5. Furthermore Member States were required to designate a National Authority (DNA) to administer the requirements of the Regulation. SI 2415 appointed the Health and Safety Commission (HSC) for the UK.

### **EC REGULATION 304/2003 – THE EXPORT AND IMPORT OF DANGEROUS CHEMICALS**

6. EC Regulation 304/2003 replaced 2455/92 on the 7 March 2003. 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 chemicals from Community substances 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.

7. Consequently SI No 2415 will need to be amended so that the measures and requirements in EC 304/2003 can be implemented in the UK.

### **UK Regulations**

8. In order to implement EC Regulation 304/2003 the HSC propose to make The Export and Import of Dangerous Chemicals Regulations 2004 which will:

- (a) Reappoint the HSC as the UK Designated National Authority;
- (b) 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.

### **TRANSITIONAL PERIOD**

9. Because the new regulations are cost neutral compared with the previous measure we will bring them into force as soon as possible without a transitional period.

### **COSTS AND BENEFITS**

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

### **COMMENTS WELCOMED**

11. As explained above, the need for new Regulations stem from a new EC Regulation, which is already binding in the UK. We discussed the detail of EC 304/2003 with stakeholders during the negotiations in Europe and prior to the formal EC agreement and we believe that there is broad acceptance of them.

We are now seeking views on the new enforcement Regulations only. Please could we have these by 2 July 2004. Please write or e-mail to:

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 STATUTORY INSTRUMENTS
 

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## 2004 No. XXX

## HEALTH AND SAFETY

 The Export and Import of Dangerous Chemicals  
 Regulations 2004

*Made* - - - - *Day Month 2004*

*Laid before Parliament* *Day Month 2004*

*Coming into force* - - *Day Month 2004*

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 2004 and shall come into force on [ ] 2004.

(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).

**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

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(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.

- (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**

5. The Export of Dangerous Chemical Regulations 1992(b) are revoked.

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(a) 1979 c. 2.  
(b) S.I. 1992/2415.

Signed by authority of the Secretary of State.

Day Month 2004

*Des Browne*  
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 to give full effect to 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) (the Regulation). 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 similar procedures for chemicals where they qualify for PIC status; and to continue to maintain a common export notification procedure for chemicals either banned for use or whose use is severely restricted within the Community. 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.
2. Other provisions of the Regulation include requirements to ensure that all chemicals are exported no later than six months before their expiry date; to ensure that Community rules on packaging, labelling, and safety information shall apply to exports of dangerous chemicals, and that pesticides are labelled with storage information appropriate to the country of destination; to prohibit the export of certain chemicals whose use is prohibited within the Community for the protection of human health or the environment; and for the provision by importers and exporters of information about the quantities of chemicals covered by the Regulation in international trade. Provision is also made for information and assistance to be made available to developing countries.
3. 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 Great Britain by the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689); the Plant Protection Products Regulations 2003 (S.I. 2003/3241); the Plant Protection Products (Scotland) Regulations (S.S.I. 2003/579); and the Biocidal Products Regulations 2001 (S.I. 2001/880, as amended by S.I. 2003/429).
4. Regulation 2 appoints the Health and Safety Commission to be the designated national authority both to act for the performance of the administrative functions required by the Regulation, in accordance with 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 of the Regulation, in accordance with Article 17.
5. Regulation 3 prohibits an exporter from providing information pursuant to the requirements of the Regulation knowing it to be false or misleading in a material particular or being reckless as to whether it is so.
6. Regulation 4(1) places on the Health and Safety Executive the duty to arrange for the enforcement of the Regulation and these Regulations, and regulations 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 the enforcement of the Regulation and these Regulations 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. These Regulations revoke the Export of Dangerous Chemicals Regulations 1992 (S.I. 1992/2415).



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# CONSULTATIVE DOCUMENT

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The full text of this and other Consultative Documents can be viewed and downloaded from the Health and Safety Executive web site on the internet:

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