STATUTORY RULES OF NORTHERN IRELAND

2013 No. 206

HEALTH AND SAFETY

The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2013

Made - - - -	*2nd August 2013*
Coming into operation	*1st September 2013*

The Department of Enterprise Trade and Investment ("the Department") [F1], is designated for the purposes of section 2(2) of the European Communities Act 1972 ("the 1972 Act") [F2] in relation to—

(a) the notification and control of substances and to measures relating to biocides [F3];

(b) the regulation and control of classification, packaging and labelling of dangerous substances and preparations and for measures relating to consumer protection [F4].

The Department, being the Department concerned [F5] makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act [F6] and Articles 17(1) to (6) [F7] and 55(2) of, and paragraphs 1(1) and (4), 3(1), 5, 12(1) and 14(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978 [F8]("the 1978 Order").

The Regulations give effect without modifications to proposals submitted to the Department by the Health and Safety Executive for Northern Ireland under Article 13(1A) [F9] of the 1978 Order after the Executive had carried out consultations in accordance with Article 46(3) [F10] of the 1978 Order. These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for references in these Regulations to—

(a) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 [F11] concerning the making available on the market and use of biocidal products to be construed as including references to Annexes I to IV of that Regulation as those Annexes are amended from time to time; and

(b) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 [F12] on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No 1907/2006, to be construed as including references to Articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third sub-paragraphs and Annexes I to VII of that Regulation as those Articles and Annexes are amended from time to time.

F1 Formerly the Department of Economic Development; *see*S.I. 1999/283 (N.I. 1), **Article 3(5)**; that Department was formerly the Department of Manpower Services; *see*S.I. 1982/846 (N.I.11), **Article 3**
F2 1972 c.68
F3 S.I. 1981/1536 for the designation in relation to the notification and control of substances and S.I. 1999/2788 in relation to measures relating to biocides
F4 S.I. 1976/897 for the designation in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and S.I. 1993/2661 in relation to measures relating to consumer protection
F5 *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
F6 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51)
F7 Article 17 shall be read with S.I. 1992/1728 (N.I.17), **Articles 3(2)** and 4(2)
F8 S.I. 1978/1039 (N.I. 9); the general purposes of Part II referred to in Article 17(1) were extended by S.I. 1992/1728 (N.I. 17), **Articles 3(1)** and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), **Article 6(1)** and Schedule 1, paragraph 19
F9 Article 13(1A) was substituted by S.I. 1998/2795 (N.I. 18), **Article 4**
F10 Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), **Article 6(1)** and Schedule 1, paragraphs 8 and 18 and the Health Protection Agency Act 2004 (c.17), **section 11** and Schedule 3 paragraph 10
F11 OJ No L167, 27.06.12, p1
F12 OJ No L353, 31.12.08, p1

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2013.

2.—(1) Except as provided by paragraphs (2) and (3) these Regulations shall come into operation on 1st September 2013.

(2) Chapter 2 of Part 3 of these Regulations shall come into operation on 1st June 2015.

(3) In so far as they apply to Chapter 2 of Part 3 of these Regulations or the CLP Regulation, regulations 4, 18 to 21 and Schedule 2 shall come into operation on 1st June 2015.

Application within the territorial sea

3. Within the territorial sea these Regulations shall apply only to and in relation to the premises and activities to which any of paragraphs 2 to 9 of Schedule 5 applies.

Interpretation

4.—(1) In these Regulations—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978;

"the Executive" means the Health and Safety Executive for Northern Ireland;

"the 1999 Regulations" means the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 [F13];

"the 2009 Regulations" means the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 [F14];

"the Biocides Regulation" means Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products, of which Annexes I to IV are to be read as amended from time to time;

"the CLP Regulation" means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, of which Articles 6(5), 11(3), 12, 14, 18(3)(b), 23, 25 to 29, 35(2) second and third sub-paragraphs and Annexes I to VII are to be read as amended from time to time;

"the Commission" means the Commission of the European Union;

"competent authority" means the authority or authorities appointed in a Member State for the purpose of carrying out the duties of a competent authority under the Biocides Regulation or the CLP Regulation;

"the Department" means the Department of Enterprise, Trade and Investment;

"the Department concerned" has the same meaning as in Article 2(2) of the 1978 Order;

"inspector" means a person appointed under Article 21 of the 1978 Order;

"territorial sea" means the territorial sea of the United Kingdom adjacent to Northern Ireland and "within the territorial sea" includes on, over and under it;

"work" shall be construed in accordance with Article 2(4) of the 1978 Order.

(2) Expressions used in both—

(a) Chapter 1 of Part 3 of, or Schedule 1 to, these Regulations; and

(b) the Biocides Regulation,

have the same meaning in these Regulations as they have in the Biocides Regulation.

(3) Expressions used in both—

(a) Chapter 2 of Part 3 of these Regulations; and

(b) the CLP Regulation,

have the same meaning in these Regulations as they have in the CLP Regulation.

(4) The Interpretation Act (Northern Ireland) 1954 [F15] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

F13 S.R. 1999 No.90, as amended by S.R.2000 No. 375, S.R. 2003 No. 33, S.R. 2006 No. 205, S.R. 2006 No. 425, S.R. 2007 No. 31, S.R. 2007 No. 291, S.R. 2009 No. 238 and S.R. 2012 No. 179

F14 S.R. 2009 No.238, as amended by S.R. 2009 No. 273. S.R. 2010 No. 160 and S.R. 2011 No. 295

F15 1954 c.33 (N.I.)

PART 2

APPOINTMENT OF COMPETENT AUTHORITIES

Competent authorities

5. For the purposes of Article 81(1) of the Biocides Regulation the competent authority shall be the Executive.

6. For the purposes of Article 43 of the CLP Regulation the competent authority shall be the Department of Enterprise, Trade and Investment.

PART 3

CHAPTER 1

BIOCIDAL PRODUCTS

Application of the 1978 Order

7.—(1) The following provisions of the 1978 Order shall apply to regulations 11 and 12(2) of these Regulations and the Biocides Regulation as if they were health and safety regulations for the purposes of that Order, subject to the following provisions of this Chapter and to the extent that they would not otherwise do so—

(a) Articles 20 to 28 (in relation to enforcement);

(b) subject to regulations 20 and 21, Articles 31 to 39 (in relation to offences); and

(c) Article 43(2) (in relation to civil liability).

(2) The Articles of the 1978 Order referred to in paragraph (1) shall not apply to duties placed by the Biocides Regulation on the competent authority or Member State.

(3) A failure by any person to discharge a duty referred to in paragraph (4) shall not constitute an offence under Article 31(1)(c) of the 1978 Order.

(4) The duties referred to in paragraph (3) are those contained in Articles 6(1), 7(1), 13(1), (2)(b) and (3), 20(1) and (3), 26(1), 29(1), 31(1), 33(1), 34(1) and (2), the second and third sub-paragraphs of 39(1), 43(1), 45(1), (2)(b) and (3), 50(2), the second and third sub-paragraphs of 53(1), 53(4), 54(1) and (2), 59(2), 62(1), 63(1), (2) and (3), 64(2), 71(3), the second sub-paragraph of 79, the second sub-paragraph of 89(3), 93(1) and 95(1) of the Biocides Regulation.

(5) Any function of the Executive or the Department concerned under any provision of the 1978 Order in respect of health and safety regulations (including their enforcement) shall be exercisable as if this Chapter and the Biocides Regulation were, to the extent that they would not otherwise be so, health and safety regulations for the purposes of that Order.

(6) The Articles of the 1978 Order which are applied to the Biocides Regulation by paragraph (1) shall apply to the Biocides Regulation as if any reference to—

(a) danger, or danger to health and safety, were a reference to danger to the health or safety of humans or animals or to danger to the environment; and

(b) harm were a reference to harm to humans, animals or the environment.

(7) Articles 24 and 27 of the 1978 Order shall apply to the Biocides Regulation as if the reference to serious personal injury in those Articles were a reference to—

(a) serious personal injury to humans;

(b) a breach of the Biocides Regulation and serious injury to animals; or

(c) a breach of the Biocides Regulation and serious harm to the environment.

Allocation of enforcement responsibility

8.—(1) Notwithstanding the 1999 Regulations, and subject to paragraphs (2) to (6), the enforcing authority for regulations 11 and 12(2) of these Regulations and the Biocides Regulation shall be the Executive.

(2) Where a biocidal product or treated article is placed on the market or made available on the market—

(a) in or from any shop, mobile vehicle, market stall or other retail outlet; or

(b) otherwise to members of the public, including by way of free sample, prize or mail order,

the enforcing authority for regulation 11 of these Regulations and for the Articles of the Biocides Regulation listed in paragraph (3) shall be the district council for the district in which the biocidal product or treated article is placed on the market or made available on the market.

(3) The Articles referred to in paragraph (2) are—

(a) Article 17(1), in so far as it relates to making biocidal products available on the market;

(b) Article 58(2) to (6);

(c) Article 69(1) and (2); and

(d) Article 95(3).

(4) The enforcing authority for Article 72 of the Biocides Regulation shall be the district council for the district in which the biocidal product is placed on the market.

(5) Subject to paragraph (6), the 1999 Regulations shall apply to the enforcement of Article 17(1) (in so far as it relates to the use of biocidal products) and Articles 17(5), 56(1) and (2) of the Biocides Regulation.

(6) The enforcing authority for Article 17(1) (in so far as it relates to the use of biocidal products) and Article 17(5) of the Biocides Regulation—

(a) in respect of any use not related to an activity involving work; or

(b) in respect of any use by a domestic servant in a private household,

shall be the district council for the district in which the use occurs.

Limitation on entry to domestic premises in certain circumstances

9.—(1) In this regulation "domestic premises" means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

(2) An inspector may not enter domestic premises in the exercise of that inspector's powers under the 1978 Order, as applied to the Biocides Regulation by virtue of regulation 7(1)(a) of these Regulations, in respect of an activity which is not, or is not related to, an activity involving work, unless a lay magistrate has issued a warrant authorising the inspector to enter and exercise that inspector's powers in those premises.

(3) A lay magistrate may not issue such a warrant unless, on an application made by the inspector, the lay magistrate is satisfied—

(a) that the inspector has reasonable grounds for believing that there is present in the domestic premises anything to which those powers relate; and

(b) that—