STATUTORY RULES OF NORTHERN IRELAND

2009 No. 238

HEALTH AND SAFETY

The Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009

Made - - - -	*18th June 2009*
Coming into operation	*27th July 2009*

The Department of Enterprise, Trade and Investment(**1**), being the Department concerned(**2**) makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**3**) ("the 1972 Act") and Articles 17(1), (2), (3), (4) and (6)(**4**) and 55(2) of, and paragraphs 1(1), (4) and (5), 2(2), 14(1) and 15 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**5**).

The Department was designated(**6**) for the purpose of section 2(2) of the 1972 Act in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations, and for measures relating to consumer protection.

The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A)(**7**) of the 1978 Order after the Executive had carried out consultations in accordance with Article 46(3)(**8**).

The 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:

(i) the 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(**9**), amending and repealing Directives 67/548/EEC(**10**) and 1999/45/EC(**11**), and amending Regulation (EC) No. 1907/2006(**12**) be construed as including references to Articles 6(5),

(**1**) 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
(**2**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**3**) 1972 c. 68; the definition of "the Treaties" referred to in section 2(2) was extended by section 1 of the European Economic Area Act 1993 (c. 51)
(**4**) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(**5**) S.I. 1978/1039 (N.I. 9), section 1(1)(c) was modified by the Health and Safety at Work Order (Application to Environmentally Hazardous Substances) Regulations (Northern Ireland) 2003, S.R. 2003 No. 52. 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 2, paragraph 19
(**6**) S.I. 1976/897 and S.I. 1993/2661
(**7**) Article 13(1A) was inserted by S.I. 1998/2795 (N.I. 18), Article 4
(**8**) Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18(c)
(**9**) O.J. No. L353, 31.12.2008, p.1
(**10**) O.J. No. L196, 16.8.67, p.1
(**11**) O.J. No. L200, 30.7.99, p.1
(**12**) O.J. No. L396, 30.12.2006, p.1

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 amended from time to time; and

(ii) the Regulation (EC) No. 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals(**13**) be construed as including references to Annexes I and V of that Regulation as those Annexes are amended from time to time.

PART 1

INTRODUCTION

Citation and commencement

1. These Regulations may be cited as the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 and shall come into operation on 27th July 2009.

Interpretation

2.—(1) In these Regulations—

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

"aerosol dispenser" means an article which consists of a non-reusable receptacle containing a gas compressed, liquefied or dissolved under pressure, with or without liquid, paste or powder and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state;

"the approved classification and labelling guide" means the guide approved by the Executive for the purposes of these Regulations and entitled "Approved Classification and Labelling Guide (Sixth Edition)" approved by the Board of the Health and Safety Executive on 3rd March 2009(**14**), as revised or re-issued from time to time;

"category of danger" means, in relation to a dangerous substance or dangerous preparation, one of the categories of danger specified in column 1 of Schedule 1;

"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 as amended from time to time;

"Community workplace exposure limit" means, in respect of a substance, an exposure limit for that substance established in a Community instrument;

"dangerous preparation" means a preparation which is in one or more of the categories of danger specified in column 1 of Schedule 1;

"dangerous substance" means a substance—

(a) which is listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation; or

(b) which, if it is not so listed, is in one or more of the categories of danger specified in column 1 of Schedule 1;

(**13**) O.J. No. L204, 31.7.08, p.1
(**14**) Available at http://www.hse.gov.uk/chip/classification.pdf

"EC number" means—

(a) in the case of a dangerous substance that appears in Table 3.2 of part 3 of Annex VI of the CLP Regulation, the EC number specified in that list;

(b) in the case of a dangerous substance that is not included in Table 3.2 of part 3 of Annex VI of the CLP Regulation or for which an EC number is not given in that list, the number for that substance specified in EINECS; or

(c) in the case of a dangerous substance that is not a phase-in substance within the meaning of REACH, the number for that substance if it is listed in ELINCS;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993 and adopted as respects the United Kingdom by the European Economic Area Act 1993(**15**);

"EEA State" means a state which is a contracting party to the EEA Agreement;

"EINECS" means the European Inventory of Existing Commercial Chemical Substances(**16**);

"ELINCS" means the European List of Notified Chemical Substances(**17**);

"enforcing authority" shall be construed in accordance with regulation 14;

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

"indication of danger" means, in relation to a dangerous substance or dangerous preparation, one or more of the indications of danger referred to in column 1 of Schedule 2 and—

(a) in the case of a dangerous substance listed in Table 3.2 of part 3 of Annex VI of the CLP Regulation, it is one or more of the indications of danger specified for that substance by a symbol-letter in that list;

(b) in the case of any other dangerous substance or a dangerous preparation, it is one or more indications of danger determined in accordance with the classification of that substance or preparation in accordance with regulation 4 and the approved classification and labelling guide;

"plant protection product" has the same meaning as it has in regulation 2(1) of the Plant Protection Products Regulations;

"the Plant Protection Products Regulations" means the Plant Protection Products Regulations (Northern Ireland) 2005(**18**);

"preparation" means a mixture or solution composed of two or more substances;

"radioactive substance" means a substance which contains one or more radionuclides whose activity or concentration cannot be disregarded as far as radiation protection is concerned;

"receptacle" means a container together with any material, wrapping and component, including any closure or fastener, associated with the container which enables the container to perform its containment function;

"REACH" means Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals;

"risk phrase" means a risk phrase listed in Annex III of Council Directive 67/548/EEC;

"safety phrase" means a safety phrase listed in Annex IV of Council Directive 67/548/EEC;

"substance" means a chemical element and its compounds in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the product

(**15**) 1993 c. 51
(**16**) O.J. No. C146A, 15.6.90, p.1
(**17**) O.J. No. C130, 10.5.93, p.1
(**18**) S.R. 2005 No. 526

and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition;

"supply" in relation to a substance or preparation means making that substance or preparation available to another person and includes importation of the substance or preparation into Northern Ireland; and

"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.

(2) In these Regulations, "package" means—

(a) subject to paragraph (3), the package in which a dangerous substance, dangerous preparation or preparation specified in regulation 11(3) is supplied, including the receptacle containing the dangerous substance or preparation in question; or

(b) a pallet or other device which enables more than one receptacle to be handled as a unit,

but does not include a container used to transport the dangerous substance or preparation unless that container is retained by the person to whom the dangerous substance or preparation is supplied for the purpose of storing that dangerous substance or preparation, and related expressions shall be construed accordingly.

(3) In the case of supply by way of retail sale, a package does not include any paper or plastic bag or other form of outer wrapping in which the package is placed when it is presented to the purchaser.

(4) In these Regulations—

(a) where reference is made to a quantity of a dangerous substance or dangerous preparation expressed in litres, that reference shall mean—

(i) in the case of a liquid, the volume in litres of that liquid;

(ii) in the case of a compressed gas, the volume in litres of the receptacle containing that gas; and

(iii) in the case of a compressed gas dissolved in a solvent, liquefied gas or solid, the same number of kilograms of that gas or solid; and

(b) for the purposes of aggregation, one kilogram of a solid shall be deemed to be equivalent to one litre of liquid or gas.

(5) In these Regulations—

(a) a risk phrase may be designated by the letter "R" followed by a distinguishing number or combination of numbers; and

(b) a safety phrase may be designated by the letter "S" followed by a distinguishing number or combination of numbers.

(6) The Interpretation Act (Northern Ireland) 1954(**19**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Application

3.—(1) Subject to paragraphs (2) to (6), these Regulations shall apply to any dangerous substance or dangerous preparation.

(2) These Regulations shall not apply to a substance or preparation which is—

(a) intended for use as a medicinal product within the meaning of section 130 of the Medicines Act 1968(**20**);

(**19**) 1954 c. 33 (N.I.)
(**20**) 1968 c. 67

(b) intended for use as a veterinary medical product within the meaning of regulation 2(1) of the Veterinary Medicines Regulations 2008(**21**);

(c) intended for use as an investigational medical product within the meaning of the Medicines for Human Use (Clinical Trials) Regulations 2004(**22**);

(d) specified in an order made under section 104 or 105 of the Medicines Act 1968(**23**) which is for the time being in force and which directs that specified provisions of that Act shall have effect in relation to medicinal products within the meaning of that Act;

(e) a controlled drug within the meaning of the Misuse of Drugs Act 1971(**24**) except that these Regulations shall apply to drugs which are excepted from section 4(1)(b) of that Act (which makes it unlawful to supply a controlled drug) by Regulations made under section 7(1)(a) of that Act;

(f) a cosmetic product within the meaning of the Cosmetic Products (Safety) Regulations 2008(**25**);

(g) in the form of waste to which the Waste Management Licensing Regulations (Northern Ireland) 2003(**26**) or the Hazardous Waste Regulations (Northern Ireland) 2005(**27**) apply;

(h) intended for use as food within the meaning of Article 2(2) of the Food Safety (Northern Ireland) Order 1991(**28**);

(i) intended for use as feeding stuff within the meaning of section 66(1) of the Agriculture Act 1970(**29**);

(j) a radioactive substance or a preparation containing radioactive substances; or

(k) a medical device within the meaning of the Medical Devices Regulations 2002(**30**) which is invasive or used in direct contact with the human body,

in the finished state, intended for the final user.

(3) These Regulations shall not apply to—

(a) a substance or preparation which is a sample taken by an authority responsible for the enforcement of any requirement imposed by or under any enactment;

(b) a substance or preparation which is under customs control; or

(c) subject to Regulation (EC) No. 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals(**31**), of which Annexes I and V are as amended from time to time, a substance or a preparation which is intended for export to a country which is not an EEA State.

(4) Regulations 6 to 11 shall only apply to substances and preparations which are supplied in packages.

(5) These Regulations shall not apply to a substance to which the Explosives Acts (Northern Ireland) 1875 to 1970(**32**), the Explosives (Northern Ireland) Order 1972(**33**), the Explosive

(**21**) S.I. 2008/2297
(**22**) S.I. 2004/1031
(**23**) 1968 c. 67, as amended by S.I. 2004/1031, S.I. 2008/2297 and S.I. 2006/2407
(**24**) 1971 c. 38
(**25**) S.I. 2008/1284
(**26**) S.R. 2003 No. 493, as amended by S.R. 2006 No. 280, S.R. 2006 No. 489 and S.R. 2008 No. 18
(**27**) S.R. 2005 No. 300
(**28**) S.I. 1991/762 (N.I. 7)
(**29**) 1970 c. 40, as amended by regulation 3(1)(a) of S.R. 2005 No. 545
(**30**) S.I. 2002/618
(**31**) O.J. No. L204, 31.7.08, p.1
(**32**) 1875 c. 17; 1924 c. 5 (N.I.); 1970 c. 10 (N.I.)
(**33**) S.I. 1972/730 (N.I. 3)