
STATUTORY INSTRUMENTS

1977 No. 1140

CONSUMER PROTECTION

The Aerosol Dispensers (EEC Requirements) Regulations 1977

Made - - - - 8th July 1977
Laid before Parliament 14th July 1977
Coming into Operation 1st September 1977

The Secretary of State, being a Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures for safety and consumer protection as respects aerosols, and any provisions concerning the composition, labelling, marketing, classification or description of aerosols (hereinafter referred to as "aerosol dispensers") and in relation to an indication of the origin of imported goods, in exercise of the powers conferred by that section, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Aerosol Dispensers (EEC Requirements) Regulations 1977 and shall come into operation on 1st September 1977.

Interpretation and extent

2.—(1) In these Regulations, unless the context otherwise requires:—

"aerosol dispenser" means any non-reusable container made of metal, glass or plastic and containing a gas compressed, liquefied or dissolved under pressure, with or without a 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; and "unfilled container" means any such container which has not been filled;

"the Directive" means Council Directive No. 75/324/EEC(c);

"local weights and measures authority", in relation to any functions under these Regulations of any such authority which are for the time being the subject of any arrangements made by such authority for the discharge of any of its functions by another local authority, includes the authority by whom those functions fall to be exercised under the arrangements;

"the reversed epsilon" means the symbol "3".

(2) The Interpretation Act 1889(d) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

(3) The Weights and Measures Act 1963(e) or as the case may be, the Weights and Measures Act (Northern Ireland) 1967(f), shall not, in so far as it relates to the marking of quantity on containers, apply to aerosol dispensers which are marked with the reversed epsilon.

(a) S.I. 1972/1811, S.I. 1975/1707 (1972 III, p. 5216; 1975 III, p. 5814).

(b) 1972 c. 68.

(c) O.J. No. L147, 9.6.1975, p. 40.

(d) 1889 c. 63.

(e) 1963 c. 31.

(f) 1967 c. 6 (N.I.).

(4) Subject to the provisions set out in the Schedule hereto, these Regulations extend to Northern Ireland.

Marking

3.—(1) An aerosol dispenser shall only be marked with the reversed epsilon if—

- (a) it is within Article 1 of the Directive and complies with the general provisions relating to construction set out in section 2.1 of the Annex to the Directive; and
- (b) it complies with the special provisions set out in sections 3, 4 and 5 of the said Annex in the case of metal, glass and plastic dispensers respectively, meets the tests specified in section 6.1 of that Annex, and has been inspected in accordance with section 6.1.4 thereof; and
- (c) it is marked in visible, legible and indelible characters, in the English language (unless there is reason to believe that the dispenser will not be used in the United Kingdom) with the information required by Article 8.1(a), (c) and (d) of the Directive and with the net contents by weight and by volume expressed in metric units:

Provided that if the capacity of the dispenser does not exceed 150 ml and the dispenser is too small to be marked with the information mentioned in this subparagraph, the information shall be marked on a label attached to the dispenser.

(2) A person who marks an aerosol dispenser or unfilled container with a mark so closely resembling the reversed epsilon as to be likely to deceive shall be guilty of an offence.

4.—(1) A person who sells or has in his possession for sale an aerosol dispenser not previously sold in the United Kingdom which is marked with the reversed epsilon but which does not comply with all the requirements referred to in Regulation 3(1) above shall be guilty of an offence.

(2) A person who sells or has in his possession for sale an aerosol dispenser imported by him into the United Kingdom which is marked with a mark so closely resembling the reversed epsilon as to be likely to deceive shall be guilty of an offence.

Entry, inspection and testing

5.—(1) An officer of a local weights and measures authority, authorised by it in writing in that behalf, may within the area of that authority and at all reasonable times and on production, if required, of his authorisation, exercise the following powers, that is to say—

- (a) he may for the purposes of determining whether an offence under these Regulations has been committed inspect any aerosol dispenser or any article which he has reasonable cause to believe to be an aerosol dispenser;
- (b) he may enter any premises (not being a private dwelling) on which he has reasonable cause to believe unfilled containers marked or intended to be marked with the reversed epsilon are being filled or aerosol dispensers so marked which have not previously been sold in the

United Kingdom are being stored with a view to sale, for the purpose of determining whether an offence has been committed under these Regulations and—

- (i) he may inspect any goods and may test aerosol dispensers and unfilled containers (being dispensers or containers which are marked or which he has reasonable cause to believe will be marked with the reversed epsilon) on those premises, or if he considers that adequate facilities are not available to him on the premises for carrying out on any such dispensers or containers tests necessary for determining whether an offence has been committed, he may remove the dispensers or containers from the premises and test them elsewhere;
- (ii) in accordance with procedures specified in section 6.2.1 of the Annex to the Directive, he may select batches of unfilled containers marked, or which he has reasonable cause to believe will be marked, with the reversed epsilon, and test in accordance with those procedures samples selected from those batches on the premises or, if he considers adequate facilities are not available to him on the premises for such tests he may remove them from the premises and test them elsewhere;
- (iii) require the filler or the person on whose premises the aerosol dispensers are stored for sale, as the case may be, to provide such reasonable facilities as appear to the officer to be necessary for the purpose of determining whether aerosol dispensers or unfilled containers comply with these Regulations; and any person who fails to comply with a requirement imposed under this provision shall be guilty of an offence.

(2) The officer shall, as soon as reasonably practicable, notify the person on whose premises the tests mentioned in head (ii) above were carried out or, as the case may be, from whose premises the samples were removed for testing, of the results of those tests, and until such notification, no container from the batch in question shall be filled, sold or supplied; and any such person who fills, sells or supplies in contravention of the foregoing provisions of this paragraph shall be guilty of an offence.

(3) A person notified in accordance with paragraph (2) above that the samples have not passed the tests shall not fill, sell or supply any container from the batch in question marked with the reversed epsilon; and any person who contravenes the foregoing provisions of this paragraph shall be guilty of an offence.

(4) If a justice of the peace, on sworn information in writing—

- (a) is satisfied that there is reasonable ground to believe either—
 - (i) that any goods which a person has power by virtue of this Regulation to inspect and test are on any premises and that their inspection or testing is likely to disclose evidence of the commission of an offence under these Regulations, or
 - (ii) that any offence under these Regulations has been, is being or is about to be committed on any premises, and
- (b) is also satisfied either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant has been given to the occupier, or

- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for one month, authorise an officer of the local weights and measures authority to enter the premises, if need be by force.

In the application of this paragraph to Scotland, "justice of the peace" shall be construed as including a sheriff and a magistrate.

(5) A person entering any premises by virtue of this Regulation may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under paragraph (4) above, being premises which are unoccupied or the occupier of which is temporarily absent, he shall leave them as effectively secured against trespassers as he found them.

(6) If a person who enters any work-place by virtue of this Regulation discloses to any other person any information obtained by him in the work-place with regard to any manufacturing process or trade secret he shall, unless the disclosure was made in performance of his duty, be guilty of an offence.

Obstruction

6. Any person who—

- (a) wilfully obstructs any officer of a local weights and measures authority in exercise of his powers under Regulation 5, or
- (b) without reasonable cause fails to give such an officer any assistance or information the officer may reasonably require of him for the purpose of the exercise by the officer of such powers,

shall be guilty of an offence.

Third party offence; and a defence

7.—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of some other person that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where an offence under these Regulations is alleged to have been committed it shall be a defence for any person charged with that offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

Prohibition on use of chloroethylene

8.—(1) Chloroethylene (vinyl chloride monomer) shall not be used as a propellant in any aerosol dispenser whether marked with the reversed epsilon or not.

(2) Any person who sells or has in his possession for sale an aerosol dispenser not previously sold in the United Kingdom, with such a propellant shall be guilty of an offence.

Offences by corporations

9.—(1) Where an offence under any provision of these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Institution of proceedings

10. A local weights and measures authority in England or Wales may institute proceedings for an offence under these Regulations committed within the area of the authority.

Penalties

11.—(1) A person guilty of an offence under Regulation 6 shall be liable on summary conviction to a fine not exceeding £20.

(2) A person guilty of any other offence under these Regulations shall be liable on summary conviction to a fine not exceeding £100, or in the case of a second or subsequent offence to a fine not exceeding £250 or to imprisonment for a term not exceeding 3 months or to both.

Modification of Trade Descriptions Acts

12.—(1) Nothing in the Trade Descriptions Act 1972(a) shall require a United Kingdom name or mark as therein defined applied to any aerosol dispenser marked with the reversed epsilon to be accompanied by an indication of the country in which that aerosol dispenser was manufactured if the United Kingdom name or mark is the name or trade mark of the person responsible for marketing the aerosol dispenser and the aerosol dispenser was manufactured in a member state of the European Economic Community.

(2) Where in relation to any aerosol dispenser marked with the reversed epsilon there appears a name and address or trade mark which is the name and address or trade mark of the person responsible for marketing the aerosol dispenser that information shall be deemed not to be a trade description for the purposes of the Trade Descriptions Act 1968(b).

John Fraser,

Minister of State,

Department of Prices and Consumer Protection.

8th July 1977.

(a) 1972 c. 34.

(b) 1968 c. 29.

SCHEDULE

ADAPTATION FOR NORTHERN IRELAND

1. In Regulation 2 the definition of “local weights and measures authority” shall be omitted.

2. In Regulation 5(1), for the words “An officer of a local weights and measures authority, authorised by it in writing in that behalf, may within the area of that authority and”, there shall be substituted “An officer of the Department of Commerce for Northern Ireland authorised by it in writing in that behalf may”.

3. For the words “of the local weights and measures authority” in Regulation 5(3), and the words “of a local weights and measures authority” in Regulation 6, there shall be substituted in each case the words “of the Department of Commerce for Northern Ireland.”.

4. For Regulation 10 there shall be substituted the following:—

“10. The Department of Commerce for Northern Ireland may institute proceedings for an offence under these Regulations.”.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations implement Council Directive No. 75/324/EEC (O.J. No. L147, 9.6.1975, p. 40) relating to aerosol dispensers. They also implement Council Directive No. 76/769/EEC (O.J. No. L262, 27.9.1976, p. 201) relating to dangerous substances and preparations, to the extent that the Directive requires the prohibition of the use of chloroethylene (vinyl chloride monomer) as a propellant in an aerosol dispenser (regulation 8).

The regulations provide that the reversed epsilon (that is the symbol “3”) is only to be applied to aerosol dispensers which comply with the relevant provisions of the Directive (regulation 3).

Dispensers are required to be marked with the net contents by weight and by volume expressed in metric units (regulation 3(1)(c)). The marking has to be in visible, legible and indelible characters but it does not have to comply with Part III of the Weights and Measures (Marking of Goods and Abbreviations of Units) Regulations 1975 (S.I. 1975/1319) since regulation 2(3) excludes the application of the Weights and Measures Act 1963 and the Weights and Measures Act (Northern Ireland) 1967 to the marking of quantity on dispensers bearing the reversed epsilon.

The regulations also exclude the provisions of the Trade Descriptions Act 1972 (which requires origin marking in certain circumstances) in the case where the dispenser bears the name or trade mark of the person who is responsible for the marketing of the dispenser, if the dispenser was manufactured in a member state. They also modify the provisions of the Trade Descriptions Act 1968 so that the name and address or trade mark of such a person is not a trade description for the purposes of the provisions of that Act, including section 16 which prohibits the import of goods bearing a false indication of origin (regulation 12).

The regulations provide for offences and penalties in connection with the misuse of the reversed epsilon (regulations 3 and 11), and include powers of inspection and testing of aerosol dispensers and the checking of batches of unfilled containers, and entry of premises for the enforcement of the regulations (regulation 5).

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Printed in England by Burrup, Mathieson & Co., Ltd., and published by Her Majesty's Stationery Office
22/S29721X/w K45 K24 7/77

ISBN 0 11 071140 8