

EXPLANATORY MEMORANDUM TO
THE EXPORT AND IMPORT OF DANGEROUS CHEMICALS
REGULATIONS 2008

2008 No. 2108

1. This explanatory memorandum has been prepared by the Health and Safety Executive on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations provide for the enforcement of EC Regulations dated 17 June 2008 concerning the export and import of dangerous chemicals.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

This instrument uses the enabling power in paragraph 1A to Schedule 2 to the European Communities Act 1972 to insert ambulatory references so as to refer to Annexes I and V of the EC Regulation “as amended from time to time” (see 7.2 below).

4. **Legislative Background**

4.1 These Regulations provide for the enforcement in the UK of the EC Regulation concerning the export and import of dangerous chemicals. The EC Regulation gives effect to the UN Rotterdam Convention, adopted in 1998. The purpose of the Rotterdam Convention is to ensure that Parties to the Convention have the information they need to make decisions on giving consent for certain chemicals to be exported to them. This follows a general recognition that some developing countries do not have adequate systems to protect their people or environment from certain chemicals. The procedures outlined in the Rotterdam Convention are often called Prior and Informed Consent.

4.2 The EC Regulation is a direct acting measure, which does not require transposition into UK legislation (we have not therefore attached a Transposition Note). However, Member States do have to make enforcement arrangements and these Regulations maintain existing enforcement arrangements.

4.3 The enforcement regulations also now apply to Northern Ireland, replacing the Export of Dangerous Chemicals Regulations (Northern Ireland) 1992 (S.R. 1992 No. 460).

4.4 A brief scrutiny history follows.

Scrutiny History

An Explanatory Memorandum, 5974/02, was submitted by the Department of Work and Pensions on 23 February 2002 to the House of Commons Scrutiny Committee and the House of Lords Select Committee on the European Union, for “EC Regulation No 304/2003, concerning the export and import of dangerous chemicals” (adopted by the European Council 28/01/03).

The House of Commons European Scrutiny Committee considered it legally and politically important as relevant to the debate on future chemicals policy and cleared it on 22 May 2002. The House of Lords European Scrutiny Committee cleared it on 5 March 2002.

An Explanatory Memorandum, 16293/06, on a proposal from the European Commission for replacement EC Regulations (2006/0246) was submitted by the Health and Safety Executive on behalf of the Department of Work and Pensions on 19 December 2006. This was considered by the House of Commons Scrutiny committee on European Communities on 19 January 2007 and by the House of Lords Select Committee on European Communities on 19 December 2006. Both Committees considered the EM to have no political or legal importance and cleared it.

4.5 The previous EC Regulation (304/2003) was annulled on the 10 January 2006 (Case No. C-178/03) by the European Court of Justice. It ruled that it had an incorrect legal base. However, it ruled that the effects of this Regulation were to be maintained until the adoption of a new Regulation with the appropriate legal bases.

4.6 The new EC Regulation continues to:

- (i) implement the ratified Rotterdam Convention.
- (ii) maintain existing controls by -
 - (a) separating chemicals into sub-categories for pesticides and industrial chemicals for professional and consumer use;
 - (b) banning the export of substances from the Community that are 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 substances banned or severely restricted within the Community to the list requiring export notification.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required. However, the Department is of the view that the provisions of these Regulations are compatible with the rights established under the European Convention of Human Rights.

7. Policy background

7.1 These Regulations place no new obligations on duty-holders or the regulators involved. HSE and HMRC inspectors will continue to work together where appropriate to ensure relevant chemicals leaving or entering the UK have followed the procedures laid out in the EC Regulation. Where HMRC inspectors suspect that a business has not followed procedures, they can seize goods for 48 hours, allowing time for HSE or HSENI inspectors to investigate the matter further. Officials of Customs and Excise have been consulted and will continue to enforce these duties.

7.2 These Regulations now include a reference to Annexes I and V of the EC Regulation as amended from time to time (known as ambulatory references). This means that the enforcement S.I. will always reflect the latest version of these Annexes, and avoids unnecessary and time consuming amendments. This is in line with 'Better regulation' principles.

7.3 In view of the fact that these Regulations are broadly the same as the 2005 Regulations¹, no formal consultation has taken place. Further, given the minimal and technical changes on the consent procedure between the 2003 and 2008 EC Regulations we expect there may be minor benefits for exporters of certain chemicals to countries outside the EU. These changes are likely, however, to affect very few transactions (5 in 2005). Although there has not been a formal consultation, policy officials have discussed developments with interested stakeholders and other Government Departments.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on costs for business, charities or voluntary bodies.

¹ The Health and Safety Commission launched a 13 week consultation exercise in April 2004 on S.I. 2005/928. This elicited 11 responses from stakeholders.

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