

2009 No. 2824

CONSUMER PROTECTION

The Aerosol Dispensers Regulations 2009

Made - - - - *21st October 2009*

Laid before Parliament *26th October 2009*

Coming into force - - *29th April 2010*

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to consumer protection.

In accordance with section 11(5) of the Consumer Protection Act 1987(c) the Secretary of State has consulted such organisations as appear to him to be representative of interests substantially affected by the following Regulations, such other persons as he considered appropriate and the Health and Safety Executive.

The Secretary of State makes regulations 3(8)(b) and (c), 6 and 7 in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and all other provisions in these Regulations in exercise of the powers conferred by section 11 of the Consumer Protection Act 1987(d).

PART 1
GENERAL

Citation and Commencement

1. These Regulations may be cited as the Aerosol Dispensers Regulations 2009 and shall come into force on 29th April 2010.

Interpretation

2.—(1) In these Regulations—

“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;

(a) S.I. 1993/2661.

(b) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) 1987 c.43. Section 11(5) was amended by S.I. 2008/960, article 22, schedule 3.

(d) Section 11(1) was amended by S.I. 2005/1803, regulation 46(1) and (3).

“compliance mark” means the symbol “3” (reversed epsilon);

“Directive” means Council Directive 75/324/EEC on the approximation of the laws of the Member States relating to aerosol dispensers^(a);

“relevant aerosol dispenser” means an aerosol dispenser which does not fall within the exception in Article 1 of the Directive.

(2) The reference in regulation 3(7)(c)(ii) and (iii) to the test method specified in point 6.1.4.1(b) and (c) of the Annex to the Directive is a reference to—

- (a) a test method approved under point 6.1.4.3(a) of that Annex, when these Regulations are made unless paragraph (3) applies and where in relation to that test method the other conditions in point 6.1.4.3 are satisfied; or
- (b) such other test method which has been approved in writing by the Secretary of State for the purposes of these Regulations and where in relation to that test method the conditions in point 6.1.4.3 are satisfied.

(3) This paragraph applies where the Secretary of State has specified in writing that a test method which is approved under point 6.1.4.3(a) of the Annex to the Directive when these Regulations are made, is not approved for the purposes of these Regulations.

Requirements for the marking of aerosol dispensers

3.—(1) Paragraphs (2) to (8) set out the requirements which must be complied with under regulation 5 in order to mark an aerosol dispenser with a compliance mark.

(2) The aerosol dispenser is a relevant aerosol dispenser.

(3) The person responsible for the marketing of the aerosol dispenser has complied with the obligations set out after the heading to point 2 (general provisions) and immediately before point 2.1 of the Annex to the Directive.

(4) The aerosol dispenser complies with the general provisions relating to construction set out in point 2.1 of the Annex to the Directive.

(5) The aerosol dispenser complies with the provision relating to the volume of the liquid phase set out in point 2.4 of the Annex to the Directive.

(6) The aerosol dispenser complies with the special provisions set out in points 3, 4 and 5 of the Annex to the Directive in the case of metal, glass and plastic dispensers respectively.

(7) The aerosol dispenser—

- (a) meets the test specified in point 6.1.1 of the Annex to the Directive in the case of empty containers;
- (b) meets the tests specified in point 6.1.2 and 6.1.3 in the case of empty metal and protected glass dispensers respectively; and
- (c) satisfies one of the following subparagraphs—
 - (i) it meets the test method specified in point 6.1.4.1(a) and the dispenser is not of a type referred to in point 6.1.4.2;
 - (ii) it meets the test method specified in point 6.1.4.1(b) and the dispenser is not of a type referred to in point 6.1.4.2;
 - (iii) it meets the test method specified in point 6.1.4.1(c).

(8) Unless paragraph (9) applies, the aerosol dispenser is marked in characters which are visible, legible, indelible and (unless it is unlikely that the dispenser will be used in the United Kingdom) in the English language, with—

- (a) the information required by Article 8.1(a), (c), and (d) and Article 8.1a of the Directive;
- (b) the net contents by volume expressed in metric units; and

(a) OJ No. L147, 9.6.1975, p40, as amended by, Commission Directive 94/1/EC (OJ L23, 28.1.1994, p28), Council Regulation (EC) No. 807/2003 (OJ L122, 16.5.2003 p.36) and Commission Directive 2008/47/EC (OJ L96, 9.4.2008, p15).

- (c) if the person responsible for marketing the dispenser sees fit, the net contents by weight expressed in metric units.
- (9) This paragraph applies where—
 - (a) the capacity of the dispenser does not exceed 150ml;
 - (b) the dispenser is too small to be marked with the information referred to in paragraph (8); and
 - (c) that information is marked on a label attached to the dispenser.

PART 2

PROHIBITIONS

Prohibition of sale or supply of unmarked relevant aerosol dispensers

4. A person shall not supply or have in his possession for supply a relevant aerosol dispenser which is not marked with a compliance mark.

Prohibition of sale or supply of non-compliant marked aerosol dispensers

5. A person shall not supply or have in his possession for supply—
- (a) an aerosol dispenser which is marked with the compliance mark where all the requirements referred to in regulation 3 relating to that aerosol dispenser are not complied with; or
 - (b) an aerosol dispenser which is marked with a mark so closely resembling the compliance mark as to be likely to deceive.

PART 3

SUPPLEMENTARY

Contravention of these Regulations

6.—(1) For the purposes of the Consumer Protection Act 1987 these Regulations, with the exception of regulation 3(8)(b) and (c), are safety regulations made under section 11 of that Act.

(2) Regulation 3(8)(b), which is not made under that Act, shall be treated as if it was a safety regulation made for all purposes under section 11 of that Act.

(3) Notwithstanding section 12(5) of the Consumer Protection Act 1987 any person guilty of an offence under that section of contravening the prohibition in regulation 5(a) by reason only of a failure to comply with regulation 3(8)(b) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to a term of imprisonment not exceeding 3 months or both.

Amendments

7. Subject to regulation 8, the Schedule (which contains revocations and an amendment) shall have effect.

Transitional provision

8.—(1) Regulations 4 and 5(a) do not prohibit the supply of, or possession for supply of, an aerosol dispenser which, before 29th April 2010, was marked with the reversed epsilon marking in

accordance with the provisions of the Aerosol Dispensers (EEC Requirements) Regulations 1977^(a).

(2) Paragraph (1) does not apply after 28th October 2010.

21st October 2009 *Kevin Brennan*
Minister for Further Education, Skills, Apprenticeships and Consumer Affairs
Department for Business, Innovation & Skills

SCHEDULE

Revocations and Amendment

Regulation 7

Aerosol Dispensers (EEC Requirements) Regulations 1977

1. The Aerosol Dispensers (EEC Requirements) Regulations 1977 are revoked.

Aerosol Dispensers (EEC Requirements) (Amendment) Regulations 1981

2. The Aerosol Dispensers (EEC Requirements) (Amendment) Regulations 1981^(b) are revoked.

Aerosol Dispensers (EEC Requirements) and the Cosmetic Products (Amendment) Regulations 1985

3. The Aerosol Dispensers (EEC Requirements) and the Cosmetic Products (Amendment) Regulations^(c) are revoked.

Aerosol Dispensers (EEC Requirements) (Amendment) Regulations 1996

4. The Aerosol Dispensers (EEC Requirements) (Amendment) Regulations 1996^(d) are revoked.

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

5.—(1) In the Schedule to the Legislative Reform (Regulatory Functions) Order 2007^(e), Part 3 is amended as follows.

(2) Under the heading “Consumer and Business Protection” omit the words “Aerosol Dispensers (EEC Requirements) Regulations 1977”.

(a) S.I. 1977/1140, as amended by S.I. 1985/1279, 1996/2421 and 2009/663.

(b) S.I. 1981/1549.

(c) S.I. 1985/1279.

(d) S.I. 1996/2421.

(e) S.I. 2007/3544; amended by S.I.2008/1277 and S.I. 2008/1284.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 1975/324/EEC on the approximation of the laws of the Member States relating to aerosol dispensers (OJ L147, 9.6.1975, p.40 – 47) (“the Directive”). The Directive has been amended by a number of instruments most recently by Commission Directive 2008/47/EC (OJ L96, 9.4.2008, p.15 – 28). The Directive was implemented by the Aerosol Dispensers (EEC Requirements) Regulations 1977 (“the 1977 Regulations”) which have also been amended by a number of regulations.

Part 1 defines words used in these Regulations and sets out the requirements which relevant aerosol dispensers must fulfil if they are to be marked with a compliance mark.

Part 2 prohibits the supply (or possession for supply) of relevant aerosol dispensers which are not marked with a compliance mark. The supply (or possession for supply) of aerosol dispensers which are marked but which do not comply with the requirements of regulation 3 is also prohibited. In addition the supply (or possession for supply) of aerosol dispensers which are deceptively marked is prohibited. Contravention of the prohibitions is an offence under section 12 of the Consumer Protection Act 1987.

Part 3 includes transitional provision to allow the supply, or possession for supply, until 28th October 2010, of aerosol dispensers which complied with the 1977 Regulations.

The Schedule revokes the 1977 Regulations and the regulations which have amended those Regulations. It also makes an amendment resulting from the revocation of the 1977 Regulations.

A transposition note and a full Impact Assessment of the effect that this instrument will have on the costs to business and the voluntary sector are available from the BIS website (www.bis.gov.uk). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Copies have also been placed in the Libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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