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STATUTORY INSTRUMENTS

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**2010 No. 740**

**The Detergents Regulations 2010**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Detergents Regulations 2010.

(2) Regulation 9 comes into force on 1st January 2015 and all other regulations come into force on 6th April 2010.

**Interpretation**

2.—(1) In these Regulations—

“authorised officer” means a person appointed under regulation 5;

“Commission Recommendation” means the Commission Recommendation of 23/XII/2005 on the tiered approach technical guidance document for the purpose of implementing Regulation (EC) No 648/2004 of the European Parliament and the Council<sup>(1)</sup>;

“contravention” includes a failure to comply;

“controlled product” means a detergent or surfactant;

“enforcement authority” means an enforcement authority specified in regulation 4;

“port health authority” means—

(a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984)<sup>(2)</sup>, the Common Council of the City of London, and

(b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district constituted by order under section 2(4) of that Act;

“premises” includes any place, structure or means of transport and, in particular, includes—

(a) any land,

(b) any installation on land (including the foreshore and other land intermittently covered by water) and any other installation (whether floating, or resting on the seabed, or its subsoil, or resting on other land covered with water or its subsoil),

(c) any tent or moveable structure, and

(d) any vehicle, vessel, aircraft or hovercraft;

“Regulation 648/2004” means Regulation (EC) No 648/2004 of the European Parliament and of the Council on detergents<sup>(3)</sup>; and

“tier”, “Tier 1”, “Tier 2”, “Tier 3” and “tiered approach” have the same meaning as in the Commission Recommendation.

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(1) C/2005/5677.23. [http://ec.europa.eu/enterprise/sectors/chemicals/files/detergents/c2005\\_5677\\_en.pdf](http://ec.europa.eu/enterprise/sectors/chemicals/files/detergents/c2005_5677_en.pdf)

(2) 1984 c. 22.

(3) OJ No L104, 8.4.2004, p.1, as last amended by Regulation (EC) No 551/2009.

(2) In these Regulations, terms used in Regulation 648/2004 have the same meaning as in that Regulation.

### **Competent Authority**

3.—(1) The competent authority referred to in Article 8(1) of Regulation 648/2004 is the Secretary of State.

(2) The Secretary of State is responsible for discharging the following functions in the United Kingdom—

- (a) those assigned to member States by Articles 8 and 15(1) of Regulation 648/2004; and
- (b) those reserved to member States by the second sub-paragraph of Article 9(3) of that Regulation.

### **Enforcement Authorities**

4.—(1) In England, enforcement authorities for the purposes of the enforcement and execution of these Regulations are—

- (a) for each London borough, the council of that borough;
- (b) for each district in a metropolitan county, the council of that district;
- (c) for each district in a non-metropolitan county—
  - (i) where the county functions have been transferred to the council of that district under a structural change (as defined in section 14(1)(a) of the Local Government Act 1992)<sup>(4)</sup>, the council of that district, and
  - (ii) in any other case, the council of the county;
- (d) for the City of London (except the Temples), the Common Council of the City of London;
- (e) for the Inner Temple, the Sub-Treasurer;
- (f) for the Middle Temple, the Under Treasurer;
- (g) for the Isles of Scilly, the Council of the Isles of Scilly; and
- (h) for each port, in relation to imported controlled products, the port health authority of that port.

(2) In Wales, enforcement authorities for the purposes of the enforcement and execution of these Regulations are—

- (a) for each county, the council of that county; and
- (b) for each county borough, the council of that county borough.

(3) In Scotland, enforcement authorities for the purposes of the enforcement and execution of these Regulations are, for each of their areas, the councils constituted under section 2 of the Local Government etc (Scotland) Act 1994<sup>(5)</sup>.

(4) In Northern Ireland, enforcement authorities for the purposes of the enforcement and execution of these Regulations are, for each local government district, the council of that district.

(5) In this regulation, the references to the purposes of enforcement and execution do not include either—

- (a) the purposes of the competent authority under regulation 3(1); or
- (b) the purposes of discharging the functions specified in regulation 3(2).

(4) 1992 c.19.

(5) 1994 c. 39.

### **Authorised Officers**

5.—(1) The Secretary of State or an enforcement authority may appoint a person as an authorised officer for the purposes of these Regulations.

(2) A person appointed by an enforcement authority is an authorised officer within the area specified for that enforcement authority in regulation 4.

### **Provision in English of information required by Regulation 648/2004**

6. Where Regulation 648/2004 requires the provision of information in relation to a controlled product, such requirement is deemed not to have been met unless the information is provided in the English language.

### **Contravention of Regulation 648/2004**

7.—(1) Any manufacturer who places on the market any controlled product is guilty of an offence unless—

- (a) the controlled product conforms with Article 3(1) of Regulation 648/2004; and
- (b) Article 3(2) of that Regulation has been complied with.

(2) Any manufacturer who—

- (a) fails to comply with Article 9 of Regulation 648/2004; or
- (b) fails to comply with a request under Article 9(3) of that Regulation,

is guilty of an offence.

(3) Any manufacturer who places on the market a controlled product that does not conform with Article 11 of Regulation 648/2004 is guilty of an offence.

(4) Any distributor who fails to comply with Article 11(3) or (4) of Regulation 648/2004 is guilty of an offence.

### **Derogation**

8.—(1) A manufacturer who applies for a derogation under Article 5 of Regulation 648/2004 must do so in accordance with that Article and the Commission Recommendation.

(2) The tests referred to in Annex IV of Regulation 648/2004 must be carried out on the basis of a tiered approach in accordance with the Commission Recommendation and must accompany an application for derogation.

(3) A fee is payable to the competent authority for each application for derogation.

(4) The fee for an application described in column 1 of Schedule 1 is that specified in the corresponding entry in column 2 of that Schedule.

### **Prohibition on the sale of certain detergents**

9. It is an offence to place on the market a detergent intended for use in domestic laundry if the weight of phosphorus in inorganic phosphate contained in the detergent is greater than 0.4% of the weight of the detergent.

### **Enforcement**

10. The enforcement authorities specified in the table in Schedule 2 must enforce under these Regulations the provisions of Regulation 648/2004 for which they are specified.

**Enforcement notices**

**11.**—(1) This regulation applies where an authorised officer has come to the opinion on reasonable grounds that there has been a contravention of regulation 6, 7 or 9 or of a directly applicable provision of Regulation 648/2004 in relation to a controlled product.

(2) The authorised officer may serve a notice in writing on one or more of the following persons—

- (a) the manufacturer of the controlled product;
- (b) the owner of the controlled product;
- (c) any person appearing to be in possession or charge of the controlled product.

(3) A notice served under paragraph (2) must specify—

- (a) the basis upon which the authorised officer has reached the opinion;
- (b) the action required to be taken by the person upon whom the notice is served; and
- (c) the period within which such action must be taken.

(4) The action specified in accordance with paragraph (3)(b)—

- (a) must be action that will either—
  - (i) remedy the failure to comply, where the failure is capable of being remedied; or
  - (ii) permit the controlled product to be made available to third parties in such a state and manner that there would have been no contravention of these Regulations had it been placed on the market in that state and manner; and
- (b) may include one or more of the following—
  - (i) recovery of the controlled product from the market in the United Kingdom;
  - (ii) where the controlled product had been imported into the United Kingdom, exportation of the controlled product from the United Kingdom;
  - (iii) disposal of the controlled product; and
  - (iv) disposal of anything treated with the controlled product.

(5) The period specified in accordance with paragraph (3)(c) must not be less than 14 days, except in an emergency.

(6) Any person who fails to comply with the provisions of a notice served under paragraph (2) (or who causes or permits another person to do so) is guilty of an offence.

**Seizure and disposal of contravening products**

**12.**—(1) This regulation applies where an authorised officer has come to the opinion on reasonable grounds that there has been a failure to comply with regulations 6, 7 or 9 or a directly applicable provision of Regulation 648/2004 in relation to a controlled product.

(2) An authorised officer may seize a controlled product and may dispose of it.

(3) An authorised officer may seize anything treated with the controlled product and may dispose of it.

(4) Before taking any action under paragraph (2) or (3), the authorised officer must serve notice of intention to do so on the person appearing to the authorised officer to be in possession or charge of the controlled product.

(5) Any notice under paragraph (4) must specify—

- (a) the basis upon which the authorised officer has reached the opinion;
- (b) the action required to be taken by the person upon whom the notice is served; and
- (c) the period after which the authorised officer intends to take the action in question.

(6) The period specified in accordance with paragraph (5)(c) must not be less than 7 days, except in an emergency.

### **Power of entry**

**13.** An authorised officer may, at all reasonable hours, enter any premises (excluding premises used only as a dwelling) for the purpose of ascertaining whether there is or has been on the premises any contravention, or any evidence of a contravention of regulations 6, 7 or 9 or of a directly applicable provision of Regulation 648/2004 in relation to a controlled product.

### **Issue of warrants authorising entry to premises in England and Wales**

**14.—(1)** If a justice of the peace is satisfied on sworn information in writing that there is a reasonable ground for entry into any premises in England and Wales (excluding premises used only as a dwelling) for any such purpose mentioned in regulation 13 and that either—

- (a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice of the peace may by warrant authorise an authorised officer to enter the premises in accordance with the warrant, and, if need be, by reasonable force.

(2) Every warrant granted under paragraph (1) continues in force for a period of one month.

### **Issue of warrants authorising entry to premises in Scotland**

**15.—(1)** If a sheriff, magistrate or justice of the peace is satisfied on sworn evidence that there is reasonable ground for entry into any premises in Scotland (excluding premises used only as a dwelling) for any such purpose mentioned in regulation 13 and that either—

- (a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice of the peace may by warrant authorise an authorised officer to enter the premises in accordance with the warrant and, if need be, by reasonable force.

(2) Every warrant granted under paragraph (1) continues in force for a period of one month.

### **Issue of warrants authorising entry to premises in Northern Ireland**

**16.—(1)** If a lay magistrate is satisfied on sworn complaint in writing that there is reasonable ground for entry into any premises in Northern Ireland (excluding premises used only as a dwelling) for any such purpose mentioned in regulation 13 and that either—

- (a) admission to the premises has been refused, or a refusal is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the lay magistrate may by warrant authorise an authorised officer to enter the premises in accordance with the warrant and, if need be, by reasonable force.

(2) Every warrant granted under paragraph (1) continues in force for a period of one month.

#### **Power of entry: supplemental**

**17.** An authorised officer entering any premises in accordance with regulation 13, or under the authority of a warrant issued under regulation 14, 15 or 16 (as the case may be)—

- (a) must produce evidence of authority if requested to do so;
- (b) may be accompanied by such other persons as the authorised officer considers necessary; and
- (c) on leaving any unoccupied premises, or premises from which the occupier is temporarily absent, which the authorised officer has entered under the authority of a warrant, must leave them as effectively secured against unauthorised entry as the authorised officer found them.

#### **Powers of inspection, sampling and seizure**

**18.—(1)** An authorised officer entering any premises in accordance with regulation 13, or under the authority of a warrant issued under regulation 14, 15 or 16 (as the case may be) may do one or more of the following things—

- (a) inspect any substance present on those premises that the authorised officer reasonably suspects to be, or to contain, any controlled product;
- (b) take samples (and, if necessary, send the samples to an approved laboratory for testing) from any substance present on those premises that the authorised officer reasonably suspects to be, or to contain, any controlled product;
- (c) subject to paragraphs (2) and (3), inspect and take copies of any relevant business records (including electronic records) in whatever form they are held;
- (d) seize and detain any such records (including electronic records) which the authorised officer has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations; and
- (e) take photographs of the premises, or take photographs of any articles on the premises, or both.

(2) In relation to premises in England and Wales, the power to inspect relevant business records under paragraph (1)(c) does not extend to material which is either excluded, or special procedure material under sections 11 and 14 of the Police and Criminal Evidence Act 1984(6).

(3) In relation to premises in Northern Ireland, the power to inspect relevant business records under paragraph (1)(c) does not extend to material which is excluded material or special procedure material under article 13 or 16 of the Police and Criminal Evidence (Northern Ireland) Order 1989(7).

#### **Protection of officers acting in good faith**

**19.—(1)** An authorised officer who acts—

- (a) in the execution or purported execution of these Regulations; and
- (b) within the scope of the authorised officer's employment,

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(6) 1984 c. 60.

(7) S.I. 1989/1341 (N.I. 12).

will not be personally liable for that act if it was done in the honest belief that the duty of an authorised officer under these Regulations required or entitled the authorised officer to so act.

(2) A person who enters premises with an authorised officer under regulation 17(b) will not be personally liable for any act that was done in the honest belief that a person accompanying an authorised officer under that regulation (“accompanying person”) was required or entitled to so act.

(3) Nothing in paragraph (1) or (2) may be construed as relieving the Secretary of State (in the case of an authorised officer appointed by the Secretary of State), or the relevant enforcement authority (in the case of an authorised officer appointed by an enforcement authority designated in regulation 4) from any liability in respect of the acts of the authorised officer or accompanying person.

(4) If the Secretary of State or enforcement authority is satisfied that the authorised officer honestly believed that the act complained of was within the scope of the authorised officer’s employment, the Secretary of State or enforcement authority may indemnify the authorised officer against the whole or part of any damages that the authorised officer has been ordered to pay, or any costs which may have been incurred, in any action brought against the authorised officer in respect of an act done—

- (a) in the execution or purported execution of these Regulations; and
- (b) outside the scope of the officer’s employment.

### **Obstruction etc**

**20.**—(1) Any person who—

- (a) intentionally obstructs an authorised officer acting in execution of these Regulations;
- (b) without reasonable cause, fails to give an authorised officer acting in execution of these Regulations any assistance or information which the authorised officer may reasonably require for the purpose of carrying out their functions under these Regulations; or
- (c) gives to an authorised officer acting in the execution of these Regulations any information which the person knows to be false or misleading,

is guilty of an offence.

(2) Nothing in paragraph (1)(b) may be construed as requiring any person to answer any question, or give any information, if to do so might incriminate the person, their spouse or civil partner.

### **Unlawful disclosure of information contained in datasheets**

**21.** Any person who fails to comply with Article 9(3) of Regulation 648/2004 is guilty of an offence.

### **Offences due to fault of third person**

**22.** Where the commission by any person of an offence under any of the provisions of these Regulations is due to the act, or default of some other person, that other person will be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

### **Offences by bodies corporate**

**23.**—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) In paragraph (1) “officer”, in relation to a body corporate, means—
- (a) a director, manager, secretary or other similar officer of the body; or
  - (b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of a body corporate.

### **Offences by partnerships and unincorporated associations**

**24.**—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

- (2) For the purposes of such proceedings—
- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate, and
  - (b) the following provisions apply as they apply in relation to a body corporate—
    - (i) section 33 of the Criminal Justice Act 1925<sup>(8)</sup> and Schedule 3 to the Magistrates’ Courts Act 1980<sup>(9)</sup>,
    - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995<sup>(10)</sup>,
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945<sup>(11)</sup> and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981<sup>(12)</sup>.

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these Regulations is to be paid out of the funds of the partnership or association.

- (4) If an offence under these Regulations committed by a partnership is proved—
- (a) to have been committed with the consent or connivance of a partner; or
  - (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (5) In paragraph (4) “partner” includes a person purporting to act as a partner.

(6) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association; or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (7) In paragraph (6) “officer”, in relation to an unincorporated association, means—
- (a) an officer of the association or a member of its governing body, or
  - (b) a person purporting to act in such a capacity.

<sup>(8)</sup> 1925 c. 86.

<sup>(9)</sup> 1980 c.43. Sections 51 and 52 have been substituted by the [Courts Act 2003 \(c.39\)](#), section 47.

<sup>(10)</sup> 1995 c. 46.

<sup>(11)</sup> 1945 c. 15 (N.I.).

<sup>(12)</sup> 1981 No. 1675 (N.I. 26).



### **Defence of due diligence**

**25.**—(1) In any proceedings for an offence under any provision of these Regulations, it will, subject to paragraph (2), be a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence either personally, or by a person under their control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged will not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing; and
- (b) where the person has previously appeared before a court in connection with the alleged offence, within one month after that person's first appearance,

the person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in their possession.

(3) In paragraph (2), any reference to appearing before a court will be construed as including a reference to being brought before a court.

### **Penalties**

**26.**—(1) Subject to paragraphs (2) and (3), a person guilty of an offence under these Regulations is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding three months, or both; or
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both.

(2) A person guilty of an offence under regulation 20(1) (obstruction etc) or 21 (unlawful disclosure of information contained in data sheets) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under regulation 9 (prohibition on the sale of certain detergents) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **Appeals against notices etc: England and Wales**

**27.**—(1) This regulation applies in England and Wales only.

(2) Any person who is aggrieved by a decision of an authorised officer to serve any notice under these Regulations may appeal to a magistrates' court.

(3) The procedure on an appeal to a magistrates' court under paragraph (2) is by way of complaint, and the Magistrates' Court Act 1980 applies to the proceedings.

(4) The period within which an appeal under paragraph (2) may be brought is one month after the date on which the notice was served, and the making of the complaint is deemed for the purposes of this paragraph to be the bringing of the appeal.

(5) On an appeal under this regulation, the court may either cancel or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court may, in the circumstances, think fit.

### **Appeal against notices etc: Scotland**

**28.**—(1) This regulation applies to Scotland only.

(2) Any person who is aggrieved by a decision of an authorised officer to serve any notice under these Regulations may appeal to the sheriff.

(3) The procedure on an appeal to the sheriff under paragraph (2) is by way of summary application.

(4) The period within which an appeal under paragraph (2) may be brought is one month after the date on which the notice was served.

(5) On an appeal under this regulation, the sheriff may either cancel or affirm the notice and, if the sheriff affirms the notice, it may be either in its original form, or with such modifications as the sheriff may, in the circumstances, think fit.

### **Appeal against notices etc: Northern Ireland**

**29.**—(1) This regulation applies to Northern Ireland only.

(2) Any person who is aggrieved by a decision of an authorised officer to serve any notice under these Regulations may appeal to a court of summary jurisdiction.

(3) An appeal to a court of summary jurisdiction under paragraph (2) must be initiated by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981 and the provisions of that Part apply accordingly.

(4) The period within which an appeal under paragraph (2) may be brought is one month after the date on which the notice was served.

(5) On an appeal under this regulation, the court may either cancel or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court may, in the circumstances, think fit.

### **Revocation**

**30.** The Detergents Regulations 2005(13) are revoked.

8th March 2010

*Huw Irranca-Davies*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

We consent

10th March 2010

*Tony Cunningham*  
*Frank Roy*  
Two of the Lords Commissioners of Her  
Majesty's Treasury