



STATUTORY INSTRUMENTS

S.I. No. 746 of 2007

EUROPEAN COMMUNITIES (DANGEROUS SUBSTANCES AND
PREPARATIONS) (MARKETING AND USE) (AMENDMENT)
REGULATIONS 2007

(Prn. A7/1912)

EUROPEAN COMMUNITIES (DANGEROUS SUBSTANCES AND PREPARATIONS) (MARKETING AND USE) (AMENDMENT) REGULATIONS 2007

I, MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Council Directive 76/769/EEC of 27 July 1976,¹ as amended by Directive 2006/122/EC of the European Parliament and of the Council of 12 December 2006² and Commission Directive 2006/139/EC of 20 December 2006³, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2007.

(2) The Principal Regulations, the Regulations of 2003, the Regulations of 2004, the Regulations of 2006, as so defined in Regulation 2(1) of these Regulations, and these Regulations may be cited together as the European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 2003 to 2007.

2. (1) In these Regulations—

“Principal Regulations” means the European Communities (Dangerous Substances and Preparations)(Marketing and Use) Regulations 2003 (S.I. No. 220 of 2003) as amended by the European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2003 (S.I. No. 503 of 2003), as amended by the European Communities (Dangerous Substances and Preparations)(Marketing and Use) (Amendment) Regulations 2004 (S.I. No. 852 of 2004) and as amended by the European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2006 (S.I. No. 364 of 2006);

“Regulations of 2003” means the European Communities (Dangerous Substances and Preparations)(Marketing and Use) (Amendment) Regulations 2003 (S.I. No. 503 of 2003);

“Regulations of 2004” means the European Communities (Dangerous Substances and Preparations)(Marketing and Use) (Amendment) Regulations 2004 (S.I. No. 852 of 2004);

¹OJ No. L 262, 27.9.1976, p.201

²OJ No. L372, 27.12.2006, p. 32

³OJ No. L 384, 29.12.2006, p. 94

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13th November, 2007.

“Regulations of 2006” means the European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2006 (S.I. No. 364 of 2006);

“Directive 98/8/EC” means Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market.

(2) A word or expression that is used in these Regulations and is also used in Council Directive 76/769/EEC of 27 July 1976¹, Directive 2006/122/EC of the European Parliament and of the Council of 12 December 2006² and Commission Directive 2006/139/EC of 20 December 2006³ has, unless the contrary intention appears, the same meaning in these Regulations as in the Directive concerned.

3. (1) Schedule 1 to the Principal Regulations is further amended—

(a) by substituting the provisions set out in Schedule A for reference number 20, and

(b) by inserting the provisions set out in Schedule B after reference number 51a.

(2) Paragraph (1)(a) comes into operation on the making of these Regulations.

(3) Paragraph (1)(b) comes into operation on 27 June 2008.

SCHEDULE A

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20. Commission Directive No. 2006/139/EC	Arsenic compounds	<p>1. Shall not be placed on the market or used as substances and constituents of preparations intended for use to prevent the fouling by micro-organisms, plants or animals of:</p> <ul style="list-style-type: none"> — the hulls of boats, — cages, floats, nets and any other appliances or equipment used for fish or shellfish farming, — any totally or partly submerged appliances or equipment; <p>2. Shall not be placed on the market or used as substances and constituents of preparations intended for use in the treatment of industrial waters, irrespective of their use.</p> <p>3. Shall not be used in the preservation of wood. Furthermore, wood so treated shall not be placed on the market;</p> <p>4. However, by way of derogation:</p> <p>(a) Relating to the substances and preparations for the preservation of wood: these may only be used in industrial installations using vacuum or pressure to impregnate wood if they are solutions of inorganic compounds of the copper, chromium, arsenic (CCA) type C and if they are authorised in accordance with Article 5(1) of Directive 98/8/EC. Wood so treated shall not be placed on the market before fixation of the preservative is completed.</p> <p>(b) Wood treated with CCA solutions in industrial installations according to point (a) may be placed on the market for professional and industrial use provided that the structural integrity of the wood is required for human or livestock safety and skin contact by the general public during its service life is unlikely:</p>
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		<ul style="list-style-type: none"> — as structural timber in public and agricultural buildings, office buildings, and industrial premises, — in bridges and bridgework, — as constructional timber in freshwater areas and brackish waters e.g. jetties and bridges, — as noise barriers, — in avalanche control, — in highway safety fencing and barriers, — as debarked round conifer livestock fence posts, — in earth retaining structures, — as electric power transmission and telecommunications poles, — as underground railway sleepers. <p>(c) Without prejudice to the application of other Community provisions on the classification, packaging and labelling of dangerous substances and preparations, all treated wood placed on the market shall be individually labelled “For professional and industrial installation and use only, contains arsenic”. In addition, all wood placed on the market in packs shall also bear a label stating “Wear gloves when handling this wood. Wear a dust mask and eye protection when cutting or otherwise crafting this wood. Waste from this wood shall be treated as hazardous by an authorised undertaking”.</p> <p>(d) Treated wood referred to under point (a) shall not be used:</p> <ul style="list-style-type: none"> — in residential or domestic constructions, whatever the purpose, — in any application where there is a risk of repeated skin contact, — in marine waters, — for agricultural purposes other than for livestock fence posts and structural uses in accordance with point (b), — in any application where the treated wood may come into contact with intermediate or finished products intended for human and/or animal consumption. <p>5. Wood treated with arsenic compounds that was in use in the Community before 30 September 2007, or that was placed on the market in accordance with these Regulations may remain in place and continue to be used until it reaches the end of its service life.</p>
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		<p>6. Wood treated with CCA type C that was in use in the Community before 30 September 2007, or that was placed on the market in accordance with these Regulations:</p> <ul style="list-style-type: none">— may be used or reused subject to the conditions pertaining to its use listed under point 4(b), (c) and (d),— may be placed on the second hand market subject to the conditions pertaining to its use listed under point 4(b), (c) and (d). <p>7. Wood treated with other types of CCA solutions that was in use in the Community before 30 September 2007:</p> <ul style="list-style-type: none">— may be used or reused subject to the conditions pertaining to its use listed under point 4(b), (c) and (d),— may be placed on the second hand market subject to the conditions pertaining to its use listed under point 4(b), (c) and (d).
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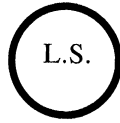
SCHEDULE B

Regulation 3(1)(b).

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<p>52. Perfluorooctane sulfonates (PFOS) $C_8F_{17}SO_2X$</p> <p>(X = OH, Metal salt (O-M+), halide, amide, and other derivatives including polymers)</p>	<p>(1) May not be placed on the market or used as a substance or constituent of preparations in a concentration equal to or higher than 0.005% by mass.</p> <p>(2) May not be placed on the market in semi-finished products or articles, or parts thereof, if the concentration of PFOS is equal to or higher than 0.1 % by mass calculated with reference to the mass of structurally or microstructurally distinct parts that contain PFOS or, for textiles or other coated materials, if the amount of PFOS is equal to or higher than $1 \mu\text{g}/\text{m}^2$ of the coated material.</p> <p>(3) By way of derogation, paragraphs 1 and 2 shall not apply to the following items, nor to substances and preparations needed to produce them:</p> <p>(a) photoresists or anti reflective coatings for photolithography processes,</p> <p>(b) photographic coatings applied to films, papers, or printing plates,</p> <p>(c) mist suppressants for non-decorative hard chromium (VI) plating and wetting agents for use in controlled electroplating systems where the amount of PFOS released into the environment is minimised, by fully applying relevant best available techniques developed within the framework of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (*),</p> <p>(d) hydraulic fluids for aviation.</p> <p>(4) By way of derogation from paragraph 1, fire-fighting foams that have been placed on the market before 27 December 2006 can be used until 27 June 2011.</p> <p>(5) Paragraphs 1 and 2 shall apply without prejudice to Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (**).</p> <p>(*) OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1). (**) OJ L 104, 8.4.2004, p. 1. Regulation as amended by Commission Regulation (EC) No 907/2006 (OJ L 168, 21.6.2006, p. 5).</p>
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GIVEN under my Official Seal,
8 November 2007

MICHEÁL MARTIN.
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations amend Schedule 1 to the European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations, 2003 (S.I. No. 220 of 2003), as last previously amended by the European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2006 (S.I. No. 364 of 2006).

The Regulations transpose—

- (i) Commission Directive 2006/139/EC of 20 December 2006 amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of arsenic compounds for the purpose of adapting its Annex I to technical progress, and
- (ii) Directive 2006/122/EC of the European Parliament and of the Council of 12 December 2006 amending for the 30th time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (perfluorooctane sulfonates).

As far as Commission Directive 2006/139/EC is concerned—

In accordance with Regulation 3(1)(a) and Schedule A, which come into operation on the making of the Regulations, the Regulations clarify the rules concerning wood treated with arsenic compounds, as earlier EU provisions did not adequately distinguish between the first placing on the market and the reuse of such wood. Reference is also made to the Biocides Directive 98/8/EC indicating that arsenic compounds may only be used if they are authorised in accordance with Article 5(1) of Directive 98/8/EC.

Wood treated with arsenic compounds that was in use in the Community before 30 September 2007, or that was placed on the market in accordance with the rules of these Regulations may remain in place and continue to be used until it reaches the end of its service life.

Wood treated with CCA type C that was in use in the Community before 30 September 2007, or that was placed on the market in accordance with these Regulations—

- (a) may be used or reused subject to the conditions pertaining to its use listed under point 4(b), (c) and (d) of Schedule A to the Regulations,
- (b) may be placed on the second hand market subject to the conditions pertaining to its use listed under point 4(b), (c) and (d) of Schedule A to the Regulations.

Wood treated with other types of CCA solutions that was in use in the Community before 30 September 2007—

- (a) may be used or reused subject to the conditions pertaining to its use listed under point 4(b), (c) and (d) of Schedule A to the Regulations,
- (b) may be placed on the second hand market subject to the conditions pertaining to its use listed under point 4(b), (c) and (d) of Schedule A to the Regulations.

As far as Directive 2006/122/EC is concerned—

In accordance with Regulation 3(1)(b) and Schedule B, under the Regulations, from 27 June 2008, perfluorooctane sulfonates (PFOS) may not be placed on the market or used as a substance or constituent of preparations in a concentration equal to or higher than 0.005% by mass, but fire-fighting foams that have been placed on the market before 27 December 2006 can be used until 27 June 2011.

In addition, PFOS may not be placed on the market in semi-finished products or articles, or parts thereof, if the concentration of PFOS is equal to or higher than 0.1% by mass calculated with reference to the mass of structurally or micro-structurally distinct parts that contain PFOS or, for textiles or other coated materials, if the amount of PFOS is equal to or higher than 1 µg/m² of the coated material.

The above restrictions shall not apply to the following items, nor to substances and preparations needed to produce them—

- (a) photoresists or anti reflective coatings for photolithography processes,
- (b) photographic coatings applied to films, papers, or printing plates,
- (c) mist suppressants for non-decorative hard chromium (VI) plating and wetting agents for use in controlled electroplating systems where the amount of PFOS released into the environment is minimised, by fully applying relevant best available techniques developed within the framework of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control,
- (d) hydraulic fluids for aviation.

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