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The Creosote (Prohibition on Use and Marketing) Regulations 2003

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STATUTORY INSTRUMENTS

2003 No. 721

CONSUMER PROTECTION

The Creosote (Prohibition on Use and Marketing) Regulations 2003

Made

13th March 2003

Laid before Parliament

14th March 2003

Coming into force

30th June 2003

Whereas the Secretary of State has, in accordance with section 11(5) of the Consumer Protection Act 1987 (“the 1987 Act”)(1) consulted such organisations as appear to her to be representative of interests substantially affected by these Regulations, such other persons as she considers appropriate and the Health and Safety Commission;

And whereas the Secretary of State is a Minister designated(2) for the purposes of section 2(2) of the European Communities Act 1972 (“the 1972 Act”)(3) in respect of measures relating to restrictions on the marketing and use of certain dangerous substances and preparations and to consumer protection;

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by section 11 of the 1987 Act and by section 2 of the 1972 Act, hereby makes the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Creosote (Prohibition on Use and Marketing) Regulations 2003 and shall come into force on 30th June 2003.

Revocation

2. The Environmental Protection (Controls on Injurious Substances) Regulations 1999(4) other than regulation 6 thereof are hereby revoked.

Interpretation

3. In these Regulations—

“the Directive” means Commission Directive [2001/90/EC](#)(5) adapting to technical progress for the seventh time Annex 1 to Council Directive [76/769/EEC](#)(6) 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;

“dangerous substance or preparation” means a substance or preparation used for wood treatment and containing one or more of the substances referred to in the Annex to the Directive and set out in the Schedule to these Regulations;

“industrial or professional use” includes use on railways, in electric power transmission and telecommunications, for fencing, for agricultural purposes (such as stakes for tree support) and in harbours and waterways;

“supply” includes offering to supply, agreeing to supply, exposing for supply and possessing for supply, and cognate expressions shall be construed accordingly; and

“treated wood” means wood that has been treated with a dangerous substance or preparation.

Prohibition of certain use of a dangerous substance or preparation

- 4.—(1) Subject to the following paragraph, no person shall use a dangerous substance or preparation in the treatment of wood.

(2) A dangerous substance or preparation may be so used—

- (a) in industrial installations; or
- (b) by professionals covered by European Community legislation on the protection of workers for in situ retreatment,

provided that the dangerous substance or preparation is applied only for an industrial or professional use and contains—

- (i) benzo-a-pyrene at a concentration of less than 0.005 per cent by mass; and
- (ii) water extractable phenols at a concentration of less than 3 per cent by mass.

Supply and marking of a dangerous substance or preparation

- 5.—(1) Subject to the following paragraph, no person shall supply—

- (a) a dangerous substance or preparation for use in the treatment of wood; or
- (b) treated wood.

(2) Paragraph (1) shall not apply to the supply of a dangerous substance or preparation in respect of which regulation 4(2) applies, provided—

- (a) the packaging in which the dangerous substance or preparation is supplied bears, in lettering which is indelible and easily legible, the words "For use in industrial installations or professional treatment only";
- (b) the said packaging has a capacity equal to or greater than 20 litres; and
- (c) the dangerous substance or preparation is sold to a person who is not a consumer.

Prohibition of use of treated wood

6. Treated wood in respect of which regulation 4(2) or regulation 7 applies may not be used—

- (a) inside any building;
- (b) in toys;
- (c) in playgrounds;
- (d) in parks, gardens and outdoor recreational and leisure facilities where there is a risk of frequent skin contact;
- (e) in the manufacture of garden furniture (such as picnic tables); or
- (f) for the manufacture and use and any retreatment of—
 - (i) containers intended for growing purposes;
 - (ii) packaging which may come into contact with raw materials, intermediate or finished products intended for human or animal consumption; or
 - (iii) any other materials which may contaminate the products mentioned in this sub-paragraph (f).

Second-hand treated wood

7. Wood that has been treated with a dangerous substance or preparation before these Regulations come into force may be supplied thereafter for second-hand use.

Regulations to be treated as safety regulations within the meaning of the 1987 Act

8.—(1) To the extent that they relate to the supply of a dangerous substance or preparation or treated wood, and subject to paragraph (2), these Regulations shall be treated as if they were safety regulations within the meaning of the 1987 Act.

(2) Any person who contravenes regulation 4 or regulation 6 shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale.

Melanie Johnson
Parliamentary Under Secretary of State for Competition, Consumers and
Markets, Department of Trade and Industry

13th March 2003

SCHEDULE SUBSTANCES CONTAINED IN DANGEROUS SUBSTANCES OR PREPARATIONS(7)

Regulation 3

<i>Substance</i>	<i>EINECS Number</i>	<i>CAS Number</i>
Creosote	232-287-5	8001-58-9
Creosote oil	263-047-8	61789-28-4
Distillates (coal tar), naphthalene oils	283-484-8	84650-04-4
Creosote oil, acenaphthene fraction	292-605-3	90640-84-9
Distillates (coal tar), upper	266-026-1	65996-91-0
Anthracene oil	292-602-7	90640-80-5
Tar acids, coal, crude	266-019-3	65996-85-2
Creosote, wood	232-419-1	8021-39-4
Low temperature tar oil, alkaline	310-191-5	122384-78-5

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Directive [2001/90/EC](#) (OJ No. L283, 27.10.01, p. 41).

The Regulations revoke the Environmental Protection (Controls on Injurious Substances) Regulations 1999 ([S.I. 1999/3244](#)) other than regulation 6, which had previously provided for restrictions on the use and marketing of wood treated with the dangerous substances or preparations referred to below (regulation 2).

The Regulations prohibit the use of creosote and creosote-related substances as set out in the Schedule ("the dangerous substances or preparations") in the treatment of wood except for industrial or professional use (regulation 4). Wood so treated may not be supplied, however dangerous substances or preparations may be supplied if the requirements of regulation 5 are complied with.

Wood treated with the dangerous substances or preparations in accordance with these Regulations may not be used in the situations specified in regulation 6, including inside any buildings, in toys and in playgrounds. Wood so treated before the Regulations come into force may be supplied for second-hand use (regulation 7), and their use is similarly restricted.

A person who contravenes regulation 4 or regulation 6 is guilty of an offence punishable on summary conviction with a maximum of three months' imprisonment or a fine not exceeding level 5 on the standard scale (regulation 8(2)). The penalty on summary conviction for a contravention of regulation 5, being an offence under section 12 of the Consumer Protection

Act [1987 \(c. 43\)](#), is a maximum of six months' imprisonment or a fine not exceeding level 5 on the standard scale, or both, by virtue of section 12(5) of that Act.

The EINECS and CAS numbers identifying the dangerous substances or preparations in the Schedule are given respectively in the European Inventory of Existing Commercial Chemical Substances (OJ No. C146A, 15.6.90, p. 1) and the CAS Registry Handbook, ISSN 0093-058X. The latter may be inspected at the Royal Society of Chemistry, Burlington House, Piccadilly, London W1V 0BN.

A full regulatory impact assessment report of the effect that these Regulations would have on the costs to business and a transposition note are freely available to the public from the Consumer and Competition Policy Directorate, Department of Trade and Industry, 4th Floor, 1 Victoria Street, London SW1H 0ET. Copies of the report have also been placed in the libraries of both Houses of Parliament.

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- (1) [1987 c. 43](#).
 - (2) [S.I. 1992/1711](#) and [S.I. 1993/2661](#).
 - (3) [1972 c. 68](#).
 - (4) [S.I. 1999/3244](#).
 - (5) OJ No. L283, 27.10.01, p. 41.
 - (6) OJ No. L262, 27.9.76, p. 201.
 - (7) In the Directive, each substance as referred to in the Schedule to these Regulations is identified by reference to its EINECS number and to its CAS number. The EINECS number is given in the European Inventory of Existing Commercial Chemical Substances (OJ No. C146A, 15.6.90, p.1), and the CAS number is the one assigned by the Chemical Abstracts Service and given in the CAS Registry Handbook, ISSN 0093-058X.