STATUTORY INSTRUMENTS

1986 No. 902

PUBLIC HEALTH, ENGLAND AND WALES
PUBLIC HEALTH, SCOTLAND
PUBLIC HEALTH, NORTHERN IRELAND

The Control of Pollution (Supply and Use of Injurious Substances) Regulations 1986

Made - - -	*27th May* 1986
Laid before Parliament	*6th June* 1986
Coming into Operation	*30th June* 1986

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, the Secretary of State for Scotland, as respects Scotland, and the Secretary of State for Northern Ireland, as respects Northern Ireland —

(1) having consulted persons appearing to them to represent persons whose activities are likely to be prohibited or restricted by regulations proposed to be made under section 100 of the Control of Pollution Act 1974(**a**);

(2) having published notices in pursuance of subsection (2)(*b*) of the said section 100;

(3) having considered the representations made to them in accordance with the notices;

(4) being of the opinion that it is appropriate for the requirements of subsection (2) of the said section 100 to be disregarded in relation to the regulations proposed to be made, being regulations in the form of the draft mentioned in subsection (2)(*b*)(ii) of the said section 100 with such modifications as the Secretaries of State consider appropriate; and

(5) considering it appropriate to make these regulations for the purpose of preventing the substances specified in them from causing damage to persons, animals or plants or pollution of air, water or land,

in exercise of the powers conferred on them by sections 100 and 104(1) of the Control of Pollution Act 1974 and of all other powers enabling them in that behalf, hereby make the following regulations:—

Citation, commencement and extent

1.—(1) These regulations may be cited as the Control of Pollution (Supply and Use of Injurious Substances) Regulations 1986 and shall come into operation on 30th June 1986.

(**a**) 1974 c.40.

(2) These regulations shall extend to all parts of the United Kingdom.

Interpretation

2. In these regulations —

"injurious substance" means a substance which is —

(*a*) a PCB;

(*b*) a PCT; or

(*c*) a preparation or a waste oil with a PCB or PCT content higher than 0.010 per cent. by weight;

"large capacitor" means a capacitor having a total weight exceeding one kilogramme;

"PCB" means any polychlorinated biphenyl other than a dichlorinated biphenyl;

"PCT" means any polychlorinated terphenyl;

"retrofilling" means the draining from any transformer of a fluid containing an injurious substance and its replacement by a less injurious alternative;

"sale" includes hire purchase;

"small capacitor" means a capacitor having a total weight not exceeding one kilogramme;

"substance" includes a preparation which is a mixture or solution containing two or more substances; and

"supply" includes offer to supply.

Prohibition of supply or use of injurious substances

3. Subject to regulation 4, no person shall —

(*a*) supply by way of sale for any purpose; or

(*b*) use in connection with any trade or business or manufacturing process,

any injurious substance.

Exemptions from regulation 3

4.—(1) Regulation 3 shall not apply to the supply by way of sale, or the use, of any injurious substance occurring —

(*a*) in relation to, or in the course of, any of the following operations —

(i) the carriage of the substance by rail, road, inland waterway, sea or air;

(ii) the export of the substance to a destination in the territory of a state which is not a Member State of the Communities;

(iii) the holding of the substance in transit, provided that during that time it is not subjected to any process and is available for examination by customs officers of the United Kingdom; or

(*b*) for the purposes of, or in the course of, any trade or business or manufacturing process whereby that substance is destroyed; or

(*c*) for the purposes of, or in the course of, any manufacturing process which has been approved by the Secretary of State, in consequence of an application made in accordance with regulation 5, as a manufacturing process by means of which an injurious substance will be converted into a substance which is not an injurious substance and which will not, in his opinion, constitute a danger to public health and the environment; or

(*d*) for the purposes of, or in the course of, research and development; or

(*e*) for the purposes of, or in the course of, analysis.

(2) Regulation 3 shall not apply to any use of an injurious substance which is described in the Schedule to these regulations if and so long as the conditions in paragraph (3) below are satisfied in relation thereto.

(3) The conditions referred to in paragraph (2) above are that —

(*a*) the equipment, plant or fluid referred to in the Schedule to these Regulations which contains the injurious substance to which the use relates was in service prior to 30th June 1986; and

(*b*) the said equipment, plant or fluid has not reached the end of its service life.

Approvals under regulation 4(1)(c)

5. Any person seeking approval of a manufacturing process under regulation 4(1)(*c*) shall submit his application in writing to the Secretary of State at least three months before it is proposed to commence that process, or such shorter period as the Secretary of State may in the circumstances of the particular case allow.

Offences

6.—(1) A person who contravenes regulation 3 shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £2,000, and, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(2) Where a person is charged with an offence under these regulations, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Revocation

7. The Control of Pollution (Supply and Use of Injurious Substances) Regulations 1980(**a**) are hereby revoked.

(**a**) S.I. 1980/638.

Regulation 4(2)

SCHEDULE

USES EXEMPTED FROM REGULATION 3

1. Use by way of dielectric application in any transformer, whether or not the transformer has at any time been the subject of retrofilling.

2. Use by way of dielectric application in any large capacitor.

3. Use by way of dielectric application in any small capacitor, the PCB content of which does not contain more than —

(*a*) 43 per cent. of chlorine, and

(*b*) 3.5 per cent. of pentachlorinated or more highly chlorinated biphenyls.

4. Use in any hydraulic fluid employed in any underground mining equipment.

5. Use in a heat-transmitting fluid in a closed-circuit heat-transfer installation (other than an installation for processing foodstuffs, feeding stuffs or pharmaceutical or veterinary products) where the PCB content of that fluid does not exceed 0.1 per cent. by weight.

Kenneth Baker,
Secretary of State for the Environment.

19th May 1986.

Nicholas Edwards,
Secretary of State for Wales.

20th May 1986.

Malcolm Rijkind,
Secretary of State for Scotland.

20th May 1986.

Tom King,
Secretary of State for Northern Ireland.

27th May 1986.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations, which apply throughout the United Kingdom, re-enact with amendments the Control of Pollution (Supply and Use of Injurious Substances) Regulations 1980 ("the 1980 Regulations"). The amendments give effect to certain provisions of the amending Council Directive 85/467/EEC (OJ No. L269, 11.10.85, p.56). To the extent that these regulations re-enact the 1980 Regulations, they give effect to certain provisions of Council Directive 76/769/EEC (OJ No. L262, 27.9.76, p.201) relating to restrictions on the marketing and use of certain dangerous substances and preparations, in particular polychlorinated biphenyls (PCBs) and polychlorinated terphenyls (PCTs). The 1980 Regulations are revoked (regulation7).

Regulation 2 defines "injurious substance" as a substance which is a PCB or PCT, or a preparation or a waste oil with a PCB or PCT content of more than 0.010 per cent. by weight. (Under the 1980 Regulations, the maximum permitted concentration of a PCB or PCT in a preparation was 0.1 per cent. by weight.)

Subject to exemptions (dealt with in regulation 4), regulation 3 prohibits the supply, or offer to supply, by way of sale or hire purchase, of any such injurious substance, or its use in connection with any trade or business or manufacturing process.

Regulation 4, read with the Schedule, prescribes certain exemptions from the general prohibition in regulation 3. The exemptions in the 1980 Regulations have been altered. In particular the Secretary of State is given power to exempt from regulation 3 any manufacturing process by means of which an injurious substance will cease to be an injurious substance and which will not in his opinion constitute a danger to public health and the environment (regulation 4(1)(*c*)). The continued use of injurious substances is not prohibited where the use is one included in the Schedule to these regulations but only if and so long as certain conditions are satisfied: the equipment, plant or fluid containing the injurious substance must be in service before 30th June 1986 and the exemption from the regulations only continues if and so long as that equipment, plant or fluid has not reached the end of its service life (regulation 4(2)).

Regulation 5 lays down procedural requirements regarding exemptions under regulation 4(1)(*c*) (which relates to certain powers of the Secretary of State to approve manufacturing processes).

Regulation 6 prescribes penalties for the contravention of regulation 3, and provides that it shall be a defence for an accused person to prove that he took all reasonable steps and exercised all due diligence to avoid committing an offence.

Copies of the Official Journal of the European Communities containing the above-mentioned Directives may be obtained from Her Majesty's Stationery Office.

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