

*This Statutory Instrument supersedes S.I. 2003/721 published on 12th May 2003 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2003 No. 1511**

**CONSUMER PROTECTION**

**The Creosote (Prohibition on Use and Marketing)(No. 2) Regulations 2003**

<i>Made</i>	- - - -	<i>9th June 2003</i>
<i>Laid before Parliament</i>		<i>10th June 2003</i>
<i>Coming into force</i>		
<i>Regulation 2(2)</i>		<i>9th June 2003</i>
<i>Remainder</i>		<i>30th June 2003</i>

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, commencement and extent**

1.—(1) These Regulations may be cited as the Creosote (Prohibition on Use and Marketing) (No.2) Regulations 2003 and except for regulation 2(2) shall come into force on 30th June 2003.

(2) Regulation 2(2) shall come into force on 9th June 2003.

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(1) 1987 c. 43.

(2) S.I. 1992/1711 and S.I. 1993/2661.

(3) 1972 c. 68.

## Revocation

2.—(1) The Environmental Protection (Controls on Injurious Substances) Regulations 1999<sup>(4)</sup> other than regulation 6 thereof are hereby revoked.

(2) The Creosote (Prohibition on Use and Marketing) Regulations 2003<sup>(5)</sup> are hereby revoked.

## Interpretation

3. In these Regulations—

“the Directive” means Commission Directive 2001/90/EC<sup>(6)</sup> adapting to technical progress for the seventh time Annex 1 to Council Directive 76/769/EEC<sup>(7)</sup> 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 (creosote);

“dangerous substance or preparation” means a substance or preparation for use in wood treatment and containing one or more of the substances 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; and

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

## Prohibition on use of a dangerous substance or preparation

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

(2) A dangerous substance or preparation to which paragraph (3) applies may be used—

(a) for wood treatment in industrial installations; and

(b) for in situ retreatment of wood for industrial or professional use by professionals covered by European Community legislation on the protection of workers.

(3) This paragraph applies to a dangerous substance or preparation which 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.

## Marketing and sale

5.—(1) No person may sell a dangerous substance or preparation to a consumer.

(2) Subject to the following paragraphs, no person may place on the market—

(a) a dangerous substance or preparation; or

(b) treated wood.

(3) Paragraph (2)(a) does not apply to the placing on the market of a dangerous substance or preparation to which regulation 4(3) applies, provided—

(a) the packaging in which the dangerous substance or preparation is placed on the market bears, in lettering which is indelible and easily legible, the words “For use in industrial installations or professional treatment only”; and

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(4) S.I. 1999/3244.

(5) S.I. 2003/721.

(6) OJ No. L283, 27.10.01, p. 41.

(7) OJ No. L262, 27.9.76, p. 201.

(b) the said packaging has a capacity equal to or greater than 20 litres.

(4) Paragraph (2)(b) does not apply to the placing on the market for the first time of wood treated in accordance with regulation 4(2)(a) for industrial or professional use.

(5) Paragraph (2)(b) does not apply to the placing on the second-hand market for re-use of treated wood where that wood was treated with the dangerous substance or preparation before these Regulations come into force.

### **Prohibition on use of treated wood**

6.—(1) Subject to paragraph (3) wood treated in accordance with regulation 4(2)(a) or to which regulation 5(5) 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 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 subparagraph

(2) The items mentioned in paragraph (1)(f) may not be retreated with a dangerous substance or preparation.

(3) The prohibition in paragraph (1) on the use of treated wood does not apply where the treated wood was in such use before these Regulations came into force.

### **Offences and Penalties**

7. Any person who contravenes regulation 4, 5 or 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.

9th June 2003

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

*Status: This is the original version (as it was originally made).*

## SCHEDULE

Regulation 3

## SUBSTANCES CONTAINED IN DANGEROUS SUBSTANCES OR PREPARATIONS(8)

Substance	EINECS Number	CAS Number
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). They revoke the Creosote (Prohibition on Use and Marketing) Regulations 2003 ([S.I. 2003/721](#)) (“the 2003 Regulations”) using the power contained in section 11 (5) of the Consumer Protection Act 1987. This revocation comes into force before the 2003 Regulations were to have come into effect. The remaining provisions, which re-enact the 2003 Regulations with amendments, are made under section 2(2) of the European Communities Act 1972. These Regulations correct defects in the 2003 Regulations.

Regulation 2 revokes 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.

The Regulations prohibit the use of creosote and creosote-related substances set out in the Schedule (“the dangerous substances or preparations”) in the treatment of wood except for treatment in industrial installations and industrial or professional use for in situ retreatment (regulation 4). Dangerous substances or preparations may not be sold to consumers (regulation 5(1)) and may not

(8) 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.

be placed on the market unless the requirements as to composition (regulation 4(3)), packaging and labelling (regulation 5(3)) are complied with.

Treated wood may not be placed on the market except for industrial and professional use. Wood treated before the Regulations come into force may be supplied for second-hand use (regulation 5(5)), and its use is restricted by regulation 6.

Treated wood may not be used in the situations specified in regulation 6, including inside any buildings, in toys and in playgrounds. Where treated wood is in use before the Regulations came into force its continued use is not affected by the restrictions on use in regulation 6.

A person who contravenes regulation 4, 5 or 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 7).

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.