

2012 No. 1715

ENVIRONMENTAL PROTECTION

**The Volatile Organic Compounds in Paints, Varnishes and
Vehicle Refinishing Products Regulations 2012**

<i>Made</i>	- - - -	<i>27th June 2012</i>
<i>Laid before Parliament</i>		<i>5th July 2012</i>
<i>Coming into force</i>	- -	<i>27th July 2012</i>

The Secretary of State, having been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment, makes the following regulations under the powers conferred by that section.

Citation and commencement

1. These Regulations may be cited as the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 and come into force on 27th July 2012.

Definitions

2. In these Regulations—

“coating” means any mixture, including all the organic solvents or mixtures containing organic solvents necessary for its proper application, which is used to provide a film with decorative, protective or other functional effect on a surface;

“organic compound” means any compound containing at least the element carbon and one or more of hydrogen, oxygen, sulphur, phosphorus, silicon, nitrogen, or a halogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates;

“relevant product” has the meaning given by regulation 3(1);

“volatile organic compound” (VOC) means any organic compound having an initial boiling point less than or equal to 250°C measured at a standard pressure of 101.3 kPa;

“VOC content” means the mass of volatile organic compounds, expressed in grams/litre (g/l), in the formulation of the product in its ready to use condition; the mass of volatile organic compounds in a given product which react chemically during drying to form part of the coating are not be considered part of the VOC content.

Scope

3.—(1) Subject to paragraphs (2) and (3), these Regulations apply to the paints, varnishes and vehicle refinishing products as defined in Schedule 1 (“relevant products”).

(a) S.I. 2008/301

(b) 1972 c. 68, as amended by the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7).

(2) These Regulations do not apply to relevant products that are to be used in a country or territory outside the customs territory of the European Union.

(3) These Regulations do not apply to products which are sold for exclusive use in an SED (Solvent Emission Directive) activity.

(4) In this regulation—

“SED (Solvent Emission Directive) Activity” means any activity falling within—

- (a) section 7 of Chapter 6 of Part 2 of Schedule 1 to the Environmental Permitting (England and Wales) Regulations 2010(a);
- (b) the section in Chapter 7 of Part 1 of Schedule 1 to the Pollution Prevention and Control (Scotland) Regulations 2000(b) where operated above the solvent consumption thresholds specified for that activity as set out in that section of that Chapter; and
- (c) section 7 of Part 1 of Schedule 1 to the Pollution Prevention and Control Regulations (Northern Ireland) 2003(c).

Limitations on marketing paints and varnishes and vehicle refinishing products

4.—(1) A person must not place on the market any relevant product unless that product—

- (a) has a VOC content not exceeding the limit value for that product set out in Schedule 2; and
- (b) carries a label in compliance with regulation 5.

(2) In determining compliance with the VOC content limit values set out in Schedule 2, the analytical methods set out in Schedule 3 apply.

(3) For relevant products to which solvents or other components containing solvents have to be added for the product to be ready for use, the limit values in Schedule 2 apply to the VOC content of the product in its ready for use condition.

Labelling

5.—(1) A label referred to in regulation 4(1)(b) must indicate—

- (a) the sub-category of the product and the relevant VOC limit values, measured in g/l, as set out in Schedule 2; and
- (b) the maximum content of VOC in g/l of the product in a ready to use condition.

(2) Paragraph (1) is without prejudice to any requirement in any other enactment that requires a relevant product to be marked or labelled.

Enforcement

6.—(1) These regulations are enforced—

- (a) in England and Wales, by the local authority;
- (b) in Scotland—
 - (i) by the local authority;
 - (ii) by the Scottish Environment Protection Agency in relation to any point of use or productive process regulated by that agency under the Pollution Prevention and Control (Scotland) Regulations 2000;

(a) S.I. 2010/675 as amended by S.I. 2010/676, S.I. 2010/2172, S.I.2011/2043, S.I. 2011/ 2933 and S.I. 2012/630.

(b) S.S.I. 2000/323 as amended by S.S.I. 2004/126 and S.S.I. 2005/340. There are other amending instruments but none is relevant.

(c) S.R. 2003 No. 46, relevant amending instruments are S.R. 2004 No. 36, S.R. 2005 No. 229, S.R. 2005 No.285, and S.R. 2005 No. 454.

- (c) in Northern Ireland, by the district council in accordance with the enforcement provisions set out in Schedule 4.

(2) Where a local authority in England enforces these regulations, sections 108 and 110 of the Environment Act 1995^(a) apply as if that local authority were an enforcing authority for the purposes of section 108.

(3) In this regulation, “local authority” means—

- (a) in relation to England—
 - (i) a county or a district council;
 - (ii) a London borough council;
 - (iii) the Common Council of the City of London;
 - (iv) the Council of the Isles of Scilly;
- (b) in relation to Wales—
 - (i) a county council;
 - (ii) a county borough council;
- (c) in relation to Scotland, a unitary authority.

Monitoring

7. The Secretary of State must establish and maintain a programme of monitoring for the purpose of verifying compliance with these Regulations.

Offences

8.—(1) It is an offence to contravene regulation 4(1).

(2) Where an offence under paragraph (1), which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to have been attributable to, any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that officer or person, as well as the body corporate, is liable to prosecution.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts or defaults of a member in connection with that member’s functions of management as if that member were a director of the body corporate.

(4) Where an offence under paragraph (1) has been committed by a Scottish Partnership and has been committed with the consent or connivance of, or is attributable to the neglect of, a partner or a person who was purporting to act as such, that person as well as the partnership is guilty of the offence.

(5) The maximum penalty on conviction for an offence under paragraph (1) is—

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

Review

9.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(a) 1995 c. 25, as amended by section 6 of and Schedule 3 to the Pollution Prevention and Control Act 1999 (c. 24), S.I. 2000/1973, section 55 of the Anti-social Behaviour Act 2003 (c. 38) and section 53 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

Revocations

10. The following regulations are revoked—
- (a) the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005(a);
 - (b) the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) (England) Regulations 2009(b);
 - (c) the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) Regulations 2010(c).

Taylor of Holbeach

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

27th June 2012

SCHEDULE 1

Regulation 3(1)

Relevant products

1.—(1) For the purposes of these Regulations, “paints and varnishes” means products listed in the sub-categories below, excluding aerosols. They are coatings applied to buildings, their trim and fittings, and associated structures for decorative, functional and protective purpose.

- (2) The sub-categories referred to in sub-paragraph (1) are—
- (a) “matt coatings for interior walls and ceilings” means coatings designed for application to indoor walls and ceilings with a degree of gloss $\leq 25@60^\circ$;
 - (b) “glossy coatings for interior walls and ceilings” means coatings designed for application to indoor walls and ceilings with a degree of gloss $>25@60^\circ$;
 - (c) “coatings for exterior walls of mineral substrate” means coatings designed for application to outdoor walls of masonry, brick or stucco;
 - (d) “interior/exterior trim and cladding paints for wood, metal or plastic” means coatings designed for application to trim and cladding which produce an opaque film. These coatings are designed for either a wood, metal or a plastic substrate. This sub-category includes undercoats and intermediate coatings;
 - (e) “interior/exterior trim varnishes and woodstains” means coatings designed for application to trim which produce a transparent or semi-transparent film for decoration and protection of wood, metal and plastics. This sub-category includes opaque woodstains. Opaque woodstains means coatings producing an opaque film for the decoration and protection of wood, against weathering, as defined in EN 927-1, within the semi-stable category;

(a) SI 2005/2773

(b) SI 2009/3145

(c) SI 2010/783

- (f) “minimal build woodstains” means woodstains which, in accordance with EN 927-1:1996, have a mean thickness of less than 5µm when tested according to ISO 2808:1997, method 5A(a);
- (g) “primers” means coatings with sealing and/or blocking properties designed for use on wood or walls and ceilings;
- (h) “binding primers” means coatings designed to stabilise loose substrate particles or impart hydrophobic properties and/or to protect wood against blue stain;
- (i) “one-pack performance coatings” means performance coatings based on film-forming material. They are designed for applications requiring a special performance, such as primer and topcoats for plastics, primer coat for ferrous substrates, primer coat for reactive metals such as zinc and aluminium, anticorrosion finishes, floor coatings, including for wood and cement floors, graffiti resistance, flame retardant, and hygiene standards in the food or drink industry or health services;
- (j) “two-pack performance coatings” means coatings with the same use as one-performance coatings, but with a second component (e.g. tertiary amines) added prior to application;
- (k) “multicoloured coatings” means coatings designed to give a two-tone or multiple-colour effect, directly from the primary application;
- (l) “decorative effect coatings” means coatings designed to give special aesthetic effects over specially prepared pre-painted substrates or base coats and subsequently treated with various tools during the drying period.

2.—(1) For the purposes of these Regulations, “vehicle refinishing products” means products listed in the sub-categories below which are used for the coating of road vehicles as defined in Directive 2007/36/EC of the European Parliament and of the Council establishing a framework for the approval of motor vehicles and their trailers and of systems, components and separate technical units intended for such vehicles(b), or part of them, where such coating is carried out as part of vehicle repair, conservation or decoration other than in manufacturing installations.

(2) The sub-categories referred to in sub-paragraph (1) are—

- (a) “preparatory and cleaning” means products designed to remove old coatings and rust, either mechanically or chemically, or to provide a key for new coatings:
 - (i) preparatory products include gunwash (a product designed for cleaning spray-guns and other equipment), paint strippers, degreasers (including anti-static types for plastic) and silicone removers;
 - (ii) “precleaner” means a cleaning product designed for the removal of surface contamination during preparation for and prior to the application of coating materials;
- (b) “bodyfiller/stopper” means heavy-bodied compounds designed to be applied to fill deep surface imperfections prior to the application of the surfacer/filler;
- (c) “primer” means any coating that is designed for application to bare metal or existing finishes to provide corrosion protection prior to application of a primer surfacer:
 - (i) “surfacer/filler” means a coating designed for application immediately prior to the application of topcoat for the purpose of corrosion resistance, to ensure adhesion of the topcoat, and to promote the formation of a uniform surface finish by filling in minor surface imperfections;
 - (ii) “general metal primer” means a coating designed for application as primers, such as adhesion promoters, sealers, surfacers, undercoats, plastic primers, wet-on-wet, non-sand fillers and spray fillers;

(a) References to ISO are to standards adopted by the International Organisation for Standardization. They are available at www.iso.org.

(b) OJ No L 263, 9.10.2007, p 1 as last amended by Commission Regulation 678/2011 (EU) (OJ No L185, 15.7.2011, p 30).

- (iii) “wash primer” means coatings containing at least 0.5 % by weight of phosphoric acid designed to be applied directly to bare metal surfaces to provide corrosion resistance and adhesion; coatings used as weldable primers; and mordant solutions for galvanised and zinc surfaces;
- (d) “topcoat” means any pigmented coating that is designed to be applied either as a single-layer or as a multiple-layer base to provide gloss and durability. It includes all products involved such as base coatings and clear coatings:
 - (i) “base coatings” means pigmented coatings designed to provide colour and any desired optical effects, but not the gloss or surface resistance of the coating system;
 - (ii) “clear coating” means a transparent coating designed to provide the final gloss and resistance properties of the coating system;
- (e) “special finishes” means coatings designed for application as topcoats requiring special properties, such as metallic or pearl effect, in a single layer, high-performance solid-colour and clear coats, (e.g. anti-scratch and fluorinated clear-coat), reflective base coat, texture finishes (e.g. hammer), anti-slip, under-body sealers, anti-chip coatings, interior finishes; and aerosols.

3. In this Schedule—

“film” means a continuous layer resulting from the application of one or more coats to a substrate;

“mixture” means mixtures or solutions composed of two or more substances;

“organic solvent” means any VOC which is used—

- (i) alone or in combination with other agents to dissolve or dilute raw materials, products or waste materials;
- (ii) as a cleaning agent to dissolve contaminants;
- (iii) as a dispersion medium;
- (iv) as a viscosity adjuster;
- (v) as a surface tension adjuster;
- (vi) as a plasticiser; or
- (vii) as a preservative;

“substance” means any chemical element and its compounds, as they occur in the natural state or as produced by industry, whether in solid or liquid or gaseous form.

SCHEDULE 2

Regulations 4 and 5

VOC content limit values

A. Maximum VOC content limit values for paints and varnishes

	<i>Product Subcategory</i>	<i>Type⁽¹⁾</i>	<i>VOC (g/l²)</i>
a	Interior matt walls and ceilings (Gloss ≤25@60°)	WB	30
		SB	30
b	Interior glossy walls and ceilings (Gloss >25@60°)	WB	100
		SB	100
c	Exterior walls of mineral substrate	WB	40
		SB	430
d	Interior/exterior trim and cladding paints for wood and metal	WB	130
		SB	300
e	Interior/exterior trim varnishes and woodstains, including opaque woodstains	WB	130
		SB	400

f	Interior and exterior minimal build woodstains	WB	130
		SB	700
g	Primers	WB	30
		SB	350
h	Binding primers	WB	30
		SB	750
i	One-pack performance coatings	WB	140
		SB	500
j	Two-pack reactive performance coatings for specific end use such as floors	WB	140
		SB	500
k	Multi-coloured coatings	WB	100
		SB	100
l	Decorative effect coatings	WB	200
		SB	200

⁽¹⁾ “solvent-borne coatings (SB)” means coatings the viscosity of which is adjusted by the use of organic solvent; and

“water-borne coatings (WB)” means coatings the viscosity of which is adjusted by the use of water;

⁽²⁾ g/l of ready to use product.

B. Maximum VOC content limit values for vehicle refinishing products

	<i>Product sub-category</i>	<i>Coatings</i>	<i>VOC g/l⁽¹⁾</i>
a	Preparatory and cleaning	Preparatory	850
		Pre-cleaner	200
b	Bodyfiller/stopper	All types	250
c	Primer	Surface /filler and general (metal) primer	540
		Wash primer	780
d	Topcoat	All types	420
e	Special finishes	All types	840

⁽¹⁾ g/l of ready to use product. Except for sub-category (a) any water content of the ready to use product should be discounted.

SCHEDULE 3

Regulation 4(2)

Analytical methods for determining VOC content

Permitted method for products with VOC content below 15% by mass where reactive diluents are not present

<i>Parameter</i>	<i>Unit</i>	<i>Test method</i>	<i>Date of publication</i>
VOC content	g/l	ISO 11890-2	2006

Permitted methods for products with VOC content equal to or greater than 15% by mass where reactive diluents are not present:

<i>Parameter</i>	<i>Unit</i>	<i>Test method</i>	<i>Date of publication</i>
VOC content	g/l	ISO 11890-1	2007
VOC content	g/l	ISO 11890-2	2006

Permitted method for products with VOC content where reactive diluents are present:

<i>Parameter</i>	<i>Unit</i>	<i>Test method</i>	<i>Date of publication</i>
VOC content	g/l	ASTMD 2369 ⁽¹⁾	2003

⁽¹⁾ References to ASTMD are to standards adopted by ASTM International. They are available at www.astm.org.

SCHEDULE 4

Regulation 6(1)(c)

ENFORCEMENT POWERS AND RELATED OFFENCES IN NORTHERN IRELAND

PART 1

POWERS OF ENTRY

1. An authorised person may, on production (if so required) of his authority, exercise any of the powers specified in paragraph 2 for the purpose of determining whether any provision of these Regulations is being, or has been, complied with.

2. The powers of an authorised person are—

- (a) to enter at any reasonable time any premises which that person has reason to believe it is necessary to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with that person—
 - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any relevant product found in or on any premises which the authorised person has power to enter, and of the air, in, on, or in the vicinity of, the premises;
- (g) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than anyone nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (h) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of an examination or investigation under sub-paragraph (c), and to inspect and take copies of, or of any entry in, the records;
- (i) to require any person to afford such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by paragraph 1 and this paragraph;

3. The powers which under paragraphs 1 and 2 are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of these Regulations is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made, to install, keep or maintain monitoring and other apparatus there.

4. In any case where it is proposed to enter any premises used for residential purposes, any entry by virtue of this Part shall only be effected—

- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and
- (b) with the consent of a person who is in occupation of those premises;

5. No answer given by a person in pursuance of a requirement imposed under paragraph 2(g) shall be admissible in evidence against that person in any proceedings.

6. Nothing in this Part shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

7. Nothing in section 98 of the Local Government Act (Northern Ireland) 1972(a) shall apply to powers conferred on an authorised person by a district council under this Part.

PART 2

OFFENCES

8. It is an offence for a person intentionally to obstruct an authorised person in the exercise of his powers or duties.

9. It is an offence for a person, without reasonable excuse—

- (a) to fail to comply with any requirement imposed under Part 1;
- (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the exercise of his powers or duties under that Part; or
- (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer under that Part.

10. A person guilty of an offence under paragraph 8 or 9 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 3

DEFINITIONS

11. In this Schedule—

“authorised person” means a person who is authorised in writing by an enforcing authority for the purposes of these Regulations;

“constable” has the meaning given to it by section 43A of the Interpretation Act (Northern Ireland) 1954(b);

“enforcing authority” means a district council in Northern Ireland;

(a) 1972 c.9 (N.I.)
(b) 1954 c.33 (N.I.)

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise;

“premises” includes any land, vehicle, vessel or mobile plant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and remake with amendments the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005 (SI 2005/2773). They implement Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints, varnishes and vehicle refinishing products (the VOCs in Paints Directive) (OJ L 143, 30.4.2004, p. 87).

In particular these Regulations transpose, by Schedule 3, the new analytical methods for determining VOC content contained in Directive 2010/79/EU on the adaptation to technical progress of Annex III to Directive 2004/42/EC (OJ L 304, 20.11.2010, p. 18).

The VOCs in Paints Directive lays down maximum content limit values for volatile organic compounds. The second phase of that limitation in respect of paints and varnishes was effective from 1st January 2010. These limits are set out in table A of Schedule 2. Reference in the 2005 regulations to the first phase has been deleted as has the transitional period which has now passed. The single set of content limit values in respect of vehicle refinishing products is set out in table B of Schedule 2.

Regulation 3 applies the Regulations to the products covered by Schedule 1 unless they are for use outside the EU or are for uses regulated for the purposes of Council Directive 1999/13/EC on the limitation of emissions of Volatile Organic Solvents due to the use of organic solvents in certain activities and installations (the Solvent Emissions Directive).

Regulation 4 prohibits the marketing of the products listed in Schedule 1 unless they have a VOC content which does not exceed the limit values in Schedule 2.

Schedule 3 sets out the analytical methods to be applied in determining the VOC content of the products.

Regulation 5 requires that products listed in Schedule 1 carry a label giving the maximum VOC content of that product in a ready to use condition.

Regulation 6 deals with enforcement and Schedule 4 contains specific provisions regarding enforcement in Northern Ireland.

Regulation 7 requires the Secretary of State to establish a programme of monitoring so as to verify compliance with the Regulations.

Regulation 8 creates an offence of failing to comply with regulation 4 and prescribes penalties. The maximum penalties are a fine on conviction on indictment, and on summary conviction, a fine of the statutory maximum which, at the time of making these Regulations, is £5,000.

Regulation 9 imposes upon the Secretary of State an obligation to review the regulations after 5 years.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Better Regulation Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL. It is published at www.legislation.gov.uk alongside the Explanatory Memorandum and this instrument.

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STATUTORY INSTRUMENTS

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