

UK Plan To Ensure Compliance With The Paint Products Directive

Introduction

1. Directive 2004/42/CE of the European Parliament and of the Council of 21 April 2004 on the Limitation of Emissions of Volatile Organic Compounds due to the use of Organic Solvents in certain Paints and Varnishes and Vehicle Refinishing Products and amending Directive 1999/13/EC (the Paints Products Directive) aims to reduce emissions of volatile organic compounds (VOC) across the UK and Europe. VOCs are precursors to the formation of ground level ozone (summer smog) and reductions resulting from implementation of this Directive will lead to improvements in air quality and public health.
2. Article 6 of the Paint Products Directive requires Member States to set up a monitoring programme for the purpose of verifying compliance and Article 7 requires Member States to report the results of the monitoring programme to demonstrate compliance (See 2010 Questionnaire at Annex 1). The 2004 Directive was amended by Directive 2008/112/EC in order to adapt it to Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures.
3. The Paint Products Directive applies a product based approach to control emissions by setting:
 - maximum content limits for solvents (VOCs) in decorative paints, varnishes and vehicle refinishing products, placed on the market from 01 January 2007 (Phase I), and
 - more stringent limits for the maximum content limits of solvents of decorative paints and varnishes, placed on the market from 01 January 2010 (Phase II).
4. The Directive has been implemented in the UK by the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005 (Statutory Instrument 2005, SI No. 2773): <http://www.legislation.gov.uk/ukSI/2005/2773/contents/made> .
5. These Regulations were amended by the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) (England) Regulations 2009 SI No. 3145 <http://www.legislation.gov.uk/ukSI/2009/3145/contents/made> . The amendment was not required in the devolved administrations' jurisdictions due to the make-up of local government there.

Purpose of this plan

6. This Plan sets out the approach adopted by the UK to ensure compliance with Article 6 of the Directive.
7. Because of the large number of premises that place on the market products covered by the Directive, a proportionate approach to compliance is being taken. This Plan establishes a risk-based approach, having regard to the diversity of premises involved, opportunities for joining up inspection for various purposes, the likelihood of particular classes of premises giving rise to non-compliance and, in particular, any non-compliance which may have a significant impact on achieving the purposes of the Directive, notably as a harmonisation directive which aims to ensure the free circulation of goods within the Internal Market..
8. Part 1 of this Plan describes the premises in the UK covered by the Directive, the competent authorities responsible for monitoring and enforcing compliance, and the national guidance that has been issued to competent authorities. Part 2 of the Plan describes the risk-based approach being adopted to secure compliance.

Part 1: Regulated Premises, Competent Authorities, and National Guidance.

Regulated facilities and Regulators

Manufacturers

9. Larger manufacturers are regulated by local authority environment protection officers and the Scottish Environment Protection Agency's environment protection officers. Manufacturers are at the top of the UK supply chain and work closely with central Government to ensure non-compliant paint does not get into the supply chain. All manufacturers are also regulated by local authority trading standards officers and health and safety officers.

10. Most UK manufacturers belong to the British Coatings Federation (BCF), accounting for about 80% of the UK market. Those above the 100T per annum threshold require a pollution permit which contains conditions aimed at securing the use of Best Available Techniques. UK guidance on BAT can be found in Process Guidance note 6/44 on the Manufacture of Coating Materials, which is being reviewed during 2010. There are currently 120 permitted manufacturers operating above the threshold, BCF inform us that there are around 80 manufacturers operating below. BCF issued guidance to members in 2006 in order to prepare for the 2007 thresholds and an update in 2008 in advance of those for 2010
<http://www.coatings.org.uk/pdf/E015%20BCF%20Guide%20to%20VOC%20emissions%20from%20coatings%20and%20inks.pdf>
<http://www.coatings.org.uk/pdf/BCF%20deco%20leaflet%20for%202010%20Mar%2008.pdf>

Our knowledge of this source sector is central to our risk based approach.

Importers

11. Importers are regulated by local authority trading standards officers and health and safety officers. Most paint used in the UK is sold to businesses and individuals by large retailers which buy their paint directly from manufacturers either in the UK or within the European Union. The REACH Directive requires that manufacturers or importers need to register any substance they supply to the EU market above 1 tonne per year. Information from the paint industry is that this has rendered the importation of paint from outside the European Union non-economically viable.

12. The total number of importers of paint into the UK is unknown as there is nothing to prevent small and medium sized wholesalers and retailers importing their own paint. That is why this implementation plan is focused on tracing the source of any non-compliant paints back from the end user or the final point of sale.

13. The Government's main concern regarding possible non-compliance through importation is the vehicle refinishing sector, which sources its paint from motor

factors, and it is the supply lines for these middlemen which are the primary focus of the Government's monitoring programme. The paint industry advise that overseas purchase by paint factors would be almost entirely to acquire products at lower cost. However, as of September 2010, no evidence has been discovered of any non-compliant paint from a non-EU source as part of the intelligence led monitoring programme.

Wholesalers

14. Wholesalers, also known as paint factors, are regulated by local authority trading standards officers and health and safety officers. Wholesalers may also be importers of paint. Regulation is intelligence led with supply lines being traced back from retailers and end users. The big retail chains avoid wholesalers and deal directly with manufacturers in the UK or elsewhere in the EU.
15. The paint factors sell to the vehicle refinishing trade, to smaller businesses and smaller retail outlets and, to a lesser extent, direct to private individuals. Because practice varies, this Plan treats them all as wholesalers, in order to distinguish them from the big retail chains that have no wholesale function. Paint factors adhere to an industry Code of Practice which commits them to only selling non-compliant paint for use on vintage vehicles, and on them receiving and keeping a declaration from the purchaser to that effect. There are approximately 1250 vehicle refinishing bodyshops currently regulated under the VOC Directive. These buy their products directly from motor factors and are inspected by local authority officers under the Local Air Pollution Prevention and Control regime.
16. Under this Plan, these regulators are expected to take the opportunity during periodic inspections to check for any non-compliant paint and to ask the source of any that is discovered. This information should then be passed on to trading standards officers for follow-up investigation.
17. In drawing up this Plan, it was found that a number of companies advertise direct supply of paints on the internet. The Government has therefore taken steps to check the internet periodically for any such company advertising cellulose or other non-compliant paints, and the relevant trading standards officers are informed of any cases for them to follow up.

Retailers

18. Retailers are regulated by local authority trading standards officers and health and safety officers. The big retailers buy their paint directly from manufacturers either in the UK or within the European Union. There are many smaller retail chains and individual shops which sell major brands of household paint on the high street and some specialist household paint shops. We have yet to find any occurrence of decorative paint retailers marketing non-compliant paint, other than for restoration work under the industry code of practice. One major chain retailing automotive supplies has been investigated in relation to vehicle refinish paints and no case for enforcement action has yet been made.

Others

19. There are no other known types of organisation marketing paint products in the UK apart from a network of community paint initiatives, which act as an exchange for unused and unwanted paint. Discussions have taken place at national level to ensure that any re-marketed paint complies with the Directive. Follow up inspections will be considered on a risk basis.

Competent Authorities

20. The competent authorities for the enforcement and monitoring functions set out in the Paints Regulations are local authorities in England, Scotland and Wales, Scottish Environment Protection Agency (SEPA) for any point of use or productive process already regulated by SEPA under the Pollution Prevention and Control (Scotland) Regulations 2000, and district councils in Northern Ireland. These functions were delegated by the Secretary of State for Environment, Food and Rural Affairs in June 2009 for England, Scotland and Wales and in April 2008 in the case of Northern Ireland.

Guidance

21. The UK Government issued guidance in June 2009 for environmental protection, health and safety and trading standards officers who, as part of their other functions, already inspect paint manufacturers, distributors, and retailers as part of their other functions.

<http://www.defra.gov.uk/environment/quality/pollution/ppc/localauth/paints/documents/guidance.pdf> .

22. The guidance advises on various aspects of monitoring, inspection and enforcement, and advised on the availability of Government funds for any necessary testing of paints. In particular, the guidance:

- lists the paints and other products covered by the Directive and the VOC levels for each
- advises on cost-effective ways of combining the regulatory responsibilities under the Directive with other enforcement roles
- explains the powers available to regulators
- advises on the scope of the directive in relation to different types of vehicle
- describes how regulators should address placing on the market paints used for historic buildings and vintage vehicles
- shows the labelling requirements of the Directive, and
- recommends an approach to inspections to check compliance with the Directive.

Part 2: Risk Based Approach to Compliance

Monitoring Programme

23. The monitoring programme is intelligence-led risk-based and targeted. For the reasons set out in Part 1 of this Plan, it focuses on the vehicle refinishing sector and their suppliers.

24. This is achieved by a package of measures aimed at closing down the end delivery portal and tracing back supply lines up the retail chain. Defra is in regular contact with trading standards and environmental health officers in England as well as with the devolved administrations and trade bodies in order to ensure we maintain an overview of compliance within the UK.

Industry Code of Practice

25. An industry code of practice was agreed and has been in place since June 2009. The code of practice applies to any manufacturer, importer, wholesaler or retailer selling non-compliant paint to customers who intend to use the materials when restoring or maintaining vintage vehicles or historic buildings. It requires that non-compliant paint should only be sold to customers if the quantity sold is strictly limited and the customer gives his or her name and address and shows proof of these details, and provides evidence that the paint will be used for the stated purpose. Copies of a declaration containing the information provided for each sale, as well as details of the paint bought, are kept on the premises where the paint is sold for a minimum of two years, by way of a record which can be checked by the regulatory authorities.

<http://www.defra.gov.uk/environment/quality/pollution/ppc/localauth/paints/documents/code-of-practice.pdf>

Targeted Inspections

26. Targeted inspections of retail premises are carried out by local authority trading standards officers. These inspections are prompted by intelligence from legitimate suppliers, from regular scans of internet advertising and from environmental health officers inspecting vehicle refinishing facilities as part of the local air pollution prevention and control regime. There are currently 10 local authorities acting on information gathered in this way.

Annual Statistical Survey

27. The Government carries out an annual statistical survey amongst local authorities in England and Wales covering work related to the Pollution Prevention and Control regime carried out over the previous year, such as income received, the number of applications made, time taken to process those applications, the number of inspections, etc... The report includes questions on how many instances of non-compliance with the Directive have been found, how many of these were due to mislabelling, how many were due to paint content being non-compliant and how many litres of paint in total were non-compliant.

Regulatory Visits

28. Larger manufacturers are regulated, and subject to inspection, by local authority environment protection officers and the Scottish Environment

Protection Agency's environment protection officers. All manufacturers are also regulated by local authority trading standards officers and health and safety officers. At the other end of the supply chain, vehicle refinishing bodyshops regulated under the VOC Directive are inspected by local authority officers under the Local Air Pollution Prevention and Control regime.

Contact with Industry

29. Government officials maintain regular contact with the British Coatings Federation, individual manufacturers, large retailers and national-scale paint factors in order to keep the Plan under review and respond flexibly to any new intelligence.

Testing

30. The Government has made available a fund of £10,000 to cover the cost of testing suspected non-compliant paints that may be mislabelled for the purpose of circumnavigating the regulatory regime. As all non-compliant paints will have a VOC content in excess of 15% by mass, we have recommended that ISO 11890-1 be used in advance of the Commission's revisions to Annex III to Directive 2004/42/EC of summer 2010. This is because there is general agreement in the VOC Article 13 Committee as to the effectiveness of the test as analysis method for products with < 15 % VOC content and because the method is 4 to 4.5 times cheaper than ISO 11890-2 according to chapter 8.2.2 of the Okopol report on implementation and review of the Directive.

Common Format for Submission of the Report on the Implementation of Directive 2004/42/EC For the Period from 1 January Until 31 December 2010

1. General Information and administrative arrangements

1.1. Authority responsible for the present report:

Name	
Address	
Contact person	
E-mail	
Phone	

1.2. In the framework of the implementation of Directive 2004/42/EC, please indicate the authority or authorities designated pursuant to Article 5 of that Directive and responsible for:

- (a) establishing, coordinating and managing the monitoring programme (at national level);
- (b) carrying out inspections and checks in the field (at regional and/or local level);
- (c) ensuring that the national provisions adopted in order to implement that Directive are enforced.

1.3. If several authorities are involved in the implementation of Directive 2004/42/EC, please indicate the measures taken to ensure the most uniform possible implementation of the Directive throughout the entire territory.

2. Monitoring Programme (Article 6 of Directive 2004/42/EC)

2.1. Did you provide a copy of the national monitoring programme in the previous report?

yes no

Has the monitoring programme changed since the last reporting period?

yes no

Where a written version of the monitoring programme exists which was not provided with the first monitoring report, or if the monitoring programme has been revised since the first report, please provide a copy of the new or revised monitoring programme in the annex to this report.

2.2. Where a written description of the monitoring programme has not been provided, please briefly describe the programme with particular reference to the following elements:

- (a) How compliance with the VOC limit values in Annex II to Directive 2004/42/EC is verified;
- (b) How the labelling requirements set out in Article 4 of Directive 2004/42/EC are verified;
- (c) How the operators monitored in a given year are selected;

- (d) How and to what extent monitoring is carried out for years when no report is due to be submitted to the Commission.

2.3. If possible, please estimate the number of operators active in the Member State in each of the following categories:

	estimated number
manufacturers	
importers	
wholesalers	
retailers	

2.4. Taking into account the market structure in 2.3 above, which of the following operators does the monitoring programme cover?¹:

- manufacturers; importers; wholesalers; retailers;
 others (please specify):

2.5. If possible please estimate of the quantity of products (in kg) on the market within the scope of Directive 2004/42/EC for the year 2010.

2.6. Please give an estimate of the market share the monitoring programme is intended to check in a given year?

- 0- 20%; 21- 40%; 41-60%; 61- 80%; 81-100%;

2.7. The inspections are generally carried out by means of¹:

- on site visits without notice having been given to the operator.
 on site visits with prior notice given to the operator.
 others (please specify) :

2.8. How do the competent authorities verify compliance of products with the VOC limit values set out in Annex II to Directive 2004/42/EC ¹?

- A: by sampling and product analysis undertaken by an accredited laboratory using the analytical methods set out in Annex III of Directive 2004/42/EC;
 B: by reliance on the report of a product analysis undertaken by the operator using the analytical methods set out in Annex III of Directive 2004/42/EC (manufacturer, importer, wholesaler or retailer);
 C: others (please specify):

2.9. Are inspections of product labels performed by means of¹:

- A: visual checks on site;
 B: submission of sample labels to the inspection authority specified in point 1.2.(b);
 C: others (please specify):

2.10. The inspection of an operator is undertaken¹:

¹ More than one answer can apply.

- systematically and more than once per year for the most important operators;
- systematically and once per year for the most important operators;
- randomly for all operators;
- randomly for small operators;
- others (please specify):

2.11. If possible, please provide an estimate of the total costs in EUR per year associated with the execution of the monitoring programme (personnel, sampling and analysing, checks on labelling, enforcement, other costs).

Estimated monitoring costs in EUR per year:

- less than 20 000€;
- 20 000€ to 40 000€;
- 41 000€ to 60 000€;
- more than 60 000€.

3. Key results of the monitoring programme carried out in 2010 (Article 7 of Directive 2004/42/EC)

3.1. Summary of inspections

Please indicate the number of inspections of the VOC content performed and the observed percentage of non-compliance with the limits set out in Annex II to Directive 2004/42/EC at the level of the Member State by completing the tables A, B and C.

Member States may provide estimations of the number of inspections of the VOC content performed and the observed percentage of non-compliance with the limits set out in Annex II to Directive 2004/42/EC at the level of the Member State based on extrapolation of information from a relevant number of authorities. Where the information provided in tables A, B or C is estimated what is the estimated market share covered by those authorities?

- 0- 20%; 21- 40%; 41-60%; 61- 80%; 81-100%;

3.1.1 Table A²

For premises inspected for VOC contents or label or both, please complete Table A.

Table A	Manufacturers	Importers	Wholesalers	Retailers	Others
1. Number of premises where VOC contents and labels were checked					
2. Number of premises where VOC contents was checked					

² The total number of premises visited or estimated is the sum of lines 1, 2 and 3.

3. Number of premises where labels were checked					
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3.1.2 Table B

For the premises inspected for the VOC content (information given in line 1 and 2 of Table A), please complete Table B.

Table B	Manufacturers	Importers	Wholesalers	Retailers	Others
Number of product samples analysed using methods specified in 2.8.A or 2.8.B of this Annex					
Number of product samples analysed using method specified in 2.8.C of this Annex where applicable					
Percentage of samples not complying with Phase I VOC limits ³					
Percentage of samples not complying with Phase II VOC limits ³					

3.1.3 Table C

For the premises inspected for the label (information given in line 1 and 3 of Table A), please complete Table C.

Table C	Manufacturers	Importers	Wholesalers	Retailers	Others
Number of labels checked by visual inspections using method specified in 2.9.A of this Annex					
Number of labels checked using all other methods					

³ Set out in part A of Annex II to Directive 2004/42/EC. For vehicle refinishing products only Phase I applies.

specified in 2.9.B or 2.9.C of this Annex					
Percentage of labels not complying with labelling requirements					

3.2. Which categories of products in Annex I to Directive 2004/42/EC in particular were found not to comply with (1) VOC content limits in Annex II; and (2) the product labelling requirements of Article 4 (up to five most recurrent categories)?

3.3. In cases of non-compliance, what actions have subsequently been taken in order to ensure compliance with Directive 2004/42/EC?

4. Exemptions granted pursuant to Article 3(2) of Directive 2004/42/EC

4.1. How has the derogation regime provided for in Article 3(2) of Directive 2004/42/EC been established?

4.2. What control system has been set up to ensure that products set out in Annex I of Directive 2004/42/EC not complying with the limit values set out in Annex II of Directive 2004/42/EC are not sold to any operator other than installations registered or authorised according to Articles 3 and 4 of Directive 1999/13/EC?

4.3. If available, please provide an estimate of the quantity of exempted products (according to the classification listed in Annex I to Directive 2004/42/EC) in 2010.

5. Individual licences granted pursuant to Article 3(3) of Directive 2004/42/EC

5.1. Has use been made of the possibility to grant individual licenses as provided for in Article 3(3) of Directive 2004/42/EC in relation to the restoration and maintenance of buildings and vintage vehicles of particular historical or cultural value?

5.2. If yes, please briefly describe the operation of the system established to grant individual licences:

- (a) Which authorities are in charge of issuing individual licences?
- (b) Which authorities are in charge of designating the buildings and/or vintage vehicles of particular historical and cultural value?
- (c) According to which criteria has particular historical and cultural value been established?
- (d) If possible, please provide an estimate of the number of buildings and/or vintage vehicles which have been designated by the competent authorities as being of particular historical and cultural value?
- (e) How is it ensured that the products in question are
 - Sold only in "strictly limited" quantities;
 - Used only for the purpose of restoration and maintenance of designated buildings and/or vehicles?
- (f) Please describe the categories and quantities of products licensed according to Article 3(3) of Directive 2004/42/EC, preferably using the following table:

Categories	Correspondence with Annex I to Directive 2004/42/EC	Quantities of 'ready to use' product for which a license has been granted (kg)
Category 1		
Category 2 etc.		

6. Other relevant information

- 6.1. What were the main difficulties encountered in setting and implementing the monitoring programme, including problems with implementation of the Directive or administrative problems encountered in implementation of a concrete monitoring programme? How were those difficulties overcome?
- 6.2. Please provide any additional relevant comments, suggestions or information in relation with the implementation of Directive 2004/42/EC.