

EXPLANATORY MEMORANDUM TO
THE TEXTILE PRODUCTS (DETERMINATION OF COMPOSITION)
REGULATIONS 2006

2006 No. 3298

This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations implement Council Directive 96/73/EC on certain methods for the quantitative analysis of binary textile fibres, as amended by European Directive 2006/2/EC. They provide for uniform methods for sampling and analysis to be used for the purpose of determining fibre composition of *binary* textile fibre mixtures including new uniform test methods for textile fibres poly lactide and elastomultiester. These Regulations also implement Council Directive 73/44/EEC on certain methods for the quantitative analysis of *ternary* textile fibres, and provide for uniform methods for sampling and analysis to be used for the purpose of determining fibre composition of ternary textile fibre mixtures.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative background

4.1 These Regulations revoke and replace the Textile Products (Determination of Composition) Regulations 1976 (the “1976 Regulations”), which previously implemented Council Directive 96/73/EC on certain methods for the quantitative analysis of binary textile fibres, and also Council Directive 73/44/EEC on certain methods for the quantitative analysis of ternary textile fibres.

4.2 Council Directive 96/73/EC and Council Directive 73/44/EEC provide for uniform methods for sampling and analysis to be used for the purposes of determining fibre composition in recognised binary and ternary textile names listed in Annex I of Council Directive 96/74/EC textile fibre names. Occasionally, as new fibres are developed, it is necessary to amend Directives 96/73/EC and 73/44/EEC by adding new uniform test methods for certain binary or ternary fibres, as appropriate, to the lists contained in the relevant Annexes to those Directives.

4.3 Directive 2006/2/EC (adopted on 6th January 2006) so amends Directive 96/73/EC, adding entries to Annex II of that Directive in relation to poly lactide and elastomultiester.

4.4 A Transposition Note is attached to this Memorandum.

5. Territorial Extent and Application.

5.1 This instrument applies to all of the UK.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Policy

7.1 Without harmonisation of test methods for textile fibres and particulars within the European Union, there is a risk that this would create a hindrance to the proper functioning of the internal market. The aim of Directive 96/73/EC and Directive 73/44/EEC is, therefore, to facilitate the better functioning of the internal market by harmonising the testing procedures for determining the composition and labelling of textile products.

7.2 The Directives are implemented in the UK by these Regulations. Manufacturers, importers, traders and retailers are obliged to carry out tests on permitted fibres in compliance with the uniform test methods set down by Directive 96/73/EC and Directive 73/44/EEC. Under the 1976 Regulations, which previously implemented Directive 96/73/EC and Directive 73/44/EEC, manufacturers, importers, traders and retailers were obliged to comply with certain test methods for fibre textile mixtures. The enforcement authorities (local authority trading standards services) are already obliged to take action where this requirement is not met.

7.3 These Regulations will not make any changes to these obligations. Where the fibre content of a textile includes polylactide and elastomultiester, textile businesses will be required to carry out the uniform test method set down for each fibre set out in Annex II of Directive 96/73/EC. There will, therefore, be negligible additional costs for those subject to the Regulations or to enforcers, as the costs involved are to conduct the appropriate test for the fibres used in the textile and the addition, or substitution of one fibre for another. By transposing the requirements of Directive 2006/2/EC, the amendment to Directive 96/73/EC benefits those subject to the implementing Regulations as this will be to the advantage of UK firms manufacturing textile products, in that it will enable them to comply accurately to the uniform test methods relating to the use of those fibres in textile products.

7.4 The Textile Products (Indication of Fibre Names Content) (Amendment and Consolidation of Schedules of Textile Names and Allowances) Regulations 2006 were made at the same time as these Regulations and add elastomultiester to the list of approved textile names and fibres in the Textile Fibres (Indication of Contents) Regulations 1986. Polylactide had already been added to the list in 2005.

Form of regulations

7.5 The 1976 Regulations previously implemented Directives 96/73/EC and 73/44/EEC by referring to a British Standard 4407 (published by the British Standard Institute on 29 July 1988), for the uniform testing methods permitted for binary and ternary textile fibre mixtures provided for in their respective Annexes.

7.6 This British Standard has not been fully updated as a result of Directive 2006/2/EC and so does not properly set out the test methods required by Directive 96/73/EC as amended by Directive 2006/2/EC. As a result, these Regulations replace the 1976 Regulations by implementing Directive 96/73/EC, as amended by Directive 2006/2/EC, and Directive 73/44/EEC, by cross-referring to the relevant Annexes to those Directives rather than by reference to British Standards as previously under the 1976 Regulations.

Consultation

7.7 A formal consultation was carried out from 30 August to 22 November 2006 on our proposals for implementing Directive 2006/2/EC. The consultation document was also published on <http://www.dti.gov.uk/consultations/page33691.html>

7.8 The only organisations to respond were British Apparel and Textile Confederation (BATC), and the United Kingdom Textile Laboratory Forum. Their view is that the industry is familiar with the Regulations referring to the British Standard as a single source for the descriptions of test methods for quantitative analysis of both binary and ternary textile fibre mixtures, and would prefer that the new regulations should, as the existing regulations do, to the Standard rather than the relevant Annexes to the Directives.

7.9 We recognise the industry's preference, but that is not a practicable approach at present, since some of the necessary parts of the British Standard will not have been updated in time to meet the Commission's implementation date of 6th January 2007. In order to achieve transposition by that date, the only feasible route is by reference to the Directives themselves.

7.10 The Government would be prepared to look again at the best mode of implementation once the British Standard has been fully revised. But if a re-implementation were proposed, it would be necessary to show that the benefits would outweigh the further work required. It seems unlikely that this test can be met for a purely formal change which did not affect the substance of the regulation.

7.11 The Government's response to the consultation exercise will be published on the DTI website in December 2006.

Revocation

7.12 The Regulations implement Directive 2006/2/EC that adds new test methods for polylactide and elastomultiester. They also revoke and replace the 1976 Regulations in implementing Directives 96/73/EC as amended by 2006/2/EC, and 73/44/EEC, by cross-referring to the Directives for the provisions in the relevant Annexes, rather than to a British Standard as previously under the 1976 Regulations.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum for this instrument.

8.2 The impact on the public sector is negligible.

9. Contact

9.1 Rose Newton at the Department of Trade and Industry, telephone 020 7215 0333 or e-mail rose.newton@dti.gsi.gov.uk, can answer any queries regarding this instrument.

FULL REGULATORY IMPACT ASSESSMENT

The Textile Products (Determination of Composition) Regulations 2006.

PURPOSE AND INTENDED EFFECT OF MEASURE

Purpose

To replace the current UK regulations, the Textile Products (Determination of Composition) Regulations 1976 (the “1976 Regulations”).

Objective

To facilitate the better functioning of the internal market by harmonising the names, composition and labelling of textile products. This is a minor technical amendment, but will benefit those in the textile industry using polylactide and elastomultiester.

The proposed Regulations will implement Directive 2006/2/EC that adds new test methods for fibres polylactide and elastomultiester to Annex II of Directive 96/73/EC (the “Binary Directive”). They will also revoke and replace the 1976 Regulations in implementing the Binary Directive and Directive 73/44/EEC (the “Ternary Directive”).

Background

The Binary Directive on quantitative analysis of binary textile fibre mixtures is implemented in the UK by the 1976 Regulations and provides for uniform methods for sampling and analysis to be used for the purpose of determining fibre composition in recognised binary textile names listed in Annex II to Directive 96/74/EC on textile fibre names.

Occasionally, as new fibres are developed, it is necessary to amend the Binary Directive by adding new uniform test methods for certain binary fibres to the lists contained in its Annex II. Directive 2006/2/EC, adopted on 6th January 2006, so amends the Binary Directive, to add test methods for polylactide and elastomultiester.

The 1976 Regulations implement both the Binary and Ternary Directives by referring to a British Standard for the test methods.

Risk assessment

Without harmonisation of test methods for textile fibres and particulars within the European Union, there is a risk that this would create a hindrance to the proper functioning of the internal market.

Failure to implement Directive 2006/2/EC will put the UK in breach of European Community legal obligations, which would mean risking infraction.

Options:

1. **Do nothing:** This is not possible. Member States are required to implement the Directive into national law. Failure to implement the Directive would risk infraction proceedings by the Commission.
2. **Amend the Textile Products (Determination of Composition) Regulations 1976:** Amend the 1976 Regulations by reference to the British Standard (in whatever initial form).
3. **Revoke the 1976 Regulations:** and make new Regulations that implement the Binary Directive (as amended by Directive 2006/2/EC) and the Ternary Directive by cross-referencing the relevant annexes.

Option 1: would not meet UK obligations to implement Directive 2006/2/EC. The UK would therefore be at risk of infraction proceedings by the Commission. Further, UK business could be put at a competitive disadvantage in the EU as their textiles would not meet EU labelling requirements.

Option 2: At present the 1976 Regulations refer to a British Standard (BS4407), under which test methods for mixture of two fibre types (binary) permitted under the Binary Directive are set down, and also those permitted under the Ternary Directive, under which test methods for mixtures of three fibre types (ternary) are set down. This Standard is updated as necessary to reflect any changes made to the relevant Annexes to these two Directives. This Standard is currently under revision, but not all parts will have been published in time to correctly transpose Directive 2006/2/EC.

This would mean that, for an interim period, the 1976 Regulations would need to be amended to refer to both the existing British Standard and also to the revised Standard (in practice, the published parts of the new Standard, supplemented by the modified version of the current Standard). Then, when the new Standard is fully published, making a second set of regulations that only refer to the revised Standard. This is not ideal and could lead to some confusion for businesses using the regulations.

Option 3: would meet UK obligations, but may increase the complexity of the Regulations for the textile industry, as the Regulations would refer to the relevant Directives themselves for descriptions of the test methods for binary and ternary mixtures, rather than to a British Standard, as at present).

We therefore propose **Option 3** as the most convenient way to achieve the UK's obligation to secure effective transposition of Directive 2006/2/EC into national law by the agreed deadline to the benefit of all those who use the regulations. The proposed Regulations will therefore revoke and replace the 1976 by reference to the relevant Directives themselves for the provisions on test methods for binary and ternary fibres rather than to a British Standard.

There is no reason, however, why industry cannot continue to refer to the British Standard as an everyday working document, even if it is no longer given any special status in the Regulations.

COSTS AND BENEFITS

Business sectors affected

Textiles and apparel industries. It is estimated that around 2,000 businesses will be affected.

Benefits

By transposing the requirements of Directive 2006/2/EC to add the uniform test methods for polylactide and elastomultiester to Annex II of the Binary Directive, the amendment benefits those subject to the implementing Regulations as this will be to the advantage of UK firms manufacturing textile products, in that it will enable them to comply accurately to the uniform test methods relating to the use of those fibres in textile products.

Total costs

It is estimated that the costs of amending current Regulations to implement a Directive to be around £700,000 annually. Manufacturers, importers, traders and retailers are obliged to carry out tests on permitted fibres in compliance with the uniform test methods set down by the Binary and Ternary Directives. Under the Regulations, manufacturers, importers, traders and retailers are already obliged to comply with certain test methods for fibre textile mixtures. The enforcement authorities (local authority trading standards services) are already obliged to take action where this requirement is not met.

The Regulations will not make any changes to these obligations. Where the fibre content of a textile includes the new fibres, polylactide and elastomultiester, textile businesses will be required to carry out the uniform test methods set down for each fibre in Annex II of the Binary Directive. There will, therefore, be negligible additional costs for those subject to the Regulations or to enforcers, as the costs involved are to conduct the appropriate test for the fibres used in the textile and the addition, or substitution of one fibre for another.

Costs for a typical business

The addition of uniform test methods for the new textile fibres is unlikely to increase the costs for a typical business, since Directive 2006/2/EC does not pose any obligations on textile manufacturers to include those fibres in their products.

Equity and fairness

The proposal has no effect on issues of equity and fairness.

Small Firms Impact Test

We informally consulted the British Apparel and Textiles Confederation (BATC), the main representative organisation for the UK textiles industry, which includes SMEs, on our proposals for implementing Directive 2006/2/EC. Results from those discussions suggested that the costs to businesses in terms of costs and burden will not be significant (since the amendment to the main Directive itself is a minor technical one that industry is already well aware of).

The BATC has expressed strong views, both informally and formally, that industry would prefer the Regulations to continue to refer to a British Standard (in whatever initial form) rather than to the Directives themselves for the provisions.

We recognise the industry's preference, but that is not a practicable approach at present, since some of the necessary parts of the British Standard will not have been updated in time to meet the Commission's implementation date of 6th January 2007. In order to achieve transposition by that date, the only feasible route is by reference to the Directives themselves.

The Government would be prepared to look again at the best mode of implementation once the British Standard has been fully revised. But if a re-implementation were proposed, it would be necessary to show that the benefits, in particular for SMEs, would outweigh the further work required. It seems unlikely that this test can be met for a purely formal change which did not affect the substance of the regulation.

Competition assessment

We have considered the competition filter test and the proposal has no significant effect on competition.

Enforcement and sanctions

The 1976 Regulations are enforced by local authority trading standards services. An offence under the Regulations is subject to the sanctions set out in the Trade Descriptions Act 1968. This position will remain the same under the new Regulations proposed.

CONSULTATION

Public consultation

We have already informally sought industry views on how we intend to implement the Directive from the British Apparel and Textile Confederation, the main representative body for the industry. Initial findings suggest that this proposal will have a negligible impact, in terms of costs and burden, on the industry.

A formal consultation was carried out from 30 August to 22 November 2006 on our proposals for implementing Directive 2006/2/EC. The only organisations to respond were the British Apparel and Textile Confederation (BATC), and the United Kingdom Textile Laboratory Forum. Their view is that the industry is familiar with the Regulations referring to the British Standard as a single source for the descriptions of test methods for quantitative analysis of both binary and ternary textile fibre mixtures, and would prefer that the new regulations should, as the existing regulations do, to the Standard rather than the relevant Annexes to the Directives.

We recognise the industry's preference, but that is not a practicable approach at present, since some of the necessary parts of the British Standard will not have been updated in time to meet the Commission's implementation date. In order to achieve transposition by that date, the only feasible route is by reference to the Directives themselves.

We would be prepared to look again at the best mode of implementation once the British Standard has been fully revised. But if a re-implementation were proposed, it would be necessary to show that the benefits would outweigh the further work required. It seems unlikely that this test can be met for a purely formal change which did not affect the substance of the regulation.

Summary and recommendation

The Textile Products (Determination of Composition) Regulations 2006 will implement Directive 2006/2/EC by reference to the Binary Directive that adds new uniform test methods for fibres, polylactide and elastomultiester, to those listed in its Annex II.

The UK is required to implement Directive 2006/2/EC in order to comply with our legal obligations. There are no real alternatives as to how the Directive itself is implemented.

We do not expect the impact to industry and to enforcers as a result of the transposition of this Directive to be significant.

Creating the new set of Regulations to refer to the Binary Directive (as amended by Directive 2006/2/EC) and the Ternary Directives themselves for the provisions, rather than to a revised British Standard supplemented by a modified version of the existing Standard will avoid the possibility of confusion for users of the Regulations as to which British Standard is applicable.

It is therefore recommended that Directive 2006/2/EC be implemented as set out in the Textile Products (Determination of Composition) Regulations 2006.

Ministerial declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Minister responsible

Malcolm Wicks

(Minister for Trade, Investment and Foreign Affairs)

Date **13th December 2006**

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Transposition Note: Council Directive 96/73/EC as amended by European Directive 2006/2/EC, and Council Directive 73/44/EEC.

This Transposition Note shows how the Department has implemented Council Directive 96/73/EC (O.J No. L32, 3.2.1997, P.1), as amended by Directive 2006/2/EC, which provides for uniform methods for sampling and analysis to be used in Member States for the purpose of determining the fibre composition of *binary* textile fibre mixtures, in order to implement Council Directive 96/74/EC (O.J No. L32 3.2.1997, p.38) on textile names. Directive 96/74/EC requires labelling to indicate the fibre composition of textile products, with checks being carried out by analysis on the conformity of these products with indications given on the label.

This Transposition Note also shows how the Department has implemented Council Directive 73/44/EEC (O.J No. L83, 30.3.1973, P.1), which provides for uniform methods for sampling and analysis to be used in Member States for the purpose of determining the fibre composition of *ternary* textile fibre mixtures

Council Directives 96/73/EC and 73/44/EEC were previously implemented in the UK by the Textile Products (Determination of Composition) Regulations 1976 (1976/202). These Regulations are revoked and replaced by the Textile Products (Determination of Composition) Regulations 2006 (2006/3298), to implement Directive 96/73/EC as amended by Directive 2006/2/EC, and Directive 73/44/EEC.

The Department of Trade and Industry has lead responsibility for the implementation of Directives 96/73/EC, 2006/2/EC and 73/44/EEC. The Textile Products (Determination of Composition) Regulations 2006 do what is necessary to transpose the requirements of these Directives. The tables below show how Directive 96/73/EC as amended by 2006/2/EC, and Directive 73/44/EEC, have been implemented in the UK.

Transposition of Directive 73/44/EEC on the quantitative analysis of ternary fibre mixtures

Article	Objective	Implementing regulation	Responsibility (Secretary of State if not specified)
1	Sets out the scope of the Directive.	Not necessary to transpose.	
2	Preparation of test samples and test specimens.	Regulation 4(1) implements Article 2 on the preparation for analysis of test samples and test specimens. Regulation 4(2) defines “test sample” and “test specimen”.	
3	Sets out test methods to be used for the quantitative analysis of ternary textile fibres.	Regulation 5(3) and 4(1) implement Article 3 on the analysis of a ternary textile fibre mixture.	
4	Sets out requirements for Test Reports on the testing of ternary mixtures.	Regulation 5(3) implements Article 4 on reporting requirements for testing of ternary textile fibre mixtures.	
5 and 6	Future Amendments, Entry in force etc	Do not require implementation.	

Transposition of Directive 96/73/EC on certain methods for quantitative analysis of binary textile fibre mixtures

Article	Objective	Implementing regulation	Responsibility (Secretary of State if not specified)
1	Sets out the scope of the Directive.	Not necessary to transpose.	
2	Definitions of “test sample” and “test specimen”.	Regulation 4(2) transposes Article 2.	
3	Sets out test methods to be used for the quantitative analysis of binary textile fibre mixtures.	Regulation 4(1) and 5(1) transpose Article 3.	
4	Sets out test methods for binary textile mixtures where there is no uniform method of analysis at Community level.	Regulation 5(2) transposes Article 4.	
5	Establishes a Committee relating to Textile Names and Labelling to assist the Commission.	Does not require implementation.	
6, 7, 8 and 9	Relate to procedural and representational matters, entry in force etc.	Articles do not require implementation	

Transposition of Directive 2006/2/EC amending Directive 96/73/EC on certain methods for quantitative analysis of binary textile fibre mixtures

Article	Objective	Implementing regulation	Responsibility (Secretary of State if not specified)
1	Amends Directive 96/73/EC by adding the uniform test methods for textile fibres polylactide and elastomultiester, to Annex II to the Directive.	Transposed by Regulation 5(1).	
2, 3 and 4	Entry in force etc	Do not require implementation	