Consultation on implementation of the Paint Products Regulations 2005

Addressing monitoring and enforcement issues

January 2009
Introduction

1.1 Under regulation 7(4) of The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005, SI 2773\(^1\) (the 'Paint Products Regulations'), the Secretary of State may delegate any functions relating to monitoring and enforcement. In Northern Ireland these functions have already been delegated to local authorities. It is proposed to do the same in England, Wales and Scotland as soon as the guidance subject to this consultation has been finalised early in 2009.

1.2 This consultation invites comments from interested parties on proposed guidance which it is envisaged that local authorities throughout the UK will have regard to when undertaking these functions. Discussions have already been held with local authority representative bodies - Lacors and Cosla and Scotss.

1.3 It also invites comments on proposed revised arrangements for dealing with paints to be used for the purposes of restoring and maintaining buildings and vintage vehicles of particular historic and cultural value.

1.4 This document has been prepared by the Department for Environment, Food and Rural Affairs (Defra) in consultation with the Scottish Government, the Welsh Assembly Government, and the Northern Ireland Administration.

Issue 1 – monitoring and enforcement + related guidance

1.5 The Paints Products Regulations implement the EC Paints Directive (2004/42/EC) in the UK\(^2\) (the 'Paint Products Directive'). The purpose of the Directive is to control VOC emissions from certain paint, varnish and vehicle refinishing products by restricting the placing on the market of products that exceed the VOC limits and labelling requirements set down in the Directive.

1.6 The Regulations are made by the Secretary of State, because the subject matter has not been devolved to the other UK administrations. The Regulations gave enforcement responsibility to the Secretary of State, but regulation 7(4) contains the proviso that he or she could delegate this, including monitoring. This delegation has already taken place in Northern Ireland in April 2008.

\(^1\) [http://www.opsi.gov.uk/si/si2005/20052773.htm](http://www.opsi.gov.uk/si/si2005/20052773.htm)

1.7 The concept of "placing on the market" is defined in the Paint Products Directive as “making available to third parties, whether in exchange for payment or not”. Importation is deemed to constitute “placing on the market”. The Government therefore considers that "placing on the market" covers every stage of marketing until paint or products are bought by the final user. This view is shared by the European Commission. As a result, it is necessary to ensure that the VOC limits and labelling requirements are complied with not only by UK paint manufacturers, but also distributors (sometimes known as ‘factors’), importers, and retailers.

1.8 The Government considers that local authorities are best placed to carry out such monitoring and enforcement that may be needed. However, the Government is also firmly of the view that these functions need to be carried out in a proportionate way, having regard to the contribution these paints and products make to overall VOC emissions (4.2% of VOC emissions in 2001 according to the Regulatory Impact Assessment); the extent of likely non-compliance; and the elements of the supply chain where this is suspected to occur. In general terms, the Government believes that compliance by the decorative paint sector to be good. On the other hand, the Government has received anecdotal evidence that non-compliant vehicle refinishing products may still be being marketed for unlawful purposes, and would expect the delegation of functions to be the trigger for a carefully-targeted local action to check on any such practices, which not only breach the Directive requirements but also undermine the competitiveness of compliant products.

1.9 The appended draft guidance addresses these issues.

1.10 The Government is concerned not to impose any unfunded burdens on local authorities. The guidance therefore envisages that inspections to check labelling and VOC content will be undertaken on a risk basis, and in conjunction with other, existing regulatory responsibilities. In particular:

- paint manufacturers: most manufacturers will already be regulated under the Environmental Permitting (England and Wales) Regulations 2007\(^3\) or the Pollution, Prevention and Control (Scotland) Regulations 2000\(^4\) and are in any event likely to be low risk and low priority for inspection

\(^3\) [http://www.opsi.gov.uk/si/si2007/uksi_20073538_en_1](http://www.opsi.gov.uk/si/si2007/uksi_20073538_en_1)

• distributors: these will be of interest to local authorities from both a trading standards and health and safety point of view

• vehicle bodyshops: those consuming 1 tonne or more of organic solvents a year in England and Wales will again be regulated under the Environmental Permitting Regulations, whilst those consuming 2 tonnes or more in Scotland will be regulated under the Pollution, Prevention and Control (Scotland) Regulations. Those below these thresholds will be subject to health and safety legislation.

It is expected that this inspection role will tail off after 1-2 years once the directive requirements are fully imbedded in the way the manufacturing, distribution and vehicle refinishing sectors operate. It is intended to undertake a review of the operation of the arrangements after 18 months, in consultation with local authority and industry representatives, in order to evaluate progress and consider modification of the guidance.

1.11 Where, exceptionally, a local authority considers it necessary to take samples of paint or products when inspecting premises, the Government will make available a sum of up to £10k in each of the three financial years beginning April 2009 for the purpose of testing paint samples. Local authorities will be able to apply to Defra for a particular testing exercise to be paid for from this fund. Applications will require only brief details of the background to the request. Defra will make arrangements nationally for a suitable test house to be available for undertaking the testing.

1.12 Having regard to paragraphs 1.10 and 1.11 and the draft appended guidance, the Government believes that the additional burdens on local authorities will be minimal, for the following reasons:

• any inspection of labels at premises will be undertaken as part of an inspection visit that has been arranged for other regulatory purposes (health and safety, trading standards, or environmental protection)
• generally there is no expectation that such visits will be brought forward from the time they would have occurred for other purposes. In cases where they are brought forward (in relation to vehicle refinishing paints), this would be a matter of advancing a visit that would otherwise have taken place, and not adding to the number of visits
• visiting those marketing decorative paints is low risk and low priority
• inspection of the labels on five different tins of paint is unlikely to take more than 5-10 minutes
• there are an estimated 500 manufacturers, distributors, or importers who supply vehicle refinishing paints, which amounts to an average of just over one establishment per local authority
• testing of paint will be funded by the Government
• the only additional burden would be in the event that follow-up action is needed. This will be probably limited to establishments marketing vehicle refinishing paints and industry soundings suggest that contraventions are likely in only a small minority of cases
• any additional effort in relation to vehicle refinishing paints is expected to be limited to the first 1-2 years after enforcement is delegated.

On this basis, local authorities will face the costs listed in a)-d) below during 2009/10; the same, but to a lesser extent, 2010/11; and primarily those in a) thereafter, although with the risks and priority regarding decorative paints and varnishes falling even further from 2011 once the 2010 limits standards have been in place a year:-

a) an additional 10 minutes (say £10, including on-costs) when undertaking visits to retailers and wholesalers of decorative paints and varnishes as and when they would have occurred for other purposes, and
b) an additional 10 minutes when undertaking visits to ~500 manufacturers, distributors and importers of vehicle refinishing paints, bringing forward visits as necessary to the financial year 2009/10
c) assuming 5% of those described in b) require follow-up action – ie 25 establishments – undertaking an additional visit to check compliance, undertaking a related visit to a customer body shop (which may or may not be subject to regular visits for environmental regulation purposes), and related administration – say 4 hours @ £50 an hour, including on-costs
d) costs of prosecution are recoverable through the courts.

Issue 2 – paints for vintage vehicles and historic buildings

1.13 The Government consulted in September 2007 on proposals to introduce a licensing scheme to make use of the provision in Article 3.3 of the Directive: "Member States may grant individual licences for the sale and purchase in strictly limited quantities of products which do not meet the VOC limit values laid down in Annex II". Several of the 27 respondents questioned whether the proposed licensing scheme was a disproportionate measure. For example, Lacors said: “…in short the Paints Directive is achieving its environmental aims by economic means rather than by regulatory enforcement…In the context of this overall ‘light touch’ but apparently effective regime we query both: …(b) the logic/desirability of creating a regulatory enforcement
mechanism for a relatively minor part of the regime when the main regime has no such mechanism.”

1.14 On reflection, the Government agrees that it would be desirable if possible to find an alternative, less burdensome mechanism for allowing strictly limited quantities of non-compliant paints to be used for these small-scale purposes. In terms of scale, paint used in the vintage vehicles and historic buildings sectors represent less than 0.03% of the total UK paint market.

1.15 The Government wishes to allow use of such relatively small quantities of paint to continue to be allowed. However, if the licensing scheme which the Directive permits is not incorporated into UK law – with a consequent avoidance of the proposed additional burden on local authorities – those marketing non-compliant paints for these purposes will have no legal defence when doing so. The Government’s view, however, is that local authority regulators are unlikely, having regard to the Regulators’ Compliance Code [5], to find that it is either proportionate or in the public interest to take enforcement action against someone marketing non-compliant paints in strictly limited quantities where it is evident that the end-use will be for the painting of vintage vehicles or historic buildings which are recognised by the Paint Products Directive as suitable for special treatment.

1.16 However, to increase confidence both among regulators and those marketing paints for such purposes, the Government considers that it would be valuable to follow the lead set by the British Coatings Federation in producing a Code of Conduct which its members adhere to in relation to vehicle refinish paints. The BCF’s Code requires: that supply of paints for these purposes is not through retail outlets; that the purchaser provides evidence as to legitimate use; that the supplier keeps records as to the amount of paint purchased in relation to each vehicle; and that the supplier makes this information available on request to the regulator. Breach of the Code would reflect on the trade association as well as on the individual business.

1.17 The Government proposes to work with interested parties to draw up a similar Code of Practice, which would cover historic buildings as well as vintage vehicles. Local authorities would then be advised that where a particular outlet was a member of a trade association which had formally signed up to the Code, this ought to provide the authorities with greater confidence when deciding on their risk-based strategy for inspection.

---

Issue 3 – 2007 and 2010 deadline for further solvent reductions for decorative paints

1.18 No enforcement action has been taken to date against anyone placing on the market left-over stocks which do not comply with the 2007 VOC content requirements. Once responsibility for monitoring and enforcing the Paint Products Directive is transferred to local authorities, it will be their responsibility to decide what steps to take to enforce the requirements. In addressing future enforcement, the draft guidance attached to this consultation advises local authorities to: "... take into account that no enforcement action has been taken in respect of the 2007 deadline prior to the delegation of enforcement responsibilities, so businesses have already had a significant period of grace." On the date the delegation takes place, the Government intends to withdraw the guidance issued in August 2007, which indicated that unused existing stocks might continue to be marketed.

1.19 Furthermore, the Government wishes to take this opportunity to remind all businesses marketing paints that there is no intention to allow any extension of time for compliance when the second deadline (for decorative paints only) is reached at the end of 2010. The relevant sectors will have had six years since the adoption of the Directive in which to plan for the 2010 deadline. However, it is open to recipients of this consultation paper to respond with a case – supported by appropriate evidence – why a particular product exceptionally requires particular consideration for exhausting stocks which are now in existence. Defra will consider any submissions made, with a view to considering publication of further guidance to local authorities on exercise of their enforcement discretion where sufficient of a case has been made. Defra does not intend to consider any submissions made after 31 March 2009 or any which do not contain evidence to support any contentions.

Consultation

1.20 You are invited to send in your comments by no later than 31 March 2009. It may not be possible to consider responses which arrive after that date.

1.21 Any comments on this consultation paper would be welcome in any form and will be carefully considered before final decisions are made. Your response can be processed more efficiently if you could reply to the following specific questions, and identify each question you are responding to. To help put your

---

6 AQ18(07) http://www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/notes/annotes/pdf/aq18-07.pdf stated: "Defra have been made aware that manufacturers and distributors are unlikely to be able to sell all current stocks of noncompliant vehicle refinishing coatings by the end of this year. Any unsold stock would be unusable and have to be disposed of. To avoid the environmental consequences of such disposal, Defra and the Welsh Assembly Government have decided to allow all current stocks of noncompliant paint products to be sold until these stocks are exhausted."
response in context, you are also encouraged to indicate who you are and who (and how many) you represent.

1. Do you agree with the delegation of enforcement and monitoring responsibilities to local authorities? Do you agree the estimates of local authority costs in paragraph 1.12?

2. Is the draft guidance included in this consultation paper clear in its intent and advice? If not, please highlight the sections in the guidance that you would like to see clarified.

3. Do you think any additional sections should be added to the guidance? If so, what?

4. Do you agree that it would be preferable to dispense with the proposed licensing scheme for buildings and vintage vehicles of particular historic and cultural value and replace it with a Code of Practice?

5. What are your views on the outline of what the Code might contain, and does your organisation wish to participate in finalising the text of the Code?

6. Do you consider that stocks of any particular product are unlikely to be used up by the end of 2010, even if manufacture of the product ceased on 31 December 2008? If so, what specific products and what evidence do you have to support this contention?

1.22 Written responses should be sent to:

control.pollution@defra.gsi.gov.uk

or alternatively by post to:

Paint Products Regulations consultation
Department for Environment, Food and Rural Affairs (Defra)
Area 3C, Ergon House
17 Smith Square,
London SW1P 3JR

1.23 If you have any queries relating to this consultation, please email using the above address, or contact Eamonn Prendergast on 020 7082 1692.

Confidentiality
1.24 In line with Defra’s policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resources Centre. The information may also be published in a summary of responses.

1.25 If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.

1.26 You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

1.26 The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, mailto: defra.library@defra.gsi.gov.uk). Wherever possible, callers should give the library at least 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

1.27 If you wish to make a complaint, or query the consultation process, please write to:

Marjorie Addo
Consultation Co-ordinator
Department for Environment, Food and Rural Affairs
Zone 7C, Nobel House
17 Smith Square
London SW1P 3JR
E-mail: consultation.coordinator@defra.gsi.gov.uk

Consultees

1.28 The list of consultees for this consultation can be found on the Defra website. Please tell us if you know of others who would be interested in receiving this consultation document.

1.29 Hard copies are also available by request from Government via the contacts in paragraphs 1.22 and 1.23 above. Additional copies of this document can be made without seeking permission.

Government Code on Consultations
1.30 A copy of the Government Code on Consultations has been published by the Department for Business, Enterprise and Regulatory Reform (BERR). A copy can be obtained from: http://www.berr.gov.uk/files/file47158.pdf.
Draft guidance document

Implementing the Paint Products Regulations in the UK

Introduction

By letter from the Secretary of State dated [..] all local authorities have been delegated the function of monitoring and enforcing under regulation 7 of the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005⁷ (the ‘Paint Product Regulations’ - also known as the Paints Regulations or the Product Regulations).

This guidance document is aimed at 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. Following discussion with Lacors, Cosla and Scotss, and having considered the views expressed in response to a consultation paper issued on 6 January 2009⁸, the Government envisages that local authorities will take the opportunity of these inspections to also check compliance with the labelling and volatile organic compound (VOC) content of paints at paint manufacturers etc.

This note advises on risk-based inspection and monitoring and on actions necessary when visiting relevant premises.

Background on paint etc marketing

Decorative paint and varnishes are sold by UK manufacturers either direct to the large DIY chains or (usually) through distributors (sometimes known as paint factors). Similarly, imported decorative paint and varnishes can be sold direct or through a distributor. Imported paints and varnishes will normally be stored in warehouses. Commercial users may buy direct from distributors. Retail of decorative paints and varnishes is through DIY supermarkets or local independent hardware or DIY shops.

Vehicle refinishing products are normally sold direct to bodyshops by local distributors which either specialise in their products or are general motor factors. Probably the best search term if using Yellow Pages and the like is “motor factor”.

What is the purpose of the Regulations?

---

The 2005 Regulations implement a 2004 EU Directive and prevent marketing of certain paints, varnishes and vehicle refinishing products which have more than a specified VOC content.

VOCs emitted from using solvent-laden paints, contribute to the formation of low-level ozone that has an adverse effect on human health. The potential impacts of ground-level ozone include reduced lung function, increased incidence of respiratory symptoms, respiratory hospital admissions and mortality. Ground-level ozone can also cause damage to many plant species leading to loss of yield and quality of crops, damage to forests and impacts on biodiversity.

Neither the Directive nor the implementing Regulations directly restrict usage: the only offence is to market paints which exceed the allowed VOC content except in certain cases explained below. The legal term used is "placing on the market", which covers all stages in the supply chain up to and including sale to the end-user.

What paints etc are affected, and what are the VOC levels?

These are all listed in Annex 1 to this guidance note.

What is the local authority role?

All the relevant premises should currently be subject to local authority regulation for environmental protection, health and safety or trading standards purposes. It is expected that authorities will use inspection visits under the Regulations to check a small sample of paint labels to assess compliance with the Regulations – see Annex 2 for guidance on visits and any follow-up action.

It is not generally expected that the existing pattern of visits will be altered to accommodate monitoring and enforcement of the 2005 Regulations. In other words, the visits that would have occurred for environmental protection etc purposes, and the frequency of these visits, should normally suffice. Furthermore, for those marketing decorative paint and varnishes, current information suggests generally good compliance with the 2007 deadline, and it is recommended that local authorities focus on compliance with the 2010 deadline which imposes even stricter VOC-content limit values in paints and varnishes. The only exceptions are:

a) vehicle refinishing paints for bodyshops: it has been suggested that there may be marketing irregularities in this sector, and it would therefore be desirable if local authorities are able to bring forward visits to a representative sample of businesses marketing such paints;

b) if a suspected or actual breach of the Regulations is found during an inspection visit.

As regards point a), it is estimated that there are around 500 manufacturers, distributors or importers who supply vehicle refinishing products to the ~7,000 vehicle bodyshops that currently operate in the UK. Unlike paint manufacturers, the distributors are not subject to environmental permitting and therefore compliance checking should piggy-back health and safety or trading standards inspections.
Whilst no action can be taken against vehicle bodyshops for using non-compliant paints (unless they consume enough solvent to require a permit under the Environmental Permitting (England and Wales) Regulations 2007 (>1 tonne) or the Pollution Prevention and Control (Scotland) Regulations 2000 (>2 tonnes), which contain conditions restricting the coatings used), authorities may find that visits to the smaller bodyshops will provide intelligence about the marketing of the paints used.

One significant complication for regulators is paints which have more than one use – unsurprisingly referred to as "dual-use" paints. Those that are marketed as having multiple uses must contain no more VOCs than allowed to comply with the use category with the lowest VOC content level. But there are also some paints – notably clearcoats – which are not specifically marketed and can be used in certain industrial processes that are allowed to use higher VOC paint because their VOC emissions are otherwise limited under the Solvent Emissions Directive (1999/13/EC), but which are also useable for vehicle refinishing. In these cases, therefore, authorities need to take care that where, for example, a distributor is marketing non-compliant paints to a bodyshop, the distributor is justified in accepting assurances – whether verbal or in writing – that the paints will not be used for any vehicle refinishing for which they are not permitted.

The existence of a signed declaration by a bodyshop that all non-compliant paint bought is not for vehicle refinish purposes does not completely absolve a distributor from responsibility for marketing in accordance with the Regulations. If suspicious of the ultimate end-use, the distributor can reasonably be expected to seek some evidence of use or make proportionate further enquiries to satisfy themselves that the end-use is permitted under the legislation.

Local authority enforcement powers

Local authorities have full powers to enter premises, examine paint containers and mixing vessels, and take samples away for testing. In England, Wales and Scotland these are given by section 108 of the Environment Act 1995, as amended. In Northern Ireland, they are given by Schedule 4 of the 2005 Regulations.

The maximum penalty for a breach of the 2005 Regulations is £5000 for each offence on summary conviction, and an unlimited fine on indictment. Regulation 8 also makes provision for prosecution of company directors, managers, secretaries, partners in a Scottish Partnership, etc.

Notes

In relation to vehicle refinishing products, the 2005 Regulations apply to four-wheeled road vehicles only. Paints for motorbikes, agricultural vehicles and off-road machinery (e.g. construction vehicles, train carriages) are not covered. However, vehicle refinishing products marketed for multiple uses must comply with the VOC limits in the 2005 Regulations if just one of those uses is the coating of four-wheeled road vehicles.

The Paint Products Directive says that a licensing scheme can be established to allow strictly limited amounts of non-compliant paint to be marketed for use for
painting vintage vehicles or historic buildings. Because of the administrative complexities of setting up such a scheme and the burdens on those to whom it would apply, but to rely on local authorities taking a proportionate approach to enforcement.

In terms of scale, paint used in the vintage vehicles and historic buildings sectors represents <0.03% of the total UK paint market. It is recommended that where there is clear evidence that paints are being marketed for either of these purposes and the quantities are strictly limited authorities will want to pay close regard to the Regulators' Compliance Code\(^9\) and to the public interest and proportionality tests if contemplating any enforcement action. The Government is currently developing a Code of Practice with industry representatives, which will identify the criteria for marketing these paints: details will be provided to authorities as soon as it is complete.

Annex 1

What paints etc are affected, and what are the VOC levels?

A ‘compliant’ paint or vehicle refinishing product must:

a) have a VOC content equal to or less than the VOC content limit set out in the Regulations.

The VOC limits for each category of vehicle refinishing product are set out in Annex 1a. The VOC limits for each category of paint are set out in Annex 1b.

b) be labelled with its VOC content in grams per litre (g/l) and the VOC content limit (also in g/l) that applies to that category of product.

The following example is the most common way to comply with the labelling requirement for decorative paint and varnishing products.

<table>
<thead>
<tr>
<th>EU limit value for the VOC content of this product (cat: A/a) is max 75 g/l”</th>
</tr>
</thead>
<tbody>
<tr>
<td>The VOC content of this product is max ... g/l</td>
</tr>
</tbody>
</table>

The label on vehicle refinishing products is likely to be in a more coded form as shown in the example below.

```
2004/42/IIB (d)(420)420
```

On the top line 2004/42 signifies the Paints Directive and IIB is the annex in the Directive where the relevant VOC limits for that product are found. The bottom line shows the product’s sub-category (d), the VOC limit that applies (420), and finally the VOC content of the product itself.

Authorities should note that from 1st January 2010, more stringent VOC limits are being introduced for decorative paints and varnishes only (see Annex 1b). However, businesses with existing stocks of paint and varnish manufactured before 2010 that are not compliant with the new limits can continue to exhaust that stock until 31 December 2010 at the latest.

The measurement method for VOC content is at Annex 1c.
Annex 1a – Vehicle Refinishing Product Categories and the associated VOC content limits

<table>
<thead>
<tr>
<th>Product sub-category*</th>
<th>Coatings</th>
<th>VOC content limit (g/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Preparatory and cleaning</td>
<td>Preparatory</td>
<td>850</td>
</tr>
<tr>
<td></td>
<td>Pre-cleaner</td>
<td>200</td>
</tr>
<tr>
<td>b) Bodyfiller/stopper</td>
<td>All types</td>
<td>250</td>
</tr>
<tr>
<td>c) Primers</td>
<td>Surfacer/filler and general (metal) primer</td>
<td>540</td>
</tr>
<tr>
<td></td>
<td>Wash primer</td>
<td>780</td>
</tr>
<tr>
<td>d) Topcoat</td>
<td>All types</td>
<td>420</td>
</tr>
<tr>
<td>e) Special finishes</td>
<td>All types</td>
<td>840</td>
</tr>
</tbody>
</table>

*the full definition of these terms contained in the Directive are as follows:

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;
   (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.
Annex 1b – Decorative Paints and Varnishes Product Categories and the associated VOC content limits

<table>
<thead>
<tr>
<th>Product sub-category*</th>
<th>Type**</th>
<th>VOC content limit (g/l ready to use)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Until 31 Dec 2009</td>
</tr>
<tr>
<td>a Interior matt walls and ceilings</td>
<td>WB</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>400</td>
</tr>
<tr>
<td>b Interior glossy walls and ceilings</td>
<td>WB</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>400</td>
</tr>
<tr>
<td>c Exterior walls of mineral substrate</td>
<td>WB</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>450</td>
</tr>
<tr>
<td>d Interior/exterior trim and cladding paints for wood and metal</td>
<td>WB</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>400</td>
</tr>
<tr>
<td>e Interior/exterior trim varnishes and wood stains, including opaque wood stains</td>
<td>WB</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>500</td>
</tr>
<tr>
<td>f Interior and exterior minimal build wood stains</td>
<td>WB</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>700</td>
</tr>
<tr>
<td>g Primers</td>
<td>WB</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>450</td>
</tr>
<tr>
<td>h Binding primers</td>
<td>WB</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>SB</td>
<td>750</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>WB</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>i</td>
<td>One-pack performance coatings</td>
<td>140</td>
</tr>
<tr>
<td>j</td>
<td>Two-pack reactive performance coatings for specific end use such as floors</td>
<td>140</td>
</tr>
<tr>
<td>k</td>
<td>Multi-coloured coatings</td>
<td>150</td>
</tr>
<tr>
<td>l</td>
<td>Decorative effect coatings</td>
<td>300</td>
</tr>
</tbody>
</table>

*the full definition of these terms contained in the Directive are as follows:

a) 'matt coatings for interior walls and ceilings' means coatings designed for application to indoor walls and ceilings with a degree of gloss \(25\angle 60^\circ\).

b) 'glossy coatings for interior walls and ceilings' means coatings designed for application to indoor walls and ceilings with a degree of gloss \(> 25\angle 60^\circ\).

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 subcategory 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 subcategory 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;

f) 'minimal build woodstains' means woodstains which, in accordance with EN 927-1:1996, have a mean thickness of less than 5\(\mu\)m when tested according to ISO 2808:1997, method 5A;

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.

** "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."
Annex 1c – Reference Measurement Methods for VOC content

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Unit</th>
<th>Test</th>
<th>Date of publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>VOC content</td>
<td>g/l</td>
<td>ISO 11890-2</td>
<td>2002</td>
</tr>
<tr>
<td>VOC content where reactive diluents are present</td>
<td>g/l</td>
<td>ASTMD 2369</td>
<td>2003</td>
</tr>
</tbody>
</table>

Note ISO 11890-2 was revised in 2006 and therefore the 2006 version should have replaced the 2002 version. The changes are minor and do not affect the method.
Annex 2

Inspection visits

It is envisaged that during each inspection, authorities will take the following steps:

- select up to 5 tins of product at random from the production line and/or storage depot/warehouse. Ideally, select tins from the range of product sub-categories listed in Annex 1. **Record the details of the tins selected and the quantity of product in each tin (in litres).**

- Check that there is a label on each tin displaying (a) the subcategory of the product, (b) the VOC content in grams per litre applicable to that sub-category of product and (c) the maximum VOC content of that product itself in grams per litre. **If this information is not displayed then the product is non-compliant. Record the number of tins and quantity of product (in litres) found to be non-compliant with the labelling requirements.**

Note:

Manufacturers of 2-pack performance coatings (ie paint products with two components that are only mixed just before use) will only include the relevant label and VOC content information on one of the two containers. Where an inspector encounters an unlabelled product, the manufacturer may say that it is one part of the 2-pack product. If so, the manufacturer should provide evidence that the product is sold in 2-pack form and provide the product formulation sheet setting out the VOC content of that product on its own and when combined with other component.

---

10 the reason for recording is that the Government anticipates being asked by the European Commission to provide information on implementation of the Paint Products Directive. Defra expect to have to ask authorities for the following information:

1. How many inspections of paint manufacturers were there in the last year?
2. How many products were checked in total at these inspections?
3. How many instances of non-compliance with the Paints Directive were found?
4. How many instances of non-compliance were due to:
   a. mislabelling
   b. non-compliant paint content
   c. both?
5. In total, how many litres of paint were found to be non-compliant?
6. Where non-compliant paint was found, what subsequent action was taken?
• For the tins selected, ask the business to provide evidence that the product meets the VOC limits. This may be provided by product formulation data sheets and/or actual VOC sampling information applicable to the tins selected if the business is a manufacturer or a distributor which mixes paints on site – in which case, check that it matches the information on the product label. If the VOC content is above the limits or the information on the label, then the product is non-compliant. For non-manufacturing or mixing businesses, check the label on each tin for compliance with the labelling requirements. Record the number of tins and quantity of product (in litres) found to be non-compliant with the VOC standards.

• Note separately the number of tins which do not comply with either the VOC standards or the labelling requirements, and those which only fail to comply with the labelling requirements.

• Check that the reference measurement method(s) used to determine the VOC content in each product matches the reference methods set out in Annex 1c. The method(s) should be included with the product formulation data and/or VOC sampling information, but if not, the business should provide the necessary detail on request. If they can't then the product may be non-compliant.

If non-compliance is suspected, authorities should first check that the product is not intended for an exempted use or for vehicles (motorbikes, tractors) that are not covered by the Regulations (see "Notes" above). If it is, what documentary evidence is there to this effect? If there are signs that dual-use paints may be being inappropriately marketed, ask for documentary evidence that this is not the case.

Any possible enforcement action must be considered in the context of the Regulators' Compliance Code. It may, for example, be most appropriate to issue a verbal warning initially where non-compliance is suspected, reinforced by a subsequent unannounced repeat inspection. On the other hand, authorities should bear in mind that marketing of paints contrary to the 2005 Regulations, especially on a significant scale, will not only add to the environmental impacts from low-level ozone, but will also potentially have commercial implications from other firms complying with the legislation. Furthermore, authorities should take into account that no enforcement action has been taken in respect of the 2007 deadline prior to the delegation of enforcement responsibilities, so businesses have already had a significant period of grace.

Where, as a result of a follow-up inspection suspicions remain, the next appropriate step may be to take one or two tins of paint for testing and/or to follow up marketing practices by visiting a couple of the end-customers. When checking distributors or bodyshop users, the following indications should help with decisions on whether to investigate further. Note that compliant vehicle refinishing products are either low-VOC (generally primers, fillers and clearcoats) or water-based (basecoats). Non-compliant high VOC paints are cellulose based apart from most 2-pack paints, which are acrylic or polyester based.
Indications that compliant coatings are being marketed | Indications that non-compliant coatings are being marketed
---|---
The base element in 'clear over base' or 'based and clear' products should be water, with a smell of household emulsion or stale water. | Non-compliant cellulose paints will smell something like nail varnish (NB care needs to be taken for health and safety reasons if making an assessment in this way).
If a frost threshold (>4°C) is displayed on the container it will be a water-based low-VOC compliant product. | 
Compliant paints are supplied in both plastic and metal containers. If a distributor has a paint mixing system with plastic containers then it is more likely to be operating in a compliant manner. | Non-compliant paints are almost always supplied in metal containers.
The paint mixing system would typically contain cans of paint from 0.25-1 litre. | Greater quantities of non-compliant paint are required to coat a vehicle compared to compliant paint. A system with metal paint cans from 1-5 litres may indicate the need for further investigation.

Note that suppliers who continue to sell non-compliant paint for vintage vehicles, historic buildings and for SED activities should have both compliant water-based and non-compliant 'cellulose' based mixing systems. A supplier without any kind of compliant paint mixing system as assessed against the guidance in the third and fourth bullets above, is likely to be non-compliant with the Regulations.

Defra have allocated a small budget to cover the cost of VOC sampling analysis on a first come first served basis for authorities in England, Scotland and Wales. Authorities should submit an application to Defra (control.pollution@defra.gsi.gov.uk) explaining very briefly why an independent VOC analysis is required in a particular case. If the application is agreed then Defra will forward details of an appropriate test house to which the samples should be sent, and pay the cost.

If the independent analysis of VOC content in a paint sample confirms that the product is non-compliant, it is likely that the authority will want to escalate enforcement action. The maximum penalty on summary conviction is £5,000.

Authorities should maintain records of inspection information for a minimum of three years for the reasons set out in footnote 10.