Are you blending or making products?

With a new European regulation coming into effect this July, the FHT looks at which members are likely to be impacted

In the October 2011 issue of International Therapist, we featured an article that made reference to the EU Cosmetics Directive (2009), and how this new piece of legislation might impact therapists when it comes into effect in July 2013.

Having consulted with a number of professional bodies and relevant Governmental and European departments and officials, this article serves to provide members with an update, based on the FHT’s understanding of the best available information at the time of writing (2nd May, 2013).

Should any further information come to light that we believe is likely to impact therapy practice, the FHT will advise its members with immediate effect through e-communications, our website, and International Therapist.

What’s it all about?

On 11 July, 2013, Regulation (EC) No 1223/2009 will replace the EU Cosmetics Directive (2009) and come into full effect in all EU Member States, which includes the UK and Republic of Ireland.

This new regulation aims to protect the health and safety of the consumer, by placing a number of responsibilities on those who make and supply cosmetic products made available on the market for commercial purposes. Amongst other things, it covers areas such as labelling; the use of restricted substances; safety testing and reports; notifying relevant authorities and traceability.

More specifically, the regulation aims to ‘strengthen elements of the regulatory framework for cosmetics […] with a view to ensuring a high level of protection of human health’. It achieves this by establishing ‘rules to be complied with by any cosmetic product made available on the market’.

© FHT 2013
What is a cosmetic product? (It’s not just make-up...)

A cosmetic product is defined in the regulation as: ‘any substance or mixture intended to be placed in contact with the external parts of the human body (the epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours’.¹ Such products may include creams, gels, oils for the skin, soaps, bath and shower preparations, make-up, hair colorants, and hair-setting/cleansing/conditioning products.²

In the context of this regulation, medicinal products, or any substance or mixture intended to be ingested, inhaled, injected or implanted into the human body, are not considered to be cosmetic products.

How will this impact FHT members?

As with any regulation, much depends on how the content and definitions contained are ‘interpreted’. For this reason, the FHT – along with any other professional organisation or official body - cannot state in black and white terms who or what practices will be impacted by the regulation. This is something that, ultimately, can only be ‘tested’ in a court of law.

However, for many months, the FHT has been liaising with various government departments and officials in both the UK and EU – including the Department of Business Innovation and Skills (BIS) - in the hope of eliciting some guidance on how this regulation may impact members who mix together two or more substances to create a ‘cosmetic product’ as part of their therapy practice. Based on information supplied by these sources and, more recently, Trading Standards, it is now the FHT’s understanding that:

- **the regulation will not impact members** who make cosmetic products that are used solely in the provision of a service, for example, when creating an aromatherapy blend or face mask to be applied/used in the course of an aromatherapy session or beauty treatment.
• the regulation will impact members who make cosmetic products and ‘supply’ these to clients for home use, regardless of whether this product was originally made for/used as part of a treatment or not, as this is considered to be making the product ‘available on the market’ under Article 2 of the regulation. The FHT believes this would include, for instance, giving clients ‘left over’ blends to use at home.

• the regulation will impact members who make or supply ‘a cosmetic product for distribution, consumption or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge’.¹ This would include making any cosmetic product with a view to retailing this, or supplying it free of charge for commercial purposes (for instance, to generate future sales). For those members who have already undertaken training and have the relevant insurance to make and supply cosmetic products for retail purposes, this will mean that from 11 July, the regulation will place additional responsibilities on them as a ‘manufacturer’.

Members who make a ‘cosmetic product available on the market’ that is manufactured by a third party will be classed as ‘distributors’ and also have certain responsibilities, such as ensuring that the cosmetic product complies with the regulation and that storage and transportation of the product does not jeopardise compliance with the regulation.

What’s next?

The FHT is pleased to learn that, at the very least, this regulation will not impact members who solely make or blend cosmetic products to be used in the provision of a service, for example, an aromatherapy massage or beauty treatment.

However, we fully appreciate that many of our members – and particularly aromatherapists - ‘supply’ their clients with left over oil blends and other products that they made primarily to be used on the client in the provision of a service (treatment), or for use at home between treatments. At this point in time, it is the FHT’s understanding that these members would be impacted by the regulation when it takes effect in July, which would mean they would be required to notify relevant authorities, have safety assessments conducted for their products, and more. The FHT has written to BIS to appeal on behalf of these members, as this would be untenable and onerous for most therapists, who are self-employed or run a small business. We will keep our members duly updated as and when we have any news to report on this front.
Training and insurance matters

Anyone currently making cosmetic products for retail purposes already has to meet a number of legal requirements, which should have been covered in their post-graduate training.

Members who intend to make products and place these on the market for commercial purposes from 11 July, 2013, will need to comply with the new EU regulation.

Please note that as well as being a legal requirement, complying with relevant legislation is also an insurance requirement for FHT members.

At the time of writing, the FHT is currently supporting the development of an online course designed for members who have already been trained in making cosmetic products, which will cover the requirements of the new EU regulation – look out for further information in the near future. Other respected training providers are also looking to develop similar courses, so please check with the FHT before enrolling, to ensure these meet membership and insurance requirements.

The FHT will also be making available some Best Practice guidelines, containing recommendations for members who regularly use products as part of their therapy practice – again, look out for further information in our regular communications and journal.

Open consultation

If you make cosmetics products for retail purposes, you may wish to respond to an open consultation on the draft Cosmetic Products Enforcement Regulations 2013, which will enforce Regulation (EC) No. 1223/2009 on Cosmetic Products. The consultation is open until 15 May, 2013, and in particular looks at enforcement and penalties. Visit https://www.gov.uk/government/consultations/enforcing-the-ec-regulation-on-cosmetic-products


© FHT 2013. No part of this document may be reproduced or disseminated without the written permission of the FHT. Although the FHT has taken all reasonable steps to ensure that the information in this document is accurate, we cannot guarantee that it is free from inaccuracies, errors or omissions. The information provided in this document is for guidance only, based on the best available information at the time, and should not be taken as legal advice. As such, the FHT shall not be liable for any loss or damage whatsoever arising from any information contained in this document. Picture credit: istockphoto.