

# DRAFT

## Order prohibiting the import and sale to consumers of clothing, footwear and waterproofing agents containing PFAS <sup>1</sup>

Pursuant to Section 30(1), Section 38f, Section 45(1) and Section 59(4) of the Act on chemicals, cf. Consolidation Act No 6 of 4 January 2023:

### *Definitions and scope*

**§ 1.** The following definitions apply for the purposes of this Order:

- 1) PFAS: Any substance containing at least one fully fluorinated methyl ( $\text{CF}_3$ ) or methylene ( $\text{CF}_2$ ) carbon atom, without any hydrogen, chlorine, bromine, or iodine atoms attached to it.
- 2) Article: As defined in Article 3(3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, as amended.
- 3) Medical devices. As defined in Article 2(1) of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (Text with EEA relevance), as amended.

**§ 2.** The Order does not cover PFAS in clothing, footwear or waterproofing agents, which are regulated in the following legal acts:

- 1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, as amended; or
- 2) Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast), as amended.

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<sup>1</sup> A draft of this Order has been notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification). (NB! NOT YET NOTIFIED!)

*Paragraph 2.* The Order does not cover PFAS, which contain only the following structural elements:  $\text{CF}_3\text{-X}$  or  $\text{X-CF}_2\text{-X}'$ , where  $\text{X} = \text{-OR}$  or  $\text{-NRR}'$  and  $\text{X}' =$  a methyl group ( $\text{-CH}_3$ ), a methylene group ( $\text{-CH}_2\text{-}$ ), an aromatic group, a carbonyl group ( $\text{-C(O)-}$ ),  $\text{-OR}''$ ,  $\text{-SR}''$  or  $\text{-NR}''\text{R}'''$  and where  $\text{R/R}''/\text{R}'''$  is a hydrogen atom ( $\text{-H}$ ), a methyl group ( $\text{-CH}_3$ ), a methylene group ( $\text{-CH}_2\text{-}$ ), an aromatic group or a carbonyl group ( $\text{-C(O)-}$ ).

*Prohibition on the import and sale to consumers of clothing, footwear and waterproofing agents containing PFAS*

**§ 3.** From 1 July 2026, companies are prohibited from importing or selling  
(1) clothing or footwear to consumers for private use where at least one article of the clothing or footwear contains a total fluorine content of 50 mg F/kg or more; or  
(2) waterproofing agents for clothing or footwear for private use containing a total fluorine content of 50 mg F/kg or more.

Paragraph 2. From 1 July 2026, private persons shall be prohibited from importing  
(1) clothing or footwear intended for consumers for private use where at least one article of the clothing or footwear contains a total fluorine content of 50 mg F/kg or more; or  
(2) waterproofing agents for clothing or footwear intended for private use containing a total fluorine content of 50 mg F/kg or more.

*Paragraph 3.* The prohibitions in paragraphs 1 and 2 shall not apply to  
(1) the reuse of clothing or footwear;  
(2) the recycling of clothing or footwear;  
(3) personal protective equipment intended to protect the user against risks specified in Regulation (EU) 2016/425, Annex I, risk category III (a) or (c);  
(4) personal protective equipment whose PFAS content constitutes a safety function for the consumer;  
(5) waterproofing agents intended for re-waterproofing of personal protective equipment referred to in Nos 3 or 4;  
(6) medical devices; or  
(7) transit goods.

*Paragraph 4.* Paragraphs 1 and 2 shall not apply, if the importer or downstream user can demonstrate that the fluorine content comes from a substance that is not PFAS, cf. Section 1(2).

*Control, dispensation and right to appeal*

**§ 4.** Supervision and control of compliance with the rules laid down in the Order shall be exercised by the Environmental Protection Agency, in accordance with the relevant provisions of the Act.

*Paragraph 2.* In special cases, the Environmental Protection Agency may derogate from the rules in the Order or allow the rules to be derogated from. The Danish Environmental Protection Agency may impose conditions on the authorisation.

*Paragraph 3* Decisions taken under this Order by the Environmental Protection Agency may not be appealed to any other administrative authority.

*Penalty, entry into force and transitional provisions*

**§ 5.** Unless higher penalties are stipulated under other legislation, penalties will be imposed on any person who:

- 1) violates the prohibition on the import or sale in Section 3(1) and/or Section 3(2); or
- 2) overrides the conditions attached to an exemption under Section 5(2).

*Paragraph 2.* The penalty may increase to imprisonment for up to 2 years if the infringement was committed wilfully or through gross negligence, and if said infringement:

- 1) caused injury to human life or health or introduced this risk;
- 2) caused damage to the environment or introduced this risk; and
- 3) achieved or intended to achieved a financial benefit, including savings, for the person in question or others.

*Paragraph 3.* Companies, etc. (legal persons) may be rendered criminally liable in accordance with the provisions in Chapter 5 of the Criminal Code.

**§ 6.** This Order shall enter into force on 01 July 2025.

*Paragraph 2.* Sale of stocks of clothing, footwear and waterproofing agents for clothing and footwear for private use covered by Section 3 shall be permitted until 1 January 2027.

*Ministry of Environment of Denmark, the DATE*

Minister's signature

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