



STATUTORY INSTRUMENTS

S.I. No. 565 of 2008



EUROPEAN COMMUNITIES (PESTICIDE RESIDUES) REGULATIONS
2008

(Prn. A8/2031)

EUROPEAN COMMUNITIES (PESTICIDE RESIDUES) REGULATIONS
2008

ARRANGEMENT OF REGULATIONS

1. Citation
2. Interpretation
3. Maximum Residues Levels
4. Appointment of Authorised Officers
5. Functions of an Authorised Officer
6. Search Warrant
7. Obstruction etc.
8. Compliance Notice
9. Evidence on Certificate
10. Fixed Payment Notice
11. Service
12. Fees
13. Offences etc.
14. Revocations and Savers

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EUROPEAN COMMUNITIES (PESTICIDE RESIDUES) REGULATIONS
2008

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Regulation (EC) No. 396/2005 of the European Parliament and of the Council of 23 February 2005¹, Commission Regulation (EC) No. 178/2006 of 1 February 2006², Commission Regulation (EC) No.149/2008 of 29 January 2008³, Regulation (EC) No. 299/2008 of the European Parliament and of the Council of 11 March 2008⁴, Commission Regulation (EC) No. 260/2008 of 18 March 2008⁵, and Commission Regulation (EC) No. 839/2008 of 31 July 2008, hereby make the following regulations—

Citation

1. These Regulations may be cited as the European Communities (Pesticide Residues) Regulations 2008.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person who immediately before the making of these Regulations was an authorised officer under the European Communities (Pesticide Residues) Regulations 2006 (S.I. 654 of 2006).
- (b) a person appointed under Regulation 4,
- (c) a member of the Garda Síochána, or
- (d) an officer of Customs and Excise;

“Minister” means Minister for Agriculture, Fisheries and Food;

“premises” includes land (including land under water) with or without buildings, a vehicle (including a boat, ship, hovercraft, aircraft or offshore installation) (being an offshore installation, within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987)), railway wagon, container or other thing used in connection with, or ancillary to, a thing aforementioned;

¹O.J. No. L70 of 16.03.2005, p.1

²O.J. No. L29 of 02.02.2006, p.3

³O.J. No. L58 of 01.03.2008, p.1

⁴O.J. No. L97 of 09.04.2008, p.67

⁵O.J. No. L234 of 30.08.2008, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th December, 2008.*

“product” means products listed in Annex 1 to the Pesticide MRL Regulation;

“sell” includes offer, expose or keep for sale, invite an offer to buy, or distribute for reward or otherwise (whether directly or through another person);

“supply” means to give without reward;

“Pesticide MRL Regulation” means Regulation (EC) No. 396/2005 of the European Parliament and of the Council of the 23rd of February 2005, Commission Regulation (EC) No. 178/2006 of 1 February 2006, Commission Regulation (EC) No. 149/2008 of 29 January 2008, Regulation (EC) No. 299/2008 of the European Parliament and of the Council of 11 March 2008, Commission Regulation (EC) No. 260/2008 of 18 March 2008⁶, and Commission Regulation (EC) No. 839/2008 of 31 July 2008.

(2) A word or expression that is used in Pesticide MRL Regulation and that is also used in these Regulations has, in these Regulations, the same meaning as in Pesticide MRL Regulation.

Maximum Residue Levels

3. A person shall not possess, sell or supply a product if the product contains within it or on it a pesticide residue the level of which exceeds the maximum level set in accordance with the Pesticide MRL Regulation.

Appointment of Authorised Officers

4. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations.

(2) A warrant of appointment as an authorised officer shall be issued to every person appointed under this Regulation by the Minister and when exercising a function conferred on that person as an authorised officer such person shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to that person.

(3) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.

(4) An appointment as an authorised officer ceases—

(a) if it is terminated pursuant to paragraph (3),

(b) if it is for a fixed period, on the expiry of that period, or

(c) if the person appointed is an officer of the Minister, upon the person appointed ceasing to be an officer of the Minister.

(5) Nothing in paragraph (4) shall be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph related.

⁶O.J. No. L 76 of 19.03.2008, p.31

Functions of an Authorised Officer

5. (1) An authorised officer may at all reasonable times enter a premises (other than a part of a premises that is a dwelling) if the authorised officer has reasonable cause to suspect that—

- (a) the manufacture, importation, preparation, handling, storage, transport, exportation, distribution, sale, supply or use of a plant protection product is taking place or has taken place in, on, under or from a premises,
- (b) the manufacture, importation, preparation, handling, storage, transport, exportation, distribution, sale, supply or use of a product, including a dried product, a processed product or a composite product, is taking place or has taken place in, on, under or from a premises,
- (c) an offence is being or has been committed under these Regulations in, on, under or from a premises, or
- (d) there are any books, documents or records, relating to a business whose activities consist of or include the sale, supply, processing or storage of a plant protection product or product on a premises,

the authorised officer may at all reasonable times,

- (i) enter and search the premises,
- (ii) stop a person, vehicle, vessel or container,
- (iii) board and search a vehicle, vessel or container,
- (iv) board and search a vehicle, vessel or container,
- (v) search a person, if the authorised officer considers it necessary,
- (vi) examine a plant protection product, product, vehicle, vessel, container or other thing,
- (vii) take, without payment, samples, including samples of a plant protection product or product or other thing that may have been in contact with the plant protection product or product or that relates to the plant protection product or product as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (viii) seize and detain (for so long as is necessary) a plant protection product, product or other thing that he or she has reasonable cause to suspect may be evidence of an offence under these Regulations,

- (ix) require the production of a document or thing relating to a plant protection product or product, vehicle, vessel or container,
- (x) dispose of, or require the owner or person in charge of or in possession of, a plant protection product or product, to dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with a plant protection product or product) in such manner as the authorised officer sees fit,
- (xi) give such directions to, or request such information of, such person regarding a plant protection product, product or premises as he or she considers necessary,
- (xii) examine and copy books, records data or data material (within the meaning in each case of the Data Protection Act 1988 (No. 25 of 1988)) he or she finds there, extract information from any such data and take extracts from any such material,
- (xiii) retain any document or thing to which subparagraph (viii) refers or a book, record, data or data material to which subparagraph (xii) refers (for so long as is necessary),
- (xiv) require a person to give his or her name and address and such information or produce any book, certificate, document, other record or thing as the authorised officer considers necessary or expedient,
- (xv) require of a person information regarding the purchase, importation, processing, production, sale, supply, ownership, identity, origin or destination of a plant protection product or product,
- (xvi) require a person who is for the time being in charge or control of any vehicle stopped or entered—
 - (I) to refrain from moving it, and
 - (II) to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of subparagraph (i) to (xiii), or
 - (III) mark or otherwise identify a plant protection product or product or a sample taken under subparagraph (vii).

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 5 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons (including an employee of or person acting on behalf of the European Commission) and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of a product as may be specified by the authorised officer.

(7) Nothing in these Regulations operates to prejudice any power to search, or to seize or detain property, which may apart from these Regulations be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

Search Warrant

6. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that he or she suspects there is evidence of an offence under these Regulations on a premises, the judge may issue a search warrant.

(2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána, as the named officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the land or premises named in the warrant.

(3) If a premises or land is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Obstruction

7. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under these Regulations,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under these Regulations,

- (c) tamper with a sample taken under Regulation 5 or
- (d) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 5—
 - (i) make a statement which he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose any material particular.

Compliance Notice

8. (1) Without prejudice to Regulation 5, if an authorised officer is of the opinion that—

- (a) an act of the institutions of the European Union or these Regulations is not being or has not been complied with or there are reasons to believe that an act of the institutions of the European Union or these Regulations will not be complied with,
- (b) it is necessary for the protection of human health, animal health or welfare or the environment including preventing the contamination of food, or
- (c) it is necessary, ancillary or supplementary for an act of the institutions of the European Community to have full effect,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of a premises or product (including the master of a vessel) a notice (“compliance notice”) stating that opinion and directing that—

- (i) a product be dealt with or used in a manner specified in the notice,
- (ii) a product not be moved from a premises specified in the notice,
- (iii) such alterations be made to a premises or operations at a premises as the officer specifies in the notice,
- (iv) a product be disposed of in such manner as the officer specifies in the notice,
- (v) a specified operation or activity cease on a premises,
- (vi) a product be removed from the State,
- (vii) a specified operation or activity takes place only in a manner specified in the notice,
- (viii) a specified type or level of sampling and analysis be undertaken for a period specified in the notice, or

- (ix) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the compliance notice.
- (2) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under paragraph (9).
- (3) A requirement contained in a compliance notice shall specify a time limit within which the notice is to be complied with.
- (4) A requirement specified in a compliance notice (in this paragraph referred to as “the earlier compliance notice”) may be amended or withdrawn by a further notice in writing and the earlier compliance notice has effect subject to such amendment or withdrawal.
- (5) A compliance notice, whether amended under paragraph (4) or not, may require the owner or person in charge of a plant or a product to choose between one or more of the requirements specified in the compliance notice and that person shall comply with the alternative requirement that he or she chooses.
- (6) A person affected by a compliance notice may, within 7 days of service of the compliance notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the product or person having charge of the product is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the compliance notice or any term of the compliance notice are not reasonable, having regard to the objectives of the Pesticide MRL Regulation.
- (7) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.
- (8) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the compliance notice or any term of the compliance notice is unreasonable having regard to the objectives of Pesticide MRL Regulation, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy thereof shall be lodged with the appropriate District Court Clerk.
- (9) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul a compliance notice.
- (10) A person, including a person on whom a compliance notice is served, shall not—
- (a) pending the determination of an appeal, deal with premises or a product to which a compliance notice relates other than under and in accordance with the notice, or
 - (b) after the appeal, deal with premises or a product to which a compliance notice relates other than under and in accordance with the compliance notice or compliance notice as modified.

(11) If—

- (a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a compliance notice (including a compliance notice modified in accordance with paragraph (9)), or
- (b) an authorised officer has reasonable cause to suspect—
 - (i) that a compliance notice (including a compliance notice modified in accordance with paragraph (9)) is not or will not be complied with, or
 - (ii) pending the determination of an appeal, a premises or product to which the compliance notice relates is or will not be dealt with other than in accordance with paragraph (10),

an authorised officer may seize and detain a product in such manner as he or she thinks fit and sell or dispose of the product in a manner that the authorised officer considers appropriate.

(12) Subject to paragraph (14), the proceeds of the sale or disposal of a product under paragraph (11) shall be paid to the owner of the product as soon as may be after such sale or disposal and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal of the product.

(13) The costs of seizure, sale or disposal of a product under this Regulation shall be recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction, or
- (b) by deducting the costs from any sum due by the Minister to a person on whom a notice has been served.

(14) The costs of any action required by a compliance notice shall be borne by the owner of a premises or product to which the notice relates.

Evidence on Certificate

9. (1) In proceedings for an offence consisting of a contravention of these Regulations, a certificate purporting to be signed by a person employed at a laboratory named in the certificate stating the capacity in which that person is so employed and stating any one or more of the following, namely—

- (a) that the person received a sample submitted to the laboratory,
- (b) that, for the period specified in the certificate, the person had the sample in his or her custody,
- (c) that the person gave the sample to such other person as is specified in the certificate, or

- (d) that the person carried out any laboratory examination for the purpose of detecting the presence, in the sample, of a pesticide residue, or that a particular level of pesticide residue was present in or on the sample,

is, unless the contrary is proved, evidence of the matters stated in the certificate.

(2) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under paragraph (1) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(3) In proceedings for an offence, evidence of an act of the institutions of the European Community may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(4) Paragraph (3) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Fixed Payment Notice

10. (1) If an officer of the Minister authorised by the Minister in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing (“fixed payment notice”) on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days from the date of the notice make to the Minister a payment of €250 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the fixed payment notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If a fixed payment notice is given—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified

is made during that period, no prosecution in respect of the alleged offence will be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

Service

11. (1) A compliance notice, subject to paragraph (2), or fixed payment notice shall be addressed to the person concerned by name and may be served on or given to the person—

- (a) by giving a copy to the person, his or her employee, servant or agent, or in the case of a partnership by delivery to any of the partners,
- (b) by leaving a copy at the address at which the person ordinarily resides, where he or she carries out business, or, where an address for service has been furnished, at that address,
- (c) by sending a copy by post in a prepaid registered letter to the address at which the person ordinarily resides, carries out business, in the case of a body corporate or unincorporated body the registered office of the body or, where an address for service has been furnished, at that address,
- (d) by electronic communication,
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering a copy to the premises or by affixing a copy in a conspicuous position on or near the premises, or
- (f) if the Minister or an authorised officer considers that the immediate giving of a compliance notice is required, by sending a copy, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) If a compliance notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words 'the owner' or 'the occupier'.

(3) A person shall not, at any time within 6 months after a compliance notice is affixed under subsection (1)(d), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Fees

12. (1) The Minister may charge a fee in respect of an application for an MRL or for the performance of any other function under these Regulations, such fee, not exceeding the cost, estimated by the Minister of providing the service to which the fee relates.

(2) If the Minister charges a fee in relation to an application for an MRL or the performance of any other function, under these Regulations, he or she shall not consider the application unless the fee accompanies the application.

(3) A fee payable pursuant to this Regulation may be recovered by the Minister, from the person by whom it is payable as a simple contract debt in a court of competent jurisdiction.

(4) A fee payable to a Minister pursuant to this Regulation shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(5) The Public Offices Fees Act 1879 does not apply to a fee charged pursuant to this Regulation.

Offences

13. (1) A person who—

(a) contravenes Article 18(1), 19, 20 of Pesticide MRL Regulations,

(b) contravenes Regulation 3, 7, 8(2) or (3) of these Regulations,

(c) obstructs or impedes an authorised officer in the exercise of any of his or her functions under Regulation 5,

is guilty of an offence and is liable—

(i) on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or to both, or

(ii) on conviction on indictment to a fine not exceeding €250,000 or to a term of imprisonment not exceeding 3 years or to both.

(2) A summary offence under these Regulations may be prosecuted by the Minister.

(3) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the

body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(4) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.

Revocations

14. The following are revoked—

- (a) The European Communities (Pesticide Residues) Regulations 2006 (S.I. No. 654 of 2006), and
- (b) The European Communities (Pesticide Residues) (Amendment) (No. 2) Regulations 2008 (S.I. No. 368 of 2008).



GIVEN under my Official Seal,
12 December 2008

BRENDAN SMITH.
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give legal effect to Regulations (EC) No. 396/2005 concerning legislation controlling pesticide residues in certain agricultural products.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
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€3.81

