

# S.I. No. 40/1992 - European Communities (Pesticide Residues) (Feedingstuffs) Regulations, 1992.

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EUROPEAN COMMUNITIES (PESTICIDE RESIDUES) (FEEDINGSTUFFS) REGULATIONS, 1992.

I, JOE WALSH, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 91/132/EEC of 4 March 1991<sup>(1)</sup>, hereby make the following Regulations:

<sup>(1)</sup>O.J. No. L. 66. 13.3.1991, p.16.

1. These Regulations may be cited as the European Communities (Pesticide Residues) (Feedingstuffs) Regulations, 1992, and shall come into operation on the 26 day of February, 1992.

2. (1) In these Regulations—

"authorised officer" means a person authorised in writing by the Minister for the purposes of these Regulations;

"controlled product" means a product listed in the second column of the First Schedule;

"designated chemist" means an officer of the Minister holding the position of a chemist authorised in writing by the Minister for the purposes of these Regulations;

"the Directive" means Council Directive No. 91/132/EEC of 4 March 1991<sup>(1)</sup> (being the amendment to Part B of Annex I to Council Directive No. 74/63/EEC of 17 December 1973)<sup>(2)</sup>;

<sup>(1)</sup>O.J. No. L. 66. 13.3.1991, p.16.

<sup>(2)</sup>O.J. No. L. 38. 11.2.1974, p. 31.

"the Minister" means the Minister for Agriculture and Food;

"pesticide residue" in relation to any controlled product, means any of the substances referred to in the first column of the First Schedule opposite a reference to the controlled product in question;

"the State Chemist" means the head of the State Laboratory or a member of the staff of the State Laboratory holding the position of a chemist authorised by the State chemist in writing to perform functions assigned to the State chemist under Regulation 10.

(2) A word or phrase that is used in these Regulations and is also used in the Directive shall, unless the contrary intention appears, have the meaning that it has in the Directive.

(3) In these Regulations, unless otherwise indicated—

( a ) a reference to a Regulation is to a Regulation of these Regulations,

( b ) a reference to a Schedule is to a Schedule to these Regulations,

( c ) a reference to a paragraph is to the paragraph of the Regulation in which the reference occurs.

3. These Regulations shall apply to any controlled product except where it can be established by appropriate evidence that it is intended for export to a country other than a Member State of the European Communities, and unless the owner or person in charge establishes that it is so intended it shall be presumed that these Regulations apply to such a product.

4. (1) A person shall not place on the market any controlled product if—

( a ) the product contains within it or on it a pesticide residue, and

( b ) the level of such pesticide residue exceeds the maximum specified in relation to the controlled product in the second or third column of the first schedule opposite the mention of such pesticide residue in the first column of the first schedule.

(2) a person who contravenes the provisions of paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months or both.

5. (1) subject to paragraph (3), an authorised officer may at any reasonable time enter—

( a ) any place or premises including farms in which he has reasonable grounds for believing that a controlled product is being produced, placed on the market, processed, stored or used, or

( b ) any railway wagon, vehicle, ship, vessel, aircraft, container or other thing in which he has reasonable grounds for believing that such a product is being transported, stored or used, or

( c ) any premises in which he has reasonable grounds for believing that there are any books, documents, or records, relating to any business whose activities consist of or include the putting into circulation, processing or storage of any controlled product,

and there or at any other place as he may consider appropriate—

(i) make such examinations, tests and inspections, and

(ii) take samples in such quantities as he considers reasonable in accordance with Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, recommended method of sampling for the determination of Pesticide Residues (Food and Agriculture Organisation of the United Nations CAC/PR5-1984), from or of any product which he finds in the course of his inspection and which he believes is or may be product to which these Regulations apply.

(2) A person who has in any place or land or on any premises or in any railway wagon, vehicle, ship, vessel, aircraft, container or other thing a controlled product shall at all reasonable times—

( a ) afford to an authorised officer such facilities and assistance as are reasonably necessary for an inspection and taking of samples pursuant to this Regulation,

( b ) give an authorised officer any information which he may reasonably require regarding the purchase, importation, processing, production, sale or use of any such product and which is within the person's knowledge or procurement, and

( c ) produce to an authorised officer any document relating to any such product which the authorised officer may reasonably require and when produced permit the officer to inspect and take extracts from or copy such document.

(3) Where a sample is taken pursuant to this Regulation the authorised officer concerned shall—

( a ) divide the sample into three parts, each of which he shall seal and mark,

( b ) give one part thereof to a designated chemist for analysis under paragraph (4),

( c ) leave with, or send by registered post to, the defendant or his agent a second part thereof, and

( d ) retain the remaining part thereof for possible analysis by the State Chemist under Regulation 10.

(4) Where a designated chemist receives a sample from an authorised officer taken in pursuance of these Regulations he shall make analyses thereof in accordance with the Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, the Recommendations for Methods of Analysis of Pesticide Residues (Food and Agriculture Organisation of the United Nations CAC/PR8-1989) and the Codex Guidelines on Good Practice in Pesticide Residue Analysis (Food and Agriculture Organisation of the United Nations (AC/PR7-1984).

(5) In any proceedings for an offence under these Regulations, evidence of the result of any analysis of, or any report on, a sample taken pursuant to this Regulation shall not be adduced unless it is proved that before the proceedings were instituted one of the parts into which the sample was duly divided was left with, or sent by registered post to, the defendant or his agent.

(6) (1) In any proceedings for an offence under these Regulations, a certificate in the form set out in the Second or Third Schedule showing the results of an analysis shall, until the contrary is shown, be sufficient evidence of the facts certified to therein in relation to the presence of any pesticide residues and the level of such pesticide residues within or on a controlled product, and a document purporting to be such a certificate shall be deemed, until the contrary is shown, to be such a certificate.

(2) In any proceedings for an offence under these Regulations, each of the documents referred to in paragraph (1) (ii) and paragraph (4) may be proved by a production of a copy thereof purporting to have been published by the Food and Agriculture Organisation of the United Nations or the World Health Organisation.

(7) Any person who—

( a ) fails to comply with a requirement of paragraph (2), or

( b ) obstructs or interferes with an authorised officer in the course of exercising a power conferred on him by this Regulation,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months or both.

(8) The Minister shall furnish an authorised officer with a certificate of his appointment, and when exercising any power conferred on him by these Regulations, the officer shall, if requested by a person affected, produce that certificate to that person.

(9) A designated chemist shall be furnished with a warrant of his appointment by the Minister to carry out analyses as required by these Regulations.

6. (1) An authorised officer may seize and retain or seize, remove and retain any controlled product in relation to which the officer has reasonable grounds for suspecting that there is or has been a failure to comply with these Regulations.

(2) An authorised officer who has seized any controlled product pursuant to this Regulation may by a notice in writing, given to the owner or to the person in apparent charge or control of the product, require either —

( a ) specified things to be done in relation to the product before it is released by the officer, or

( b ) the disposal of the product by the owner, or the person in apparent charge or control of the product, in a manner and within a time specified in the notice and at the expense of the owner, such disposal to be such as will prevent the product being used for human or animal consumption,

and in either case, the authorised officer shall retain control of the product to which the notice relates until the requirements of the notice have been complied with.

(3) Where there has been a failure to comply with a requirement of a notice given under paragraph (2) (b), an authorised officer who in pursuance of this Regulation has seized any product may, on giving notice in writing to the owner, or the person in apparent charge or control of such product of his intention to do so, apply to the District Court in the District Court district in which the notice has been served for an order directing that the product be disposed of (by destruction or otherwise) in a manner, specified in the order, that will prevent its being used for human or animal consumption.

(4) Where an application is made under paragraph (3) to the District Court for an order directing the disposal of a controlled product, the Court, if it is satisfied that—

(i) the controlled product to which the notice relates contains within it or on it a pesticide residue in excess of the maximum specified in relation to that product under these Regulations,

(ii) if such product were released, it might be put into circulation contrary to Regulation 4, and

(iii) such product if consumed would constitute a danger to human or animal health,

shall order that the product be disposed of (by destruction or otherwise) in a manner, specified in the order, that will prevent its being used for human or animal consumption.

(5) Where an order is made by the District Court under paragraph (4), the order may provide that the product to which it relates shall be disposed of in the manner specified in the notice given under paragraph (2) (b), or in such other manner as may be specified in the Court's order and which, in the opinion of the Court, will prevent the product being used for human or animal consumption.