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GUERNSEY STATUTORY INSTRUMENT

1995 NO. 26

The Control of Poisonous Substances Regulations, 1995

<i>Made</i>	<i>14 September</i>	<i>1995</i>
<i>Laid before the States</i>	<i>25 October</i>	<i>1995</i>
<i>Coming into operation</i>	<i>1 November</i>	<i>1995</i>

THE STATES BOARD OF EMPLOYMENT, INDUSTRY AND COMMERCE, in exercise of the powers conferred on them by sections 1 and 4 of the Poisonous Substances (Guernsey) Law, 1994, hereby make the following regulations:-

Title and commencement.

1. These regulations may be cited as the Control of Poisonous Substances Regulations 1995 and shall come into operation on the *1 November 1995*.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires-

"**active ingredient**" means a component of a poisonous substance which fits it for use as a pesticide;

"**adjuvant**" means a substance other than water, without significant pesticidal properties, which enhances or is intended to enhance the effectiveness of a pesticide, when it is added to that pesticide;

"**approval**" means an approval by the Board under regulation 5 in relation to a poisonous substance;

"**Board**" means the Board of Employment, Industry and Commerce;

"**consent**" means a consent of the Board given under regulation 6;

"**contravention**" includes failure to comply and like expressions shall be construed accordingly;

"**evaluation**" means a written evaluation of study reports or other data examined in the course of an appraisal by the Board of a poisonous substance in relation to which approval is sought;

"**experimental approval**" has the meaning given by regulation 5(2)(a);

"**full approval**" has the meaning given by regulation 5(2)(c);

"**import**" includes importing by individuals, and like expressions shall be construed accordingly;

"**licensed approval**" has the meaning given by regulation 5(2)(d);

"**licensed substances**" are poisonous substances in relation to which the Board has given a licensed approval by virtue of Regulation 5(2)(d);

"**local beekeepers spray warning scheme**" means any scheme for the advance notification of the application of poisonous substances, organised by local beekeepers and notified to the Board;

"**metal working fluid**" means any fluid used to facilitate the cutting, drilling, forming or machining of metal;

"**micropropagation**" means the growth of plantlets from tissue culture or small parts of a plant in culture solution and under conditions which are sterile apart from the presence of that plant;

"**mycoplasma**" means a genus of organisms which have a unit membrane without a rigid cell wall and are highly pleomorphic, having no independent form or spore stage in the life cycle;

"**novel food**" means any food or food ingredient produced from raw material which hitherto has not been used for human consumption or has been so used only in small amounts, or produced by new or extensively modified processes not previously used in the production of food;

"**paint**" includes surface coatings;

"**poisonous substances**" means anything to which, pursuant to regulation 3, these regulations apply;

"**provisional approval**" has the meaning given by regulation 5(2)(b);

"**sell**" includes offer or expose for sale or have in possession for sale, and "sale" shall be construed accordingly;

"**soil sterilant**" means a substance used to control harmful organisms in soil or compost;

"**supply**" includes offer to supply;

"**use**" includes licensed use.

(2) The Interpretation (Guernsey) Law, 1948 shall apply to the interpretation of these regulations.

(3) Any reference in these regulations to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended and applied.

Scope.

3. (1) Subject to the following provisions of this regulation, these regulations apply to the following substances (referred to in these regulations as "**poisonous substances**"), that is to say, any pesticide and any substance, preparation or organism prepared or used for any of the following purposes -

- (a) protecting plants or wood or other plant products from harmful organisms;
- (b) regulating the growth of plants;
- (c) giving protection against harmful creatures;

- (d) rendering such creatures harmless;
 - (e) controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products;
 - (f) protecting animals against ectoparasites.
- (2) These regulations do not apply to -
- (a) organisms other than bacteria, protozoa, fungi, viruses, and mycoplasmas, used for destroying or controlling pests;
 - (b) products whose use or sale within the Island of Guernsey is controlled under the Pharmacists, Poisons and Pharmacy Ordinance, 1970, when those substances are used or sold for the purpose over which control under that Ordinance is exercised;
 - (c) substances prepared or used for the purpose of disinfecting, bleaching or sterilising any substance (including water) other than soils, compost or other growing medium;
 - (d) substances used in laboratories for the purpose of the micropropagation of plants or substances used in the production of novel food;
 - (e) substances designed and used for -

- (i) the stimulation of the growth of plants, excluding materials which act as plant growth hormones or which mimic the action of such materials;
 - (ii) the modification of microbiological processes in soil, excluding soil sterilants;
 - (iii) assistance in the anaerobic fermentation of silage;
- (f) pesticides -
- (i) used in adhesive pastes, decorative paper or textiles;
 - (ii) intended solely for exportation from the Island of Guernsey;
 - (iii) used as part of a manufacturing process, other than for the purpose of preserving timber or timber products or in the production of food;
 - (iv) used in preparations intended for topical application to human beings for the purpose of repelling insects;
 - (v) used in metal working fluids;
 - (vi) used in paint;
 - (vii) used in water supply systems or in swimming pools.

(3) Notwithstanding subparagraph (2)(f)(iii) and (vi) above, the expression "**poisonous substances**" in paragraph (1) above shall include paints used to prevent the fouling of the hulls of vessels or structures below the waterline, or applied to nets, floats or other apparatus used in the cultivation of fish.

Prohibitions.

4. (1) No person shall import a poisonous substance unless -
 - (a) the Board has given a provisional, licensed or full approval under regulation 5 in relation to that substance and a consent under regulation 6(b); and
 - (b) any conditions of the approval related to importation and the conditions of the consent have been complied with.

- (2) No person shall advertise a poisonous substance unless -
 - (a) the Board have given a provisional, licensed or full approval under regulation 5 in relation to that substance and a consent under regulation 6(a); and
 - (b) any conditions of the approval related to advertisement and the conditions of the consent have been complied with.

- (3) No person shall sell a poisonous substance unless -
 - (a) the Board have given a provisional, licensed or full approval under regulation 5 in relation to that substance and a consent under regulation 6(b);
 - (b) any conditions of the approval related to sale and the conditions of the consent have been complied with; and
 - (c) in the case of a poisonous substance in relation to which a licensed approval has been given by the Board under regulation 5(2)(d), or a poisonous substance not of a description given approval in the United Kingdom, the purchaser holds a licence granted under paragraph 6 of Schedule 3 and proof of the licence is produced by the purchaser at the time of sale.

- (4) No person shall supply a poisonous substance unless -
 - (a) the Board have given an approval under regulation 5 in relation to that substance and a consent under regulation 6(b); and
 - (b) any conditions of the approval related to supply and the conditions of the consent have been complied with.

- (5) No person shall store a poisonous substance unless -
 - (a) the Board have given an approval under regulation 5 in relation to that substance and a consent under regulation 6(b); and
 - (b) any conditions of the approval related to storage and the conditions of the consent have been complied with.

- (6) No person shall use a poisonous substance unless -
 - (a) the Board have given an approval under regulation 5 in relation to that substance and a consent under regulation 6(c); and
 - (b) any conditions of the approval related to use and the conditions of the consent have been complied with.

Approval.

5. (1) Subject to the following provisions of this regulation, the Board may give their approval in relation to a poisonous substance of any description given approval in the United Kingdom under The Control of Pesticides Regulations, 1986.

(2) The Board's approval may be given in relation to a poisonous substance in the form of -

- (a) an experimental approval, to enable testing and development to be carried out with a view to providing the Board with safety and other data;

- (b) a provisional approval, for a stipulated period with a view to satisfying the Board's outstanding data requirements;
- (c) a full approval, for an unstipulated period; or
- (d) a licensed approval.

(3) An approval may authorise the use, supply and storage of the poisonous substance to which it relates and a provisional approval, licensed approval or full approval may in addition authorise the importation, sale and advertisement of that substance.

(4) An approval may be given subject to conditions imposed when or after it is given.

(5) The Board may, at any time -

- (a) review, revoke or suspend an approval,
- (b) amend the conditions of an approval.

(6) The Board may also give their approval in relation to a poisonous substance not of a description given approval in the United Kingdom; and the provisions of this regulation shall apply in relation to such an approval as they apply in relation to an approval given under paragraph (1).

Consents.

6. The Board may by notice in La Gazette Officielle give their consent to -

- (a) the advertisement of poisonous substances subject to such of the basic conditions set out in Schedule 1 and any further conditions as may be specified by such a notice;
- (b) the importation, sale, supply and storage of poisonous substances subject to such of the basic conditions set out in Schedule 2 and any further conditions as may be specified by such a notice;

- (c) the use of poisonous substances subject to such of the basic conditions set out in Schedule 3 and any further conditions as may be specified by such a notice.

Seizure or disposal of poisonous substances.

7. (1) If there has been a contravention, in relation to any poisonous substance, of any provision of regulation 4, or of any condition of an approval or consent, the Board shall have power -

- (a) to seize or dispose of the poisonous substance or to require that some other person shall dispose of it in such manner and within such time as the Board may specify;
- (b) to seize or dispose of anything treated with the poisonous substance or to require that some other person shall dispose of any such thing in such manner and within such time as the Board may specify;
- (c) to direct any person to take such remedial action in such manner and within such time as appears to the Board to be necessary as a result of the contravention.

(2) If any poisonous substance has been imported into the Island of Guernsey in contravention of any provision of regulation 4 or of any condition of any approval or consent, the Board may require that it shall be removed out of the said Island in such manner and within such time as the Board may specify.

Release of information to the public.

8. (1) Upon the giving of a provisional approval or of a full approval or the amendment of the conditions imposed upon it, the Board may, at the request of any person, make available to him for inspection, at such times and on such conditions as they may determine, an evaluation of the poisonous substance in relation to which that approval was given or the conditions were amended.

(2) If a person satisfies the Board that an evaluation made available to him for inspection under the previous paragraph gives sufficient information for his purposes,

the Board may make available for his inspection, at such times and on such conditions as may be determined by the Board, the study reports (or other data) supplied in support of an application for the approval.

(3) A copy of an evaluation or study report may be furnished by the Board on payment of such reasonable fees as the Board may determine from time to time.

(4) No person to whom an evaluation or a study report has been made available for inspection by virtue of this regulation shall make any commercial use of the information contained therein nor, unless authorised in writing by the Board so to do, publish any of the contents of that evaluation or study report.

Offences.

9. A person who contravenes, or who causes or permits the contravention of, any provision or condition of these regulations or of any approval, consent, licence or requirement given or imposed under these regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Dated this 14 day of September 1995



D EVANS

President of the Board of Employment, Industry & Commerce

For and on behalf of the Board

SCHEDULE 1

Regulation 6(a)

BASIC CONDITIONS SUBJECT TO WHICH CONSENT TO THE ADVERTISEMENT
OF POISONOUS SUBSTANCES MAY BE GIVEN

1. An advertisement shall relate only to such uses of a poisonous substance as are permitted by the approval given in relation to that substance.

2. Any printed or pictorial advertisement, whether contained in leaflets, posters, newspapers, magazines or other periodicals, and other promotional material diffused through any broadcast or recorded medium, shall include-

- (a) a statement of the active ingredient of each poisonous substance mentioned in the advertisement;
- (b) such general warning as the Board may, by further condition, require in relation to each poisonous substance so mentioned;
- (c) where required by a condition of the approval given in relation to a poisonous substance mentioned in the advertisement, a statement of any special degree of risk to human beings, creatures, plants or the environment.

SCHEDULE 2

Regulation 6(b)

BASIC CONDITIONS SUBJECT TO WHICH CONSENT TO THE IMPORTATION,
SALE, SUPPLY AND STORAGE OF POISONOUS SUBSTANCES MAY BE GIVEN

1. (1) Any person who imports, sells, supplies or stores a poisonous substance shall -

- (a) take all reasonable precautions, particularly with regard to storage and transport, to protect the health of human beings, creatures and plants and to safeguard the environment;
- (b) be competent to perform the duties which he is called upon to perform; and
- (c) notify the Board in writing of imports at regular intervals.

(2) No person shall sell or supply a poisonous substance approved for agricultural use, or store such a substance for the purpose of sale or supply, unless he has obtained a certificate of competence recognised by the Board, or unless he sells, supplies or stores that substance under the direct personal supervision of a person who holds such a certificate.

2. In this Schedule "**poisonous substance approved for agricultural use**" means a substance for which the approval provides that it may be used for the purposes of agriculture, horticulture, forestry or animal husbandry.

3. Every employer shall ensure that any person in his employment who may be required to sell, supply or store a poisonous substance during the course of that employment shall be provided with such instruction and guidance as is necessary to enable that person to achieve the standard of competence recognised by the Board and otherwise to comply with the provisions of these regulations and of any consent or approval given under them.

SCHEDULE 3

Regulation 6(c)

BASIC CONDITIONS SUBJECT TO WHICH CONSENT TO THE USE OF
POISONOUS SUBSTANCES MAY BE GIVEN

1. Any person who uses a poisonous substance shall take all reasonable precautions to protect the health of human beings, creatures and plants, to safeguard the environment and in particular to avoid pollution of water.

2. No person shall combine or mix for use two or more poisonous substances except in accordance with the conditions of the approvals given in relation to those substances.

3. No person shall use a poisonous substance in conjunction with an adjuvant except in accordance with the conditions of the approval given in relation to that substance.

4. No person shall use a poisonous substance in the course of business unless he has received adequate instruction and guidance in the safe, efficient and humane use of poisonous substances and is competent for the duties which he is called upon to perform.

5. No person shall use after April 1999 in the course of a commercial service a poisonous substance approved for agricultural use unless he has obtained a certificate of competence recognised by the Board, or unless he uses the substance under the direct personal supervision of a person who holds such a certificate.

6. No person shall use a poisonous substance given approval for use by virtue of regulation 5(2)(d) or 5(6) unless he has personally been granted a specific licence to do so from the Board and unless he uses the substance in accordance with any conditions subject to which the licence and approval were granted. The products to which this paragraph applies are those -

- (a) given full or provisional approval in the United Kingdom but restricted by the Board for use in Guernsey;

- (b) which have specific restrictions on use in the United Kingdom and are similarly restricted by the Board for use in Guernsey;
- (c) not approved for use in the United Kingdom.

7. In this Schedule -

"commercial service" means the application of a poisonous substance by a person to land, buildings or the contents of buildings not in his or his employer's ownership or occupation, and includes the treatment of seed with the use of mobile or static equipment;

"poisonous substance approved for agricultural use" means a poisonous substance for which the approval provides that it may be used for the purposes of agriculture, horticulture, forestry or animal husbandry.

8. Every employer shall ensure that any person in his employment who may be required to use a poisonous substance during the course of that employment shall be provided with such instruction and guidance as is necessary to enable that person to achieve the standard of competence recognised by the Board and otherwise to comply with the provisions of these regulations and of any consent or approval given under them.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations are made for the purpose of controlling pesticides and other poisonous substances in implementation of the Poisonous Substances (Guernsey) Law, 1994.

Subject to the excepted substances specified in regulation 3, regulation 4 prohibits the advertisement, importation, sale, supply, storage or use of any poisonous substance unless the Board have given an approval in relation to that substance under regulation 5 and a consent to that activity under regulation 6 and unless the conditions of both the approval and the consent have been complied with.

Regulation 5 empowers the Board to give approvals in relation to poisonous substances in the form of experimental approvals, provisional approvals, licensed approvals or full approvals, and to impose conditions upon, and review, revoke or suspend, any such approvals.

Regulation 6 empowers the Board, by notice, to give consent to the advertisement, importation, sale, supply, storage, and use of poisonous substances subject to the conditions set out in Schedules 1, 2 and 3 and any further conditions specified by the notice.

In the event of a breach of the specified prohibitions in relation to any poisonous substance or of the conditions of an approval or a consent, regulation 7 authorises the seizure or disposal of the substance and anything treated with it, all necessary remedial action and, in the case of an imported substance, its removal out of the Island.

Regulation 8 enables the Board to make available evaluations of, and study reports submitted on, poisonous substances in relation to which a provisional or full approval has been given.

Regulation 9 imposes criminal sanctions for contraventions of the regulations.