

EUROPEAN COMMUNITIES (PROHIBITION OF CERTAIN ACTIVE SUBSTANCES IN PLANT PROTECTION PRODUCTS) (AMENDMENT) (No. 2) REGULATIONS 1985

I, AUSTIN DEASY, Minister for Agriculture, 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 making, pursuant to Article 4 of Council Directive 79/117/EEC of 21st December, 1978,¹ a derogation from Article 3 of that Directive and for the purpose of giving effect to Commission Directive 83/131/EEC of 14th March, 1983² and Commission Directive 85/298/EEC of 22nd May, 1985,³ hereby make the following regulations:

1 O.J. No. L33/36 8.2. 1979.

2 O.J. No. L91/35 9.4.1983,

3 O.J. No. L154/48 22.5.1985.

- REG 1

1. (1) These Regulations may be cited as the European Communities (Prohibition of Certain Active Substances in Plant Protection Products) (Amendment) (No. 2) Regulations, 1985, and shall come into force on the 31st day of July, 1985.

(2) The Principal Regulations and these Regulations may be cited together as the European Communities (Prohibition of Certain Active Substances in Plant Protection Products) Regulations, 1981 and 1985, and shall be construed together as one.

- REG 2

2. In these Regulations "the Principal Regulations" means the European Communities (Prohibition of Certain Active Substances in Plant Protection Products) Regulations, 1981 (S.I. No. 320 of 1981).

- REG 3

3. (1) Where a plant protection product to which the Directive applies is to be imported into the State, notice of the intended importation shall be given in writing to the Minister by or on behalf of the importer specifying—

(a) the port, airport or other place at which it is expected to land or otherwise bring into the State the product,

(b) the date on which the product is expected to be so landed or otherwise brought into the State,

(c) the number of packs which the relevant consignment comprises (if it comprises more than one),

(d) the pack size (given by reference to volume or weight) of the consignment or, in case the consignment comprises more than one pack, the pack size (so given) of each such pack, and

(e) the destination to which the product is consigned or an address at which the product may be examined, tested or inspected pursuant to Regulation 4 of the Principal Regulations.

(2) A person who fails to comply with the requirements of paragraph (1) of this Regulation shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment.

(3) Regulation 7 of the Principal Regulations shall apply to an

offence under this Regulation as it applies to an offence under the Principal Regulations.

- REG 4

4. (1) The Principal Regulations are hereby amended by—

(a) the substitution of, "or sent by registered post to the defendant or his agent" for "or transmitted to the defendant" in paragraph (6) of Regulation 4;

(b) the substitution of "£1,000" for "£500" in paragraph (8) of Regulation 4;

(c) the substitution of the following paragraphs for paragraphs (2), (3), (4) and (5) of Regulation 5:

"(2) An authorised officer may by a notice in writing given to the owner or to the person in apparent charge or control of a product which has been seized under this Regulation—

(a) require things specified in the notice to be done in relation to the product before it is released by an authorised officer,

(b) either—

(i) require the disposal of the product by the person to whom the notice is given, in a manner specified in the notice and at the expense of the owner, or

(ii) indicate the authorised officer's intention of disposing of the product at the expense of the owner,

such disposal to be, in either case, such as will prevent the product from being placed on the market or used, and in case a notice given under this paragraph requires specified things to be done in relation to a product, 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 a notice is given under this Regulation, a person shall not, without the consent of the authorised officer by whom the notice was given, sell, move, dispose of or otherwise interfere with the product in any way pending compliance with the requirement of the notice.

(4) Any person who is aggrieved by a notice given under paragraph (2) of this Regulation, which either requires the product to which it relates to be disposed of or indicates an intention to dispose of such product, may, not later than the expiration of the period of seven days beginning on the date of the notice, appeal to the District Court against the notice.

(5) (a) Where an appeal is made to the District Court under paragraph (4) of this Regulation, that court, if it is satisfied that—

(i) the product to which the relevant notice under this Regulation relates is one to which Regulation 3 (1) of these Regulations applies, and

(ii) if such product were released, it might be placed on the market or used for purposes not authorised under Regulation 3 (2) of these Regulations,

shall order that the product be disposed of in the manner specified in the notice, 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 from being used or placed on the market.

(b) Where an order made by the District Court under this paragraph requires the product to which it relates be disposed of by an authorised officer, the cost of such disposal shall be recoverable by the Minister as a simple contract debt in any court of competent jurisdiction from the person who was the owner of the product at the time of its seizure under this Regulation.

(6) A notice under this Regulation shall not come into force unless—

(a) in case an appeal is taken against the notice, the appeal is withdrawn,

(b) in any other case, the period during which such an appeal may be taken has expired.

(7) A person who—

(a) fails to comply with a requirement of a notice given under paragraph (2) of this Regulation, or

(b) contravenes paragraph (3) of this Regulation, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment."

(d) the substitution of "£1,000" for "£500" in paragraphs (1) and (2) of Regulation 6;

(e) insertion of "Camphechlor" after "Aldrin" in the list of persistent organo-chlorine compounds in Part I of the Schedule; and

(f) the substitution of the entry set out in paragraph (3) of this Regulation for the entry in Part II of the Schedule;

and the said paragraph (6), the said paragraph (8) and the said paragraphs (1) and (2), as so amended, are set out in paragraphs 1 to 3 of the Table to this Regulation.

(2) Paragraph (1) (f) of this Regulation, in so far as it relates to the material at A in the entry in Part II of the Schedule to the Principal Regulations (inserted by the said paragraph (1) (f) and set out in paragraph (3) of this Regulation), shall come into operation on the 1st day of January, 1986.

(3) The following is the entry referred to in paragraph (1) (f) of this Regulation:

Active substances referred to in Regulation 3 (2) (b) Cases in which placing on the market or use is permitted in accordance with Regulations 3 (2) A. Mercury compounds Mercuric oxide As a paint to treat *Nectria galligena* (canker) on pomaceous fruit trees after harvesting and until budding Mercurous chloride (calomel) (a) Against *Plasmodiophora* on Brassicae (b) Treatment of onion seeds and plants against *Sclerotium* A. Alkoxyalkyl and aryl mercury compounds Seed treatment of cereals, beet, flax and rape B. Persistent organo-chlorine compounds Aldrin (a) Treatment of growing media of container-grown ornamentals against *Otiorynchus* (b) Treatment of potatoes grown in former pastureland against *Agriotes*

TABLE

1. (6) In proceedings for an offence under Regulations 3 of these Regulations, the result of any test, examination or analysis of, or any report on, a sample taken pursuant to this Regulation shall not be adduced unless before the proceedings were instituted one of the parts into which the sample was divided (as required by paragraph (5) of this Regulation) was left with, or sent by registered post

to the defendant or his agent.

2. (8) A person who fails to comply with a requirement of this Regulation or who obstructs or interferes with an authorised officer in the course of exercising a power conferred on him by these Regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment.

3. (1) A person who contravenes Regulation 3 of these Regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment.

(2) If any person fraudulently—

(a) tampers with any plant protection product so as to procure that any sample of it taken pursuant to these Regulations does not correctly represent the plant protection product, or

(b) tampers or interferes with any sample taken pursuant to these Regulations, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both the fine and the imprisonment.

GIVEN under my Official Seal this 11th day of July, 1985.

AUSTIN DEASY,

Minister for Agriculture.

EXPLANATORY NOTE.

These Regulations amend existing Regulations (S.I. 320 of 1981) to require prior notification of intended importation of certain plant protection products; update the fines for infringements; revises the provisions regarding seizing and detaining products and in implementation of the latest EEC Directives they reduce the list of cases where the marketing and use of prohibited products is permitted and end the derogation that allowed the use of DDT in certain circumstances.