

STATUTORY INSTRUMENTS

S.I. No. 395 of 2002

European Communities (Export and Import of Certain Dangerous Chemicals) (Industrial Chemicals) (Enforcement) Regulations 2002

I, Mary Harney, Minister for Enterprise, Trade and Employment 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 Regulation (EEC) No. 2455/92 of 23 July 1992¹ as amended by Council Regulation (EC) No. 3135/94², Commission Regulation (EC) No. 1492/96³, Commission Regulation (EC) No. 1237/97⁴ and Commission Regulation (EC) No. 300/2002⁵ hereby make the following regulations:

⁵ O.J. No. L52/1, 22.2.2002

⁴ O.J. No. L173/37, 1.7.97

³ O.J. No. L189/19, 30.7.96

² O.J. No. L332/1, 22.12.94

¹ O.J. No. L251/13, 29.8.92

1. These Regulations may be cited as the European Communities (Export and Import of Certain Dangerous Chemicals)(Industrial Chemicals)(Enforcement) Regulations 2002.

2. The Act of 1989 shall be construed and have effect as if these Regulations were an existing enactment within the meaning of existing enactments contained in section 2(1) of that Act and set out in Part II of the Second Schedule to that Act.

3. (1) In these Regulations, unless the context otherwise requires-

"Act of 1989" means the Safety, Health and Welfare at Work Act, 1989 (No. 7 of 1989);

"Authority" means the National Authority for Occupational Safety and Health;

"Council Regulation" means Council Regulation (EEC) No. 2455/92 of 23 July 1992⁶ as amended by Council Regulation (EC) No. 3135/94⁷, Commission Regulation (EC) No. 1492/96⁸, Commission Regulation (EC) No. 1237/97⁹ and Commission Regulation (EC) No. 300/2002¹⁰;

¹⁰ O.J. No. L52/1, 22.2.2002

⁹ O.J. No. L173/37, 1.7.97

⁸ O.J. No. L189/19, 30.7.96

⁷ O.J. No. L332/1, 22.12.94

⁶ O.J. No. L251/13, 29.8.92

"inspector" means a person authorised by the Authority under section 33 of the Act of 1989;

"State Chemist" has the meaning assigned to it by Regulation 8;

"third country" means a country which is not a Member State of the European Union.

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

(3) In these Regulations -

(a) a reference to a Regulation or a Schedule is a reference to a Regulation or a Schedule of these Regulations, unless it is indicated that reference to some other Regulation is intended,

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and

(c) a reference to an Article or an Annex is a reference to an Article or Annex of the Council Regulation unless it is indicated that some other Council Regulation is intended.

(4) In these Regulations a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by any subsequent enactment.

4. Subject to Regulation 5, the designated national authority for the purposes and enforcement of the Council Regulation and these Regulations, shall be the Authority.

5. These Regulations shall apply to -

(a) chemicals specified in Annex I that are designated with the use category of industrial chemical and any preparation containing these chemicals, and

(b) chemicals specified in Annex II that are designated with the use category of industrial chemical and any preparation containing any of these chemicals.

6. (1) An inspector may -

(a) enter, inspect, examine and search at all times any structure or any premises or other land which the inspector has reasonable cause to believe is being used for or in connection with the manufacture, storage, export, import, packing or placing on the market of any substance or preparation subject to the provisions of these Regulations,

(b) enter, inspect, examine, and search at all times any structure or any railway wagon, vehicle, ship, vessel, aircraft, container or other thing in which the inspector has reasonable cause to believe is being used for the transport or storage of any substance or preparation subject to the provisions of these Regulations,

(c) be accompanied by a member of the Garda Síochána if the inspector has reasonable cause to apprehend any obstruction in the execution of his duty,

(d) in cases where the inspector enters any structure, premises or other land, any railway wagon, vehicle, ship, vessel, aircraft, container or other thing pursuant to these Regulations -

(i) require the person who appears to the inspector to be in charge of the structure, premises or other land, to produce any substance or preparation subject to the provisions of these Regulations which is in such person's possession or under his control,

(ii) require such person, or any person employed in or on such structure, premises or other land, to produce any books, records or other documents which relate to transactions concerning any substance or preparation subject to the provisions of these Regulations and which are in his or her possession or under his or her control, and

(iii) inspect any substance or preparation subject to the provisions of these Regulations and any book, record or document produced in pursuance of a requirement under these Regulations, and, if the inspector thinks fit, copy any entry in such book, record or document,

(e) make such examination and inquiry as may be necessary to ascertain whether the provisions of the Council Regulation and these Regulations are being complied with,

(f) where, in the course of exercising a power conferred on him or her by subparagraph (a), the inspector finds anything he or she reasonably believes to be a substance or preparation to which these Regulations apply in or on any structure, premises or other land, require the person who appears to the inspector to be in charge or control of such substance or preparation to give the inspector such information as is in the power of that person as to who is the owner of the substance or preparation,

(g) examine anything which he or she reasonably believes to be a substance or preparation subject to the provisions of these Regulations which the inspector finds in the course of an inspection pursuant to these Regulations,

(h) where the inspector has reasonable cause to believe that at or on any structure, premises or other land, a contravention of the Council Regulations or these Regulations has been or is being committed, use force where necessary in order to enter the structure, premises or other land, provided the inspector is so authorised by a warrant of a

judge of the District Court (which such judge is authorised to issue upon reasonable ground being assigned on oath), or, if it appears to the inspector to be a case of emergency and that the delay in obtaining a warrant would be likely to endanger life, without being so authorised, and

(i) for the purpose of any examination or inquiry under these Regulations, require any person whom the inspector finds on any such structure, premises or other land, to answer, in the absence of persons other than a person nominated by him to be present and any persons whom the inspector thinks fit to ask provided that any answer given by a person in pursuance of a requirement imposed under these Regulations shall not be admissible without the consent of such person in any proceedings.

(2) Where an inspector, in the course of exercising a power conferred on him or her by paragraph (1), finds any thing which he or she reasonably believes to be a substance or preparation to which these Regulations apply, the owner of the substance or preparation, the person who appears to the inspector to be in charge or in control of the substance or preparation, and any person who is the servant or agent of such owner shall enable the inspector to use anything which is then under the control of such person and required by the inspector for the purpose of making an examination, inspection or search pursuant to this Regulation, or for the purpose of the taking of a sample pursuant to Regulation 7.

(3) Section 33(2) of the Act of 1989 shall apply to an inspector when exercising his or her functions under these Regulations.

7. (1) An inspector, in the course of exercising a power conferred on him by these Regulations, may take for analysis sufficient samples of the substances or preparation if —

(a) the inspector reasonably believes the substance or preparation-

(i) to be a substance or preparation that is subject to the provisions of these Regulations, and

(ii) concerns a contravention of the Council Regulation, and

(b) the inspector has informed the owner of the substance or preparation concerned or a person who appears to the inspector to be in charge or control of, or to have other responsibilities as regards such substance or preparation, of his or her belief.

(2) The owner or other person referred to in paragraph (1) may, at the time when a sample is being taken under these Regulations and on supplying the necessary appliances, require the inspector to divide the sample into three parts, to mark and seal or fasten up each part in such manner as its nature permits and —

(a) to deliver to such owner or other person one part of such sample,

(b) to retain one part of such sample for further comparison, and

(c) to submit one part for analysis,

and any analysis under this Regulation shall be carried out by or under the direction of the State Chemist.

(3) The State Chemist shall analyse a sample submitted to him or her under these Regulations.

(4) The State Chemist shall, following an analysis of a sample referred to in paragraph (3), issue a certificate in the form specified in the Schedule to the Authority as soon as is practicable and shall specify the result of the analysis of the sample concerned.

(5) A certificate referred to in paragraph (4) shall be admissible as evidence of the matters stated therein unless the contrary is proven.

8. (1) The State Chemist means

(a) the Head of the State Laboratory, or

(b) a member of the staff of the State Laboratory authorised under paragraph (2).

(2) The Head of the State Laboratory may authorise a member of the Staff of the State Laboratory to carry out the functions assigned to the State Chemist under these Regulations.

9. (1) A person who fails to comply with Article 4.1, 4.3, 4.4, 5.4, 5.5 or 7 of the Council Regulation shall be guilty of an offence.

(2) Except in so far as it relates to Article 4.1, 4.3, 4.4 and 7 of the Council Regulation, paragraph (1) shall not apply to the Authority or an inspector.

(3) A person who makes a statement which he or she knows to be false or misleading (in a material particular) or recklessly makes a statement which is false or misleading (in a material particular), where the statement is made in purported compliance with a requirement to furnish any information imposed by or under any provision of the Council Regulation, shall be guilty of an offence.

(4) A person who makes a false entry in any register, book, notice or other document required by any provision of the Council Regulation to be kept, served or given or, with intent to deceive, to make use of any such entry which he knows to be false, shall be guilty of an offence.

(5) A person who prevents any other person from appearing before or from answering any question to which an inspector, in accordance with these Regulations, may require an answer shall be guilty of an offence.

(6) A person who, without reasonable cause (proof of which shall lie with that person) fails or refuses to comply with a request of, or to answer a question asked by or who -

(a) obstructs or impedes an inspector in the exercise of his or her functions or who fails to comply with a requirement of these Regulations,

(b) in purported compliance with such a requirement gives information to an inspector which that person knows to be false or misleading in a material respect,

(c) fails to comply with a requisition of an inspector made in pursuance of these Regulations,

(d) wilfully withholds any information as to who is the owner of a substance or preparation to which the Council Regulation applies, or

(e) prevents, or attempts to prevent, a person from appearing before or being examined by an inspector,

shall be guilty of an offence.

(7) If the contravention, breach or failure in respect of which a person is convicted of an offence under these Regulations is continued after the conviction, that person shall be guilty of a further offence on every day on which the contravention, breach or failure continues and for each such offence shall be liable on summary conviction to a fine not exceeding €1,000.

(8) Where an offence under these Regulations is committed by a body corporate and 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, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence.

10. (1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €1,900 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(2) Proceedings for an offence under these Regulations may be brought and prosecuted by the Authority.

(3) Where an entry is required to be made in any register or other record as to the observance of any provision of the Council Regulation and that entry has not been made in the register or other record, the request for the making of such entry shall be admissible as evidence in proceedings for an offence under Regulation 9(3).

(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 summary proceedings for an offence under these Regulations may be instituted-

(a) within two years from the date on which the offence was

committed, or

(b) where such proceedings concern the provision of a notification from a competent authority of a third country concerning the export to or import from such country of chemicals to which these Regulations apply, at any time within 6 months from the date on which such notification was received,

whichever is the later.

11. Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Authority the costs and expenses measured by the court, that were incurred by the Authority in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Authority.

SCHEDULE

Regulation [7 and 9]

CERTIFICATE OF RESULT OF ANALYSIS

**Referred by (name of
inspector) _____ at _____**

Laboratory Reference.....

Number.....

Sample of

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received by the State Chemist on

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from

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Methods of analysis used

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This is to certify that the above mentioned sample, which was duly fastened and sealed, has been analysed under the provisions of the European Communities (Export and Import of Certain Dangerous Chemicals) (Industrial Chemicals) (Enforcement) Regulations 2002) (S.I. No. 395 of 2002) and that the results of the analysis are as follows:—

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This certificate is issued under the European Communities (Export and Import of Certain Dangerous Chemicals) (Industrial Chemicals) (Enforcement) Regulations 2002) (S. I. No. 395 of 2002)

Date..... Signed.....

State Chemist

GIVEN under my Official Seal,

this 25th day of July 2002.



MARY HARNEY

Mary Harney, T.D.

Minister for Enterprise, Trade and Employment.

Explanatory Note

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

These Regulations serve to implement the enforcement provisions of Council Regulation (EEC) No 2455/92 as amended by Council Regulation (EC)3135/94 for those industrial chemicals which are covered by the Council Regulation, introduce necessary enforcement powers and make provision for the penalties that may be applied by the courts in the event of infringements. The designated national Authority for the purposes of these Regulations is the National Authority for Occupational Safety and Health. Separate Regulations implementing the provisions of Council Regulation (EEC) No 2455/92 and associated Council or Commission Regulations for pesticides covered by the Council Regulation have been made by the Minister for Agriculture.

Published by the Stationery Office,

Dublin 8.