

**Statutory Instruments**

**S.I. No 384 of 2005**

**European Communities (Fertiliser) Regulations 2005**

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## **S.I. No. 384 of 2005**

### **European Communities (Fertiliser) Regulations 2005**

I, Mary Coughlan, 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 full effect to Regulation (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003<sup>1</sup>, hereby make the following regulations-

#### **Citation**

1. These Regulations may be cited as the European Communities (Fertiliser) Regulations 2005.

#### **Interpretation**

2. (1) In these Regulations –

“authorised officer” means-

- (a) a person appointed under Regulation 9,
- (b) a member of the An Garda Síochána, or
- (c) an officer of Customs and Excise;

“Commission” means the Commission of the European Communities;

“Community territory” means the territory of the European Communities;

“European Regulation” means Regulation (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003;

“Member State” means a Member State of the European Communities;

“Minister” means the Minister for Agriculture and Food;

“premises” includes any place, vehicle, ship or other vessel, aircraft, railway wagon or other means of transport or any container used in transport;

“product” means a fertiliser;

“production” means system by which fertiliser is produced;

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<sup>1</sup> O.J. No. L 304 of 21.11.2003, p.1.

- (2) In these Regulations-
- (a) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulation is intended, and
  - (b) a reference to a paragraph or a subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.
- (3) A word or expression that is used in the European Regulation and is also used in these Regulations has, in these Regulations, the same meaning as it has in the European Regulation.

### **Application of Regulations**

3. These Regulations apply to any fertiliser that is designated “EC Fertiliser”.

### **Compulsory Statements**

4. (1) The indication of the nitrogen, phosphorus and potassium contents of fertilisers placed on the market shall be expressed in the following way:
- (a) nitrogen solely in the elemental form (N); and either
  - (b) phosphorus and potassium solely in the elemental form (P, K); or
  - (c) phosphorus and potassium in both elemental and oxide forms simultaneously.
- (2) The calcium, magnesium, sodium and sulphur contents of secondary nutrient fertilisers and, where the conditions of Article 17 of the European Regulation are fulfilled, of primary nutrient fertiliser placed on the market shall be expressed in the following way:
- (a) in the elemental form (Ca, Mg, Na, S); or
  - (b) in both the elemental and oxide forms simultaneously.

### **Sampling and analysis**

- 5 (1) Where a sample is taken, it shall be taken and dealt with in accordance with Annex III and Annex IV of the European Regulation
- (2) The official laboratories responsible for carrying out analyses shall be the State Laboratory or any other laboratory nominated by the Minister.
- (3) In proceedings for an offence under these Regulations, the result of any test examination or analysis of, or report on a sample shall not be adduced unless before the proceedings were instituted one of the final samples was left with or transmitted to the defendant.
- (4) A person requiring a second opinion in relation to an analysis may send an officially sealed final sample for analysis to a laboratory accredited in accordance with Annex V (B) to the European Regulation for the particular type of analysis to be undertaken.
- (5) A certificate purporting to be from such a laboratory stating that the sample was received by the laboratory with its seals intact shall be evidence of that fact, unless the contrary is proved.

### **Notice of intention to import product**

6. (1) A person who is importing a product, whether directly or otherwise, shall give notice to the Minister, in a form approved by the Minister, at least 5 working days prior to the importation of the product.
- (2) A person who has given notice under subparagraph (1) shall advise the Minister of any change of circumstances relating to the importation or proposed importation of the product within 24 hours of becoming aware of the change and at least 24 hours before the product enters the State.

### **Directions relating to imported product**

7. Where a product to which Regulation 6 applies does not comply with a provision of these Regulations or the European Regulation, the Minister shall prohibit its entry into or placing on the market in the State.

### **Compliance with directions relating to imported product**

8. An importer of a product to which Regulation 7 applies shall comply with the instructions of the Minister and shall be liable for any expenses incurred in complying with the said instructions.

### **Appointment of authorised officers**

9. (1) The Minister may appoint in writing such and so many persons as he or she thinks necessary to be authorised officers.
- (2) (a) An authorised officer shall be furnished with a warrant of his or her appointment.
- (b) When exercising a power conferred on him or her under these Regulations an authorised officer shall, if requested by any person affected, produce the warrant to that person for inspection.

### **Powers of authorised officers**

10. (1) Subject to paragraph (2), an authorised officer may, for the purposes of ensuring that these Regulations are being complied with –
- (a) at all reasonable times, enter any premises or a place where he or she has reason to believe there is a product and inspect the premises or place,
- (b) require any person in charge of the premises or place or connected with any equipment or other device at that premises or place to produce to him or her any books, documents or records and in the case of such information in a non-legible form to reproduce it in permanent legible form relating to the product and to give to him or her such information as he or she may reasonably require in relation to the product,
- (c) inspect and take copies of, or take extracts from, any such books, documents or records including in the case of information in a non-legible form a copy of or extract from such information in permanent legible form in whatever form kept,
- (d) there or at any other place carry out such examinations, inspections or tests of the product, equipment or other device found on the premises or at the place as the officer considers appropriate and, if the officer so thinks fit, remove or have removed from there any product, equipment or other device and retain it for a reasonable period to facilitate such examination, testing or inspection,
- (e) examine any procedure connected with the manufacture, installation or maintenance of the product,
- (f) take, without payment, such samples of the product or of any other substance as the officer may reasonably require and carry out or have carried out on such samples there or elsewhere such checks and inspections as he or she considers necessary,
- (g) seize and detain the product,
- (h) secure for later inspection the premises or place or part of it,

- (i) if accompanied by -
    - (i) a member of An Garda Síochána in uniform, or
    - (ii) an officer of the Revenue Commissioners in uniform authorised by them to exercise powers conferred by the Customs Acts or the statutes which relate to the duties of excise,
- stop any vehicle which the authorised officer reasonably suspects to contain any product to which Regulations apply.
- (2) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (5) authorising such entry.
  - (3) An authorised officer, where he or she considers it necessary, may be accompanied by a member of An Garda Síochána when performing any powers conferred on an authorised officer by this Regulation.
  - (4) A member of An Garda Síochána not in uniform, when exercising any such power, shall, if so requested by any person affected, produce evidence in writing that he or she is such a member or officer.
  - (5) If a judge of the District Court is satisfied, on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is a product on any premises or at any place, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers or by a member or members of the Garda Síochána at any time or times within one month from the date of issue of the warrant, on production of the warrant requested, to enter those premises or part of it or that place, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Regulation.

### **Failure to comply with requirements**

- 11. A person who –
  - (a) obstructs or otherwise interferes with an authorised officer in the performance of his or her duties,
  - (b) without lawful excuse, refuses or fails when requested by the authorised officer to assist him or her in the performance of the officer's duties,
  - (c) gives information to an authorised officer that the person knows to be false or misleading in a material respect,

- (d) fraudulently tampers with any thing so as to procure that any sample taken pursuant to Regulation 10 of these Regulations does not correctly represent the substance sampled,
- (e) tampers or interferes with any sample taken under these Regulations, or
- (f) fails to comply with the provisions of these Regulations or the European Regulation

shall be guilty of an offence.

### **Punishment for offences and offences by bodies corporate**

- 12.(1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €3,000 or up to six months imprisonment or both.
- (2) An offence under these Regulations may be prosecuted by the Minister.
- (3) Where an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported 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 or she was guilty of the offence.

### **Savers**

- 13. (1) An authorised officer appointed under the European Communities (Sampling and Analysis of Fertilisers) Regulations 1978 (S.I. No. 12 of 1978), European Communities (Marketing of Fertilisers) Regulations 1978 (S.I. 13 of 1978) or the European Communities (Marketing of Fertilisers) Regulations 1981 (S.I. No. 414 of 1981) and holding office immediately before the commencement of these Regulations shall continue in office as appointed under these Regulations.
- (2) Any proceedings being taken under the Regulations revoked in Regulation 14 shall continue as if prosecuted under these Regulations.

## **Revocations**

14. The following Statutory Instruments are revoked:

European Communities (Sampling and Analysis of Fertilisers) Regulations 1978 (S.I. No. 12 of 1978) as amended;

European Communities (Marketing of Fertilisers) Regulations 1978 (S.I. 13 of 1978) as amended;

European Communities (Marketing of Fertilisers) Regulations 1981 (S.I. No. 414 of 1981) as amended.

GIVEN under my Official Seal

1 July 2005

L. S.

Mary Coughlan  
Minister for Agriculture and Food

## **EXPLANATORY NOTE.**

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

These Regulations lay down minimum types and specifications for inorganic EC fertilisers which can be placed on the market within the European Union. They also provide Ministerial powers for penalties in the case of infringements.