



STATUTORY INSTRUMENTS.

S.I. No. 235 of 2010

PERSISTENT ORGANIC POLLUTANTS REGULATIONS 2010

(Prn. A10/0739)

PERSISTENT ORGANIC POLLUTANTS REGULATIONS 2010

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) and section 6 of the Environmental Protection Agency Act 1992 (No. 7 of 1992), for the purpose of giving effect to Regulation (EC) No. 850/2004 of the European Parliament and the Council of 29 April 2004 on persistent organic pollutants¹ and amending Directive 79/117/EEC² as last amended by Regulation (EC) 807/2003³, hereby makes the following Regulations—

Citation

1. These Regulations may be cited as the Persistent Organic Pollutants Regulations 2010.

Entry into Force

2. These Regulations shall come into force on 31st May 2010.

Definitions

3. (1) In these Regulations—

“Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act 1992;

“Commission” means the Commission of the European Communities;

“competent authority” has the meaning assigned to it by Regulation 6;

“Convention” means the 2001 Stockholm Convention on Persistent Organic Pollutants;

“Minister” means the Minister for the Environment, Heritage and Local Government;

“persistent organic pollutants” means those substances listed in Annexes I to IV of Regulation 850/2004;

“person” means any natural or legal person;

“Protocol” means the 1998 Protocol on Persistent Organic Pollutants to the 1979 UNECE Convention on Long-Range Transboundary Air Pollution;

¹O.J. No. L 158/7 of 30 April 2004, of which a corrected version was published in O.J. No. L229/5 of 29 June 2004.

²O.J. No. L 33/36 of 8 February 1979.

³O.J. No L 122/36 of 16 May 2003.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 8th June, 2010.*

“Public authority” means—

- (a) a Minister of the Government,
- (b) the Commissioners of Public Works in Ireland,
- (c) a local authority for the purposes of the Local Government Act, 1941,
- (d) a harbour authority within the meaning of the Harbours Act, 1946,
- (e) a health board established under the Health Act, 1970,
- (f) a board or other body established by or under statute,
- (g) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or
- (h) a company in which all the shares are held by a board, company, or other body referred to in *paragraph (f)* or *(g)* of this definition;

“Regulation 850/2004” means Regulation (EC) No. 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC, as amended by Council Regulation (EC) No. 1195/2006⁴, Council Regulation (EC) No. 172/2007⁵, Commission Regulation (EC) No. 323/2007⁶ and Commission Regulation (EC) No. 304/2009⁷ and as may be further amended or replaced from time to time by an act made or adopted by an institution of the European Communities.

(2) In these Regulations—

- (a) any reference to an article or sub-article which is not otherwise identified is a reference to an article or sub-article of these Regulations; and
- (b) a letter, word, phrase or symbol which has been assigned a meaning by Regulation 850/2004 has that meaning except where otherwise indicated.

(3) Persistent organic pollutants which are prohibited from being imported or are subject to any restriction on importation are deemed to be so prohibited or restricted for the purposes of the Customs Consolidation Act 1876, the Customs Act 1956 and the Customs and Excise (Miscellaneous Provisions) Act 1988.

Objective and Scope

4. The aim of these Regulations is to give effect to relevant provisions of Regulation 850/2004.

⁴O.J. No. L 217/1 of 8 August 2006

⁵O.J. No. L 55/1 of 23 February 2007

⁶O.J. No. L 85/3 of 27 March 2007

⁷O.J. No. L96/33 of 15 April 2009

5. The scope of these Regulations shall be that stated in Article 1 of Regulation 850/2004 and shall include persistent organic pollutants added to Annexes I to IV and amendments made to Annex V of Regulation 850/2004 from time to time in accordance with Articles 14, 16 and 17 of that Regulation

Competent authority

6. (1) For the purposes of this Regulation, section 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) shall apply.

(2) The Agency shall be the competent authority for the purposes of Regulation 850/2004.

(3) The Agency shall be responsible for ensuring compliance with the provisions of Articles 3 and 4 of Regulation 850/2004 in relation to the control of production, placing on the market and use of persistent organic pollutants concerned.

(4) The Agency shall—

(a) be responsible for informing or making any notification or communication to the Commission, a Member State or the Secretariat of the Convention, as appropriate, arising out of Articles 4(2), 4(3), 6(2), 7(4)(b)(iii), 8(2) and 8(3) of Regulation 850/2004; and

(b) inform the Minister at the same time as information is given or any notification or communication is made to the Commission, a Member State or the Secretariat of the Convention under Article 4 of Regulation 850/2004.

(5) The Agency shall be responsible for exercising the powers, functions and duties of the competent authority and of the Member State under Article 5 in relation to stockpiles and Article 7 in relation to waste management of Regulation 850/2004.

(6) The Agency shall be responsible for exercising the powers, functions and duties of the Member State in relation to release inventories, action plans and processes under Article 6 of Regulation 850/2004.

(7) The powers, functions and duties of the Agency under these Regulations and Regulation 850/2004 are without prejudice to the performance by the Agency of any other of its powers, functions and duties under any other enactment.

Public Authorities Concerned

7. (1) For the purposes of these Regulations and Regulation 850/2004, “public authority concerned” shall be, for—

(a) persistent organic pollutants used or intended for use as pesticides, the Minister for Agriculture, Fisheries and Food;

- (b) persistent organic pollutants used or intended for use in medicinal or veterinary applications, the Irish Medicines Board;
- (c) substances, on their own, in preparations or in articles, which have been identified as persistent, bioaccumulative or toxic or very persistent and very bioaccumulative, within the meaning of Regulation (EC) No. 1907/2006⁸ concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals and establishing a European Chemicals Agency,
 - (i) the Health and Safety Authority,
 - (ii) subject to paragraph (iii), the Minister for Agriculture, Fisheries and Food, in respect of pesticides, and
 - (iii) the Environmental Protection Agency, in respect of the prevention of environmental pollution;
- (d) persistent organic pollutants in food and foodstuffs, the Food Safety Authority of Ireland;
- (e) persistent organic pollutants in shellfish and relevant marine sediments, the Marine Institute;
- (f) persistent organic pollutants being imported, the Revenue Commissioners;
- (g) other monitoring, permitting, licensing or enforcement systems, as appropriate—
 - (i) a local authority or the Agency for the purposes of the Waste Management Acts 1996 to 2008,
 - (ii) a local authority or the Agency for the purposes of the Water Pollution Acts 1977 and 1990,
 - (iii) a local authority for the purposes of the Air Pollution Act 1987,
 - (iv) the Agency in relation to activities licensable under the Environmental Protection Agency Acts 1992 and 2003, and
 - (v) the Minister for the Environment, Heritage and Local Government in relation to the Dumping at Sea Acts 1996 to 2004; and
- (h) public health issues, the Health Service Executive.

(2) The Agency, in the exercise of its power, functions and duties under these Regulations and Regulation 850/2004, and in particular Articles 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Regulation 850/2004, shall have regard to the existing powers, functions and duties of other public authorities concerned.

⁸O.J. No. L136/3 of 29 May 2007

(3) Other public authorities concerned shall have regard to the requirements of these Regulations and Regulation 850/2004 in the exercise of their powers, functions and duties.

(4) The Agency may enter into such arrangements with other public authorities concerned as it considers necessary to ensure that the requirements of these Regulations and Regulation 850/2004 are implemented and complied with, including—

- (a) the clarification of responsibilities of the public authority concerned and the Agency;
- (b) the carrying out of monitoring, inspections, checks, examinations and investigations as appropriate by a public authority concerned;
- (c) the exchange of information in relation to such activities as may be specified in the arrangement;
- (d) the public authority concerned advising the Agency, and the Agency advising the public authority concerned, of suspected offences under these Regulations and Regulation 850/2004;
- (e) arrangements for ensuring compliance with these Regulations and Regulation 850/2004, including responsibility for initiating proceedings under article 14 in relation to offences under these Regulations; and
- (f) agreeing a memorandum of understanding, if appropriate, with a public authority concerned for the purposes of implementing any arrangements made under this article or under these Regulations and Regulation 850/2004.

(5) The Agency, in consultation with any public authority concerned, may, where appropriate, coordinate the powers, functions and duties of such public authorities concerned under these Regulations and Regulation 850/2004 for the purposes of giving effect to Regulation 850/2004 and shall provide such authorities with such guidance or advice as the Agency considers appropriate or necessary for the purposes of implementing any of the provisions of these Regulations and Regulation 850/2004.

(6) The Agency and the public authorities concerned shall cooperate with each other in carrying out their powers, functions and duties as competent authority or public authority concerned under these Regulations and Regulation 850/2004.

(7) The powers, functions and duties of a public authority concerned under these Regulations and Regulation 850/2004 are without prejudice to the performance by the public authority concerned of any other of its powers, functions and duties under any other enactment.

Offences for non-compliance

8. (1) Any person who produces, places on the market or uses a substance in contravention of Article 3(1) of Regulation 850/2004 is guilty of an offence.

(2) Any person who produces, places on the market or uses a substance in contravention of Article 3(2) of Regulation 850/2004 is guilty of an offence.

(3) Any person who holds a stockpile which consists of or contains any persistent organic pollutant listed in Annex I or Annex II in contravention of Article 5(1) of Regulation 850/2004 is guilty of an offence.

(4) Any person who holds a stockpile greater than 50kg which consists of or contains any persistent organic pollutant listed in Annex I or Annex II in contravention of the first paragraph of Article 5(2) of Regulation 850/2004 is guilty of an offence.

(5) Any person who holds a stockpile greater than 50kg which consists of or contains any persistent organic pollutant listed in Annex I or Annex II in contravention of the second paragraph of Article 5(2) of Regulation 850/2004 is guilty of an offence.

(6) Any person who produces or holds waste in contravention of Article 7(1) of Regulation 850/2004 is guilty of an offence.

(7) Any person who disposes of or recovers waste in contravention of Article 7(2) of Regulation 850/2004 is guilty of an offence.

(8) Any person who disposes of or recovers waste in contravention of Article 7(3) of Regulation 850/2004 is guilty of an offence.

(9) A public authority concerned shall cooperate with the Agency in identifying a person who produces, places on the market or uses a substance referred to in sub-articles (1) and (2), or who holds a stockpile referred to at sub-articles (3) to (5), or who produces or holds waste referred to at sub-article (6), or who disposes of or recovers waste referred to at sub-articles (7) and (8), and that is under its remit to ensure that the provisions of these Regulations and Regulation 850/2004 are complied with.

National Implementation Plan

9. (1) The Agency shall be responsible for exercising the powers, functions and duties of the Member State in relation to the National Implementation Plan and other implementation plans under Article 8 of Regulation 850/2004.

(2) The Agency shall, *inter alia*, include in the National Implementation Plan—

- (a) following consultation with the public authorities concerned, details of the roles and responsibilities, including in relation to permitting, monitoring and enforcement, of such authorities;

(b) details of arrangements made between the Agency and the public authorities concerned for cooperation, support, advice and guidance in the exercise of their powers, functions and duties under these Regulations and Regulation 850/2004; and

(c) action plans prepared pursuant to Article 6 of Regulation 850/2004.

(3) Public authorities concerned shall cooperate with each other and the Agency in the preparation and implementation of the National Implementation Plan referred to at sub-article (1).

Monitoring

10. (1) For the purposes of this Regulation, section 52 of the Environmental Protection Agency Act of 1992 (No. 7 of 1992) shall apply.

(2) The Agency shall be responsible for exercising the powers, functions and duties of the Member State in relation to programmes and mechanisms for the regular provision of comparable monitoring data under Article 9 of Regulation 850/2004.

(3) Public authorities concerned, as appropriate, shall provide the Agency with comparable monitoring data required in such form and at such frequency as may be specified by the Agency for the purposes of sub-article (1).

(4) Public authorities concerned shall provide to the Agency such information obtained as a result of the carrying out of monitoring, inspections, checks, examinations and investigations as may be arranged in accordance with Article 7.

Information, Awareness and Training

11. (1) For the purposes of this Regulation, section 55 of the Environmental Protection Agency Act of 1992 (No. 7 of 1992) shall apply.

(2) The Agency shall be responsible for exercising the powers, functions and duties of the Member State under Articles 10(1) and (3) of Regulation 850/2004.

(3) The Agency, and the public authorities concerned in consultation with the Agency, shall, as appropriate, promote and facilitate awareness programmes, the provision of public information and training with regard to persistent organic pollutants in accordance with Article 10(2) of Regulation 850/2004.

Reporting

12. (1) The Agency shall be responsible, following consultation with the public authorities concerned and the Minister, for the collection and coordination of the information, statistical data and summary information required by the Commission under Article 12 of Regulation 850/2004 and for the preparation and submission of any such data, information or reports at the required intervals to the Minister for transmission to the Commission.

(2) Public authorities concerned shall, as appropriate, maintain records and provide the Agency with information required in such form and at such frequency as may be specified by the Agency for the purposes of sub-article (1).

(3) Public authorities concerned shall advise the Agency of suspected offences under these Regulations and Regulation 850/2004.

(4) A person who places on the market, or who produces or uses persistent organic pollutants which are controlled under Article 3 of Regulation 850/2004, or a person who holds a stockpile referred to in Article 5 of Regulation 850/2004, or a person who produces or holds waste subject to the requirements of Article 7 of Regulation 850/2004, shall provide to a public authority concerned or to the Agency any information required for the purposes of sub-article (1), or such other information as may reasonably be sought by a public authority concerned or the Agency as it considers appropriate or necessary for the purposes of implementing any of the provisions of these Regulations or Regulation 850/2004, in such form and at such frequency as may be specified by the public authority concerned or the Agency.

(5) Any person to whom sub-article (4) applies, who provides, or who does not provide, to the Agency or a public authority concerned information which is in contravention of sub-article (4) is guilty of an offence.

Penalties

13. (1) A person guilty of an offence under these Regulations shall be liable—

- (a) on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding twelve months, or at the discretion of the court to both such fine and such imprisonment;
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding three years, or at the discretion of the court to both such fine and such imprisonment.

Prosecution of Offences

14. (1) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Agency or a public authority concerned.

(2) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under these Regulations may be instituted at any time within two years from the date of the commission of the offence.

(3) For the purposes of this article, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his or her knowledge shall be prima facie evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this sub-article and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(4) Proceedings under this article shall be without prejudice to the power of the competent authority concerned to take proceedings under any other enactment.

Fees

15. (1) A fee shall be paid to the Agency by an applicant in respect of an application for a derogation under Article 7(4)(b) of Regulation 850/2004.

(2) The Agency, when allowing a derogation under Article 7(4)(b) of Regulation 850/2004, shall require the applicant to make such payment or payments as it considers appropriate for the purposes of defraying any reasonable costs which may be incurred by the Agency or a public authority concerned in carrying out monitoring or inspection or taking other measures related to the exercise of its powers, functions and duties under these Regulations and Regulation 850/2004 in relation to the derogation.

(3) If an applicant fails to pay any sum, required to be paid under sub-article (2), the Agency may recover the sum from the applicant as a simple contract debt in any court of competent jurisdiction.



Given under the Official Seal of the Minister for the Environment,
Heritage and Local Government.
31 May 2010.

JOHN GORMLEY,
Minister for the Environment, Heritage and Local
Government.

EXPLANATORY NOTE

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

These Regulations give statutory effect in Ireland to Regulation (EC) No. 850/2004 of 29 April 2004 as amended on persistent organic pollutants. The EC Regulation is intended to ensure coherent and effective implementation of the European Community's obligations under the 2001 Stockholm Convention on Persistent Organic Pollutants and the 1998 Protocol on Persistent Organic Pollutants to the 1979 UNECE Convention on Long-Range Transboundary Air Pollution.

Regulation (EC) 850/2004 prohibits the production, placing on the market and use of certain substances which are persistent organic pollutants, whether on their own, in preparations or as constituents of articles, and restricts the production, placing on the market and use of other substances. Further persistent organic pollutants may be added from time to time.

These Regulations also designate the Environmental Protection Agency as the competent authority for the purposes of Regulation (EC) No. 850/2004. The Agency must fulfil obligations with regard, inter alia, to the drawing up and maintenance of release inventories and, in consultation with public authorities concerned and the public, the drawing up of national action and implementation plans to ensure the fulfilment of obligations under Regulation (EC) 850/2004, the Stockholm Convention and the 1998 Protocol.

The roles and responsibilities of public authorities which may be concerned are outlined including a general obligation to cooperate with each other and the Agency. The Agency is also responsible for reporting on certain aspects of implementation of Regulation (EC) No. 850/2004 both nationally and to the EU, while the Minister for the Environment, Heritage and Local Government has responsibility for the remaining reporting requirements. The Agency is also given power to charge fees in relation to specified applications.

These Regulations create offences for non-compliance with specified requirements of Regulation (EC) 850/2004 and these Regulations. Penalties for offences which are intended to be effective, proportionate and dissuasive, initiation of legal proceedings and recovery of costs of prosecutions are also provided for.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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Wt. (B27684). 305. 6/10. Cahill. Gr. 30-15.