



STATUTORY INSTRUMENTS.

S.I. No. 351 of 2008

EUROPEAN COMMUNITIES (CLASSIFICATION, PACKAGING AND
LABELLING OF PLANT PROTECTION PRODUCTS AND BIOCIDES
PRODUCTS) (AMENDMENT) REGULATIONS 2008

(Prn. A8/1404)

EUROPEAN COMMUNITIES (CLASSIFICATION, PACKAGING AND LABELLING OF PLANT PROTECTION PRODUCTS AND BIOCIDES PRODUCTS) (AMENDMENT) REGULATIONS 2008

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EUROPEAN COMMUNITIES (CLASSIFICATION, PACKAGING AND
 LABELLING OF PLANT PROTECTION PRODUCTS AND BIOCIDES
 PRODUCTS) (AMENDMENT) REGULATIONS 2008

I, BRENDAN SMITH, Minister for Agriculture, Fisheries 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 further effect to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999¹ and Commission Directive 2001/60/EC of 7 August 2001², Commission Directive 2006/8/EC of 23 January 2006³, Council Directive 67/548/EEC of 27 June 1967⁴, Council Directive 92/32/EEC of 30 April 1992⁵, Council Directive 96/56/EEC of 3 September 1996⁶, Commission Directive 88/302/EEC of 18 November 1987⁷, Commission Directive 91/410/EEC of 22 July 1991⁸, Commission Directive 92/69/EEC of 31 July 1992⁹, Commission Directive 93/21/EEC of 27 April 1993¹⁰, Commission Directive 93/72/EEC of 1 September 1993¹¹, Commission Directive 93/105/EC of 25 November 1993¹², Commission Directive 93/101/EC of 11 November 1993¹³, Commission Directive 94/69/EC of 19 December 1994¹⁴, Commission Directive 96/54/EC of 30 July 1996¹⁵, Commission Directive 97/69/EC of 5 December 1997¹⁶, Commission Directive 98/73/EC of 18 September 1998¹⁷, Commission Directive 98/98/EC of 15 December 1998¹⁸, Commission Decision of 19 May 2000¹⁹, Commission Directive 2000/32/EC of 19 May 2000²⁰, Commission Directive 2000/33/EC of 25 April 2000²¹, Commission Directive 2001/59/EC of 6 August 2001²², Council Directive 91/414/EEC of 15 July 1991²³, and Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998²⁴, hereby make the following Regulations:

¹O.J. No. L 200/1 30/7/1999

²O.J. No. L 226/5 22/8/2001

³O.J. No. L 19/12 24/1/2006

⁴O.J. No. L 196/1 16/8/1967

⁵O.J. No. L 154/1 5/6/1992

⁶O.J. No. L 236/35 18/9/1996

⁷O.J. No. L 133/1 30/5/1988

⁸O.J. No. L 228/67 17/8/1991

⁹O.J. No. L 383/113 29/12/1992 and O.J. No. L 383A/1 29/12/1992

¹⁰O.J. No. L 110/20 4/5/1993 and O.J. No. L 110A/1 4/5/1993

¹¹O.J. No. L 258/29 16/10/1993 and O.J. No. L 258A/1 16/10/1993

¹²O.J. No. L 294/21 30/11/1993

¹³O.J. No. L 13/1 15/1/1994

¹⁴O.J. No. L 381/1 31/12/1994

¹⁵O.J. No. L 248/1 30/9/1996

¹⁶O.J. No. L 343/19 13/12/1997

¹⁷O.J. No. L 305/1 16/11/1998

¹⁸O.J. No. L 355/1 30/12/1998

¹⁹O.J. No. L 136/108 8/6/2000

²⁰O.J. No. L 136/1 8/6/2000

²¹O.J. No. L 136/90 8/6/2000

²²O.J. No. L 225/1 21/8/2001

²³O.J. No. L 230/1 19/8/1991

²⁴O.J. No. L 123/1 24/4/1998

*Notice of the making of this Statutory Instrument was published in
 "Iris Oifigiúil" of 5th September, 2008.*

Citation.

(1) These Regulations may be cited as the European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) (Amendment) Regulations 2008.

Amendments and Substitutions.

(2) The European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. No. 624 of 2001) are amended—

(a) in Regulation 2 (1) by deleting—

- (i) “(which is set out in the First Schedule)” in each place where it occurs,
- (ii) “set out in the Second Schedule, comprising additional safety advice in accordance with Article 16(5), in the definition of “Annex VIII”,
- (iii) “which is set out in the Third Schedule” in each place where it occurs,
- (iv) “set out in the Fourth Schedule, comprising a list of preparation (formulation) types and codes” in the definition of “Annex XIV”, and
- (v) the definitions of “ ‘designated analyst’ ” and “ ‘State Chemist’ ”,

(b) by substituting for the definition of “ ‘authorised officer’ ” the following—

“ ‘authorised officer’ ” means—

- (a) a person who immediately before the making of these Regulations was an authorised officer under the European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. No. 624 of 2001),
 - (b) a person appointed under Regulation 19,
 - (c) a member of the Garda Síochána, or
 - (d) an officer of Customs and Excise;”,
- (c) by substituting “The Minister” for “The Pesticide Control Service of the Department of Agriculture, Food and Rural Development” in Regulation 4(1),
- (d) by substituting “in a form and containing such information as the Minister may determine” for “as set out in the Fifth Schedule” in Regulation 11(3),

(e) by substituting, for Regulations 19 through 27, the following—

“Appointment of Authorised Officers

19. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations.

(2) An officer of the Minister shall issue a warrant of appointment as an authorised officer to every person appointed under this Regulation by the Minister and when exercising a function conferred on the person as an authorised officer the authorised officer shall, if requested by a person affected, produce the warrant to that person.

(3) The Minister may terminate the appointment of an authorised officer, whether or not the appointment was for a fixed period.

(4) An appointment as an authorised officer ceases—

- (a) if it is terminated pursuant to paragraph (3),
- (b) is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister, upon the person appointed ceasing to be an officer of the Minister.

(5) Nothing in paragraph (4) prevents the Minister from reappointing as an authorised officer a person to whom that paragraph related.

Functions of Authorised Officers

20. (1) If an authorised officer has reasonable cause to suspect that—

- (a) the manufacture, import, preparation, handling, storage, transport, sale, supply or use of a plant protection product or biocide product is taking place or has taken place in, on, under or from a premises,
- (b) an offence is being or has been committed under these Regulations in, on, under or from a premises, or
- (c) there are any books, documents or records, relating to the manufacture, import, preparation, handling, storage, transport, sale, supply or use of a plant protection product or biocide product

the authorised officer may at all reasonable times enter the premises and—

- (i) search the premises,
- (ii) stop a person, vehicle, vessel or container,

- (iii) board and search a vehicle, vessel or container,
- (iv) search a person, if the authorised officer considers it necessary,
- (v) examine a plant protection product, biocide product, vehicle, vessel, container or other thing,
- (vi) take, without payment, samples, including samples of a plant protection product or biocide product or other thing that may have been in contact with a plant protection product or biocide product or that relates to a plant protection product or biocide product and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vii) seize and detain (for so long as is necessary) a plant protection product, biocide product or other thing that he or she has reasonable cause to suspect may be evidence of an offence under these Regulations,
- (viii) require the production of a document or thing relating to a plant protection product or biocide product, vehicle, vessel or container,
- (ix) dispose of, or require the owner or person in charge of or in possession of, a plant protection product or biocide product (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with a plant protection product or biocide product) to dispose of it at the expense of the owner or person in charge of or in possession of it in such manner as the authorised officer sees fit,
- (x) give such directions to, or request such information of, a person regarding a plant protection product, biocide product or premises as he or she considers necessary,
- (xi) examine and copy books, records, data or data material (within the meaning in each case of the Data Protection Act 1988 (No. 25 of 1988)) he or she finds there, extract information from any such data and take extracts from any such material,
- (xii) retain any document or thing to which subparagraph (viii) refers or a book, record, data or data material to which subparagraph (xi) refers (for so long as is necessary),

- (xiii) require a person to give his or her name and address and such information or produce any book, certificate, document, other record or thing as the authorised officer considers necessary or expedient,
- (xiv) require of a person information regarding the purchase, import, export, manufacture, processing, production, sale, supply, ownership, identity, origin or destination of a plant protection product or biocide product,
- (xv) require a person who is for the time being in charge or control of a vehicle stopped or entered—
 - (I) to refrain from moving it, and
 - (II) to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of *subparagraph (i) to (xiii)*,
- (xvi) mark or otherwise identify a plant protection product or biocide product or a sample taken under subparagraph (vi), or
- (xvii) take photographic images of any document, plant protection product or biocide product, or other thing.

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 21 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons (including an employee of or person acting on behalf of the European Commission) and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or

movement of a plant protection product or biocide product as may be specified by the authorised officer.

(7) Nothing in these Regulations operates to prejudice any power to search, or to seize or detain property, which may apart from these Regulations be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

Search Warrant.

21. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that he or she suspects there is evidence of an offence under these Regulations on a premises, the judge may issue a search warrant.

(2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána, as the named officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the land or premises named in the warrant.

(3) If a premises or land is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Obstruction etc.

22. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under these Regulations,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under these Regulations,
- (c) tamper with a plant protection product or biocide product so as to procure that any sample of it taken pursuant to Regulation 20 does not correctly represent the plant protection product or biocide product, or
- (d) tamper with a sample taken under Regulation 20, or
- (e) in purporting to make an application or furnish information for the purposes of these Regulations or to give information

required by an authorised officer for the performance of the officer's powers under Regulation 20—

- (i) make a statement which he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
- (ii) fail to disclose any material particular.

Compliance Notice.

23. (1) Without prejudice to Regulation 20, if an authorised officer is of the opinion that—

- (a) a plant protection product or biocide product has not been classified, packaged, or labelled in accordance with these Regulations,
- (b) a plant protection product or biocide product may be sold or supplied contrary to Regulation 5,
- (c) an act of the institutions of the European Communities or these Regulations is not being or has not been complied with or there are reasons to believe that an act of the institutions of the European Communities or these Regulations will not be complied with,
- (d) it is necessary for the protection of human health, animal health or the environment including preventing the contamination of food, or
- (e) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of a premises, plant protection product or biocide product (including the master of a vessel) a notice ("compliance notice") stating that opinion and directing that—

- (i) a plant protection product or biocide product be dealt with or used only in a manner specified in the notice,
- (ii) a plant protection product or biocide product not be moved from a premises specified in the notice,
- (iii) such alterations be made to a premises or operations at a premises as the officer specifies in the notice,
- (iv) a plant protection product or biocide product be disposed of in such manner as the officer specifies in the notice,

- (v) a specified operation or activity cease on a premises,
- (vi) a plant protection product or biocide product be removed from the State,
- (vii) a specified operation or activity takes place only in a manner specified in the notice,
- (viii) a specified type or level of sampling and analysis be undertaken for a period or in a manner (if any) specified in the notice, or
- (ix) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the compliance notice.

(2) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under paragraph (9).

(3) A requirement contained in a compliance notice may specify a time limit within which the notice is to be complied with.

(4) A requirement specified in a compliance notice (in this paragraph referred to as “the earlier compliance notice”) may be amended or withdrawn by a further notice in writing and the earlier compliance notice has effect subject to such amendment or withdrawal.

(5) A compliance notice, whether amended under paragraph (4) or not, may require the owner or person in charge of a plant protection product or biocide product to choose between one or more of the requirements specified in the compliance notice and that person shall comply with the alternative requirement that he or she chooses.

(6) A person affected by a compliance notice may, within 7 days of service of the compliance notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the plant protection product, biocide product or person having charge of the plant protection product or biocide product is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the compliance notice or any term of the compliance notice are not reasonable, having regard to the objectives of the Directive of 1999 or these Regulations (in this Regulation referred to as “an appeal”).

(7) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.

(8) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the compliance notice or any term of the compliance notice is unreasonable having regard to the

objectives of the Directive of 1999 or these Regulations, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy thereof shall be lodged with the appropriate District Court Clerk.

(9) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul a compliance notice.

(10) A person, including a person on whom a compliance notice is served, shall not—

- (a) pending the determination of an appeal, deal with premises, a plant protection product or a biocide product to which a compliance notice relates other than under and in accordance with the notice, or
- (b) after the appeal, deal with premises or a plant protection product or a biocide product to which a compliance notice relates other than under and in accordance with the compliance notice or compliance notice as modified.

(11) If—

- (a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a compliance notice (including a compliance notice modified in accordance with paragraph (9)), or
- (b) an authorised officer has reasonable cause to suspect—
 - (i) that a compliance notice (including a compliance notice modified in accordance with paragraph (9)) is not or will not be complied with, or
 - (ii) pending the determination of an appeal, a premises or a plant protection product or biocide product to which the compliance notice relates is or will not be dealt with other than in accordance with paragraph (10),

an authorised officer may seize and detain a plant protection product or biocide product in such manner as he or she thinks fit and sell or dispose of the plant protection product or biocide product in a manner that the authorised officer considers appropriate.

(12) Subject to paragraph (14), the proceeds of the sale or disposal of a plant protection product or biocide product under paragraph (11) shall be paid to the owner of the product as soon as may be after such sale or disposal and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal of the plant protection product or biocide product.

(13) The costs of seizure, sale or disposal of a plant protection product or biocide product under this Regulation shall be recoverable by Minister-

(a) as a simple contract debt in a court of competent jurisdiction, or

(b) by deducting the costs from any sum due by the Minister to a person on whom a notice has been served.

(14) The costs of any action required by a compliance notice shall be borne by the owner of a premises or plant protection product or biocide product to which the notice relates.

Evidence on Certificate.

24. (1) In proceedings for an offence consisting of a contravention of these Regulations, a certificate purporting to be signed by a person employed at a laboratory named in the certificate stating the capacity in which that person is so employed and stating any one or more of the following, namely—

(a) that the person received a sample submitted to the laboratory,

(b) that, for the period specified in the certificate, the person had the sample in his or her custody,

(c) that the person gave the sample to such other person as is specified in the certificate, or

(d) that the person carried out any laboratory examination for the purpose of detecting the presence, in the sample, of an active substance or other component, or that a particular level of an active substance or other component was present in the sample,

is, unless the contrary is proved, evidence of the matters stated in the certificate.

(2) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under paragraph (1) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(3) In proceedings for an offence, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(4) Paragraph (3) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Fixed Payment Notice.

25. (1) If an officer of the Minister authorised by the Minister in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing (“fixed payment notice”) on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days from the date of the notice make to the Minister a payment of €250 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the fixed payment notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If a fixed payment notice is given—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence will be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

Service.

26. (1) A compliance notice, subject to paragraph (2), or fixed payment notice shall be addressed to the person concerned by name and may be served on or given to the person—

- (a) by giving a copy to the person, his or her employee, servant or agent, or in the case of a partnership by delivery to any of the partners,
- (b) by leaving a copy at the address at which the person ordinarily resides, where he or she carries out business, or, where an address for service has been furnished, at that address,
- (c) by sending a copy by post in a prepaid registered letter to the address at which the person ordinarily resides, carries out business, in the case of a body corporate or unincorporated body the registered office of the body or, where an address for service has been furnished, at that address,
- (d) by electronic communication,
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering a copy to the premises or by affixing a copy in a conspicuous position on or near the premises, or
- (f) if the Minister or an authorised officer considers that the immediate giving of a compliance notice is required, by sending a copy, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) If a compliance notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner or the occupier.

(3) A person shall not, at any time within 6 months after a compliance notice is affixed under subsection (1)(e), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Fees.

27. (1) The Minister may set and charge a fee in respect of an application for approval of documentation and materials for clearance or the performance of another function by the Minister under these Regulations and different fees (not exceeding the cost, estimated by the Minister, of performing the function to which the fee relates) may be charged having regard to the cost to the Minister of performing the particular function.

(2) The Minister shall not consider an application in respect of which a fee is set pursuant to paragraph (1) unless the fee accompanies the application.

(3) A fee payable pursuant to this Regulation may be recovered by the Minister from the person by whom it is payable as a simple contract debt in a court of competent jurisdiction.

(4) Moneys received by a Minister of the Government under this Regulation or Regulation 12 shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(5) The Public Offices Fees Act 1878 (42 & 43 Vict. Cap 58) does not apply to a fee charged pursuant to this Regulation.

Offences.

28. (1) A person who contravenes Regulation 5, 11, 12, 13, 14, 15, 16, 18, 22, 23(2), (10) or 26(3) commits an offence and shall be liable on summary conviction to a fine not exceeding €5,000, or to imprisonment for a term not exceeding six months, or to both.

(2) An offence under these Regulations may be prosecuted by the Minister.

(3) If an offence under these Regulations is committed by a body corporate and it 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 who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first mentioned offence.

(4) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.”, and

(f) by deleting the Schedules.



GIVEN under my Official Seal,
8 August 2008

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

These Regulations give effect to Commission Directive 2006/8/EC of 23 January 2006 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations, in relation to plant protection and biocidal products and update the European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. No 624 of 2001) relating to inspection and enforcement provisions and offences.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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