

2008 No. 433

AGRICULTURE

PESTICIDES

**The Pesticides (Maximum Residue Levels) Regulations
(Northern Ireland) 2008**

Made - - - - *5th November 2008*

Coming into operation- - *8th December 2008*

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The Department of Agriculture and Rural Development is a Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common

agricultural policy of the European Community(a) and in relation to measures in the veterinary and phytosanitary fields for the protection of public health(b).

These Regulations make provision for a purpose mentioned in that section and it appears to the Department that it is expedient for the references to Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC(c) to be construed as references to that instrument as amended from time to time.

The Department of Agriculture and Rural Development makes the following Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A of Schedule 2 to, the European Communities Act 1972(d).

Citation and commencement

1.—(1) These Regulations may be cited as the Pesticides (Maximum Residue Levels) Regulations (Northern Ireland) 2008 and come into operation on 8th December 2008.

Interpretation

2.—(1) In these Regulations—

“the Department” means the Department of Agriculture and Rural Development;

“inspector” means a person appointed under regulation 8(1);

“Regulation 396/2005” means Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC, as last amended by Regulation (EC) No 299/2008 of the European Parliament and of the Council of 11 March 2008(e).

(2) Any reference in these Regulations to Regulation 396/2005 is a reference to that Regulation as amended from time to time.

(3) Expressions used in both these Regulations and Regulation 396/2005 have the same meaning in these Regulations as they have in Regulation 396/2005.

(4) The Interpretation Act (Northern Ireland) 1954(f) applies to these Regulations as it applies to an Act of the Assembly.

Notices

3. Any notice under these Regulations—

(a) must be in writing;

(b) may be subject to conditions; and

(c) may be amended, suspended or revoked by a notice issued by an inspector.

Designated national authority

4. The Department is the designated national authority for the purposes of Article 38 of Regulation 396/2005.

(a) S.I. 2000/2812

(b) S.I. 1999/2027

(c) OJ No L 70, 16.3.2005, p 1 as amended by OJ No L 29, 2.2.2006, p 3, OJ No L 58, 1.3.2008, p 1, OJ No L 76, 19.3.2008, p 31 and OJ No L 97, 9.4.2008, p 67.

(d) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51)

(e) OJ No L 97, 9.4.2008, p 67

(f) 1954 c.33 (N.I.)

Functions of the member State

5. The functions of the member State in Regulation 396/2005 are to be performed by the Department.

Compliance with MRLs

6. It is an offence for any person to—
- (a) place on the market as food or feed, or
 - (b) feed to any animal,

any product covered by Annex I to Regulation 396/2005 in breach of Article 18(1) of that Regulation as read with Article 20(1) of that Regulation.

Prohibition on processing and mixing products

7. It is an offence for any person to process or mix any products specified in Article 19 of Regulation 396/2005 in breach of that Article.

Powers of inspectors

8.—(1) The Department may appoint any person to be an inspector for the purposes of these Regulations.

- (2) Schedule 1 (powers of inspectors) has effect.

Obstruction

9. It is an offence—
- (a) intentionally to obstruct any person acting in the execution of these Regulations;
 - (b) knowingly or recklessly to give any information that is false or misleading in a material particular to any person acting in the execution of these Regulations;
 - (c) intentionally to fail to disclose any material particular to any person acting in the execution of these Regulations; or
 - (d) to fail, without reasonable excuse—
 - (i) to give any assistance or information that any person acting in the execution of these Regulations may require; or
 - (ii) to produce any record that any person acting in the execution of these Regulations may require to be produced.

Offences by bodies corporate

10.—(1) For the purposes of these Regulations section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited”.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts or defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

- (3) Where an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Offences due to fault of another person

11. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Penalties

12. A person guilty of an offence under these Regulations is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Enforcement

13. These Regulations are enforced by the Department.

Application to the Crown

14.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations apply to persons in the public service of the Crown as they apply to other persons.

(4) In this regulation any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

Revocations

15. Schedule 2 (revoked instruments) has effect.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 5th November 2008.



John Speers

A senior official of the Department of Agriculture and Rural Development

Powers of inspectors

Powers of entry

1.—(1) An inspector may, on producing a duly authenticated authorisation (if so required), enter any premises at any reasonable hour for the purpose of ensuring that the provisions of these Regulations are being, or have been, complied with.

(2) Admission to any premises used only as a private dwelling house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier, or the entry is in accordance with a warrant granted under this paragraph.

(3) If a lay magistrate, on sworn information in writing, is satisfied that there are reasonable grounds for entry onto any premises for the purposes of the enforcement of these Regulations, and either—

- (a) admission has been refused, or a refusal is expected, and (in either case) that notice to apply for a warrant has been given to the occupier;
- (b) asking for admission, or the giving of such a notice, would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the magistrate may by signed warrant authorise the inspector to enter the premises, if need be, by reasonable force.

(4) A warrant under this paragraph is valid for one month.

(5) If an inspector enters any unoccupied premises, the inspector must leave them as effectively secured against unauthorised entry as the inspector found them.

(6) In this paragraph—

“premises” includes any place, vehicle, trailer, container, stall, moveable structure, vessel or aircraft;

“vessel” means every description of vessel (whether with or without means of propulsion of any kind), and includes anything constructed or used to carry persons, goods or plant or machinery by water, or constructed to be propelled or moved on or in water.

Powers of an inspector

2.—(1) An inspector entering premises under paragraph 1 may—

- (a) take onto those premises any person, equipment or materials that the inspector considers necessary for the enforcement of these Regulations;
- (b) open any container;
- (c) carry out any searches, inspections, measurements and tests;
- (d) take samples;
- (e) have access to, and inspect and copy any books, documents or records (in whatever form they are held) relating to these Regulations and remove them to enable them to be copied;
- (f) photograph or copy anything whose production the inspector has power to require under sub-paragraph (e);
- (g) photograph anything which the inspector has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations;
- (h) seize any computers and associated equipment for the purpose of copying documents provided that they are returned as soon as practicable.

(2) Any person who accompanies an inspector in accordance with this paragraph may perform any of the inspector's functions but only under the supervision of that inspector.

Power of an inspector to use reasonable force

3. An inspector may use reasonable force, if necessary, in the performance of functions under these Regulations.

Seizure or disposal of products

4. If any product to which Regulation 396/2005 applies contains a quantity of pesticide residue greater than that permitted under that Regulation, an inspector may—

- (a) seize or dispose of the consignment containing that product, or any part of it, or require the owner or person appearing to be in charge of it to dispose of it; or
- (b) direct the owner or any person appearing to be in charge of it to take such remedial action as appears to the inspector to be necessary.

Information notice

5. An inspector may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified.

Enforcement and prohibition notices

6.—(1) An inspector may serve a notice on any person who contravenes, or who the inspector has reasonable grounds to suspect may contravene, these Regulations—

- (a) requiring that person to act in accordance with these Regulations; or
- (b) prohibiting that person from acting in contravention of these Regulations.

(2) The notice must give reasons for serving it and, if appropriate, specify what action should be taken and give time limits.

Compliance with notices

7.—(1) It is an offence for any person on whom a notice is served under these Regulations to fail to comply with the provisions of that notice.

(2) Such a notice must be complied with at the expense of the person on whom it is served and, if it is not complied with, an inspector may arrange for it to be complied with at the expense of that person.

SCHEDULE 2

Regulation 15

Revoked instruments

The following Regulations are revoked—

- (a) the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) Regulations (Northern Ireland) 2006(a);
- (b) the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Amendment) Regulations (Northern Ireland) 2006(b);

(a) S.R. 2006 No. 220
(b) S.R. 2006 No. 501

- (c) the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Amendment) Regulations (Northern Ireland) 2007**(a)**;
- (d) the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Amendment) Regulations (Northern Ireland) (No. 2) 2007**(b)**;
- (e) the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Amendment) Regulations (Northern Ireland) 2008**(c)**;

(a) S.R. 2007 No. 428
(b) S.R. 2007 No. 465
(c) S.R. 2008 No. 195

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce the provisions of Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/41/EEC (“Regulation 396/2005”).

Regulation 4 designates the Department of Agriculture and Rural Development as the national authority for the purposes of Article 38 of Regulation 396/2005.

Regulation 5 provides that, in relation to Northern Ireland, the functions of the member State in Regulation 396/2005 are to be performed by the Department of Agriculture and Rural Development.

Regulation 6 creates an offence of placing on the market as food or feed, or feeding to an animal, any product covered by Annex I to Regulation 396/2005, if that product contains pesticide residue levels in excess of those specified in Article 18(1) of that Regulation as read with Article 20(1). Regulation 7 creates an offence of processing or mixing certain products with a view to placing them on the market as food or feed, or feeding them to animals.

Regulation 8 and Schedule 1 set out the powers of inspectors.

Regulation 12 provides that any person guilty of an offence under these Regulations is liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine.

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