



STATUTORY INSTRUMENTS.

**S.I. No. 146 of 2020**

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EUROPEAN UNION (PERSISTENT ORGANIC POLLUTANTS)  
REGULATIONS 2020

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I, RICHARD BRUTON, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Regulation (EU) No. 2019/1021 of the European Parliament and the Council of 20 June 2019<sup>1</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Persistent Organic Pollutants) Regulations 2020.

*Interpretation*

2. (1) In these Regulations—

“Agency” means the Environmental Protection Agency;

“Commission” means the Commission of the European Union;

“EU Regulation” means Regulation (EU) No. 2019/1021 of the European Parliament and of the Council of 20 June 2019;

“National Implementation Plan” means the National Implementation Plan under Article 7 of the 2001 Stockholm Convention on Persistent Organic Pollutants;

“Minister” means the Minister for Communications, Climate Action and Environment;

“persistent organic pollutants” means those substances listed in Annexes I to IV of the EU Regulation;

“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, 2001,
- (d) a harbour authority within the meaning of the Harbours Act, 1946,

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<sup>1</sup> OJ No. L169, 25.6.2019, p.45

- (e) the Health Service Executive established under the Health Act, 2004,
  - (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.
- (2) In these Regulations—
- (a) a word or expression that is used in these Regulations and is also used in the EU Regulation has in these Regulations the same meaning as it has in the EU Regulation unless the contrary intention appears, and
  - (b) a reference to an Article which is not otherwise identified is a reference to an Article in the EU Regulation.
- (3) For the purposes of these Regulations and the EU Regulation, “public authority concerned” shall be, for—
- (a) persistent organic pollutants used or intended for use as pesticides, the Minister for Agriculture, Food and the Marine;
  - (b) persistent organic pollutants used or intended for use in medicinal or veterinary applications, the Health Products Regulatory Authority;
  - (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. 1907/2006 of the European Parliament and the Council of 18 December 2006<sup>2</sup>
    - (i) the Health and Safety Authority,
    - (ii) subject to paragraph (iii), the Minister for Agriculture, Food and the Marine, 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—

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<sup>2</sup> O.J. No. L396, 30.12.2006, p. 1

- (i) a local authority or the Agency for the purposes of the Waste Management Act 1996,
  - (ii) a local authority or the Agency for the purposes of the Water Pollution Act 1977,
  - (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 to 2011,
  - (v) the Minister for Housing, Planning and Local Government, in relation to the Dumping at Sea Act 1996, and
- (h) public health issues, the Health Service Executive.

*Application of Customs Act 2015 for Persistent Organic Pollutants*

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 Act 2015.

*Competent authority*

4. (1) The Agency shall be the competent authority responsible for the administrative tasks and enforcement required by the EU Regulation.

(2) The Agency shall 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 the EU Regulation, and
- (c) action plans prepared pursuant to Article 6.

(3) The Agency may enter into such arrangements with other public authorities concerned as it considers necessary to ensure that the requirements of the EU Regulation 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,

- (e) arrangements for ensuring compliance with the EU Regulation, including responsibility for initiating proceedings under Regulation 9 in relation to offences, and
- (f) agreeing a memorandum of understanding, if appropriate, with a public authority concerned for the purposes of implementing any arrangements made under these Regulations.

(4) 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 the EU Regulation.

(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 for the purposes of giving effect to the EU Regulation 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 the EU Regulation.

(6) 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 13 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.

#### *Public Authorities Concerned*

5. (1) Public authorities concerned shall have regard to the requirements of the EU Regulation in the exercise of their powers, functions and duties.

(2) Public authorities concerned shall cooperate with each other and the Agency in carrying out their powers, functions and duties as public authority concerned under the EU Regulation and in particular Articles 3, 4, 5, 6, 7, 9, 10, 11 and 13 and shall:

- (a) assist in the provision of information for the preparation and implementation of the National Implementation Plan under Article 9,
- (b) 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 Article 10,
- (c) provide to the Agency such information obtained as a result of the carrying out of monitoring, inspections, checks, examinations and investigations,
- (d) maintain records and provide the Agency with information required in such form and at such frequency as may be specified by the Agency,
- (e) advise the Agency of suspected offences under these Regulations.

*Appointment of authorised persons*

6. (1) The Agency may appoint such and so many persons as it thinks fit to be authorised persons for the purposes of performing its functions under these Regulations.

(2) A person appointed as an authorised person shall be furnished with a certificate of his or her appointment and shall, when exercising any power conferred on him or her under these Regulations, if requested by a person affected, produce to the person the certificate or a copy of it.

*Powers of authorised persons*

7. (1) An authorised person may, for the purpose of ensuring that these Regulations and the EU Regulation are being complied with—

- (a) at all reasonable times enter any premises or place, at which there are reasonable grounds to believe that a substance, article, mixture or waste containing a substance to which the EU Regulation applies is, where appropriate, being or has been manufactured, produced, stored, distributed, supplied or placed on the market or that records or equipment relating to the substance, article, mixture or waste are kept, and search and inspect the premises or place and any substance, article, mixture, waste, records, or equipment found therein,
- (b) secure for later inspection any premises or place or part of it in which such substance, article, mixture, waste product, records or equipment are kept or there are reasonable grounds for believing that such substance, article, mixture, waste, records or equipment are kept,
- (c) require any person in charge of or employed in such premises or place to produce to the authorised person such books, documents or records (and in the case of such information in a non-legible form to reproduce it in a permanent legible form) that are in the person's power or control or to give to the authorised person such information as the authorised person may reasonably require in relation to any entries in such records,
- (d) take photographs at the premises of any such substance, article, mixture, waste, records or equipment,
- (e) inspect and take copies of or extracts from any such books, documents or records (including in the case of information in non-legible form a copy of or extract from such information in a permanent legible form),
- (f) remove and retain, where the authorised person has reasonable cause to suspect that there has been a contravention of these Regulations, the substance, article, mixture, waste, equipment or records for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,

- (g) require any person in charge of the premises, or any person who appears to the authorised person to be in possession of the substance, article, mixture or waste to supply without payment, for test, examination or analysis sufficient samples thereof,
  - (h) require any person to afford the authorised person such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the authorised person to exercise any of the powers conferred on him or her under this Regulation.
- (2) An authorised person 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 (4) authorising such entry.
- (3) An authorised person, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when exercising any powers conferred on an authorised person under this Regulation.
- (4) If a judge of the District Court is satisfied on the sworn information of an authorised person that there are reasonable grounds for suspecting that there is information required by an authorised person under this Regulation held on any premises or place or there is a substance, article, mixture, waste or equipment which an authorised person requires to inspect for the purposes of these Regulations or the EU Regulation or that such inspection is likely to disclose evidence of a contravention of these Regulations or the EU Regulation, the judge may issue a warrant authorising an authorised person, accompanied by such other authorised persons or by a member or members of the Garda Síochána as may be 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 need be by reasonable force, the premises or place and exercise all or any of the powers conferred on an authorised person under this Regulation.
- (5) An application under paragraph (4) shall be made to the judge of the District Court in whose district court district the premises is situated.
- (6) A person shall not—
- (a) obstruct or interfere with an authorised person in the exercise of his or her powers under this Regulation,
  - (b) without reasonable excuse fail to comply with a request from an authorised person under this Regulation, or
  - (c) make a statement to such authorised person which the person knows is false or misleading.
- (7) A person who fails to comply with paragraph (6) commits an offence and is liable on summary conviction to a class A fine.

#### *Obligations on persons*

8. (1) A person who places on the market, or who produces or uses persistent organic pollutants which are controlled under Article 3, or a person who holds a stockpile referred to in Article 5, or a person who produces or holds waste subject

to the requirements of Article 7, shall provide to a public authority concerned or to the Agency any information required for the purposes of these Regulations, 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 the EU Regulation, in such form and at such frequency as may be specified by the public authority concerned or the Agency.

(2) Any person to whom this Regulation applies, who provides, or who does not provide, to the Agency or a public authority concerned information which is in contravention of this regulation commits an offence.

*Offences*

9. (1) A person who produces, places on the market or uses a substance in contravention of Article 3(1) commits an offence.

(2) Any person who produces, places on the market or uses a substance in contravention of Article 3(2) commits 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 to the EU Regulation in contravention of Article 5(1) commits 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 to the EU Regulation in contravention of the first paragraph of Article 5(2) commits an offence.

(5) Any person who produces or holds waste in contravention of Article 7(1) commits an offence.

(6) Any person who disposes of or recovers waste in contravention of Article 7(2) commits an offence.

(7) Any person who disposes of or recovers waste in contravention of Article 7(3) commits an offence.

(8) 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 paragraphs (1) and (2) of this regulation, or who holds a stockpile referred to at paragraphs (3) and (4) of this regulation, or who produces or holds waste referred to at paragraph (5) of this regulation, or who disposes of or recovers waste referred to at paragraphs (6) and (7) and that is under its remit to ensure that the EU Regulation are complied with.

*Penalties*

10. A person who commits an offence under these Regulations is liable—

(a) on summary conviction to a Class A fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

*Prosecution of Offences*

11. (1) Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Agency or public authority concerned.

(2) For the purposes of this regulation, 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 Regulation 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.

*Offences by bodies corporate*

12. (1) 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 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 purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

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

*Fees*

13. (1) A fee of €1,000 shall be paid to the Agency by an applicant in respect of an application for a derogation under Article 7(4)(b).

(2) The Agency, when considering a derogation under Article 7(4)(b), 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 the EU Regulation in relation to the derogation.

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

*Revocation*

14. (1) The Persistent Organic Pollutants Regulations 2010 (S.I. No. 235 of 2010) are revoked.



GIVEN under my Official Seal,  
21 April, 2020.

RICHARD BRUTON,  
Minister for Communications, Climate Action and  
Environment.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,  
D02 DR67.

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