

GUERNSEY STATUTORY INSTRUMENT

2014 No. 18

**The Control of Poisonous Substances (Guernsey)
Regulations, 2014**

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The Control of Poisonous Substances (Guernsey) Regulations, 2014

<i>Made</i>	<i>6th May, 2014</i>
<i>Coming into operation</i>	<i>12th May, 2014</i>
<i>Laid before the States</i>	<i>2014</i>

**THE STATES OF GUERNSEY COMMERCE AND EMPLOYMENT
DEPARTMENT**, in exercise of the powers conferred on it by sections 1, 3 and 4 of the Poisonous Substances (Guernsey) Law, 1994^a, hereby makes the following regulations:-

Purpose and scope

Purpose of these Regulations.

1. The purpose of these Regulations is –
 - (a) to protect the health and safety of human beings, animals and plants, and
 - (b) to safeguard the environment, and in particular, to avoid pollution of water.

Declaration of poisonous substances.

2. (1) Subject to paragraphs (2) and (3), the following substances are poisonous substances for the purposes of the Law –

^a Ordres en Conseil Vol. XXXV (1), p. 388; as amended by Recueil d'Ordonnances Tome XXVII, p. 139 and Tome XXIX, p. 406.

- (a) any pesticide, or
- (b) any substance, preparation or organism prepared or used for any of the following purposes -
 - (i) protecting plants, food, or wood or other plant products from harmful organisms,
 - (ii) regulating the growth of plants,
 - (iii) giving protection against harmful creatures,
 - (iv) rendering such creatures harmless,
 - (v) controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products, or
 - (vi) protecting animals against ectoparasites,

as if it were a pesticide.

(2) None of the following are poisonous substances for the purposes of the Law –

- (a) organisms, other than bacteria, protozoa, fungi, viruses, and mycoplasmas, used for destroying or controlling pests,

- (b) medicinal products used, sold or supplied solely -
 - (i) for treating or preventing disease in human beings, or
 - (ii) with a view to restoring, correcting or modifying physiological functions of human beings by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis for human beings,
- (c) food used, sold or supplied solely as food,
- (d) water used, sold or supplied solely for domestic or food production purposes,
- (e) substances prepared or used for the purpose of disinfecting, bleaching or sterilising any substance (including water) other than soils, compost or other growing medium,
- (f) substances used in laboratories for the purpose of the micropropagation of plants or substances used in the production of novel food,
- (g) substances designed and used for –
 - (i) the stimulation of the growth of plants, excluding materials which act as plant growth hormones or which mimic the action of such materials,

- (ii) the modification of microbiological processes in soil, excluding soil sterilants, or
 - (iii) assistance in the anaerobic fermentation of silage,
- (h) substances, preparations or organisms designed and used for destroying or controlling pests by purely physical means, or
- (i) pesticides –
- (i) used in adhesive pastes, decorative paper or textiles,
 - (ii) used as part of a manufacturing process, other than for the purpose of preserving timber or timber products or in the production of food,
 - (iii) used in preparations intended for topical application to human beings for the purpose of repelling insects,
 - (iv) used in metal working fluids,
 - (v) used in paint, or
 - (vi) used in water supply systems or in swimming pools.

(3) Despite items (ii) and (v) of paragraph (2)(i), paints used to prevent the fouling of the hulls of vessels or structures below the waterline, or applied to nets, floats or other apparatus used in the cultivation of fish, are poisonous substances for the purposes of the Law.

Limited exception for re-export substances.

3. (1) Nothing in these Regulations prohibits or restricts the advertisement, sale or supply of a re-export substance to the extent that the advertisement, sale or (as the case may be) supply of the substance relates solely to the re-exportation or proposed re-exportation of that substance.

(2) In paragraph (1), "**re-export substance**" means any poisonous substance that –

- (a) is imported solely for the purpose of re-export,
- (b) is classified, packaged and labelled in accordance with the CLP Regulation,
- (c) is not altered in any way whatsoever, whilst in Guernsey, and
- (d) remains at all times in the packaging in which it was imported.

Prohibitions

Prohibition on importation.

4. A person must not import a poisonous substance unless –

- (a) the substance is approved,
- (b) the importation is authorised by an approval or a licence, and
- (c) the importation complies with –
 - (i) any condition of the approval relating to importation, and
 - (ii) where the importation is authorised by a licence, the conditions of the licence.

Prohibition on advertising.

5. A person must not advertise a poisonous substance unless –

- (a) the substance is approved,
- (b) the advertisement is authorised by an approval or a licence, and
- (c) the advertisement complies with –
 - (i) any condition of the approval relating to advertisement, and
 - (ii) where the advertisement is authorised by a licence, the conditions of the licence.

Prohibition on sale, supply and storage.

6. A person must not sell, supply or store a poisonous substance unless–

- (a) the substance is approved,
- (b) the sale, supply or (as the case may be) storage is authorised by an approval or a licence, and
- (c) the sale, supply or (as the case may be) storage complies with –
 - (i) any condition of the approval relating to sale, supply or (as the case may be) storage, and
 - (ii) where the sale, supply or (as the case may be) storage is authorised by a licence, the conditions of the licence.

Prohibition on use.

7. A person must not use a poisonous substance unless –

- (a) the substance is approved,
- (b) the use is authorised by an approval or a licence, and
- (c) the use complies with –
 - (i) any condition of the approval relating to use, and
 - (ii) where the use is authorised by a licence, the conditions of the licence.

Prohibition on transportation.

8. A person must not transport any poisonous substance unless –
- (a) the substance is approved, and
 - (b) the person –
 - (i) holds a certificate of competence for the transportation of poisonous substances, or
 - (ii) transports the substances under the direct personal supervision of a person who holds such a certificate.

General duties

General duties of professional users.

9. (1) A person who makes a professional use of any poisonous substance must maintain a register (in a form and manner specified by the Department by public notice) containing –

- (a) a record of each professional use of a poisonous substance, including -
 - (i) the date of the professional use,
 - (ii) the details of the poisonous substance applied and amounts used,
 - (iii) the name of the person applying the substance,

- (iv) the hours worked on operations, and
 - (v) the name and location of the place where the substance was applied,
- (b) in the case of any poisonous substances application equipment used by the person –
- (i) a record of the date on which it was first brought into use,
 - (ii) a record of each calibration of that equipment, including the date of calibration and the name of the person who performed the calibration, and
 - (iii) in the case of regulated equipment, a record of each examination of that equipment by a competent person, including –
 - (A) the date of the examination,
 - (B) the name of the competent person who carried out the examination,
 - (C) details of any defect identified by the competent person and the steps taken to fix or remedy that defect, and
 - (D) written verification by the competent person that that equipment is suitable for

use for the application of poisonous substances.

(2) Any person required to maintain a register under paragraph (1)

(a) must keep the records required by paragraph (1)(a) for a period of 7 years after the professional use recorded,

(b) must keep the records required by paragraph (1)(b)(i) or (ii) for a period of 7 years after the first use of the equipment or (as the case may be) after the calibration of the equipment, and

(c) must keep the records required by paragraph (1)(b)(iii) for a period of 10 years after the examination of the equipment by a competent person.

Duties of employers.

10. (1) This regulation applies where a person ("**the employee**") is required to transport, sell, supply, store or use a poisonous substance in the course of his employment by another person ("**the employer**").

(2) Where this regulation applies, the employer must ensure that the employee is provided with the instructions and guidance necessary to enable the employee to comply with the provisions of these Regulations and the conditions of any relevant approval or licence.

Approvals, licences, etc.

Approvals.

11. (1) On an application made in accordance with regulation 13, the Department may by public notice approve a poisonous substance of any kind or description.

(2) The Department must not approve a poisonous substance unless the substance has been given –

- (a) an approval within the meaning of the Control of Pesticides Regulations 1986^b, or
- (b) an equivalent approval by the competent authority of any Member State of the European Union other than the United Kingdom.

(3) An approval given by the Department may be –

- (a) a full approval, or
- (b) a licensed approval.

(4) A full approval –

- (a) must classify the substance approved as either an "amateur product" or a "professional product",

^b UK S.I. 1986/1510.

- (b) authorises the importation, advertisement, sale, supply, storage and use of the substance, subject to the basic conditions, and
 - (c) is in force indefinitely, subject to revocation or suspension under paragraph (8).
- (5) For the purposes of paragraph (4)(a) –
 - (a) a substance must be classified as an "amateur product" if it is –
 - (i) intended for sale or supply to, or use by, non-professional users, and
 - (ii) intended for use within the curtilage of a dwelling, and
 - (b) any other substance must be classified as a "professional product".
- (6) A licensed approval –
 - (a) may be given subject to any conditions specified in the approval,
 - (b) may authorise the importation, advertisement, sale, supply, storage and use of the substance by a specified person or a specified kind or description of persons, subject to –

(i) the basic conditions, and

(ii) any other condition specified in the approval,
and

(c) is in force for the period specified in the approval,
subject to any revocation or suspension under paragraph
(8).

(7) Any poisonous substance given a licensed approval by the
Department is deemed to be a professional product.

(8) The Department may at any time by public notice –

(a) review, revoke or suspend any approval or any
authorisation given under a licensed approval, or

(b) on the application of any person or otherwise, amend
any conditions of a licensed approval, other than a basic
condition.

(9) Section 30 (the appeal provision) of the Health and Safety at
Work (General) (Guernsey) Ordinance, 1987^c has effect in relation to any decision
relating to an approval as if it were a decision relating to a licence, for the purposes of
that provision.

^c Recueil d'Ordonnances Tome XXIV, p. 162; Tome XXV, p.328; Tome
XXVII, p. 139; Tome XXIX, p. 406.

Licences.

12. (1) On an application made in accordance with regulation 13, the Department may give a person a licence to import, advertise, sell, supply, store or use an approved poisonous substance in circumstances where the person would not otherwise be authorised to do so by or under the approval for that substance.

(2) A licence –

- (a) is subject to the basic conditions and any other condition specified in the licence, and
- (b) is in force for the period specified in the licence, subject to any revocation or suspension under paragraph (3).

(3) The Department may at any time by written notice to the holder of a licence –

- (a) review, revoke or suspend the licence, or
- (b) on the application of any person or otherwise, amend the conditions of the licence, other than a basic condition.

Requirements of applications.

13. Any person may apply to the Department for an approval or a licence, or to amend the conditions of any approval or licence, by –

- (a) making the application in any form or manner specified by the Department for this purpose,

- (b) including or providing any evidence or information required by the Department for this purpose, and
- (c) paying any fee prescribed by the Department for this purpose.

Powers, offences, etc.

Seizure, storage and disposal of poisonous substances, equipment, etc.

14. (1) This regulation applies where an inspector suspects, on reasonable grounds, that a poisonous substance is being or has been imported, advertised, sold, supplied, stored, used or transported by any person in contravention of –

- (a) any provision of these Regulations, or
- (b) any condition of an approval or a licence.

(2) Where this regulation applies, the inspector may exercise the powers specified in paragraph (3) if the inspector considers it necessary in order to –

- (a) protect the health and safety of human beings, animals and plants, or
- (b) safeguard the environment, and in particular, to avoid pollution of water.

(3) The powers referred to in paragraph (2) are –

- (a) the power to seize the poisonous substance, any equipment or other thing used to apply the poisonous

substance, and anything treated with the poisonous substance, and

(b) the power to store any seized property, subject to the provisions of Schedule 4.

(4) Schedule 4 has effect in relation to any seized property.

(5) On the application of any inspector or any person who claims any seized property, the Magistrate's Court may, despite any provision to the contrary in Schedule 4 –

(a) make an order for the delivery of the property to the person appearing to the court to be the owner of it, or

(b) make any other order that the court thinks fit in respect of the property, for example an order for the forfeiture, disposal or exportation of the property.

(6) For the avoidance of doubt, the powers conferred by this regulation are in addition to any powers conferred by or under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987, any other enactment or any rule of customary or common law.

Offences, penalties and proceedings.

15. (1) A person is guilty of an offence who, without reasonable excuse, contravenes –

(a) regulation 4, 5, 6, 7, 8, 9(1) or (2), 10(2) or 18(2), or

(b) any condition of an approval or a licence.

(2) A person is guilty of an offence if –

- (a) for the purposes of or in connection with an application made under these Regulations,
- (b) in purported compliance with any condition of an approval or a licence,
- (c) in purported compliance with any requirement imposed under, or otherwise for the purposes of, these Regulations, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which the person intends, or could reasonably be expected to know, that the statement, information or document would or might be used by any person for the purpose of exercising that person's functions under these Regulations,

the person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information or document which that person knows or has reasonable cause to believe to be false,

deceptive or misleading in a material particular,
or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction or conviction on indictment to a fine not exceeding twice level 5 on the uniform scale.

(4) Where a body corporate is guilty of an offence under paragraph (1) or (2), and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that officer or other person, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if that member were a director of the body corporate.

Miscellaneous and general provisions

Department to recognise competence schemes.

16. (1) The Department may, by public notice, recognise a scheme of competence –

- (a) for the transportation, sale, supply, storage or use of a poisonous substance, or
- (b) for conducting examinations of regulated equipment for the purposes of these Regulations.

(2) A recognition under paragraph (1) is subject to any modifications or variations specified by the Department by public notice.

(3) For the avoidance of doubt, the Department may at any time by public notice, amend or revoke all or any part of a recognition made under paragraph (1).

Public register of approvals.

17. (1) The Department must maintain and make available to the public a register of approvals, kept in any manner and form the Department considers fit, including the following information –

- (a) whether the approval is a full approval or a licensed approval,
- (b) in the case of a full approval, whether the substance approved is classified as an "amateur product" or a "professional product",
- (c) in the case of a licensed approval –
 - (i) whether the approval authorises the importation, advertisement, sale, supply, storage or use of the substance by a specified person or a specified kind or description of persons,

- (ii) any conditions subject to which the approval is given, other than the basic conditions,
 - (iii) the period for which the licensed approval is to remain in force, and
 - (iv) details of any amendment of the conditions of the licensed approval, and
- (d) in the case of any approval, or any authorisation given under a licensed approval, details of any review, revocation or suspension of the approval or the authorisation.

(2) For the avoidance of doubt, in this regulation, "**approval**" includes anything deemed to be a full approval or a licensed approval under the provisions of Schedule 5.

Release of other information to the public.

- 18.** (1) At the request of any person, the Department may –
- (a) make any evaluation, study report, or licence information held by the Department available to the person for inspection, at such time and on such conditions as the Department may determine, or
 - (b) on payment of a reasonable charge determined by the Department, supply the person with a copy of any evaluation, study report or licence information.

(2) A person to whom any evaluation, study report or licence information has been made available for inspection, or to whom a copy of any evaluation, study report or licence information has been supplied –

(a) must not make any commercial use of any information or document contained in the evaluation, study report or licence information, and

(b) must not publish any such information or document, unless authorised in writing by the Department to do so.

(3) In this regulation –

"commercial use", in relation to any information or document, includes the use of that information or document in any manner whatsoever in connection with the manufacture, distribution, importation, advertisement, sale, supply, storage, use or export of any pesticide but does not include the use of that information or document for the purpose of books, journals or other publications with the written authorisation of the Department,

"evaluation" means a written evaluation of study reports or other data examined in the course of an appraisal of the active ingredient of a poisonous substance leading to the giving of an approval, the amendment of any conditions of an approval, or the revocation of an approval, for that poisonous substance,

"licence information" means all or any information relating to a licence (including the identity of the person to whom the licence was given), at the discretion of the Department, and

"**study report**" means any study report or other data relating to an application for approval or the continuance of any approval, including the amendment of the conditions of any approval.

Interpretation.

19. (1) In these regulations, unless the context otherwise requires-

"**1995 Regulations**" means the Control of Poisonous Substances Regulations, 1995^d,

"**active ingredient**" means a component of a poisonous substance which fits it for use as a pesticide,

"**adjuvant**" means a substance other than water, without significant pesticidal properties, which enhances or is intended to enhance the effectiveness of a pesticide, when it is added to the pesticide,

"**amateur product**" means any approved poisonous substance classified as, or deemed to be, an amateur product under these Regulations,

"**approval**" means a full approval or a licensed approval,

"**approved**" means approved by the Department under regulation 11,

"**basic condition**", in relation to any activity, means any condition in Schedules 1 to 3 applicable to the activity,

^d

G.S.I. No. 26 of 1995.

"certificate of competence" means a current certificate of competence issued under or for the purposes of a competence scheme recognised by the Department under regulation 16,

"CLP Regulation" means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006,

"competent person" means a person who holds a certificate of competence to conduct an examination of regulated equipment,

"contravene" includes fail to comply,

"Department" means the States of Guernsey Commerce and Employment Department,

"enactment" means any Law, Ordinance or subordinate legislation,

"export" means export from Guernsey to any place outside Guernsey, and **"re-export"** is to be construed accordingly,

"food" has the meaning given by section 54(1) of the Food and Drugs (Guernsey) Law, 1970^e,

^e Ordres en Conseil Vol. XXII, p. 412; as amended by Ordres en Conseil Vol. XXIV, p. 273; Ordres en Conseil Vol. XXV, p. 378; Ordres en Conseil Vol. XXIX, p. 329; Ordres en Conseil Vol. XXXI, p. 278; Ordres en Conseil Vol. XXXVI, p. 235; Ordres en Conseil Vol. XXXVI, p. 648; Recueil d'Ordonnances Tome XXIX, p. 406. See also Recueil d'Ordonnances Tome XXVII, p. 2; G.S.I. No. 9 of 1996.

"full approval" means full approval under regulation 11(3)(a),

"Guernsey" means the island of Guernsey and includes Herm and Jethou,

"import" means import into Guernsey from any place outside Guernsey,

"inspector" means a person appointed as an inspector under section 15 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987^f,

"the Law" means the Poisonous Substances (Guernsey) Law, 1994,

"licence" means a licence given by the Department under regulation 12,

"licensed approval" –

(a) means a licensed approval under regulation 11(3)(b),
and

(b) includes any authorisation given under the licensed approval,

"medicinal product" has the meaning given by section 133(1) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^g,

^f Recueil d'Ordonnances Tome XXIV, p. 162; Tome XXV, p.328; Tome XXVII, p. 139; Tome XXIX, p. 406.

^g Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 540 and Ordinance No. XLI of 2013.

"metal working fluid" means any fluid used to facilitate the cutting, drilling, forming or machining of metal,

"micropropagation" means the growth of plantlets from tissue culture or small parts of a plant in culture solution and under conditions which are sterile apart from the presence of that plant,

"mycoplasma" means a genus of organisms which have a unit membrane without a rigid cell wall and are highly pleomorphic, having no independent form or spore stage in the life cycle,

"novel food" means any food or food ingredient produced from raw material which hitherto has not been used for human consumption or has been so used only in small amounts, or produced by new or extensively modified processes not previously used in the production of food,

"paint" includes surface coatings,

"pest" means —

- (a) any organism harmful to plants, food, wood or other plant products,
- (b) any undesired plant, or
- (c) any harmful creature,

"pesticide" means any substance, preparation or organism prepared or used for destroying or controlling any pest,

"poisonous substance" means anything declared under regulation 2 to be a poisonous substance for the purposes of the Law,

"poisonous substances application equipment" means any apparatus specifically designed for the application of poisonous substances, including accessories that are essential for the effective operation of such equipment, such as nozzles, manometers, filters, strainers and cleaning devices for tanks,

"prescribed" means prescribed by further Regulations or an Order made by the Department,

"professional product" means any approved poisonous substance classified as, or deemed to be, a professional product under these Regulations,

"professional user" means any person who uses poisonous substances in the course of his work activities, including any operator, technician, employer, employee or self-employed person, for agriculture, farming, forestry, horticulture, animal husbandry or other uses, **"professional use"** includes professional use of an amateur product, and, for the avoidance of doubt, **"non-professional use"** is to be construed accordingly,

"public notice" means the publication of a notice in La Gazette Officielle or in any other manner considered appropriate by the Department,

"regulated equipment" means any poisonous substances application equipment other than a handheld sprayer or knapsack,

"seized property" means anything seized under regulation 14(2),

"sell" includes offer or expose for sale or have in possession for sale, and **"sale"** is to be construed accordingly,

"**soil sterilant**" means a substance used to control harmful organisms in soil or compost,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"**supply**" includes offer to supply,

"**transport**" includes load or unload,

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^h,

"**use**" includes use that is authorised by an approval or a licence, and any cognate expression is to be construed accordingly.

(2) An approval, a licence, or the register kept for the purposes of regulation 17 may refer to any other register or document, and any such reference, unless otherwise specified, takes effect as a reference to that other register or document as revised or re-issued from time to time.

(3) The Interpretation (Guernsey) Law, 1948ⁱ applies to the interpretation of these regulations.

^h Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009 and Recueil d'Ordonnances Tome XXXI, p. 542.

ⁱ Ordres en Conseil Vol. XIII, p. 355.

(4) Any reference in these regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended and applied.

Revocation.

20. The 1995 Regulations are revoked.

Transitional and savings.

21. The provisions of Schedule 5 have effect.

Citation.

22. These Regulations may be cited as the Control of Poisonous Substances (Guernsey) Regulations, 2014.

Commencement.

23. These Regulations come into force on the 12th May, 2014.

Dated this 6th day of May 2014.

A handwritten signature in black ink, appearing to be 'K. Stewart', written over a dotted line.

Deputy Kevin A. STEWART

Minister of the Commerce and Employment Department

For and on behalf of the Department

SCHEDULE 1

BASIC CONDITIONS FOR ADVERTISEMENT OF POISONOUS SUBSTANCES

Regs. 11 and 12

1. An advertisement must not relate to any use of a poisonous substance other than a use that is authorised by an approval or a licence.

2. Any electronic, printed or pictorial advertisement, whether contained in websites, emails, leaflets, posters, newspapers, magazines or other periodicals, or other promotional material diffused through any broadcast or other medium, must include, in relation to each poisonous substance mentioned in the advertisement –
 - (a) a statement of the active ingredient,

 - (b) any general warning required by the Department in relation to the substance,

 - (c) where required by a condition of the approval for the substance, a statement of any special degree of risk to human beings, animals, plants or the environment,

 - (d) where the substance has been given a full approval, a statement of whether the product is a professional or an amateur product.

SCHEDULE 2

BASIC CONDITIONS FOR IMPORTATION, SALE, SUPPLY AND STORAGE OF POISONOUS SUBSTANCES

Regs. 11 and 12

1. A person who imports, sells, supplies or stores a poisonous substance –
 - (a) must take all reasonable precautions, particularly with regard to storage and transport –
 - (i) to protect the health and safety of human beings, animals and plants, and
 - (ii) to safeguard the environment, and in particular, to avoid pollution of water,
 - (b) must be competent to perform the duties which the person is called upon to perform, and
 - (c) must notify the Department in writing of any poisonous substance imported and stored, and the quantity of the substance.
2. A person must not sell or supply a professional product, or store a professional product for the purpose of sale or supply, unless the person –
 - (a) holds a certificate of competence for the sale, supply or (as the case may be) storage of poisonous substances, or

-
- (b) sells, supplies or stores the product under the direct personal supervision of a person who holds such a certificate.
3. A person must not sell or supply a poisonous substance to any other person for professional use unless the person to whom the substance is sold or supplied holds a certificate of competence for the use of poisonous substances.

SCHEDULE 3

BASIC CONDITIONS FOR USE OF POISONOUS SUBSTANCES

Regs. 11 and 12

1. Any person who uses a poisonous substance must take all reasonable precautions, particularly with regard to storage and transport –
 - (a) to protect the health and safety of human beings, animals and plants, and
 - (b) to safeguard the environment, and in particular, to avoid pollution of water.

2. Any person who makes a professional use of any poisonous substance must also -
 - (a) ensure that the application of the poisonous substance is confined to the crop, land, produce, buildings, contents of buildings, materials and other areas intended to be treated,
 - (b) reduce the amount of poisonous substances used and the frequency of use to a level that is as low as is reasonably practicable to meet the intended use,
 - (c) where the use of a poisonous substance represents a risk to the aquatic environment or drinking water, use an alternative approved poisonous substance that is not classified as dangerous for the aquatic environment if there is such a substance, and

- (d) obtain a new certificate of competence, or renew his certificate of competence, for use of poisonous substances, at least once every 5 years.
3. A person must not combine or mix for use two or more poisonous substances except in accordance with the conditions of the approvals for those substances.
 4. A person must not use a poisonous substance in conjunction with an adjuvant except in accordance with the conditions of the approval for the substance.
 5. A person must not make a professional use of any poisonous substance unless –
 - (a) he has received adequate instruction and guidance in the safe, efficient and humane use of poisonous substances,
 - (b) he is competent for the duties which he is called upon to perform, and
 - (c) he –
 - (i) holds a certificate of competence for the use of poisonous substances, or
 - (ii) uses the substance under the direct personal supervision of a person who holds such a certificate.
 6. A professional user must not apply any poisonous substance using poisonous substances application equipment unless –

- (a) the equipment has been calibrated in accordance with the manufacturer's instructions in the 12 month period preceding that application, and
- (b) subject to paragraph 7, in the case of regulated equipment which has, prior to the application, been brought into use by anyone (whether before or after the commencement of these Regulations) –
 - (i) the equipment was first brought into use within the five-year period preceding that application, or
 - (ii) a competent person has, after the commencement of these Regulations and within the five-year period preceding that application, inspected that equipment and verified that that equipment is suitable for use for the application of poisonous substances.

7. A professional user may apply a poisonous substance using regulated equipment even if the condition in paragraph 6(b) is not satisfied, if –

- (a) the equipment is owned or leased by the professional user or the employer of the professional user,
- (b) the equipment was purchased for the first time before the commencement of these Regulations, and
- (c) the application takes place before the fifth anniversary of the commencement of these Regulations.

SCHEDULE 4

ADDITIONAL PROVISIONS FOR STORAGE AND DISPOSAL OF SEIZED PROPERTY

Reg. 14

1. An inspector may arrange the manner and place in which seized property is stored before it is disposed of in accordance with these Regulations and any other enactment.
2. Any person who appears to an inspector to be the person who would, but for the seizure, be entitled to possession of the seized property must be given reasonable access to that property.
3. Where the seized property is perishable or its storage involves unreasonable expense or inconvenience, and –
 - (a) the Department is unaware of any person who would, but for the seizure, be entitled to possession of the seized property,
 - (b) no person has claimed the property within the period of three months after it was seized under these Regulations, and
 - (c) there is no order to the contrary by a competent court,the Department may destroy, sell or otherwise dispose of that property in any manner the Department considers appropriate.
4. A person convicted of an offence under these Regulations is liable to pay to

the States (through the Department) all expenses reasonably incurred in relation to the storage of any seized property that was used in, the subject of, or otherwise involved in, the commission of the offence; and –

- (a) the States may recover the expenses for which that person is liable as a civil debt due from the person to the States, and
- (b) this paragraph applies whether or not the seized property is forfeited to the States under any enactment, but a person is not liable to pay expenses incurred on and from the day on which the thing is so forfeited.

SCHEDULE 5

TRANSITIONAL AND SAVINGS PROVISIONS

Reg. 21

1. A full approval given to a poisonous substance under the 1995 Regulations and in force immediately before the commencement of these Regulations is deemed to be a full approval given under regulation 11, and for the avoidance of doubt –
 - (a) retains any classification of the substance as either an "amateur product" or a "professional product",
 - (b) authorises the importation, advertisement, sale, supply, storage and use of the substance, subject to the basic conditions,
 - (c) may be reviewed, revoked or suspended in accordance with regulation 11(8), and
 - (d) continues in force indefinitely, subject to any revocation or suspension under regulation 11(8).

2. An experimental approval, a provisional approval or a licensed approval ("**previous approval**") given to a poisonous substance under the 1995 Regulations and in force immediately before the commencement of these Regulations is deemed to be a licensed approval given under regulation 11, and for the avoidance of doubt –
 - (a) the substance so approved is deemed to be a professional product,

- (b) any stipulation, requirement or condition of the previous approval is deemed to be a condition of the licensed approval,
 - (c) any authorisation in the previous approval to import, advertise, sell, supply, store or use the substance, continues to have effect subject to the basic conditions and any other condition specified in the approval,
 - (d) the approval may be amended, reviewed, revoked or suspended in accordance with regulation 11(8), and
 - (e) the approval continues in force for the period for which it was given, subject to any revocation or suspension under regulation 11(8).
3. A consent given to the advertisement, importation, sale, supply or storage of a poisonous substance under the 1995 Regulations and in force immediately before the commencement of these Regulations is deemed to be a licence given under regulation 12, and for the avoidance of doubt –
- (a) any stipulation, requirement or condition of the consent is deemed to be a condition of the licence,
 - (b) the deemed licence authorises the importation, advertisement, sale, supply, storage or use of the substance, according to the tenor of the consent, subject to the basic conditions and any other condition specified in the consent,
 - (c) the deemed licence may be amended, reviewed, revoked or suspended in accordance with regulation 12(3), and

- (d) the deemed licence continues in force for the period for which the consent was given, subject to any revocation or suspension under regulation 12(3).
4. Unless the context requires otherwise, a reference to any provision of the 1995 Regulations, in any enactment or document in force immediately before the commencement of these Regulations, is to be construed as a reference to any corresponding provision of these Regulations.
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EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, to be made under the Poisonous Substances (Guernsey) Law, 1994, will replace the Control of Poisonous Substances Regulations, 1995 with a regulatory regime that reflects modern developments in the UK and the rest of Europe in health and safety requirements for the control of poisonous substances, such as pesticides.

Regulations 1 to 3 specify the purpose of these Regulations and the substances that are to be regulated as poisonous substances by these Regulations. A limited exception is provided for poisonous substances that are imported solely for re-export, as long as these substances meet certain conditions.

Regulations 4 to 7 prohibit the importation, advertising, sale, supply, storage and use of a poisonous substance, unless the substance has been approved by the Commerce and Employment Department ("**the Department**") and the importation, advertising, sale, supply, storage or (as the case may be) use of the substance is authorised either by the approval or by a specific licence given by the Department.

Regulation 8 prohibits transportation of a poisonous substance unless the substance is approved and the person transporting the substance holds a relevant certificate of competence or is working under the direct personal supervision of someone who holds such a certificate.

Regulation 9 imposes record-keeping duties on professional users and regulation 10 sets out the duty of employers to provide the necessary instruction and guidance to employees required to transport, sell, supply, store or use a poisonous substance.

Regulations 11 to 13 set out the procedures and requirements for applications to be made to the Department and for the giving of approvals and licences by the Department.

Regulation 14 gives Health and Safety inspectors power to seize poisonous substances and equipment, etc. where the inspectors believe that the substances have been imported, advertised, sold, supplied, stored, used or transported in breach of these Regulations. This power can only be exercised if the inspector considers it necessary to protect the health and safety of human beings, animals and plants or safeguard the environment.

Regulation 15 creates offences and sets out penalties for these offences. Officers of a body corporate may, in certain circumstances, be liable for offences committed by the body corporate.

Regulation 16 authorises the Department to recognise competence schemes for the transportation, sale, supply, storage or use of poisonous substances (leading to a certificate of competence for the relevant activity). Regulation 17 requires the Department to maintain a public register of approvals, while regulation 18 authorises the Department to release evaluations and study reports and any information

concerning licences to members of the public, on request. Any information or document disclosed under regulation 18 is subject to restrictions on use and publication.

Regulation 19 is the interpretation provision, regulation 20 revokes the Control of Poisonous Substances Regulations, 1995, and regulation 21 gives effect to transitional and savings provisions. Regulations 22 and 23 specify the citation and date of commencement of these Regulations.

These Regulations will come into force on the 12th May, 2014.

