

**Guidance on the Chemicals Acts 2008 and 2010**  
**(Nos. 13 of 2008 and 32 of 2010)**

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## **Guidance on the Chemicals Acts 2008 and 2010 (Nos. 13 of 2008 and 32 of 2010)**

### **Introduction**

The purpose of this Guidance is to give practical help to all duty holders who have responsibilities under the Chemicals Act 2008, and the Chemicals (Amendment) Act 2010, known as the Chemicals Acts 2008 & 2010. These may be chemical manufacturers, importers distributors, downstream users, only representatives and exporters, as well as employers, employees, safety representatives, safety and health practitioners and the general public.

The 2008 Chemicals Act has been amended by the 2010 Chemicals Acts, and this guide also highlights the main changes arising from this amendment.

This Guidance is not intended as a legal interpretation of the legislation.

The main purpose of the 2008 and 2010 Acts is to facilitate the administration and enforcement of certain EU Regulations concerning chemicals.

These Regulations include the:

- **Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation (No. 1907/2006)**
- **Classification, Labelling and Packaging of Substances and Mixtures (CLP) Regulation (No. 1272/2008)**
- **Rotterdam Regulation (No. 689/2008) concerning the export and import of dangerous chemicals under the Rotterdam Convention and the**
- **Detergents Regulation (No. 648/2004).**

These EU Regulations are directly applicable in Ireland, as well as all other EU Members States. This means that those who have duties under these Regulations must comply with the relevant provisions, e.g. a manufacturer of a chemical substance subject to Registration under the REACH Regulations must comply with the provisions and deadlines set out in that Regulation.

The Chemicals Acts 2008 & 2010 lay out the framework for how these Regulations are implemented and enforced in Ireland, e.g. who enforces them, what are the penalties for non-compliance, etc. Many of the administrative arrangements of the Chemicals Acts 2008 & 2010 are similar to those laid out in the Safety, Health & Welfare at Work 2005, Act, as it is desirable for the purposes of maintaining consistency and uniformity of enforcement that the enforcement tools, powers of inspectors, and general provisions are similar throughout the legislative regime of the Authority.

The Chemicals Acts also set out the various national authorities that administer and enforce the EU Regulations covered by the Acts, and provide for cooperation between these national authorities and between national authorities and authorities of other EU member states. The Health and Safety Authority is the main competent authority for all of the Regulations listed under the Acts. Five other national authorities have administration or enforcement obligations under the Acts, namely the Minister for Agriculture, Fisheries and Food, the Environmental Protection Agency (EPA), Beaumont Hospital Board, the Revenue Commissioners and the Irish National Accreditation Board (INAB).

A brief description of the provisions in the EU Regulations covered by the 2008 and 2010 Acts are as follows. Further details are available on the Authority website at [www.hsa.ie](http://www.hsa.ie), the European Chemicals Agency website [www.echa.europa.eu](http://www.echa.europa.eu) or by calling the Authority's REACH or CLP Helpline at 1890 289 389. Both of these websites must be checked on an ongoing basis for new amendments to these EU Regulations particularly to the Annexes to the Regulations.

### **REACH Regulation**

The REACH Regulation, entered into force on 1 June 2007, and most of its provisions came into practical operation on 1 June 2008. Under the REACH Regulation, all actors in the chemical supply chain have a responsibility to ensure that they manufacture, place on the market or use substances in ways that do not adversely affect human health or the environment. Obligations under REACH are determined by the role of an actor in the supply chain, whether this be as manufacturer, importer, only representative, distributor or downstream user. One of the key provisions of REACH is Registration, a process whereby all substances manufactured or imported into the European Union at greater than 1 tonne per annum must be registered. Registration takes place on a phased basis, with registration deadlines which depend on tonnage and hazard of the substances, of 2010, 2013 and 2018 for pre-registered substances. Substances not pre-registered and non-phase in substances must be registered immediately. The duty to communicate and keep information is common to all actors in the supply chain. REACH also provides for an Authorisation system aimed at ensuring that substances of very high concern are properly controlled and progressively replaced by suitable alternative substances or technologies where these are economically and technically viable. Where this is not possible, the use of substances may only be authorised if adequate control of that use can be demonstrated, or where there is an overall benefit to society from using the substance. In addition, REACH provides for the imposition of restrictions on the manufacture, use or placing on the market of substances causing an unacceptable risk to human health or the environment at an EU-wide level.

### **CLP Regulation**

The CLP Regulation entered into force on 20<sup>th</sup> January 2009 and is closely linked to the REACH Regulation. The CLP Regulation relates to the classification, labelling and packaging of chemical substances and mixtures manufactured or imported into the European Union. It is directly applicable to manufacturers, importers, downstream users (including formulators), distributors and producers of certain articles. The CLP Regulation contains criteria and rules used to determine if a chemical can cause harm to human health and the environment. This involves the identification and evaluation of the physical properties of the chemical, along with

its health and environmental effects. It also involves the communication of those hazards on a label. This identification, evaluation and communication process must be made for any chemical manufactured within or imported into the EU and placed on the EU market. All marketed chemicals must be classified and labelled, irrespective of the quantity placed on the market. The CLP Regulation is being introduced on a phased basis to allow time to change over from the existing classification and labelling regime (CPL) to the new CLP rules. Under the CLP Regulation manufacturers and importers are also obliged to notify their substances placed on the market, to the Classification and Labelling Inventory. This is a database established and maintained by the European Chemicals Agency (ECHA), which contains basic classification and labelling information on notified and registered substances. This notification process applies to substances that are within the scope of CLP i.e. classified as hazardous, either on their own or in a hazardous mixture, regardless of tonnage. In addition, substances subject to registration under REACH must also be notified. The C&L Inventory can be accessed on the ECHA website from mid 2011 at [www.echa.europa.eu](http://www.echa.europa.eu).

Under Article 45 of the CLP Regulation, Member States must appoint a body or bodies responsible for receiving information relating to emergency health response. The Beaumont Hospital Board has been appointed for this purpose.

### **Rotterdam Regulation**

The Rotterdam Regulation on the export and import of dangerous chemicals implements within the EU the Rotterdam Convention on the prior informed consent procedure (PIC) for certain hazardous chemicals and pesticides in international trade. It came into operation on 1<sup>st</sup> August 2008. This Regulation places obligations on exporters of certain hazardous chemicals when exporting to non-EU countries. The objective is to allow countries to monitor and to control the export and import of certain hazardous chemicals. The Regulation promotes shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm. The basic principle of the Rotterdam Convention is that the export of a banned or severely restricted chemical, which is listed in Annex III to the Convention, may only take place with the prior informed consent (PIC) of the importing party. In addition to provisions relating to specific chemicals listed in its Annexes, the Rotterdam Regulation also contains provisions that apply to all chemicals when exported. These provisions address, in particular, requirements on packaging and labelling as specified in respective Community legislation.

### **Detergents Regulation**

The Detergents Regulation entered into force on 8 October 2005 and is designed to control the adverse effects of detergents on the environment. A detergent is a substance or a mixture containing soaps and/or surfactants (any organic substance/mixture which has surface-active properties) intended for washing and cleaning processes. The objective of the Detergents Regulation is to harmonise the rules relating to the biodegradability of surfactants in detergents by applying requirements relating to restrictions or bans on surfactants on grounds of biodegradability.

The Regulation also sets out additional labelling requirements for detergents, and on the information that manufacturers must hold at the disposal of the Member States' competent authorities and medical personnel. Manufacturers must, on request, make available to the Beaumont Hospital Board, without delay and free of charge, an ingredient datasheet as stipulated in Annex VII C of the Regulation. The task of providing this product information to meet the needs of medical professionals has been assigned to the National Poisons Information Centre (NPIC) which is based in Beaumont Hospital.

## **Part 1 — Preliminary and General**

(Sections 1 to 4)

### **1. Short title and commencement**

**Section 1** gives the short title the “Chemicals Act 2008” and allows for the Minister to determine commencement date(s) for the Act or for parts of it. A new Section 1 is added to the Chemicals (Amendment) Act 2010 (the 2010 Act) which states that the 2008 Act is called the ‘**Principal Act**’ for the purposes of referring to it in the 2010 Act. The Chemicals (Amendment) Act 2010 (No. 32 of 2010), came into operation on the 10 December 2010. Now both Acts can be called the **Chemicals Acts 2008 and 2010**.

### **2. Interpretation**

**Section 2** is an interpretation section and defines terms used in the 2008 Act. Some of these definitions are brought in for the first time by Section 2 of the 2010 Act. In other cases definitions in the 2008 are amended to reflect the situation at the end of 2010.

### **3. Service of notices, etc.**

**Section 3** provides for procedures as regards the service of notices under the 2008 & 2010 Acts and allows for the service of notices through various formats including electronic mail and fax.

### **4. Expenses**

**Section 4** provides for payment of the Minister's expenses administering the 2008 and 2010 Acts and is a standard provision, providing for Exchequer financing of administrative expenses.

## Part 2 — Regulations and Codes of Practice

(Sections 5 to 7)

### 5. Regulations

**Section 5** provides for the making of national Regulations by the Minister under the 2008 & 2010 Acts. The EU Regulations are directly applicable to all persons to whom they are addressed but, from time to time, it is also necessary for the Minister to make Regulations or Commencement Orders containing supplementary or incidental provisions.

The Minister may make Regulations under the 2008 & 2010 Acts for the purpose of giving effect to a provision of the treaties governing the European Communities, or an act adopted by an institution of the European Communities, relating to —

- (a) the manufacture, classification, labelling, packaging, export, import, placing on the market, testing, storage, transport, use or disposal of chemicals, or
- (b) the control of major accident hazards relating to chemicals and the prevention of accidents involving chemicals or the minimisation of the effects of such hazards or accidents on persons and the environment.

Such Regulations may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the Regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of the 2008 or 2010 Acts).

For example, regulations would be necessary to give effect to Section 31 of the 2008 Act relating to fixed payment notices. This is a similar provision to that in Section 79 of the Safety, Health and Welfare at Work Act 2005.

### 6. Reviews of and proposals regarding relevant chemicals statutory provisions

**Section 6** provides for the Health and Safety Authority to review the relevant chemicals statutory provisions, as directed by the Minister or as it considers appropriate, and to make proposals to the Minister.

The Authority is obliged to consult with persons or bodies that appear to it to be appropriate, or as directed by the Minister, before submitting proposals relating to the relevant chemicals statutory provisions to the Minister.

### 7. Codes of practice

**Section 7** enables codes of practice to be drawn up and published by the Health and Safety Authority, or where the Minister so directs, or to approve codes of practice developed by other bodies, setting out practical guidance on compliance with the relevant chemicals statutory provisions.

### **Part 3 — National Authorities**

(Sections 8 to 10)

#### **8. National Authorities**

**Section 8**, which was amended by Section 4 of the 2010 Act, sets out the national authorities in Ireland for the purposes of the relevant EU Regulations as follows –

##### **(i) for the purposes of the Rotterdam Regulation:**

- (a) the Health and Safety Authority;
- (b) the Revenue Commissioners, for the purposes only of Article 17 of the Rotterdam Regulation; and
- (c) the Minister for Agriculture, Fisheries and Food, in respect of pesticides (other than for the purposes of Article 17 of the Rotterdam Regulation).

##### **(ii) for the purposes of the Detergents Regulation:**

- (a) the Health and Safety Authority;
- (b) the Environmental Protection Agency, in respect of matters relating to biodegradability of surfactants in detergents;
- (c) Beaumont Hospital Board, for the purposes only of Article 9(3) of the Detergents Regulation; and
- (d) the Irish National Accreditation Board, for the purposes only of Article 8(2) and (3) of the Detergents Regulation.

##### **(iii) for the purposes of the REACH Regulation:**

- (a) the Health and Safety Authority;
- (b) subject to paragraph (c), the Minister for Agriculture, Fisheries and Food, in respect of pesticides;
- (c) the Environmental Protection Agency, in respect of the prevention of environmental pollution.

##### **(iiiA) For the purposes of the CLP Regulation:**

- (a) the Health and Safety Authority;

- (b) the Minister for Agriculture, Fisheries and Food, in respect of pesticides;
- (c) Beaumont Hospital Board, for the purposes only of Article 45 of that Regulation.

## **9. Cooperation arrangements**

**Section 9** provides that national authorities must co-operate with each other in the performance of their functions under the 2008 and 2010 Acts. Such cooperation includes the carrying out of inspections, checks, examinations and investigations and the sharing of information in relation to those activities. All national authorities are required to submit a report annually on their activities under both Acts to the Health and Safety Authority, who in turn submits a composite report to the Minister on these activities.

National authorities may also make mutual cooperation arrangements with authorities of EU Member States and EEA states, subject to Ministerial Order. However, before any such arrangements can be put into effect they must be statutorily approved by an Order made by the Minister under the 2008 Act.

## **10. Fees for services**

**Section 10** enables a national authority, subject to the approval of the Minister and the Minister for Finance and in consultation with any other relevant Minister, to charge appropriate fees for the performance of its functions.

A national authority may charge appropriate fees for the performance of its functions and for the provision of services (other than providing advice to the Minister or to another Minister or to another national authority). Provision is made for different fees, waivers, remission or refund of fees, as appropriate. A national authority may sell anything produced, published or developed by it (or in cooperation with another national authority) and may enter into contracts for the further development and commercial exploitation of anything produced, published or developed by it. A national authority may recover monies owing to it as a simple contract debt in any court of competent jurisdiction.

## **Part 4 — Enforcement**

(Sections 11 to 22)

## **11. Appointment of inspectors**

**Section 11** provides for the appointment of inspectors for the enforcement of the relevant chemicals statutory provisions. A national authority may appoint persons as inspectors to enforce the relevant chemicals statutory provisions within its area of responsibility in accordance with Section 8 of the 2008 Act. An inspector must be given a certificate of authorisation and, when exercising his or her powers under the Act and if requested by an affected person, must produce the certificate or a copy of it and a form of personal identification. An appointment as an inspector ceases to operate when the relevant national authority revokes the appointment. These provisions are very similar to the appointment of inspectors under the Safety, Health and Welfare at Work Act, 2005.

## 12. Powers of inspectors

**Section 12** sets out the powers of inspectors under the 2008 and 2010 Acts, and again these are quite similar to those laid out in Safety, Health and Welfare at Work Act, 2005. There is a detailed and specific listing of all the various powers which an inspector may need to invoke in order to carry out enforcement of any of the chemical regulations covered by the 2008 and 2010 Acts, and some illustrative examples of these are listed below.

- An inspector may, at any time, enter, inspect, examine and search any place where he or she reasonably believes that the relevant chemicals statutory provisions apply.
- An inspector is also empowered, where he or she considers it necessary, to carry out or have carried out tests, examination or analysis of any chemical found at the place and to require that any chemical (or samples of it) there be supplied to the inspector for such testing, examination or analysis or to remove any chemical or samples of it for such purposes. In such cases, the inspector may take advice on any dangers involved.
- An inspector may also cause any chemical found at a place in respect of which there has been or there appears to the inspector to have been a contravention of the relevant chemicals statutory provisions, to be subjected to any testing, examination or analysis, but not to damage or destroy it unless this is necessary for the purposes of the relevant chemicals statutory provisions. Where the inspector considers it necessary to exercise this power, he or she shall ensure that such action is carried out in the presence of the person in charge of the place if that person requests to be present. In such cases, the inspector may take advice on any dangers involved.
- An inspector may remove and retain for as long as necessary any chemical found at a place for all or any of the following purposes –
  - for examination,
  - to ensure that it is not tampered with before its examination is completed, and
  - to ensure that it is kept available for use as evidence in any legal proceedings under the 2008 Act.

Where the inspector removes and retains any chemical the inspector must, where it is practicable, take a sample and give a marked and identifiable portion of the sample to the person in charge at the place.

- An inspector, where necessary, may require the removal from the market of a chemical by the person who has placed that chemical on the market, where it appears to the inspector that, in relation to that chemical, the relevant chemicals statutory provisions have been contravened.

- When requested by an inspector for the purposes of an investigation or an inspection under the relevant chemicals statutory provisions, the person in charge must give the inspector the name and address of the supplier from whom a chemical was purchased or otherwise obtained.

### **13. Immunity and indemnification**

**Section 13** provides for the immunity and indemnity of inspectors or members of staff of a national authority.

Section 13(1) provides that a national authority, an inspector, or a member or a member of staff of a national authority are not liable in damages in respect of any act done or omitted to be done in the performance, or purported performance, of their functions under the relevant chemicals statutory provisions, unless the act or omission concerned was done in bad faith.

Section 13(2) requires that a national authority, subject to the provisions of any enactment or rule of law, indemnify an inspector or a member or member of staff of that national authority, in respect of any act done or omitted to be done by him or her in the performance, or purported performance, of his or her functions under the relevant chemicals statutory provisions, unless the act or omission concerned was done in bad faith.

### **14. Direction for improvement plan**

**Section 14** provides that an inspector may issue a direction for an improvement plan (referred to as a plan under the 2010 Act) where the inspector is of the opinion that an activity is being carried out that involves a risk to human health or the environment. Section 14 provides that an inspector may give a written direction to a person in control requiring the submission of an improvement plan in the case of a risk to human health or the environment from an activity to which a duty under the relevant chemicals statutory provisions applies. The direction must –

- ◆ identify the activity concerned,
- ◆ require the submission of a plan within 1 month specifying the remedial measures proposed to be taken,
- ◆ require the person in control of the activity to implement the plan, and
- ◆ include any other requirements that the inspector considers necessary.

Where a plan is submitted to an inspector or a revised plan is submitted pursuant to a direction under Section 15, the inspector must, within 1 month, confirm whether or not he or she is satisfied with the plan. If an inspector is not satisfied that a plan is adequate, he or she shall direct the person who prepared the plan, to revise it as specified in the direction and resubmit the revised plan to the inspector within the period specified in the direction. When the inspector

confirms by notice that he or she is satisfied with the plan, the person concerned shall implement the plan forthwith. The inspector must sign all directions and notices under this section.

This enforcement provision is intended for use where there is not an immediate and serious risk to persons or the environment or where there may not be an outright breach of the relevant chemicals statutory provisions. Those situations are dealt with under later Sections. This provision is suitable for use where deficiencies are present which can be dealt with over a period of time, without giving rise to a serious immediate threat to human health or the environment. While Section 14 is aimed at encouraging a dialogue between the inspector and the “person in control” who is encouraged to develop a preventive plan to deal with a range of risks, the plan once agreed must be implemented.

### **15. Contravention notice**

**Section 15** provides that where an inspector is of the opinion that there is a particular breach of the relevant chemicals statutory provisions, or that a “person in control” has failed to comply with a direction under Section 14, has either failed to submit an adequate plan or failed to implement a plan under Section 14, the inspector may serve a contravention notice.

A contravention notice must –

- ◆ state that the inspector is of the opinion referred to above,
- ◆ give the reasons for that opinion,
- ◆ identify the particular relevant chemicals statutory provisions to which that opinion relates,
- ◆ direct the person to remedy the contravention or matter within a specified period (which may not be earlier than the end of the 14 day period allowed for an appeal) or to remove a chemical from the market,
- ◆ include information on the appeal procedures, and any other requirement that the inspector considers appropriate, and
- ◆ be signed and dated by the inspector.

A contravention notice may include directions on necessary measures to be taken to remedy the contravention or to comply with the notice and directions, to bring the notice to the attention of any person who may be affected by it or to the attention of the public generally. Where the person on whom a contravention notice is served is of the opinion that the notice has been complied with, he or she must confirm this in writing to the inspector.

Where a person on whom a contravention notice has been served confirms in writing to the inspector that the matters referred to in the notice have been remedied, the inspector, on being satisfied that the matters have been so remedied, must within one month of receipt of such

confirmation, give written notice to the person concerned of compliance with the contravention notice.

A person on whom a contravention notice is served may appeal to the District Court (in the District Court district in which the notice was served) within 14 days and the judge may confirm, vary, or cancel the notice. When making an appeal, the person must also notify the relevant national authority, which is entitled to appear and give evidence in court.

Where an appeal has been taken and the notice is not cancelled, it takes effect on the later of the day next following its confirmation, or the day the appeal is withdrawn, or the date specified in the notice. Where there is no appeal, the notice takes effect on the later of the end of the period for making an appeal or the date specified in the notice. An inspector may withdraw a contravention notice at any time or, where no appeal is made or is pending, extend the period specified in the notice for remedying matters.

## **16. Prohibition notice**

**Section 16** empowers an inspector to serve a prohibition notice on the “person in control” (i.e. the person who is or who may reasonably be presumed by the inspector to be in control of the activity) prohibiting an activity relating to a chemical involving a serious risk to health or the environment. An amendment introduced by the 2010 Act also provides for an inspector also to serve a prohibition notice if the measures taken by the person in control for the prevention and mitigation of major accidents are or are likely to be seriously deficient. A prohibition notice must

- state that the inspector is of the opinion referred to above,
- give the reasons for that opinion,
- specify the activity concerned,
- where in the inspector’s opinion the activity involves a contravention or likely contravention of the relevant chemicals statutory provisions, specify the provision(s) concerned,
- prohibit the carrying on of the activity concerned until the matters giving rise to, or likely to give rise to, the risk are remedied,
- be signed and dated by the inspector.

The notice may include directions on measures to be taken to remedy any contraventions or matter to which the notice relates, or to otherwise comply with the notice and directions to bring the notice to the attention of any person who may be affected by it or to the attention of the public generally.

A prohibition notice takes effect either immediately or, when an appeal is taken, on the later of the day next following the day on which it is confirmed on appeal or the appeal is withdrawn or the date specified in the notice. The launch of an appeal does not suspend the operation of a

prohibition notice but the appellant may apply to the court to have its operation suspended until the appeal is disposed of and the court, if it thinks fit, may suspend the prohibition notice until the appeal is dealt with.

A person may, within 7 days of the service of a prohibition notice, appeal to the District Court (in the District Court district in which the notice was served) and the judge may confirm, vary or cancel the notice. Where a notice is confirmed the judge may, on the application of the appellant, suspend the operation of the notice for a specified period. A person who appeals a prohibition notice, or applies for suspension of the notice, must notify the relevant national authority at the same time, giving the grounds of the appeal or the application. Where a person on whom a prohibition notice has been served is of the opinion that the matters referred to in the notice have been remedied by the due date he or she must so confirm in writing to the inspector.

Where a person on whom a prohibition notice has been served confirms in writing to the inspector that the matters referred to in the notice have been remedied, the inspector, on being satisfied that the matters have been so remedied, must within one month of receipt of such confirmation, give written notice to the person concerned of compliance with the prohibition notice. An inspector may withdraw a prohibition notice at any time if satisfied that the relevant activity no longer involves a serious risk to health or the environment or is satisfied that the notice was issued in error or is incorrect.

#### **17. Contravention of prohibition notice — application to High Court**

**Section 17** provides that if the activity giving rise to a prohibition notice under section 16 is continued contrary to a notice, an inspector may apply to the High Court for an order prohibiting the activity.

Section 17 applies to situations where activities relating to chemicals which present a serious risk to health or the environment or has the potential to cause a major accident are continued contrary to a prohibition notice served under Section 16. The High Court may, on an application *ex parte*<sup>1</sup> by an inspector of a national authority, prohibit the contravention of the prohibition notice. The High Court may, following an application under this Section, order the person concerned to stop doing such acts as it directs.

#### **18. Investigations and special reports**

**Section 18** provides that a national authority may direct any of its staff or another appropriate person to carry out an investigation and make a report of that investigation. While most investigations into breaches of the relevant chemicals statutory provisions will be conducted by inspectors of the relevant national authorities under the powers of inspectors in Section 12 of the 2008 Act, Section 18 enables national authorities to direct a member of their staff or any other competent person that they consider appropriate to investigate the causes and circumstances surrounding any injury to health or damage to the environment or other activity to which the relevant chemicals statutory provisions relate, and to make a “special report” to them in the matter.

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<sup>1</sup> Without consulting and informing the person on whom the prohibition notice has been served

An investigation and special report under this Section could, for example, be for the purposes of establishing the causes and determining appropriate preventive measures arising from clusters of ill health suspected of being related to chemicals to which the relevant chemicals statutory provisions apply. They could also be related to particular instances of damage to the environment related to such chemicals. Another circumstance warranting a special investigation and report would be where a major accident at a chemical plant involving large quantities of dangerous chemicals resulted in the death and/or serious injury to humans or serious damage to the environment. Where more than one national authority is carrying out such an investigation they would co-operate as provided for in Section 9.

A person who is not an inspector carrying out such an investigation has all the powers of an inspector of a national authority and the relevant national authority may pay the person such fees and expenses as determined by the Minister with the approval of the Minister for Finance. Any special report prepared in accordance with Section 18 of the 2008 Act must be presented to the Minister and any other relevant Minister as soon as practicable and the relevant national authority may publish the report and shall do so if the Minister directs.

#### **19. Application to High Court regarding activity involving serious risk**

**Section 19** empowers a national authority where it considers that any activity which involves or is likely to involve a contravention of the relevant chemicals statutory provisions, and the resulting risk to health or to the environment is so serious that that activity should be restricted or immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level, to apply ex parte to the High Court for an order restricting or prohibiting that activity.

#### **20. Prohibition and restriction on the movement of chemicals**

**Section 20** provides that any prohibition or restriction on the importation or exportation of chemicals under the 2008 & 2010 Acts is deemed applicable for the purposes of the Customs Consolidation Act 1876, Customs Act 1956 and Customs and Excise (Miscellaneous Provisions) Act 1988.

#### **21. Evidence in proceedings**

**Section 21** provides that in proceedings for an offence under the 2008 and 2010 Acts, any document purporting to have been prepared or kept pursuant to a requirement in the European Regulations, or in the ordinary course of business by a person who had, or may reasonably be considered to have had, personal knowledge of the matters specified in the document, are admissible as evidence of the matters specified in the document.

In proceedings for an offence under the 2008 and 2010 Acts, a document purporting to be a reproduction in legible form of a document stored in non-legible form to which the above provisions apply is admissible as evidence of the matters specified therein, if the court before which the proceedings have been brought is satisfied that it was reproduced in the course of the normal operation of the reproduction system concerned.

Section 21 does not apply to -

(a) a document containing information that is privileged from disclosure in proceedings for an offence,

(b) a document prepared by a person who would not be compellable to give evidence at the instance of the party seeking to have the document admitted as evidence of the matters specified in the document,

(c) a document (other than a technical document) prepared for the purposes, or in contemplation, of the investigation of any offence, an investigation or inquiry carried out pursuant to or under any enactment, any proceedings whether civil or criminal, or proceedings of a disciplinary nature, or a document (other than a technical document) prepared after the alleged commission of the offence concerned.

## **22. Powers of officer of customs and excise to detain chemicals**

**Section 22** provides officers of customs and excise with the powers to detain chemicals that are being exported or imported if requested to do so by a national authority for the purpose of the performance by the national authority of any functions conferred on it under any of the relevant chemicals statutory provisions.

Such detention may be for so long as is reasonably necessary for an inspector to examine the chemical but may not, in any case, exceed 72 hours from the time when the chemical concerned is detained.

## **Part 5 — Information**

(Sections 23 to 28)

## **23. Dissemination of information in the public interest**

**Section 23** provides that a national authority, in the interests of the protection of human health or the environment, may bring to the attention of the public, information relating to matters giving rise to the issuing of contravention notices or prohibition notices under the 2008 Act. For example, this could mean specific information about a specific chemical of very high concern e.g. about a very toxic, highly flammable or explosive chemical or where the potential exists to have a major accident at a facility storing and processing large quantities of dangerous chemicals.

## **24. Publication of names of certain persons**

**Section 24** requires the Health and Safety Authority, annually, to compile a list of persons

(a) convicted of an offence under the relevant chemicals statutory provisions,

(b) on whom prohibition notices have been served under Section 16 of the 2008 Act, and

(c) in respect of whom an order has been made under a Section 17 High Court order relating to contravention of a prohibition notice or a Section 19 High Court order relating to activities involving serious risks.

The Authority is required to publish the lists referred to at (a) and (c) above and may publish the list referred to at (b) above, in such manner as it considers appropriate. The lists must include details, as the Authority thinks fit, of the matter involved and the fine, penalty, notice or order concerned.

## **25. Protection for persons reporting breaches of the 2008 and 2010 Acts**

**Section 25** provides that where any person who, in good faith, reports to a national authority that -

(a) an offence under the 2008 and 2010 Acts has been or is being committed, or

(b) any provision of the relevant chemicals statutory provisions has not been or is not being complied with, then,

no one shall have a cause of action against that person in respect of that communication, unless he or she acted in bad faith.

## **26. Protection of employees from penalisation for reporting breaches of the 2008 and 2010 Acts**

**Section 26** prohibits an employer from penalising an employee for having formed an opinion of the kind referred to in Section 25 and communicated it, whether in writing or otherwise, to a national authority if the employee has acted reasonably and in good faith in forming that opinion and communicating it to the national authority concerned.

Penalisation by an employer or a person acting on their behalf includes any act or omission affecting detrimentally any term or condition of employment of an employee. Under Section 26, an employee may present a complaint to a rights commissioner that his or her employer has contravened the Section in relation to him or her and, if he or she does so, the commissioner must -

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, and

(b) give a decision in writing in relation to it and communicate the decision to the parties.

A decision of a rights commissioner as referred to above must do one or more of the following -

(a) declare that the complaint was or, as the case may be, was not well founded,

(b) require the employer to comply with Section 26 and, for that purpose, require the employer to take specified steps;

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with Regulations made under section 17 of the Unfair Dismissals Act 1977.

An employee may bring a complaint to a rights commissioner within 12 months from the date of the contravention to which the complaint relates or such further period not exceeding 6 months from the date of the expiration of the 12 months as the rights commissioner considers reasonable, in exceptional circumstances. Either party may appeal against a decision of a rights commissioner to the Employment Appeals Tribunal.

Further information on the rights commissioner service is available on [www.lrc.ie](http://www.lrc.ie) and on the Employment Appeals Tribunal on [www.eatribunal.ie](http://www.eatribunal.ie). Though not a legal interpretation of those provisions, the provisions of Sections 7, 8, 9 and 10 of the Terms of Employment Act 1994 as modified for the purposes of the Chemicals Act 2008 are set out at the Appendix, for illustrative purposes.

## **27. Power to require information**

**Section 27** provides that a national authority may serve a written notice (an "information notice") on a person, to provide information that the authority may reasonably require for the proper performance by it of its functions under the relevant chemicals statutory provisions. The notice will specify the period within which the required information must be provided and the specified date may be extended by that authority on the application of the person served with the information notice.

The person served with an information notice may appeal within 7 days to the District Court (in the District Court district in which the notice was served) and the judge may confirm, vary or cancel the notice and if confirmed, may suspend the operation of the notice for such time as the judge considers appropriate. A person on whom an information notice is served must, where no appeal is made, comply with it before the later of the end of the period specified in the notice or where that period has on request been extended by a national authority the end of that extended period.

A person on whom an information notice is served must, where an appeal is made and the information notice to which the appeal relates is confirmed or varied or the appeal is withdrawn, comply with the notice before -

(a) the day immediately following the day on which the notice is confirmed or varied or the appeal is withdrawn,

(b) the end of the period specified in the notice, or

(c) where the operation of the notice has been suspended on appeal to the District Court, the end of the period of suspension,

whichever occurs latest.

## **28. Prohibition on unauthorised disclosure of information**

**Section 28** prohibits the unauthorised disclosure of confidential information. It specifies that save as otherwise provided by law, a member or member of staff of a national authority, an inspector, a person appointed to carry out an investigation under Section 18 relating to “Investigations and special reports” or a consultant or adviser to a national authority, or that person’s employee, may not, unless authorised by a national authority, disclose confidential information obtained while performing authority functions.

This does not prevent the disclosure of information where that disclosure is -

- (a) For the purpose of the discharge of functions under the relevant chemicals statutory provisions,
- (b) made with the consent of the person to whom the information applies, or
- (c) for the purposes of -
  - (i) any legal proceedings (including by means of a report to a coroner holding an inquest under the Coroners Acts 1962 and 2005 on the body of a person whose death may have been caused through personal injury), or
  - (ii) any investigation or special report under Section 18 of the 2008 Act.

## **Part 6 — Offences and Penalties**

(Sections 29 to 33)

### **29. Offences**

**Section 29** sets out the offences under the 2008 and 2010 Acts and these offences fall into two types.

- A duty holder who contravenes a provision of the relevant statutory provisions covered by the 2008 & 2010 Acts may commit an offence, *e.g.*, a manufacturer who contravenes a provision of the REACH Regulation that applies to him or her, shall be guilty of an offence. These offences are listed in sections 29 (1) – (3A).
- The other type of offence, as laid out in section 29 (4) to (16), is more general in nature, and is not specifically related to a breach of the EU Regulations covered by the 2008 & 2010 Acts. For example, a person who contravenes requirements in a prohibition notice commits an offence.

In general offences under the Chemicals Acts 2008 & 2010 are known as hybrid offences, in that they can be prosecuted under either summary conviction or conviction on indictment. Summary conviction means that the offence may only be tried in the District Court, whereas conviction on indictment means indictment by the Director of Public Prosecutions, which is a criminal prosecution.

An offence under section 29 (16) (failure to comply with a direction for an improvement plan under Section 14 of the Act and contravention of an information notice under Section 27 of the Act) can only be prosecuted under summary conviction in the District Court.

### **30. Penalties**

**Section 30** sets out the penalties for conviction of an offence under section 29.

If a person is convicted of an offence under section 29 (16), they are liable on summary conviction to a fine not exceeding €5,000.

A person guilty of any other offence set out in Section 29 is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term up to 12 months or both or, on conviction on indictment, to a fine not exceeding €3,000,000 or imprisonment for up to 2 years or both.

Where a person is convicted of an offence under the relevant chemicals statutory provisions in proceedings brought by a national authority, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to that national authority the costs and expenses measured by the court, incurred by the national authority in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisers engaged by the national authority.

### **31. Fixed payment notice**

**Section 31**, subject to the making of Regulations by the Minister under the 2008 Act, provides that where an inspector has reasonable grounds for believing that an offence has been committed under the relevant chemicals statutory provisions, he or she may serve the person with a “fixed payment notice” also known as “on the spot fines” stating that –

- (a) the person is alleged to have committed that offence,
- (b) the person may during the period of 21 days beginning on the date of the notice make to the national authority concerned at the address specified in the notice a payment of such amount as may be prescribed (in Regulations to be made under the 2008 Act), being an amount of not more than €2,000, accompanied by the notice,
- (c) the person is not obliged to make the payment specified in the notice, and
- (d) a prosecution of the person to whom the notice is given in respect of the alleged offence will not be instituted during the period of 21 days beginning on the date of the

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.

As supplementary Regulations are necessary to give effect to Section 31, this Section has not been effected yet (January 2011). This is a similar provision to that in Section 79 of the Safety, Health and Welfare at Work Act 2005. .

### **32. Offences by body corporate**

**Section 32** provides that where an offence under the 2008 or 2010 Acts has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a 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 shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

### **33. Prosecution of offences**

**Section 33** is a standard section and provides that a national authority may initiate and prosecute summary offences under the relevant chemicals statutory provisions.

Summary proceedings for an offence under Section 29(16) of the Act (failure to comply with a direction for an improvement plan under Section 14 of the Act and contravention of an information notice under Section 27 of the Act) may be instituted at any time within 12 months from the date an offence was committed or alleged to have been committed, notwithstanding Section 10(4) of the Petty Sessions (Ireland) Act 1851.

Where, arising from a special report made under Section 18(1) of the 2008 Act to a national authority, it appears that there was a breach of the relevant chemicals statutory provisions, summary proceedings may be commenced within 6 months of the making of the special report or 12 months after the date of the contravention, whichever is the later.

## **Part 7 — Miscellaneous**

(Sections 34 to 37)

### **34. Appeal to Circuit Court from certain orders of District Court**

**Section 34** provides that for the avoidance of doubt, an order of the District Court confirming, varying or cancelling a notice under section 15(6), relating to a contravention notice, 16(6), relating to a prohibition notice, or 27(3), relating to an information notice, of the 2008 Act is a decision of a judge of the District Court for the purposes of section 84 of the Courts of Justice Act 1924. This provision is to make clear in legislation the existence of a right of appeal from the District Court to the Circuit Court by either side from a decision of the District Court to confirm, vary or cancel a notice issued by a national authority.

**35. Notice or direction to be in writing**

**Section 35** sets out that notices or directions made under the 2008 and 2010 Acts shall be in writing.

**36. Laying of regulations and orders before Houses of Oireachtas**

**Section 36** of the 2008 Act is a standard provision of legislation which provides for the laying of Regulations or Orders before the Houses of the Oireachtas.

**37. Amendment of Safety, Health and Welfare at Work Act 2005**

**Section 37** sets out amendments to the Safety, Health and Welfare at Work Act 2005 –

(a) in section 34(1), relating to functions of the Health and Safety Authority, by inserting after paragraph (d) the following -

“(dd) to perform the functions conferred on the Authority by the Chemicals Act 2008,” and

(b) in Schedule 6, paragraph (5), by substituting “paragraph (4)” for “paragraph (3)”, to correct a typographical error in the original text of the 2005 Act.

**Section 12** of the 2010 Act provides for additional amendments to Sections, 18, 29, 58, 65, 66 and 78 of the Safety, Health and Welfare at Work Act, 2005 which are being brought in as a result of Court decisions since the enactment of the 2005 Act. These amendments will be covered by separate guidance.

**38 Sections 11 and 13 of Chemicals (Amendment) Act 2010**

**Section 11** of the 2010 Act, which is set out below, gives national effect to technical amendments to the European Union Regulations. In particular there are ongoing amendments to a number of the Technical Annexes to the REACH and CLP Regulations, due to adaptation to technical progress which occur on a regular basis. For example, Annex XVII of the REACH Regulation, the list of Restrictions, will be amended from time to time to add new restrictions/or amend existing restrictions. Similarly, Annex VI of the CLP Regulation will be continually updated to include add harmonised classification & labelling proposals and/or amend existing ones where new information becomes available.

*11.—(1) A reference in the Principal Act to—*

- (a) the Rotterdam Regulation,*
- (b) the Detergents Regulation,*
- (c) the REACH Regulation, or*
- (d) the CLP Regulation,*

*shall be construed as a reference to that Regulation as amended by a European act (other than a directive adopted by an institution of the European Union), whether the amendment is made before, on or after the passing of this Act.*

(2) *In this section—*

*“Act of 1972” means the European Communities Act 1972;*

*“European act” means—*

- (a) a provision of the treaties governing the European Union, or*
- (b) an act adopted by an institution of the European Union, an institution of the European Communities or any other body competent under those treaties;*

*“European Communities” has the same meaning as it has in the Act of 1972;*

*“European Union” has the same meaning as it has in the Act of 1972;*

*“treaties governing the European Union” has the same meaning as it has in the Act of 1972.*

**Section 13 of the 2010 Act** which is set out below, sets the short title of the two Acts covered by this Guidance as the Chemicals Acts 2008 and 2010. Similarly amendments made to the Safety, Health and Welfare at Work Act, 2005 by the 2008 and 2010 Acts are covered by a collective title. The Chemicals Act 2008 (No 13 of 2008) came into operation on 15 July 2008 through the Chemicals Act 2008 (Commencement) Order 2008 (S.I. No. 273). The Chemicals (Amendment) Act 2010 (No. 32 of 2010), came into operation on the 10 December 2010 under the Chemicals Act 2010 (Commencement) Order 2010 (S.I. No. 591).

*13.—(1) This Act may be cited as the Chemicals (Amendment) Act 2010.*

*(2) The Principal Act and this Act (other than section 12) may be cited together as the Chemicals Acts 2008 and 2010.*

*(3) The Safety, Health and Welfare at Work Act 2005, section 37 of the Principal Act and section 12 may be cited together as the Safety, Health and Welfare at Work Acts 2005 and 2010.*

*(4) This Act shall come into operation on such day or days as the Minister for Enterprise, Trade and Innovation may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.*

## Appendix

### Terms of Employment (Information) Act 1994 (No. 5 of 2004)

#### Provisions applying for the purposes of Section 26 of the Chemicals Act 2008 (in accordance with Section 26(6))

#### **Section 7 – Complaints by employees in relation to contraventions of 2008 and 2010 Acts by their employers.**

For the purposes of the Chemicals Act 2008, Section 7, subsections (1) and (2) of the 1994 Act are replaced by Section 26(4) and (5) of the 2008 Act as follows –

“(4) An employee may present a complaint to a rights commissioner that his or her employer has contravened subsection (1) in relation to him or her and, if he or she does so, the commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, and

(b) give a decision in writing in relation to it and communicate the decision to the parties.

(5) A decision of a rights commissioner under subsection (4) shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the employer to comply with subsection (1) and, for that purpose, require the employer to take specified steps;

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks’ remuneration in respect of the employee’s employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977.”

For the purposes of the 2008 Act, Section 7, subsections (3) to (7)(a) of the 1994 Act should be read as follows -

“(3) A rights commissioner shall not entertain a complaint under this section unless it is presented to him within the period of 12 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period, not exceeding 6 months from the expiration of the said period of 12 months, as the rights commissioner considers reasonable.

(4)(a) A complaint shall be presented by giving notice thereof in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister.

(b) A copy of a notice under paragraph (a) shall be given to the other party concerned by the rights commissioner concerned.

(5) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(6) A rights commissioner shall furnish the Tribunal with a copy of any decision given by the commissioner under subsection (1).

(7) The Minister may by regulations—

(a) provide for any matters relating to proceedings under this section that the Minister considers appropriate, and”.

For the purposes of the 2008 Act, Section 8 of the 1994 Act should be read as follows -

**“Section 8 - Appeals from and enforcement of decisions of rights commissioner.**

**8.—(1)** A party concerned may appeal to the Tribunal from a decision of a rights commissioner under section 7 and, if the party does so, the Tribunal shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2)(a) An appeal under this section shall be initiated by the party concerned giving, within 6 weeks of the date on which the recommendation to which it relates was communicated to the party, a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under subsection (3) and stating the intention of the party concerned to appeal against the decision.

(b) A copy of a notice under paragraph (a) shall be given by the Tribunal to the other party concerned as soon as may be after the receipt of the notice by the Tribunal.

(3) The Minister may by regulations provide for all or any of the following matters in relation to proceedings before the Tribunal and for anything consequential thereon or incidental or ancillary thereto:

(a) the procedure in relation to all matters concerning the initiation and the hearing by the Tribunal of appeals under this section,

(b) the times and places of hearings of such appeals,

- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Tribunal,
- (e) the particulars to be contained in a notice under subsection (2),
- (f) the award by the Tribunal of costs and expenses in relation to such appeals and the payment thereof,
- (g) the extension by the Tribunal of the time for initiating such appeals.

(4)(a) The Minister may, at the request of the Tribunal, refer a question of law arising in proceedings before it to the High Court for determination by it and the determination of the High Court shall be final and conclusive.

(b) A party to proceedings before the Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law and the determination of the High Court shall be final and conclusive.

(5) Section 39 (17) of the Redundancy Payments Act, 1967 , shall apply in relation to proceedings before the Tribunal under this Act as it applies to matters referred to it under that section with the substitution in paragraph (e) of the said section 39 (17) of "a fine not exceeding £1,000" for "a fine not exceeding twenty pounds".

(6) (a) Where a decision of a rights commissioner in relation to a complaint under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Tribunal and the Tribunal shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision.

(b) The bringing of a complaint before the Tribunal by virtue of this subsection shall be effected by giving to the Tribunal a notice in writing containing such particulars (if any) as may be specified in regulations made for the purposes of subsection (3).”

For the purposes of the 2008 Act, Section 9 of the 1994 Act should be read as follows -

**“Section 9 - Enforcement of determinations of Tribunal.**

**9.—(1)(a)** If an employer fails to carry out in accordance with its terms a determination of the Tribunal in relation to a complaint under section 7 within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

(i) the employee concerned,

(ii) the employee's trade union, or

(iii) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination in accordance with its terms.

(b) In paragraph (a) the reference to a determination of the Tribunal is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the reference to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

(2) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Tribunal is communicated to the parties and ending on the date of the order.

(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade or business.”

For the purposes of the 2008 Act, Section 10 of the 1994 Act should be read as follows -

**“Section 10 - Evidence of failure to attend before or give evidence or produce documents to Tribunal.**

**10.**—A document purporting to be signed by the chairman or a vice-chairman of the Tribunal stating that—

(a) a person named in the document was, by a notice under paragraph (c) of section 39(17) of the Redundancy Payments Act, 1967 , required to attend before the Tribunal on a day and at a time and place specified in the document, to give evidence or produce a document,

(b) a sitting of the Tribunal was held on that day and at that time and place, and

(c) the person did not attend before the Tribunal in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or failed to produce the document,

shall, in a prosecution of the person under paragraph (e) of the said section 39 (17), be evidence of the matters so stated without further proof.”