L.N. 350 of 2005

PESTICIDES CONTROL ACT, 2001

(CAP. 430)

Activities concerning the Professional Use of Toxic Products Rules, 2005

IN exercise of the powers conferred by articles 4 and 5 of the Pesticides Control Act 2001, the Minister for Rural Affairs and the Environment has made the following rules :-

Title and Scope.

1. (1) The title of these rules is the Activities Concerning the Professional Use of Toxic Products Rules, 2005.

(2) The scope of these rules is to implement the rules found under European Union Council Directive 74/556EEC, hereinafter referred to as "the Directive".

Adoption of transitional measures.

2. (1) Malta shall adopt the transitional measures defined in this Directive in respect of establishment or provision of services in its territory by natural persons and companies or firms covered by Title I of the General Programmes , hereinafter called "beneficiaries" wishing to pursue the activities referred to in sub-rule (2) of this rule.

(2) The activities referred to are those covered by Council Directive No 74/557/EEC of the 4th June 1974 on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products.

The Directive also covers activities involving the professional use of toxic products in so far as such activities have been or will be liberalized by the following Directives: -

(a) Council Directive No 65/1/EEC of 14th December 1964 laying down detailed provisions for the attainment of freedom to provide services in agriculture and horticulture;

(b) Council Directive No 667/654/EEC of the 24th October, 1967 laying down detailed provisions for the attainment of freedom

of establishment and freedom to provide services in respect of activities of self-employed persons in forestry and logging;

(c) Council Directive No 71/18/EEC of the 16th December ,1970 laying down detailed provisions for the attainment of freedom of establishment in respect of self-employed persons providing agricultural and horticultural services;

(d) Council Directive No 74/.../EEC of ... concerning the attainment of freedom of establishment and the freedom to provide services in respect of various activities of self-employed persons (ex ISIC Major Group 01 to Major Group 85) as regards the activities covered by that Directive which fall within ISIC Group 859 and entail the use of toxic products.

(3) The transitional measures shall also apply to persons pursuing as paid employees the activities referred to in sub-rule (2), as shall Article 7 (1) to (4), of Council Directive No 74/557/EEC.

Evidence of knowledge and ability deemed to be sufficient.

3. Where, in Malta, the taking up or pursuit of any activity referred to in paragraph (a)of rule 2(2) is dependent on the possession of general, commercial or professional knowledge and ability, it shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:

(a) five consecutive years in an independent capacity or in a managerial capacity, such activity not having ceased more than two (2) years before the date when the application referred to in rule 5 (2) is made;

(b) two consecutive years in an independent capacity or in a managerial capacity where the beneficiary possesses a certificate of ability and competence for the activity in question authorizing him to pursue the activities of trade in or distribution of toxic products in the Member State of origin or the Member State whence he comes;

(c) three consecutive years in an independent capacity or in a managerial capacity where the beneficiary proves that for the activity in question he has received previous training attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements;

(d) three consecutive years in a non-independent capacity where the beneficiary possesses a certificate of ability and

competence for the activity in question authorizing him to pursue the activities of trade in or distribution of toxic products in the Member State of origin or the Member State whence he comes;

(e) four consecutive years in a non-independent capacity where the beneficiary proves that for the activity in question he has received previous training, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements.

This rule only relates to trade in or distribution of packaged toxic products intended for delivery to the final user in their original packaging.

Duration of activity.

4. (1) Where, in Malta, the taking up or pursuit of any activity referred to in the paragraph (b)of rule 2 (2) is dependent on the possession of general, commercial, or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:-

(a) six consecutive years in an independent capacity or in a managerial capacity such activity not having ceased more than two years before the date when the application referred to in rule 5(2) is made;

(b) three consecutive years in an independent capacity or in a managerial capacity where the beneficiary possesses a certificate of ability and competence for the activity in question authorizing him to pursue activities entailing the professional use of toxic products in the Member State of origin or the Member State whence he comes;

(c) four consecutive years in an independent capacity or in a managerial capacity where the beneficiary proves that for the activity in question he has received previous training, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements;

(d) four consecutive years in a non-independent capacity where the beneficiary possesses a certificate of ability and competence for the activity in question authorizing him to pursue activities entailing the professional use of toxic products in the Member State of origin or the Member State whence he comes;

(e) five consecutive years in a non-independent capacity where the beneficiary proves that for the. activity in question he has received previous training, attested by a certificate recognized by the State or regarded by the competent professional or trade body as fully satisfying its requirements;

(2) The provisions in sub-rule (1) (a), (c) and (e) are not applicable to activities entailing the professional use of certain highly toxic products given below: -

(a) Hydrocyanic acid and its soluble salts,

(b) Hydrofluoric acid and its soluble salts,

(c) Acrylonitrile,

(d) Liquid compressed ammonium,

(e) Methyl bromide,

(f) Chloropicrin,

(g) Hydrogen phosphide and products liable to liberate it,

(h) Ethylene oxide,

(i) Carbon disulphide,

(j) Carbon tetrachloride,

(k) Trichloroacetronitrile.

For the purpose of applying the provisions in paragraphs (b) and (d) to these highly toxic products, the certificate of ability and competence must state the product or products which the beneficiary is authorized to use in the Member State of origin or the Member State whence he comes.

In this case, the beneficiary's activity shall not have ceased more than two years before the date when the application referred to in rule 5(2) is made.

5. (1) A person shall be regarded as having pursued an activity in a managerial capacity within the meaning of rules 2 and 3 if he has

Pursuance of activity in a managerial capacity.

pursued such an activity in an industrial or commercial undertaking in the occupational field in question:

(a) as manager of an undertaking or manager of a branch of an undertaking; or

(b) as deputy to the proprietor or to the manager of an undertaking, where such post involves responsibility equivalent to that of the proprietor or manager represented; or

(c) in a managerial post with duties relating to trade in or distribution of toxic products and with responsibility for at least one department of the undertaking, or in a managerial post with responsibility for the use of the said products.

(2) Proof that the conditions laid down in rules 2 and 3 are satisfied shall be established by an attestation issued by the competent authority or body in the Member State of origin or Member State whence the person concerned comes, which the latter shall submit in support of his application for authorization to pursue the activity or activities in question in the host Member States. Such attestation shall state, where appropriate, whether, in the Member State of origin or Member State whence the person concerned comes, authorization is limited to the taking up of activities relating to the distribution of toxic products or to activities entailing the professional use of such products, or whether certain toxic products are excluded from these latter activities.

(3) Malta shall designate the authorities and bodies competent to issue the certificates referred to in sub-rule (2) and shall forthwith inform the other Member States and the European Commission thereof.

Same limitations may be applied by host Member State.

6. Where, in the Member State of origin or the Member State whence the person concerned comes, the formal qualifications laid down in rules 3 and 4 or the attestations laid down in rule 5 (2) authorize only the taking up of activities relating to the distribution of toxic products or of activities entailing the professional use of such products, or exclude certain toxic products from these latter activities, the host Member State may apply the same limitations in its territory and also exclude from activities entailing the professional use of toxic products consisting of the same active material as products excluded by formal qualifications and attestations or involving similar risks for human, animal and plant health either directly or indirectly through the environment.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni (doi.gov.mt) — Valletta — *Published by the Department of Information (doi.gov.mt) — Valletta*
Mitbugħ fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 24ċ – *Price 24c*