



STATUTORY INSTRUMENTS.

S.I. No. 533 of 2018



EUROPEAN UNION (MERCURY) REGULATIONS 2018

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I, RICHARD BRUTON, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017¹ hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Mercury) Regulations 2018.

Interpretation

2. (1) In these Regulations—

“authorised person” means a person who is appointed in writing pursuant to Regulation 7 by a local authority, the Minister or the Environmental Protection Agency;

“Code of Practice” means the form of guidance given by the Dental Council pursuant to section 66(2) of the Dentists Act 1985 (No. 9 of 1985);

“EU Regulation” means Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017¹;

“local authority” means a local authority within the meaning of the Local Government Act 2001 (No. 37 of 2001);

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

(2) A word or expression that is used in these Regulations and is also used in the EU Regulation shall have in these Regulations the same meaning as it has in the EU Regulation unless the contrary intention appears.

(3) In these Regulations, a reference to an Article is a reference to an Article of the EU Regulation.

(4) The reference in Article 10(6) to “authorised waste management establishment or undertaking” shall be construed as an operator that holds a waste collection permit within the meaning of section 34 of the Waste Management Act 1996 (No. 10 of 1996) for the purposes of handling and collecting amalgam waste.

¹OJ L 137, 24.5.2017, p.1.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 18th December, 2018.

Competent Authority for various requirements in Articles 5, 7, 8, 9, 12, 13 and 14

3. (1) The Environmental Protection Agency is the competent authority in the State for the purposes of monitoring compliance with—

- (a) Article 5(1) (insofar as that provision relates to the manufacturing of certain mercury-added products in the circumstances referred to therein),
- (b) Article 7(1), (2) and (3),
- (c) Article 8(1) and (2),
- (d) Article 9(1),
- (e) Article 12(1), (2) and (3),
- (f) Article 13(1) and (3), and
- (g) Article 14(1), (2), (3) and (4).

(2) The Environmental Protection Agency is the competent authority in the State for the purposes of—

- (a) the receipt of notifications under Article 8(3),
- (b) the carrying out of the obligation referred to in Article 8(4),
- (c) the development and implementation of a national plan in the circumstances outlined in Article 9(2),
- (d) the receipt of the data and other information and materials that are specified in Article 12(1), and
- (e) the receipt of the register referred to in Article 14(4) and the required communication to the Commission referred to in that provision.

Competent Authority for monitoring compliance requirements for dental facilities and handling of amalgam waste

4. (1) Each local authority shall monitor compliance by operators of dental facilities situated within its functional area with the obligation in Article 10(4).

(2) Each local authority shall monitor compliance by dental practitioners situated within its functional area with the obligations in Article 10(6).

Competent Authority for monitoring compliance with Article 10(1) and (2)

5. The Dental Council shall, in its Code of Practice, provide—

- (a) for the use of dental amalgam in pre-dosed encapsulated form only,
- (b) that dental amalgam shall not be used for dental treatment of deciduous teeth, of children under 15 years and of pregnant or breastfeeding

women, except when deemed strictly necessary by the dental practitioner based on the specific medical needs of the patient,

- (c) that a breach of paragraph (a) or (b) by a dental practitioner shall constitute a ground for a fitness to practice inquiry under section 38(1)(a) of the Dentists Act 1985.

Application of Waste Regulations

6. The materials referred to in Article 11 of the EU Regulation shall be regarded as waste within the meaning of—

- (a) section 4 of the Waste Management Act 1996 (No. 10 of 1996), and
- (b) Regulation 4(2)(t) of the European Communities (Shipments of Hazardous Waste exclusively within Ireland) Regulations 2011 (S.I. No. 324 of 2011),

and that Act and those Regulations shall apply accordingly to those materials.

Appointment of authorised persons

7. (1) The Environmental Protection Agency may appoint such and so many persons as it thinks fit to be authorised persons for the purposes of performing its functions under Regulation 3.

(2) A local authority or the Minister may appoint such and so many persons as it thinks fit to be authorised persons for the purposes of performing its functions under Regulation 4.

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

Powers of authorised persons

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

- (a) at all reasonable times enter any premises or place, at which there are reasonable grounds to believe that a substance or product to which the EU Regulation applies is being or has been manufactured, produced, stored, distributed, supplied or placed on the market or that records or equipment relating to the substance or product are kept, and search and inspect the premises or place and any substance, product, records, or equipment found therein,
- (b) secure for later inspection any premises or place or part of it in which such substance, product, records or equipment are kept or there are reasonable grounds for believing that such substance, product, records or equipment are kept,

- (c) require any person in charge of or employed in such premises or place to produce to the authorised person such books, documents or records (and in the case of such information in a non-legible form to reproduce it in a permanent legible form) that are in the person's power or control or to give to the authorised person such information as the authorised person may reasonably require in relation to any entries in such records,
- (d) take photographs at the premises of any such substance, product, records or equipment,
- (e) inspect and take copies of or extracts from any such books, documents or records (including in the case of information in non-legible form a copy of or extract from such information in a permanent legible form),
- (f) remove and retain, where the authorised person has reasonable cause to suspect that there has been a contravention of these Regulations, the substance, product, equipment or records for such period as may be reasonable for further examination or until the conclusion of any legal proceedings,
- (g) require any person in charge of the premises, or any person who appears to the authorised person to be in possession of the substance or product to supply without payment, for test, examination or analysis sufficient samples thereof,
- (h) require any person to afford the authorised person such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the authorised person to exercise any of the powers conferred on him or her under this Regulation.

(2) An authorised person shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (4) authorising such entry.

(3) An authorised person, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when exercising any powers conferred on an authorised person under this Regulation.

(4) If a judge of the District Court is satisfied on the sworn information of an authorised person that there are reasonable grounds for suspecting that there is information required by an authorised person under this Regulation held on any premises or place or there is a substance, product or equipment which an authorised person requires to inspect for the purposes of these Regulations or the EU Regulation or that such inspection is likely to disclose evidence of a contravention of these Regulations or the EU Regulation, the judge may issue a warrant authorising an authorised person, accompanied by such other authorised persons or by a member or members of the Garda Síochána as may be necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by reasonable

force, the premises or place and exercise all or any of the powers conferred on an authorised person under this Regulation.

(5) An application under paragraph (4) shall be made to the judge of the District Court in whose district court district the premises is situated.

(6) A person shall not—

- (a) obstruct or interfere with an authorised person in the exercise of his or her powers under this Regulation,
- (b) without reasonable excuse fail to comply with a request from an authorised person under this Regulation, or
- (c) make a statement to such authorised person which the person knows is false or misleading.

(7) A person who fails to comply with paragraph (6) commits an offence and is liable on summary conviction to a class A fine.

Penalties for breaches of EU Regulation

9. (1) A person who breaches Article 5(1) (insofar as that provision relates to the manufacturing of certain mercury-added products in the circumstances referred to therein) commits an offence and is liable on summary conviction to a class B fine or imprisonment for a term not exceeding 6 months, or both.

(2) A person who breaches Article 7(1), (2) or (3), Article 8(1) or (2) commits an offence and is liable—

- (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.

(3) A person who fails to notify the Environmental Protection Agency in the circumstances outlined in Article 8(3), or, on making such a notification fails to include the information therein commits an offence and is liable—

- (a) on summary conviction to a class A fine, or
- (b) on conviction on indictment to a fine not exceeding €250,000.

(4) A person who breaches Article 9(1) commits an offence and is liable—

- (a) on summary conviction to a class B fine or imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.

(5) An operator of a dental facility who breaches an obligation in Article 10(4) commits an offence and is liable on summary conviction to a class D fine.

(6) A dental practitioner who breaches an obligation in Article 10(6) commits an offence and is liable—

(a) on summary conviction to a class B fine or imprisonment for a term not exceeding 3 months or both, or

(b) on conviction on indictment to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.

(7) A person who breaches Article 12(1) or (2) commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both.

(8) A person who breaches Article 13(1) or (3) commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both.

(9) A person who breaches Article 14(1), (2) or (3) commits an offence and is liable—

(a) on summary conviction to a class B fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.

(10) A person who breaches Article 14(4) commits an offence and is liable on summary conviction to a class D fine.

(11) An offence under paragraph (1), (2)(a), (3)(a), (4)(a), (7), (8), (9)(a), or (10) may be prosecuted by the Environmental Protection Agency.

(12) An offence under paragraph (5) or (6)(a) may be prosecuted by the local authority within whose functional area the breach occurs.

Application of Customs Act 2015 to import and export prohibitions in EU Regulation

10. A person who breaches Article 3(1), (2), (3) or (4), Article 4 (1), (2) or (3) or Article 5(1) (insofar as that provision relates to the import and export of certain mercury-added products in the circumstances referred to therein) commits an offence and shall, in accordance with section 50 of the Customs Act 2015 (No. 18 of 2015), be subject to the provisions of that Act.

Offences by bodies corporate

11. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of, any person, being a director, manager, secretary or other officer of the body corporate, or a

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

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

Revocation

12. The European Communities Mercury (Export Ban and Safe Storage) Regulations 2012 (S.I. No. 27 of 2012) are revoked.



GIVEN under my Official Seal,
14 December 2018.

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

EXPLANATORY NOTE

(This Note is not part of the Statutory Instrument and does not purport to be a legal interpretation.)

These Regulations lay down the rules and penalties applicable to infringements of Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury and designate competent authorities to implement the EU Regulation.

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