



STATUTORY INSTRUMENTS.

S.I. No. 529 of 2022

AIR POLLUTION ACT 1987 (SOLID FUELS) REGULATIONS 2022

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AIR POLLUTION ACT 1987 (SOLID FUELS) REGULATIONS 2022

I, EAMON RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by sections 10, 12A, 14(7) and (8), 22F(4) and (5) and 53 of the Air Pollution Act 1987 (No. 6 of 1987) and the Climate Action and Environment (Transfer of Departmental Administration and Ministerial Functions) Order 2016 (S. I. No. 393 of 2016) (as adapted by the Communications, Climate Action and Environment) (Alteration of Name of Department and Title of Minister) Order 2020 (S. I. No. 373 of 2020)), hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Air Pollution Act 1987 (Solid Fuels) Regulations 2022.
- (2) These Regulations come into operation on 31 October 2022.

Interpretation

2. (1) In these Regulations —

“Act of 1987” means Air Pollution Act 1987 (No. 6 of 1987);

“Agency” means Environmental Protection Agency;

“approved solid fuel” means a solid fuel product which is used for the purposes of combustion for heating (space or water) in a fireplace in a domestic or a licensed premises that conforms with the requirements as set out in Regulation 5 in respect of the product;

“bag” means a sealed receptacle containing a quantity of solid fuel;

“bale” means a unit of solid fuel which is securely strapped or wrapped;

“biomass” means the biodegradable fraction of products, waste and residues of biological origin from agriculture (including vegetal and animal substances), forestry and related industries, including fisheries and aquaculture as well as the biodegradable fraction of industrial and municipal waste;

“bog-land” means land consisting wholly or mainly of land on or under the surface of which there is turf;

“certificate of compliance” means a certificate, for the time being in force, verifying that a producer of solid fuel complies with the requirements set out in Regulation 5, issued by a certification body under Regulation 10;

“certification body” means a third-party conformity assessment body;

“cessation scheme” means the Cessation of Turf Cutting Compensation Scheme established by the Minister for Housing, Local Government and

Heritage and administered by the Department of Housing, Local Government and Heritage;

“coal products” means any coal, lignite, coke or semi coke of coal falling under CN Code 2701, 2702 or 2704;

“domestic premises” means premises which are used wholly or mainly as a private dwelling;

“EFTA country” means a country that is a member of the European Free Trade Association;

“fireplace” has the meaning assigned to it in section 7(1) of the Act of 1987;

“fuels register” means the register established and maintained by the Agency under section 22A (inserted by section 24 of the Environment Miscellaneous Provisions) Act 2015) of the Act of 1987;

“licensed premises” has the same meaning as it has in the Intoxicating Liquor Act 2008 (No. 17 of 2008);

“manufactured part biomass product” means any solid fuel product produced using biomass and any other materials where the biomass content is greater than 30% but less than 100%;

“manufactured solid fuel” means any solid fuel manufactured or mixed with a biomass fraction of less than 30%;

“owner of a vehicle” means the person in possession of or, for the time being, in charge of a vehicle;

“package” means material used to create a bag, bale or other container to hold a quantity of solid fuel which is intended for sale to the general public;

“peat briquette” means milled peat which has been dried and moulded into a uniform shape;

“producer” in relation to a solid fuel means a person who for the purposes of combustion or heating, produces or treats or imports solid fuel for retail or distribution in the State, and produce shall be read accordingly;

“retailer” in relation to the sale of solid fuels, means a person who for the purposes of trade or otherwise in the course of business, sells or otherwise supplies irrespective of the selling technique used, solid fuel to other persons for combustion for heating, in, from or in connection with a premises or online, whether directly or indirectly, and includes a wholesaler and a supplier;

“right of turbary” means the right of digging, cutting and taking away turf from a bog-land for use as fuel and includes —

- (a) a right arising by custom to do so, and
- (b) the right of preparing and storing on the bog-land any turf cut from it;

“solid fuel” means any solid substance that is burned to produce heat;

“turf” means peat taken from bog-land, irrespective of extraction method, but does not include peat briquettes.

(2) In these Regulations a reference to an International Standard or a British Standard is a reference to a standard published by the International Organisation for Standardisation or the British Standards Institution and should be construed as the most current such standard in effect.

Prohibition on sale or distribution of unapproved solid fuel

3. A person shall not retail or distribute solid fuel for the purposes of combustion for heating (space or water) in a fireplace in a domestic or a licensed premises that is not an approved solid fuel.

Facilitation of right of turbary

4. (1) Notwithstanding Regulation 3, the holder of a right of turbary may, by way of sharing turf cut by or for the holder, give it to other persons for their personal use and is not considered a producer for the purposes of these Regulations.

(2) The holder of a right of turbary may sell or offer to sell turf to another provided it is not by way of the internet or other media, or from a premises or place used for the retail of food, fuel or other goods, including from shops, garages and petrol filling stations, fuel yards and public houses and other public places (within the meaning of section 3 of the Criminal Justice (Public Order) Act 1994 (No. 2 of 1994)).

(3) The holder of a right of turbary mentioned in paragraph (1) may provide turf for distribution to those entitled to turf under the cessation scheme.

(4) The requirements of Regulation 9(c) shall not apply to the transport of turf cut by the holder of a right of turbary under this Regulation.

Requirements for approved solid fuel

5. (1) Solid fuel to be considered an approved solid fuel must conform with the requirements specified in the following paragraphs.

(2) Coal products and manufactured solid fuels must have a smoke emission rate of less than 10 grams per hour.

(3) Manufactured part biomass products must have a smoke emission rate of less than 5 grams per hour.

(4) Coal products and manufactured solid fuels, including manufactured part biomass products, must have sulphur content —

- (a) less than 2% by weight on a dry ash-free basis, and
- (b) subject to a market assessment, with effect from 1 September 2025, have sulphur content less than 1% by weight on a dry ash-free basis.

(5) Fuel products which are 100% biomass products, including wood products and wood logs, supplied in units of two cubic metres or less, must have a moisture content of —

- (a) less than 25%, and
- (b) with effect from 1 September 2025, less than 20%.

(6) Wood logs supplied in units of more than two cubic metres shall be accompanied by a notice containing the statement specified in Schedule 1.

Fuels register

6. (1) A producer is required to register annually on the fuels register in accordance with this Regulation.

(2) A producer, or a person purporting to act as such, shall not carry out a fuel activity (within the meaning of section 22A(1)(a) of the Act of 1987) in relation to solid fuel unless he or she is registered on the fuels register in respect of the activity.

(3) In addition to the information required under section 22A(2) of the Act of 1987, an application to the Agency by a producer for entry on the fuel register shall be accompanied by the following information:

- (a) a list of all products of solid fuel produced by fuel type, in relation to the fuel activity carried out by the applicant;
- (b) the certificate of compliance or a copy of it held by him or her in respect of the fuel activity to which the application relates;
- (c) evidence of possession of a current tax clearance certificate issued to the applicant;
- (d) total sales volumes of solid fuels achieved by the applicant for the previous year;
- (e) any trading name or Companies Registration Office number relating to the application;
- (f) name and contact details of the person responsible for the provision of information relevant to the application;
- (g) details of any conviction for an offence under the Act of 1987 committed by the applicant or a person in his employment within the period of 5 years previous to the application.

(4) An application for entry on the fuels register shall be accompanied by a fee of €100 and any administrative costs of registration decided by the Agency.

(5) An applicant for entry, or a producer entered, on the fuels register shall inform the Agency of any material change of information provided under paragraph (3) within 14 days of the change.

(6) The period of time for which registration of a producer on the fuels register may have effect is during the period from 1 September in a particular year until 31 August in the following year, and the registration of the producer has effect from the date during that period he or she is entered on the fuels register until the expiration of that period on 31 August following the date of entry.

(7) In the year 2022 the period from 1 September referred to in paragraph (6) is to be read as the period from 31 October in that year until 31 August in the following year.

(8) The Agency may specify to producers registered on the fuels register the date by which an application for continued registration on the fuels register should be submitted to avoid interruption in registration. Where an application is duly made by that date but has not been considered by the Agency by the date the registration is due to commence, the registration of the producer continues until the determination of the application by the Agency.

(9) A producer registered on the fuels register shall display the registration number issued to the producer under section 22E of the Act of 1987, on any invoice, credit note, dispatch and delivery docket, marketing material or website relating to any fuel activity carried out by the producer.

(10) A producer who is not registered on the fuels register shall not display any document or registration number issued or purported to have been issued under section 22E of the Act of 1987, on any invoice, credit note, dispatch and delivery docket, marketing material or website or at any premises relating to any fuel activity carried out by the producer.

(11) A producer shall at any premises where the producer carries out a fuel activity and in any written advertisement advertising the producer's fuel activity prominently display the registration number issued to him or her under section 22E of the Act of 1987 with the words "Registered fuel producer on the Fuels Register" or similar words, and in any broadcast advertisement state that the producer is so registered.

(12) A producer registered on the fuels register who ceases to carry out a fuel activity shall, within 30 days of such cessation, inform the Agency of this.

Producer responsibility

7. (1) A producer is responsible for the conformity assessment under Regulation 10 of solid fuel which the producer produces.

(2) A producer shall not retail or distribute a solid fuel product unless the product —

- (a) is an approved solid fuel,
- (b) is certified as set out in Regulation 10,
- (c) is labelled in accordance with the requirements of Regulation 11,

- (d) in the case of wood supplied in units of two cubic metres or more, is accompanied by a notice containing the statement specified in Schedule 1, and
- (e) relates to a fuel activity in respect of which the producer is registered on the fuels register.

Retailer responsibility

8. (1) A retailer shall not retail in the State any solid fuel placed on the market by a producer who is not registered on the fuels register in respect of that fuel activity.

(2) A retailer shall not make available for sale on the premises of the retailer or by any other means a solid fuel which is not an approved solid fuel.

(3) A retailer shall keep records for a period of one year to show that all solid fuel sold or distributed is an approved solid fuel. These records should include all invoices, credit notes, dispatch or delivery documents detailing the products purchased from a producer, including the registration number issued to the producer under section 22E of the Act of 1987 in respect of solid fuel supplied to the retailer.

(4) The records referred to in paragraph (3) shall be provided by a retailer for inspection, on request, by an authorised person.

Transportation of solid fuel

9. The owner or operator of any vehicle which is used for the transport of solid fuel for the purposes of combustion for heating (space or water) in a domestic or licensed premises shall retain on the vehicle and provide to an authorised person, if requested by the officer —

- (a) a record of the quantity of each type of solid fuel on the vehicle and the name and address of the person or body who supplied the fuel,
- (b) a record of the origin and destination of the solid fuel and the name and address of the person or persons purchasing the fuel, and
- (c) a record demonstrating that the solid fuel is an approved solid fuel, such as an invoice, credit note, dispatch or delivery documents detailing the products purchased from a producer entered on the fuels register which shall include the registration number issued to producer under section 22E of the Act of 1987 in respect of solid fuel being transported.

Certification of compliance and testing methods

10. (1) For the purposes of establishing compliance with the requirements, specifications and procedures set out in these Regulations, a producer of solid fuel shall be audited on an annual basis by a certification body.

(2) A producer of solid fuel shall apply to a certification body for assessment of compliance.

(3) The records to be kept and maintained by a producer relating to solid fuel products produced by the producer shall be sufficient to enable the certification body to determine compliance with the requirements of these Regulations, including the requirements set out in Regulation 5 and include at a minimum those specified in Schedule 2.

(4) The requirements of Regulation 5 shall be satisfied by compliance with:

- (a) a relevant standard or code of practice of a national standards body or equivalent body in another Member State, an EFTA country, the United Kingdom or Turkey;
- (b) any relevant international standard recognised for use in another Member State, an EFTA country, the United Kingdom or Turkey;
- (c) any relevant technical regulation with mandatory or de facto mandatory application for marketing or use in another Member State, an EFTA country, the United Kingdom or Turkey,
- (d) any relevant quality assurance scheme,

insofar as the standard, code of practice, technical regulation, scheme or process in question enables the requirements of Regulation 5 to be certified in an equivalent manner.

(5) The sulphur content shall be determined by the method for the time being specified in ASTM D4239 or International Standard reference ISO 19579 or technical equivalent;

(6) The gross calorific value shall be determined by the method for the time being specified in International Standard reference ISO 1928 or technical equivalent and the moisture level for the purposes of expressing gross calorific value on a moist ash-free basis shall be the level corresponding to moisture holding capacity as determined by the method for the time being specified in International Standard reference ISO 1018 or technical equivalent.

(7) The volatile matter content shall be determined by the method for the time being specified in International Standard reference ISO 20360:2020 or ISO 562 or technical equivalent as applicable.

(8) The smoke emission rate shall be determined by the method for the time being specified in British Standard 3841.

(9) The ash content shall be determined by the method for the time being specified in International Standard reference ISO 1171.

(10) The method to be used for calculating analyses of fuels to different bases shall be the method for the time being specified in International Standard reference ISO 1170.

(11) The method to be used for calculating the moisture content of wood fuels or 100% biomass product shall be the method for the time being specified in International Standard reference ISO 17225 or technical equivalent.

(12) A laboratory or testing facility may carry out any test, examination or analysis of any sample of fuel taken for the purposes of ensuring compliance with these Regulations in accordance with the methods specified in this Regulation.

Labelling

11. (1) The packaging of an approved solid fuel shall be labelled —

- (a) with the words “contents comply with the Air Pollution Act Regulations” and
- (b) with the registration number issued to the producer of the fuel under section 22E of the Act of 1987.

(2) A label for the purposes of paragraph (1) shall be —

- (a) non-detachable,
- (b) legible,
- (c) either in colour, or black and white, on a contrasting background, and
- (d) tamperproof.

(3) In addition to the requirements of paragraph (1), the label of the packaging of manufactured part biomass products shall include the percentage of biomass used in the product blend.

(4) The packaging of fuel which is not an approved solid fuel shall not purport to have complied with this Regulation.

Authorised persons

12. (1) A local authority or the Minister may appoint in writing such persons or class of persons, as the authority considers appropriate, to be an authorised person for the purposes of these Regulations and the Act of 1987.

(2) An authorised person may exercise any of the functions conferred on an authorised person under this Regulation, Regulation 8(4) or the Act of 1987 —

- (a) within the functional area of the local authority which appointed the authorised person, or
- (b) in the functional area of another local authority with which an agreement exists for the exercise or performance by an authorised person of the first-mentioned authority in the functional area of the other authority of the functions of an authorised person.

(3) An authorised person appointed under Regulation 10 of the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012 (S. I. No. 326 of 2012) who holds his or her authorisation immediately on the commencement of this Regulation continues to be an authorised person as if appointed under this Regulation.

(4) An authorised person may, in respect of any vehicle or any premises which, in his or her opinion, is being used in connection with the retailing or distribution of solid fuel —

- (a) inspect and take samples of any solid fuel on the vehicle or at the premises,
- (b) request from a producer and inspect a certificate of compliance or document under section 22E of the Act of 1987 issued to him or her,
- (c) inspect such records or such documents as the authorised person, having regard to all the circumstances, considers necessary for the purposes of these Regulations, or
- (d) require from the owner or occupier of the premises or from any other person on the premises, or require from the owner or operator of a vehicle, such information as the authorised person, having regard to all the circumstances, considers necessary for the purposes of these Regulations.

(5) Where an authorised person takes a sample of any solid fuel from any vehicle or premises under paragraph(4)(a), the authorised person shall —

- (a) immediately notify an appropriate person that a sample has been so taken and give a receipt in respect of the sample to the appropriate person, and
- (b) at the time of taking the sample, attach to the sample's container or packaging, as appropriate, a label specifying the date on which the sample was taken and an identification number for that sample.

(6) In this Regulation "appropriate person" means the owner or occupier of, or any other person who appears for the time being to be in charge of, the premises at which the sample is taken, or the owner or operator of a vehicle from which the sample is taken.

Laboratory analysis

13. (1) A sample taken under Regulation 12(4)(a) shall be forwarded to a laboratory accredited to ISO/IEC 17025 or equivalent for the relevant scope of analysis, or a testing facility engaged by the Agency or the local authority concerned for testing, analysis or examination of the sample for the purpose of detecting any failure to comply with the requirements required under Regulation 5.

(2) In proceedings for an offence under section 11 of the Act of 1987 a certificate purporting to be signed by a person employed at a laboratory or testing facility where a sample of solid fuel taken under Regulation 12(4)(a) was tested, analysed or examined stating the capacity in which the person is employed and that —

- (a) the person received the sample, identified by the information required under Regulation 12(5)(b) on the label attached to the sample's container,
- (b) for the period specified in the certificate, the person had the sample in his or her possession, and
- (c) the person —
 - (i) gave the sample to another person named in the certificate, or
 - (ii) carried out a procedure for the purpose of detecting in the sample evidence of failure to comply with the technical requirements required under Regulation 5,

is (without proof of the signature or the person or that he or she is or was employed at the laboratory or testing facility) unless the contrary is shown, evidence of the matters stated in the certificate.

(3) In proceedings for an offence under section 11 of the Act of 1987 the court may, if it considers that it is in the interests of justice, direct that oral evidence of the matters stated in a certificate referred to in paragraph (2) be given, and the court may for the purpose of receiving oral evidence adjourn the proceedings.

Revocation

14. The following are revoked:

- (a) the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012 (S. I. No. 326 of 2012);
- (b) the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2015 (S. I. No. 30 of 2015);
- (c) the Air Pollution (Fixed Payment Notice) Regulations 2015 (S. I. No. 633 of 2015);

- (d) the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2016 (S. I. No. 128 of 2016);
- (e) the Air Pollution Act 1987 (Registration of Fuel Bagging Operators and Suppliers, and Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2016 (S. I. No. 571 of 2016);
- (f) the Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2020 (S. I. No. 260 of 2020).

Regulation 5(6) and 7(2)

Schedule 1

Wording for wood over 2m³

Form of words in respect of wood sold in volumes of more than two cubic metres.

Wood is not suitable for burning until it has been dried to a moisture content of 25% or less. Wood should be stored and dried in a bright, well aired space until it reaches the required moisture level.

Form of words in respect of wood sold in volumes of more than two cubic metres from 1 September 2025.

Wood is not suitable for burning until it has been dried to a moisture content of 20% or less. Wood should be stored and dried in a bright, well aired space until the wood has reached the required moisture level.

*Regulation 10(3)***Schedule 2***Records for traceability and compliance*

(1) Records for traceability and compliance of fuels, within the scope of Regulation 10 (3) shall be —

- (a) kept in appropriate media (such as paper or electronic form),
- (b) retained for 6 years, and
- (c) stored or archived to ensure satisfactory accessibility, legibility, and freedom from corruption or intentional alteration.

(2) The types of records kept shall include, as a minimum, where applicable, the following:

- (a) delivery records for raw materials delivered to the producer, showing —
 - (i) the delivered weight,
 - (ii) the certificate of analysis,
 - (iii) traceability to certificate of analysis,
 - (iv) the delivery vehicle licence plate number or ship reference, and
 - (v) the date of delivery;
- (b) calibration and maintenance records for the weighbridges;
- (c) calibration and maintenance records for the weighing equipment and check weighing, where used;
- (d) records of investigations and timely corrective action following any weighing equipment malfunction or loss of accuracy;
- (e) production reports showing the number of products produced, and any product contained which was returned to the stockpile;
- (f) annual stocktakes of raw materials and final product on year end or nearest working day;
- (g) accreditation certificates to I.S. EN ISO/IEC 17025, or equivalent, as carrying out testing to the applicable standard, for all calibration contractors and analytical laboratories which carry out work relevant to the process;
- (h) product treatment records (if any);
- (i) sales records for all fuel sold;
- (j) market surveillance records (if any);
- (k) feedback and complaints records (if any);
- (l) production records confirming control parameters (quality);
- (m) records of production runs (duration, product, quantity).



GIVEN under my Official Seal,
20 October 2022.

EAMON RYAN,
Minister for the Environment,
Climate and Communications.

EXPLANATORY NOTE

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

The purpose of the Regulations is to regulate the sale and distribution of solid fuel used for space or water heating in domestic or licensed premises (such as public houses or hotels). Solid fuel may only be distributed as an approved solid fuel that meets the requirements set out in the Regulations.

Regulation 1 is the citation (title) and commencement. The Regulations have effect from 31 October 2022.

Regulation 2 gives an interpretation to words and phrases used in the Regulations.

Regulation 3 prohibits the distribution or sale of solid fuel for heating homes or licensed premises, such as public houses or hotels, which is not an approved fuel in compliance with technical requirements set out in Regulation 5.

Regulation 4 prohibits the sale of turf via online sales channels, retail premises or other public places but allows only those with rights in relation to turf cutting to distribute turf to others as per traditional customary practices.

Regulation 5 introduces new technical requirements that will apply to solid fuels placed on the market, sold or distributed across the State for use in domestic and licensed premises

Regulation 6 obliges a producer to register on the EPA's fuel register in order to place solid fuel on the market or produce or distribute it. It sets out the information and fee required for application for registration, the validity period of registration and requirements related to the display of registration details.

Regulations 7 and 8 set out the responsibilities of producers and retailers.

Regulation 9 outlines the responsibilities for all those involved in the transportation of solid fuel.

Regulation 10 provides for the certification process to ensure that all fuels placed on the market meet the new technical requirements.

Regulation 11 provides for labelling requirements on solid fuel packaging.

Regulation 12 provides enforcement measures by authorised persons.

Regulation 13 provides for laboratory testing of samples taken by authorised persons.

Regulation 14 revokes the previous Regulations in respect of solid fuel.

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