



STATUTORY INSTRUMENTS.

S.I. No. 108 of 2022

EUROPEAN UNION (MARKET SURVEILLANCE) (COMPLIANCE WITH CERTAIN PRODUCTS) REGULATIONS 2022.

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I, EAMON RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019¹, in so far as it relates to products that are subject to the Union harmonised legislation referred to in Annex I thereto at reference numbers 9, 10, 13, 16, 17, 21, 33, 39, 59, 64 and 67, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Market Surveillance) (Compliance with Certain Products) Regulations 2022.

Application

2. These Regulations apply to products that are subject to the Union harmonised legislation listed in Annex I to the MSA Regulation at reference numbers 9, 10, 13, 16, 17, 21, 33, 39, 59, 64 and 67, being given effect to in the case of the Directive referred to at—

- (a) reference number 9, by the European Union (Packaging) Regulations 2014 (S.I. No. 282 of 2014),
- (b) reference number 10, by the European Communities Act 1972 (Environmental Specifications for Petrol, Diesel Fuels and Gas Oils for use by non-road mobile machinery, including inland waterway vessels, agricultural and forestry tractors, and recreational craft) Regulations 2011 (S. I. No. 155 of 2011),
- (c) reference number 13, by the European Union (End-of-Life Vehicles) Regulations 2014 (S.I. No. 281 of 2014),
- (d) reference number 17, by the European Union (Paints, Varnishes, Vehicle Refinishing Products and Activities) Regulations 2012 (S. I. No. 564 of 2012),
- (e) reference number 21, by the European Union (Batteries and Accumulators) Regulations 2014 (S.I. No. 283 of 2014), and
- (f) reference number 39, by the European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2012 (S.I. No. 513 of 2012).

¹ OJ No. L 169, 25.6.2019, p. 1

Interpretation

3. (1) In these Regulations —

“authorised officer” means a person appointed under Regulation 7;

“MSA” means the Environmental Protection Agency;

“MSA Regulation” means Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019;

“product” means a product that is subject to the Union harmonised legislation to which these Regulations apply.

(2) A reference in these Regulations to an Article, unless otherwise indicated, is a reference to an Article of the MSA Regulation.

(3) A word or expression that is used in these Regulations and is also used in the MSA Regulation has, unless the contrary intention appears, the same meaning in these Regulations as it has in the MSA Regulation.

Designation of market surveillance authority

4. The Environmental Protection Agency is the market surveillance authority for the purposes of organising and carrying out market surveillance in the State as provided for in the MSA Regulation in respect of products that are subject to the Union harmonised legislation to which these Regulations apply.

Failure to cooperate with MSA

5. Where the MSA considers an economic operator is not complying with Article 7(1) or an information society service provider is not complying with Article 7(2), the MSA may apply to the High Court for an order directing compliance in accordance with the terms of the order. The court may make such order as it sees fit.

Contravention of MSA Regulation

6. (1) A person who places a product on the market in contravention of Article 4 commits an offence.

(2) An economic operator who fails to take corrective measures required under Article 16 commits an offence.

(3) A person who puts a product into circulation, which has been suspended under Article 26(1) from free circulation, in contravention of Article 26 commits an offence.

(4) A person who places on the market a product, which has been prohibited under Article 28 (1) or (2) from being placed on the market, in contravention of Article 28 commits an offence.

(5) A person who commits an offence under this Regulation is liable —

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €250,000.

Authorised officers

7. (1) The MSA may appoint persons to be authorised officers for the purpose of ensuring compliance with the MSA Regulation in respect of the products that are subject to the Union harmonised legislation to which these Regulations apply.

(2) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and when exercising a power conferred on him or her under this Regulation, shall, if requested by a person thereby affected, produce the warrant of his or her appointment, or a copy of it, to that person and a form of personal identification.

(3) An authorised officer may, for the purpose of ensuring that MSA Regulation is being complied with in respect of products, do any of the following:

- (a) enter at any reasonable time any premises or place, at which there are reasonable grounds to believe that any product or equipment relating thereto is or is likely to be found, and search and inspect the premises or place or product or equipment found there and any certificates, books, documents or records relating to such product or equipment or the placing of it on the market;
- (b) secure for later inspection any premises or place or part of it or any product or equipment relating thereto or certificates, books, documents or records relating to such are kept or there are reasonable grounds for believing that such are contained or kept;
- (c) require any person in charge of the premises or place or product or equipment relating thereto to produce to him or her any books, documents or records relating to such which are in the person's power or control (and in the case of such information in a non-legible form to reproduce it in a legible form) and to give to him or her such information as the authorised officer may reasonably require in relation to any entries in such books, documents or records;
- (d) inspect and take extracts from or make copies of any such books, documents or records (including, in the case of information in a non-legible form, a copy of or extract from such information in a legible form);
- (e) remove and retain such books, documents or records for such period as may be reasonable for further examination;
- (f) require any person in charge of the premises or place to maintain such books, documents or records for such period of time, as may be reasonable, as he or she directs;
- (g) require any person in charge of the premises or place or such product or equipment to give him or her any information which he or she may reasonably require relating to any product found there;
- (h) take without payment of compensation any necessary samples of any such product or equipment;
- (i) carry out or have carried out on the sample so taken such analyses, examinations, tests and inspections as he or she considers necessary or expedient;

- (j) take photographic or video evidence of the product or equipment found there.
- (4) Where an authorised officer in exercise of his or her powers under this Regulation is prevented from entering any premises or place, an application may be made under paragraph (6) for a warrant to authorise such entry.
- (5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling, unless he or she has obtained a warrant under paragraph (6) authorising such entry.
- (6) If, on the sworn information of an authorised officer, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that information or any item required by an authorised officer for the purpose of the MSA Regulation is held at any premises or any place, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers and members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant, if so requested, to enter those premises or that place, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this Regulation.
- (7) Where an authorised officer in the exercise of his or her powers under this Regulation finds any product to it to which these Regulations apply which is prohibited under Article 26 from being in free circulation, or is prohibited under Article 28 from being placed on the market, the officer may serve on the person in charge of the premises or place or the equipment where it is found a notice in writing addressed to the operator concerned prohibiting the circulation or the placing on the market, as the case may be, of the product or equipment relating to it and requiring its disposal as set out in the notice. If the product is not disposed of in accordance with the notice, an authorised officer may cause the product or equipment to be seized for disposal, the cost of which shall be borne by the operator.
- (8) An operator who fails to comply with a notice under paragraph (7) 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.
- (9) A person who –
 - (a) without reasonable excuse, fails or refuses to comply with any request or requirement made by an authorised officer under this Regulation (other than under paragraph (7)),
 - (b) obstructs, impedes or interferes with an authorised officer in the exercise by that officer of a power under this Regulation,
 - (c) gives to an authorised officer information that is false or misleading in a material respect, or
 - (d) alters, suppresses or destroys –
 - (i) any certificate, book, document or record which the person concerned has been required to produce, or reasonably expected to be required to produce, or
 - (ii) any notice served under paragraph (7),

commits an offence and is liable on summary conviction to a class A fine.

Corrective measures

8. (1) The MSA may require an economic operator to take appropriate action to bring an instance of non-compliance with MSA Regulation in respect of a product to an end to eliminate the risk.

(2) Where the MSA considers that an economic operator is failing to take corrective action required by the MSA under paragraph (1) or where the non-compliance or the risk persists, the MSA may direct—

- (a) the corrective action be taken in accordance with the direction,
- (b) prohibit or restrict the making available of the product on the market, or
- (c) order that the product be withdrawn.

(3) An economic operator who fails to comply with paragraph (2) 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.

Elimination of serious risk

9. (1) Where the MSA considers there are no other effective means to eliminate a serious risk, it may—

- (a) require the removal of content referring to the related products from an online interface or require the explicit display of a warning to end users when they access an online interface, or
- (b) where a requirement according to paragraph (a) has not been complied with, require information society service providers to restrict access to the online interface, including by requesting a relevant third party to implement such measures.

(2) A person who fails to comply with paragraph (1) 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.

Service

10. (1) Subject to paragraph (2), any notice, direction or requirement under these Regulations or the MSA Regulation shall be addressed to the person concerned by name and may be given -

- (a) by delivering it to the person,

- (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in the case in which an address for service has been furnished, at that address,
 - (c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address, or
 - (d) by electronic communication, if the person concerned has agreed to service of it by such means, provided that there is a facility for confirming receipt of the electronic communication and that such receipt has been confirmed.
- (2) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 (No. 38 of 2014) shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.
- (3) Where a notice, direction or requirement has been sent to a person in accordance with paragraph (1)(c), it is deemed to have been duly served on or given to the person on the third working day after the day on which it was so sent.

Costs

11. The MSA may recover from the relevant economic operator the totality of the costs of its activities with respect to instances of non-compliance, including those referred to in Article 15(2).

Summary proceedings

12. Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the MSA or the Minister for the Environment, Climate and Communications.



GIVEN under my Official Seal,
28 February, 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).

Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products introduces strengthened market surveillance powers to provide for the free movement of relevant products within the EU. The relevant products are regulated in accordance with EU harmonised legislation specified in the annexes to Regulation (EU) 2019/1020.

These Regulations strengthen the role of the market surveillance authority (the Environmental Protection Authority) in respect of environmental legislation specified in Annex 1 (at reference numbers 9, 10, 13, 16, 17, 21, 33, 39, 59, 64 and 67) to Regulation (EU) 2019/1020.

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