

2018 No. 162

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Microbeads) (Scotland)
Regulations 2018**

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| <i>Made</i> - - - - | <i>17th May 2018</i> |
| <i>Laid before the Scottish Parliament</i> | <i>21st May 2018</i> |
| <i>Coming into force</i> - - | <i>19th June 2018</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 140(1)(b) and (c), (3)(c) and (d), and (9) of the Environmental Protection Act 1990(a) and all other powers enabling them to do so.

In accordance with section 140(6) of that Act(b), they have published notices in the London Gazette and in the Edinburgh Gazette and have considered the representations made to them in accordance with those notices.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Protection (Microbeads) (Scotland) Regulations 2018 and come into force on 19th June 2018.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“authorised purpose” means the purpose of determining whether an offence under regulation 3(1) or (2) has been or is being committed;

“enforcement officer” means a person authorised under regulation 5;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c);

“microbead” means any water-insoluble solid plastic particle of less than or equal to 5mm in any dimension;

“plastic” means a synthetic polymeric substance that can be moulded, extruded or physically manipulated into various solid forms and that retains its final manufactured shape during use in its intended applications;

(a) 1990 c.43. Section 140(3)(c) was amended by S.I. 1999/1108. The functions of the Secretary of State under section 140, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) The requirement to consult the Advisory Committee on Hazardous Substances formerly established under section 140(5) of the 1990 Act was removed by S.I. 2012/1923.

(c) 1994 c.39. Section 2 was amended by the Environment Act 1995 c.25, schedule 27, paragraph 232(1).

“rinse-off personal care product” means any substance, or mixture of substances, manufactured for the purpose of being applied to any relevant human body part in the course of any personal care treatment, by an application which entails at its completion the prompt and specific removal of the product (or any residue of the product) by washing or rinsing with water, rather than leaving it to wear off or wash off, or be absorbed or shed, in the course of time;

and for this purpose—

- (a) a “personal care treatment” means any process of cleaning, protecting or perfuming a relevant human body part, maintaining or restoring its condition or changing its appearance; and
- (b) a “relevant human body part” is—
 - (i) any external part of the human body (any part of the epidermis, hair system, nails or lips);
 - (ii) the teeth; or
 - (iii) mucous membranes of the oral cavity;

“supply”, in relation to a rinse-off personal care product, means supply by way of sale or its presentation as a promotional prize or gift in the course of a business.

Offences

3.—(1) A person who, in the manufacture of any rinse-off personal care product, uses microbeads as an ingredient of that product commits an offence.

(2) A person who supplies, offers to supply or has in possession for supply any rinse-off personal care product containing microbeads commits an offence.

(3) A person who commits an offence under paragraph (1) or (2) is liable—

- (a) on summary conviction, to a fine not exceeding £5,000;
- (b) on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine not exceeding £5,000 or both.

Offences by bodies corporate

4.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Enforcement

5.—(1) A local authority may authorise any person to exercise in its area, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 6, if that person appears suitable to exercise them.

(2) An authorisation under paragraph (1) must be in writing.

Powers of entry and examination etc.

6.—(1) The powers which an enforcement officer may be authorised to exercise are—

- (a) to enter at any reasonable time any premises (other than premises used wholly or mainly as a dwelling) which the enforcement officer has reason to believe it is necessary to enter for an authorised purpose;
- (b) when entering any premises under sub-paragraph (a)—
 - (i) to be accompanied by another enforcement officer; and
 - (ii) to bring any equipment or materials required for any authorised purpose for which the power of entry is being exercised;
- (c) on entering any premises under sub-paragraph (a)—
 - (i) to make such examination and investigation as may in any circumstances be necessary;
 - (ii) to take such measurements and photographs and make such recordings as the enforcement officer considers necessary for the purpose of any such examination or investigation; and
 - (iii) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any documents which it is necessary for the enforcement officer to see for the purposes of any such examination or investigation and to inspect and take copies of the document;
- (d) as regards any premises which an enforcement officer has power to enter under sub-paragraph (a), to direct that those premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of examination or investigation under sub-paragraph (c);
- (e) to take any samples, or cause samples to be taken, of any articles or substances found in or on any premises which an enforcement officer has power to enter under sub-paragraph (a), and to cause any such articles or substances to be analysed or tested;
- (f) in the case of any such sample, to take possession of it and to retain it for so long as is necessary for all or any of the following purposes:—
 - (i) to examine it, and subject it to any process or test, or cause it to be examined;
 - (ii) to ensure that it is not tampered with before the examination is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations.

(2) Except in an emergency, where an enforcement officer proposes to enter any premises and—

- (a) entry has been refused and the enforcement officer apprehends on reasonable grounds that the use of force may be necessary to effect entry; or
- (b) the enforcement officer apprehends on reasonable grounds that entry is likely to be refused and that the use of reasonable force may be necessary to effect entry,

any entry on to those premises by virtue of paragraph (1)(a) may only be effected under the authority of a warrant by virtue of paragraph (3).

(3) If it is shown to the satisfaction of a sheriff, summary sheriff or justice of the peace on sworn information in writing—

- (a) that there is reasonable ground for entry into the premises for the purpose for which entry is required; and

(b) that one or more of the conditions specified in paragraph (4) below is fulfilled, the sheriff, summary sheriff or justice of the peace may by warrant authorise the enforcement officer to enter the premises, in accordance with the warrant and, if need be, by force.

(4) The conditions mentioned in paragraph (3)(b) above are—

- (a) that admission to any premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

(5) A warrant issued in pursuance of paragraph (3) above shall continue in force until the purpose for which the entry is required has been satisfied.

(6) Nothing in paragraph (1)(c)(iii) compels the production by a person of any documents of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

(7) An enforcement officer may only exercise the powers in paragraph (1) if the enforcement officer has reasonable cause to believe that an offence under regulation 3 has been committed.

(8) An enforcement officer seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—

- (a) a supplier of rinse-off personal care products;
- (b) a manufacturer of a rinse-off personal care product or employee of such a manufacturer; or
- (c) the owner or occupier of any premises in which the enforcement officer seeks to exercise the power concerned.

(9) In this regulation—

“document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing; and

“emergency” means a case which it appears to the enforcement officer in question—

- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health; or
- (b) that the circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or effect a remedy.

R CUNNINGHAM
A member of the Scottish Government

St Andrew's House,
Edinburgh
17th May 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the use of microbeads as an ingredient in the manufacture of rinse-off personal care products and the sale of any such products containing microbeads and come into force on 19th June 2018.

Regulation 3 provides that it is an offence for a person to manufacture or for a person to supply, offer to supply, or have in possession for supply any rinse off personal care product containing microbeads. A person found guilty of such an offence will be liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to a term of imprisonment not exceeding 2 years or a fine not exceeding £5,000 or both.

Regulation 4 makes provision for offences by bodies corporate, Scottish partnerships or unincorporated associations.

Regulation 5 provides that the local authority may authorise any person to exercise any of the powers specified in regulation 6.

Regulation 6 gives enforcement officers powers of entry to carry out the necessary investigations in order to determine whether an offence under regulation 3 has been committed.

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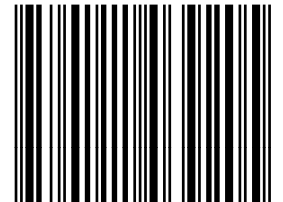
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