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STATUTORY INSTRUMENTS

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**2023 No. 982**

**The Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023**

**PART 1**

**Introduction**

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023.

(2) These Regulations come into force on the twenty-fourth day after the day on which they are made.

(3) These Regulations extend to England and Wales and apply in relation to England only.

**Interpretation**

2. In these Regulations—

“compliance notice” has the meaning given by paragraph 1(1)(b) of Schedule 1;

“end user” means any person to whom a product is supplied, other than—

- (a) for the purposes of supplying it, in the course of a business, to another person, or
- (b) for the purposes of a manufacturing process;

“enforcement undertaking” has the meaning given by paragraph 17(2) of Schedule 1;

“expanded or foamed extruded polystyrene” means polystyrene where the polymeric material is expanded at any point during its manufacture by any means (such as heat from steam or expansion during cooling) using any blowing agent (such as butane, pentane or propane);

“fixed monetary penalty” has the meaning given by paragraph 1(1)(a) of Schedule 1;

“local authority” means—

- (a) in relation to the City of London, the Common Council for the City of London,
- (b) in relation to an area in the rest of London, the London borough council for that area,
- (c) in relation to the Isles of Scilly, the Council of the Isles of Scilly,
- (d) in relation to an area in the rest of England, the county council for that area or, where there is no county council for that area, the district council for that area;

“plastic” means a material consisting of polymer as defined in Article 3(5) of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)(1), to which additives or other substances may have been added, and

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(1) EUR 2006/1907.

which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified;

“regulator” means a local authority;

“single-use plastic balloon stick” means a stick, including its attachment mechanism, that is—

- (a) designed or intended to be attached to and support balloons,
- (b) made wholly or partly from plastic, and
- (c) not designed or intended to be re-used;

“single-use plastic cutlery” means any item that is—

- (a) designed or intended to be used as, or in the same way as, a knife, fork, spoon or chopstick,
- (b) made wholly or partly from plastic, and
- (c) not designed or intended to be re-used;

“single-use plastic plate, tray or bowl” means any item that is—

- (a) designed or intended to be used as a plate, tray or bowl,
- (b) made wholly or partly from plastic, and
- (c) not designed or intended to be re-used;

“single-use polystyrene cup” means a cup, with or without a lid or cover, that is—

- (a) made wholly or partly from expanded or foamed extruded polystyrene, and
- (b) not designed or intended to be re-used;

“single-use polystyrene food or drink container” means a receptacle such as a box, with or without a lid or cover, that is—

- (a) made wholly or partly from expanded or foamed extruded polystyrene,
- (b) not designed or intended to be re-used; and
- (c) used to contain food or drink that is ready to be consumed without further preparation;

“stop notice” has the meaning given by paragraph 9(2) of Schedule 1;

“supply” means supply, whether by way of sale or not;

“third party undertaking” has the meaning given by paragraph 3(1) of Schedule 1.

## PART 2

### Offences

#### **Offence: supply of single-use plastic plates, trays or bowls to an end user**

3.—(1) A person who, in the course of a business, supplies or offers to supply to an end user a single-use plastic plate, tray or bowl is guilty of an offence.

(2) Paragraph (1) does not apply to the supply of a single-use plastic plate, tray or bowl that is packaging.

(3) Paragraph (1) is subject, in respect of a tray or bowl, to section 2 of the United Kingdom Internal Market Act 2020(2).

(4) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

(5) In this regulation, “packaging” has the same meaning as in regulation 3 of the Packaging (Essential Requirements) Regulations 2015(3).

**Offence: supply of single-use plastic balloon sticks and cutlery**

4.—(1) A person who, in the course of a business, supplies or offers to supply either of the following is guilty of an offence—

- (a) a single-use plastic balloon stick;
- (b) single-use plastic cutlery.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

**Offence: supply of single-use polystyrene containers and cups**

5.—(1) A person who, in the course of a business, supplies or offers to supply either of the following is guilty of an offence—

- (a) a single-use polystyrene food or drink container;
- (b) a single-use polystyrene cup.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

## PART 3

### Offences: general

**Defence of due diligence for suppliers**

6.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under Part 2 of these Regulations it is a defence for a person (“P”) to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice must—

- (a) give any information in P’s possession which identifies or assists in identifying the person who—
  - (i) committed the act or default; or
  - (ii) supplied the information on which P relied; and
- (b) be served on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied on the information, having regard in particular to—

- (a) the steps that P took, and those which might reasonably have been taken, for the purposes of verifying the information; and
- (b) whether P had any reason to disbelieve the information.

(5) In this regulation, “third party allegation” means an allegation that the commission of the offence was due to—

- (a) the act or default of another person; or
- (b) reliance on information supplied by another person.

#### **Time limit for the prosecution of offences**

7.—(1) An information relating to an offence under Part 2 of these Regulations may be tried if it is laid within twelve months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) No proceedings are to be brought more than three years after the commission of the offence.

## **PART 4**

### **Enforcement and civil sanctions**

#### **Enforcement**

8.—(1) A regulator may authorise any person to exercise, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 10, if that person appears to the regulator suitable to exercise them.

- (2) An authorisation under paragraph (1) must be in writing.
- (3) In this Part—

“authorised purpose” means the purpose of determining whether an offence under Part 2 has been or is being committed, or any requirement of a compliance notice, a stop notice or an enforcement undertaking under these Regulations has been or is being contravened;

“enforcement officer” means a person authorised under paragraph (1).

#### **Civil sanctions**

9. Schedule 1 (civil sanctions) has effect for the purpose of the enforcement of an offence under Part 2 of these Regulations.

#### **Powers of entry and examination etc.**

10.—(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 suspect 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 the authorised purpose in question;
- (c) on entering any premises under sub-paragraph (a)—
  - (i) to make such examination and investigation as may 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;
  - (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) Where an enforcement officer proposes to enter any premises and—
- (a) entry has been refused or the enforcement officer apprehends on reasonable grounds that entry is likely to be refused, and
  - (b) the enforcement officer apprehends on reasonable grounds that the use of reasonable force may be necessary to effect entry,
- any entry onto those premises by virtue of paragraph (1)(a) may only be effected under the authority of a warrant.
- (3) 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 disclosure in an action in the County Court or High Court.
- (4) An enforcement officer may only exercise the powers in paragraph (1) in the reasonable belief that an offence under Part 2 of these Regulations has been or is being committed.
- (5) 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 single-use plastic plates, trays or bowls, balloon sticks, or cutlery; or single-use polystyrene food or drink containers, or cups;
  - (b) an employee of a supplier referred to in sub-paragraph (a); or
  - (c) the owner or occupier of any premises in which the enforcement officer seeks to exercise the power concerned.
- (6) If a justice of the peace, on sworn information in writing, is satisfied—
- (a) that there are reasonable grounds to enter any premises in exercise of the power in paragraph (1)(a); and
  - (b) that any of the conditions in paragraph (2)(a) or (b) is met,
- the justice of the peace may by warrant authorise an enforcement officer to enter the premises, if need be by reasonable force.

### **Publication of information about enforcement action**

**11.—**(1) Where a regulator imposes civil sanctions under these Regulations in relation to an offence under Part 2, the regulator must from time to time publish—

- (a) the cases in which the civil sanction has been imposed;
  - (b) where the civil sanction is a fixed monetary penalty or compliance notice, the cases in which a third party undertaking has been accepted; and
  - (c) the cases in which an enforcement undertaking has been entered into.
- (2) In paragraph (1)(a), the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.
- (3) This regulation does not apply in cases where the regulator considers that publication would be inappropriate.

## PART 5

### Supplementary

#### Guidance

**12.**—(1) Each regulator must publish guidance about its use of civil sanctions under these Regulations in relation to an offence under Part 2.

(2) In the case of guidance relating to a fixed monetary penalty, compliance notice or stop notice, the guidance must contain the relevant information set out in paragraph (3).

(3) The relevant information referred to in paragraph (2) is information as to—

- (a) the circumstances in which the penalty or notice is likely to be imposed;
- (b) the circumstances in which it may not be imposed;
- (c) rights to make representations and objections and rights of appeal; and
- (d) in the case of a fixed monetary penalty, the amount of the penalty, how liability for the penalty may be discharged and the effect of discharge.

(4) The regulator must revise the guidance where appropriate.

(5) The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under this regulation.

(6) The regulator must have regard to the guidance or revised guidance in exercising its functions.

#### Review

**13.**—(1) The Secretary of State must—

- (a) as soon as reasonably practicable after the end of the period of three years from the date on which these Regulations come into force carry out a review of the operation of the provisions in Part 4 (enforcement and civil sanctions) and Schedule 1;
- (b) from time to time carry out a review of the regulatory provision contained in these Regulations (including Part 4 and Schedule 1); and
- (c) publish a report setting out the conclusions of any review.

(2) In the case of a review under paragraph (1)(a)—

- (a) section 67 of the Regulatory Enforcement and Sanctions Act 2008 requires that the review must in particular consider whether the provision has implemented its objectives efficiently and effectively;
- (b) the Secretary of State, in conducting the review, must consult such persons as the Secretary of State considers appropriate; and

- (c) the Secretary of State must lay a copy of the report under paragraph (1)(c) before Parliament.
- (3) In the case of a review under paragraph (1)(b)—
  - (a) the first report must be published before the expiry of the period ending five years from the date on which these Regulations come into force;
  - (b) subsequent reports must be published at intervals not exceeding five years; and
  - (c) section 30(4) of the Small Business, Enterprise and Employment Act 2015<sup>(4)</sup> requires that a report published under this regulation must, in particular—
    - (i) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(b);
    - (ii) assess the extent to which those objectives are achieved;
    - (iii) assess whether those objectives remain appropriate; and
    - (iv) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (4) In this regulation “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

## PART 6

### Amendments

#### **Amendment of the Environmental Protection (Microbeads) (England) Regulations 2017**

14. The Environmental Protection (Microbeads) (England) Regulations 2017<sup>(5)</sup> are amended in accordance with Schedule 2.

#### **Amendment of the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020**

15. The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020<sup>(6)</sup> are amended in accordance with Schedule 3.

#### **Amendments: transitional provision**

16. In relation to any offence for which a variable monetary penalty has been imposed, or a notice of intent to impose a variable monetary penalty has been served, before these Regulations came into force—

- (a) the Environmental Protection (Microbeads) (England) Regulations 2017 apply as if the amendments in paragraph 6 of Schedule 2 had not been made;
- (b) the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 apply as if the amendments in paragraphs 2(c) and 7 of Schedule 3 had not been made.

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<sup>(4)</sup> 2015 c. 26.

<sup>(5)</sup> S.I. 2017/1312, amended by the Sentencing Act 2020 (c. 17) and by S.I. 2022/500 (C. 18) and 2023/149.

<sup>(6)</sup> S.I. 2020/971, amended by S.I. 2022/500 (C. 18) and 2023/149.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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7th September 2023

Rebecca Pow  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs