STATUTORY INSTRUMENTS

2017 No. 1312

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Protection (Microbeads) (England) Regulations 2017

Made - - - - 19th December 2017

Coming into force in accordance with regulation 1

The Secretary of State—

(a) has published a notice in the London Gazette as required by section 140(6)(b) of the Environmental Protection Act 1990(**1**) ("the 1990 Act") and has considered the representations made in accordance with that notice;

(b) has consulted in accordance with section 60 of the Regulatory Enforcement and Sanctions Act 2008(**2**) ("the 2008 Act") and is satisfied (in accordance with section 66 of that Act) that local authorities (who are the regulator for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations;

(c) considers it appropriate to make these Regulations for the purpose of preventing the substance or articles specified in them from causing pollution of the environment and harm to the health of animals.

In accordance with section 62(3) of the 2008 Act, a draft of these Regulations has been laid before, and approved by resolution of, each House of Parliament.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 140(1)(b) and (c), (3)(c) and (d), and (9) of the 1990 Act(**3**) and sections 36, 42, 46, 48, 49, 50, 52 to 55 and 62(2) of the 2008 Act(**4**).

(**1**) 1990 c. 43.
(**2**) 2008 c. 13. For the purposes of these Regulations, "the regulator" has the meaning given by regulation 2, rather than the meaning given by section 37 of the 2008 Act.
(**3**) 1990 c. 43. Section 140(3)(c) was amended by S.I. 1999/1108.
(**4**) 2008 c. 13. Section 36(2) was amended by the Enterprise Act 2016, section 21(1), (2)(f); section 42(6) was amended by S.I. 2015/664; section 49(1) was amended by S.I. 2015/664.

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Environmental Protection (Microbeads) (England) Regulations 2017.

(2) Except as provided in paragraphs (3) and (4), these Regulations come into force 21 days after the day on which they are made.

(3) Paragraph (2) of regulation 3 and, so far as it relates to that paragraph, paragraph (3) of that regulation, and regulation 4, come into force 6 months after the day on which these Regulations are made.

(4) In relation to an offence under regulation 3(2), regulations 6 to 8 come into force 6 months after the day on which these Regulations are made.

(5) These Regulations extend to England and Wales, but apply in relation to England 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, or any requirement of a compliance notice, a stop notice or an enforcement undertaking under these Regulations has been or is being contravened;

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

"enforcement undertaking" has the meaning given by paragraph 17 of the Schedule;

"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;

"the regulator", for the purposes of the enforcement of an offence under regulation 3(1) or (2), means, in relation to any place at which a rinse-off personal care product is manufactured or supplied, the local authority with responsibility for the area in which the place is situated;

and for this purpose "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;

"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 (including any part of the epidermis, hair system, nails or lips);

(ii) the teeth; or

(iii) mucous membranes of the oral cavity;

"stop notice" has the meaning given by paragraph 9(2) of the Schedule;

"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;

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

PART 2

Offences

Offences

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

(2) A person who supplies, or offers to supply, any rinse-off personal care product containing microbeads is guilty of an offence.

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

Defence of due diligence for suppliers

4.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under regulation 3(2) 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 upon the information, having regard in particular—

(a) to the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) to 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—

(a) to the act or default of another person; or

(b) to reliance on information supplied by another person.

Time limit for the prosecution of offences

5.—(1) An information relating to an offence under regulation 3 that is triable by a magistrates' court may be so 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 3

Enforcement and Civil Sanctions

Enforcement

6.—(1) The 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 8, 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, "enforcement officer" means a person authorised under paragraph (1).

Civil sanctions

7. The Schedule (civil sanctions) has effect for the purpose of the enforcement of an offence under regulation 3(1) or (2).

Powers of entry and examination etc.

8.—(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 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 or 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) Except in an emergency, 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 regulation 3 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 a rinse-off personal care product or an employee of such a supplier;

(b) a manufacturer of a rinse-off personal care product or an 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.

Publication of enforcement action

9.—(1) Where the regulator imposes civil sanctions under these Regulations in relation to an offence under regulation 3, 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 variable 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.