



STATUTORY INSTRUMENTS.

S.I. No. 611 of 2022



EUROPEAN UNION (EXTENDED PRODUCER RESPONSIBILITY)
(BALLOONS) REGULATIONS 2022

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I, EAMON RYAN, Minister for the Environment, Climate and Communications, having regard to section 4 of the European Communities Act 2007 (No. 18 of 2007) and in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive (EU) 2019/904/EC of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastics on the environment¹ hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Extended Producer Responsibility) (Balloons) Regulations 2022.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires:

“Agency” means the Environmental Protection Agency established by section 19 of the Environmental Protection Agency Act 1992 (No.7 of 1992);

“approved body” means any person, association or body corporate approved by the Minister in accordance with Part III of these Regulations;

“authorised person” means a person who is appointed an authorised person in accordance with section 5(1) of the Principal Act;

“authorised representative” means any natural or legal person established within the State who has been appointed by written mandate from a producer, established in another Member State to fulfil the obligations of that producer, pursuant to these Regulations in the State;

“Certificate of membership” means a certificate issued by an approved body under Regulation 5;

“Companies Acts” means the Companies Acts 2014 and every other enactment which is to be read together with that Act;

“Directive” means Directive EU 2019/904/EC of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment;

¹ OJ No L155, 12.6.2019, p.1

“Minister” means the Minister for the Environment, Climate and Communications;

“packaging” means any material, container or wrapping, used for or in connection with the containment, transport, handling, protection, promotion, marketing or sale of any product or substance, including such material, container or wrapping as may be prescribed;

“placed on the market” means the first sale or supply of a relevant product for the purpose of trade or otherwise in the course of business in the State”;

“plastic” shall be construed in accordance with the Directive, including any guidelines published by the European Commission in accordance with Article 12 of the Directive;

“Principal Act” means the Waste Management Act 1996 (No.10 of 1996);

“producer” means any person, irrespective of the selling technique used, who is first to place a relevant product on the market in the State.

“Regulations of 2011” means the European Communities (Waste Directive) Regulations 2011-2020 (S.I. No 126 of 2011 and S.I. No.323 of 2020);

“Regulations of 2021” means the European Union (Single Use Plastics) (No.2) Regulations 2021 (S.I. No 516 of 2021);

“relevant products” means products listed in Section II (2) of Part E of the Annex to the Directive, including any guidelines published by the Commission in accordance with Article 12 of the Directive;

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context requires otherwise, the same meaning in these Regulations as it has in the Directive.

Scope

3. (1) These Regulations apply to balloons for domestic use and application, which are relevant products for the purposes of these Regulations.

(2) These Regulations do not apply to balloons for industrial or other professional use and applications that are not distributed to consumers.

PART II

ESTABLISHMENT OF AN EXTENDED PRODUCER RESPONSIBILITY SCHEME

Establishment of an Extended Producer Responsibility Scheme

4. (1) Producers shall establish an Extended Producer Responsibility Scheme (hereafter “the scheme”) to operate in respect of relevant products set out in Regulation 3.

(2) Producers may appoint a person to apply to the Minister in accordance with these Regulations to operate the scheme referred to in paragraph (1) on their behalf.

- (3) (a) The costs of operating the scheme shall be recouped from:
- (i) registration fees set by an approved body,
 - (ii) producer fees set by an approved body,
 - (iii) any other source created by an approved body.
- (b) An approved body shall set any producer and registration fees to meet only its costs of operation and not for profit.

PART III

APPROVED BODY

Functions of an Approved Body

5. (1) An approved body shall:
- (a) carry out all the functions for which they are approved effectively and in a financially sound manner,
 - (b) establish and maintain a register of all producers placing relevant products on the market in the State,
 - (c) audit the producers registered with it in accordance with these Regulations,
 - (d) issue a certificate of membership to all producers who fulfil their obligations under these Regulations,
 - (e) revoke a certificate of membership from all producers who fail to fulfil their obligations under these Regulations,
 - (f) provide the Minister and the Agency with information relating to producers registered with it in accordance with these Regulations,
 - (g) recoup from individual producers the costs referred to in Regulation 13(5)(a), to fund the awareness raising measures referred to in Regulation 6(1)(h),
 - (h) recoup from individual producers the costs referred to in Regulation 13(5)(b) and 13(5)(c), for payment to the Minister,
 - (i) gather relevant information from producers in connection with participation in the scheme,
 - (j) provide the Minister and Agency with all reasonable information they may seek in order to verify compliance with these Regulations and relevant requirements of the Directive.

Application for approval

6. (1) An application to the Minister for approval of a person to operate an Extended Producer Scheme shall be made in writing and accompanied by the following:

- (a) (i) where the applicant is a body corporate
 - I. a copy of Articles of Association and/or Constitution of the body corporate,
 - II. the appropriate certificate issued by the Companies Registration Office,
 - III. the names and addresses in the State of the officers of the body corporate or agent applying for approval and its board of directors,
 - IV. the registered office and the address of the secretary, if different from the registered office,
- (ii) where the applicant is not a body corporate, the names and addresses in the State of officers of the applicant.
- (b) proposals relating to corporate governance of the applicant in line with any guidance from the Minister in relation to such governance,
- (c) proposals for the composition of the board of the approved body,
- (d) a business plan in relation to the proposed scheme,
- (e) a financial plan in relation to the proposed scheme,
- (f) proposals for a contingency reserve to cover all the costs, including the consequential expenses, associated with the winding up of an approved body which has its approval revoked, goes into liquidation, examination or receivership or bankruptcy, as appropriate or enters into a scheme of arrangement or compromise in accordance with the provisions of section 449 of the Companies Act 2014,
- (g) proposals for the calculation of the costs referred to in Regulation 13(5), which shall be calculated in accordance with Article 8(4) of the Directive,
- (h) proposals relating to the awareness raising measures the approved body will take to inform consumers and incentivise responsible consumer behaviour as referred to in Article 10 of the Directive,
- (i) proposals relating to co-operation with other approved bodies,
- (j) proposals for supporting the Agency in the enforcement of these Regulations,
- (k) proposals in relation to Rules of Membership for members of the approved body together with details of the relevant participation fees,

- (l) proposals for an independent appeals process in the event of an application for membership being rejected or as appropriate revoked,
- (m) proposals for reconciliation and audit of information supplied by members,
- (n) proposals relating to the nature and frequency of information (including financial accounts) to be submitted by the body concerned to the Minister or to other such person as may be specified by the Minister,
- (o) such other information as may be specified in writing by the Minister for the purposes of this Regulation.

Grant or refusal of approval

7. (1) Subject to paragraph (3), the Minister may, by notice in writing, grant approval to a person for the purposes of this Part, or may refuse to grant such approval.

(2) Subject to Regulations 8 and 10, an approval granted by the Minister under this Regulation shall be for a period of not more than 5 years.

(3) An approval in accordance with the provisions of paragraph (1) shall be subject to such conditions as the Minister may specify as appropriate, including conditions relating to:

- (a) the Articles of Association and/or Constitution of the body corporate,
- (b) the appropriate certificate issued by the Companies Registration Office,
- (c) corporate governance,
- (d) the composition of the board of directors,
- (e) the business plan,
- (f) the financial plan,
- (g) a contingency reserve,
- (h) the calculation of the costs referred to in Regulation 13(5),
- (p) awareness raising measures to inform consumers and incentivise responsible consumer behaviour as referred to in Article 10 of the Directive,
- (i) co-operation with other approved bodies and individual producers,
- (j) co-operation with the Agency in the enforcement of these Regulations,
- (q) the Rules of Membership for members of the approved body and the membership fee structure,

- (r) an independent appeals process in the event of an application for membership being rejected or as appropriate revoked,
 - (s) the registration and certification of producers,
 - (t) the nature and frequency of information (including financial accounts) to be submitted by the body concerned to the Minister or to other such person as may be specified by the Minister,
 - (u) any other matters the Minister may consider appropriate.
- (4) Without prejudice to paragraph (3)(g), in the event that an approved body:
- (a) has its approval revoked in accordance with the provisions of Regulation 10,
 - (b) goes into liquidation, examination or receivership, as appropriate,
 - (c) enters into a scheme of arrangement or compromise in accordance with the provisions of section 449 of the Companies Act 2014,

the contingency reserve provided for in Regulation 6(f), shall not be used by any person or persons, including liquidator, examiner, receiver or, as appropriate, administrator concerned for any purpose, including the discharge of liabilities to creditors, whether secured creditors, preferential creditors, creditors claiming under retention of title, creditors with claims supported by guarantees or indemnities, ordinary creditors or, as appropriate, subordinated creditors, other than for fulfilling the obligations of the producer as laid down in these Regulations.

(5) The Minister may, by notice in writing, from time to time attach a new condition to or, as the case may be, vary any existing condition attached to an approval under this Regulation.

Review of approval

8. (1) Subject to paragraph (2), where it appears to the Minister that:
- (a) a review of an approval granted in accordance with the provisions of Regulation 7 is required because the Minister is of the opinion that there is a risk of a failure to comply with the approval, or
 - (b) for some other reason it is necessary in the interests of the environmentally sound management of relevant products,

the Minister may review an approval granted in accordance with the provisions of Regulation 7 or require the approved body to make a new application in accordance with the provisions of Regulation 6 for a renewal of an approval.

(2) Where the Minister proposes to review an approval granted in accordance with Regulation 7, or require the approved body to make a new application in accordance with the provisions of Regulation 6, the Minister shall:

- (a) give notice in writing to the approved body of the proposal and the reasons therefore,
- (b) specify a period of not less than 3 months within which the approved body may make a submission to the Minister in relation to the review or make new proposals as the case may be, and
- (c) consider any submissions, or proposals so made.

(3) Following consideration of any submissions or proposals made in accordance with paragraph (2), the Minister may issue a revised approval, varying any condition attaching to the approval or attach any additional conditions which he or she considers appropriate.

(4) The issue of a revised approval by the Minister on the basis of new proposals made by the approved body shall oblige the approved body to implement the new proposals upon which the Minister has confirmed approval.

Expiry of approval

9. Where an approval granted in accordance with the provisions of Regulation 7 or a revised approval granted in accordance with Regulation 8 is due to expire, the approved body concerned shall:

- (a) not later than 6 months before the expiry of the approval, notify the Minister, in writing, if it intends to cease operating as an approved body, or
- (b) not later than 6 months before the expiry of the approval, if intending to continue to operate as an approved body, make an application to the Minister under Regulation 6.

Revocation of approval

10. (1) Subject to paragraph (2), where it appears to the Minister that an approved body is not:

- (a) complying with the terms of its approval, or
- (b) complying with the conditions attached to such approval,

the Minister may revoke an approval under Regulation 7 or revised approval under Regulation 8.

- (2) (a) Where the Minister proposes to revoke an approval or revised approval, the Minister shall:
 - (i) give notice in writing to the approved body of the proposed decision and the reasons therefor,
 - (ii) specify a period of not less than 4 weeks within which the approved body may make a submission to the Minister in relation to the proposed decision, and
 - (iii) consider any submission so made.

- (b) Following his or her consideration of a submission made by the approved body, the Minister may decide:
 - (i) to seek proposals from the approved body for the purpose of issuing a revised approval in accordance with Regulation 8, or
 - (ii) revoke the approval or the revised approval.

Use of logo adopted by an approved body

11. No person shall, other than with the written consent of an approved body, display at any premises or on or in any product, packaging, advertisement or notice, any logo or other mark or symbol designed and adopted by that approved body.

Information to the Agency

12. The Minister may oblige an approved body to provide the Agency with any data necessary in relation to activities carried out by producers registered with that body, to enable the Agency to fulfil its obligations under these Regulations or the Directive.

PART IV

OBLIGATIONS OF PRODUCERS

13. (1) From the 31st December 2024, a producer shall not place a relevant product on the market in the State unless he or she is a member of an approved body.

(2) A producer who is established in another Member State or a country outside of the European Union shall appoint an authorised representative to fulfil the obligations of that producer pursuant to these Regulations.

(3) A producer established in the State and who places relevant products onto the market in any other Member State shall appoint an authorised representative in that Member State as the person responsible for fulfilling the obligation of that producer, pursuant to the Directive, in that Member State.

(4) A producer shall –

- (a) register with an approved body,
- (b) provide details to the approved body with whom they have registered of all relevant products they place on the market,
- (c) pay any registration and producer fee as required by the approved body,
- (d) furnish information in connection with their participation in the scheme, in such form and at such frequency as may be specified by the approved body with whom they are registered.

(5) The producer fees referred to at paragraph 4(c) shall provide that the following costs shall be covered in addition to those required under Regulation 30A(4) of the Regulations of 2011:

- (a) the costs of the awareness raising measures regarding relevant products referred to in Article 10 of the Directive,
- (b) the costs of cleaning up litter resulting from relevant products and the subsequent transport and treatment of that waste,
- (c) the costs of data gathering and reporting in accordance with point (c) of Article 8a(1) of Directive 2008/98/EC.

PART V ENFORCEMENT

Function of the Agency

14. The Agency shall be responsible for the enforcement of the provisions of these Regulations within the State and shall take such steps as are necessary for this purpose.

Authorised Persons

15. An authorised person may exercise the powers conferred on such a person under section 14 of the Principal Act for the purposes of enforcing these Regulations and, accordingly, a reference in that Act includes a reference to these Regulations.

PART VI MISCELLANEOUS

Offences

16. (1) Any person who contravenes or fails to comply with a provision or provisions of these Regulations shall be guilty of an offence.

(2) Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager secretary or other similar officer of the body corporate or a person who was purporting to act in any capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in

connection with his or her functions of management as if he or she were a director of the body corporate.

Prosecutions and Penalties

17. A prosecution for an offence determined in accordance with Regulation 16 will be subject to the penalties in section 10 of the Principal Act and prosecuted in accordance with sections 11, 12 and 13 of the Principal Act.



GIVEN under my Official Seal,
28 November, 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)

These Regulations further transpose Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

The regulations provide for the introduction of an extended producer responsibility scheme for balloons (except balloons for industrial or other professional uses and applications that are not distributed to consumers) and impose obligations on producers, or their nominated authorised representative, who place balloons on the Irish market.

The European Commission has published guidelines on single-use plastic products to further clarify whether a product is to be considered a single-use product for the purposes of Directive (EU) 2019/904 (Commission Notice 2021/C 216/01).

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