



STATUTORY INSTRUMENTS.

S.I. No. 571 of 2016

AIR POLLUTION ACT 1987 (REGISTRATION OF FUEL BAGGING
OPERATORS AND SUPPLIERS, AND MARKETING, SALE,
DISTRIBUTION AND BURNING OF SPECIFIED FUELS)
(AMENDMENT) REGULATIONS 2016

AIR POLLUTION ACT 1987 (REGISTRATION OF FUEL BAGGING
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(AMENDMENT) REGULATIONS 2016

I, DENIS NAUGHTEN, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by sections 6 (as amended by Section 8 of the Protection of the Environment Act 2003 (No. 27 of 2003)) and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) and by sections 10, 22F (inserted by Section 24 of the Environment (Miscellaneous Provisions) Act 2015 (No. 29 of 2015)) and 53 (as amended by Section 26 of that Act) of the Air Pollution Act 1987 (No. 6 of 1987) (as amended) and the Climate Action and Environment (Transfer of Departmental Administration and Ministerial Functions) Order 2016 (S.I. No. 393 of 2016) (as adapted by the Communications, Energy and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2016 (S.I. No. 421 of 2016)), hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the Air Pollution Act 1987 (Registration of Fuel Bagging Operators and Suppliers, and Marketing, Sale, Distribution and Burning of Specified Fuels) (Amendment) Regulations 2016

Commencement

2. These Regulations come into effect on 17th November 2016.

Definitions

3. In these Regulations, save where the context otherwise requires:

“Act of 1987” means the Air Pollution Act 1987 (No. 6 of 1987) as amended;

“Act of 2015” means the Environment (Miscellaneous Provisions) Act 2015 (No. 29 of 2015);

“Agency” means the Environmental Protection Agency;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th November, 2016.*

“bagging operator” means a person or body engaged in the business of bagging or baling:

- (i) bituminous coal, (ii) low smoke solid fuel, or (iii) low smoke biomass product;

“bituminous coal” means coal falling within CN Code 2701 12 placed on the market for residential heating;

“certificate of conformity” has the same meaning as in the Fuel Regulations;

“Fuels Register” means the register established and maintained under section 22A of the Act of 1987 (inserted by section 24 of the Act of 2015);

“Fuel Regulations” means Air Pollution Act (Marketing, Sale, Distribution and Burning of Specified Fuels) Regulations 2012 (S.I. No. 326 of 2012), as amended;

“Low smoke biomass product” has the same meaning as in the Fuel Regulations;

“Low smoke solid fuel” means a solid fuel which contains coal and which is permissible for sale in a Low Smoke Zone as defined in the Fuel Regulations;

“solid fuel supplier” means any person or body which, within the State:

- (a) wholesales or distributes (i) bituminous coal, (ii) low smoke solid fuel, or (iii) low smoke biomass product; or
- (b) retails 50% or more of their total annual sales proceeds from the products listed at (a) above.

Part 2

REGISTRATION OF FUEL BAGGING OPERATORS AND SUPPLIERS

Specified Persons

4. The following persons or classes of person are specified for the purposes of Section 53(1)(ca) of the Act of 1987:

- (a) Bagging operators supplying bituminous coal, low smoke solid fuel or low smoke biomass product for residential use within the State;
- (b) Solid fuel suppliers.

Information to accompany an application

5. (1) An application pursuant to Regulation 4(a) shall be made by 1 September each year or such other date as the Agency may specify and be accompanied by the following information:

- (a) Name, address and contact details (including telephone and e-mail details) of the person or persons responsible for the provision of registration information of the organisation;
- (b) Fuel brands offered;
- (c) Evidence of possession of a current tax clearance certificate issued by the Revenue Commissioners;
- (d) such other information as the Agency may reasonably require for the purpose of fulfilling its functions in relation to establishing and maintaining a register of bagging operators;
- (e) such fee as may from time to time be set by the Agency.

(2) An application pursuant to Regulation 4(b) shall be made by 1 September each year or such other date as the Agency may specify and accompanied by the following information:

- (a) Name and address and contact details (including phone and e-mail details) of the person or persons responsible for the provision of registration information in the organisation;
- (b) Trading name;
- (c) Companies Registration Office number;
- (d) Copy of certificate(s) of conformity for fuels supplied;
- (e) Evidence of possession of a current tax clearance certificate issued by the Revenue Commissioners;

(f) such other information as the Agency may reasonably require for the purpose of fulfilling its functions in relation to establishing and maintaining a register of solid fuel suppliers;

(g) such fee as may from time to time be set by the Agency.

(3) A specified person shall notify the Agency of any change to the information provided under paragraphs 5(1) or 5(2) within one month of such change occurring.

Conditions to be satisfied by registered persons

6. A bagging operator shall comply with such directions from the Agency as are necessary to rectify any findings arising from an audit by a certification body under Regulation 9A of the Fuel Regulations.

Period of validity of registration

7. Registrations shall be valid for one year or for such other period as may be specified by the Agency.

Prohibition on fuel activity unless registered

8. A person or class of persons falling within the scope of Regulation 4 shall not carry out a fuel activity unless they are registered on the fuels register.

Part 3

MARKETING, SALE, DISTRIBUTION AND BURNING OF SPECIFIED
FUELS

9. The Fuel Regulations are amended as follows:

(1) in Regulation 4 by the substitution of the following definition for the definition of bag:

“‘Bag’ means a receptacle which is sealable containing a quantity of:

- (a) bituminous coal;
- (b) low smoke solid fuel; or
- (c) low smoke biomass product”;

(2) in Regulation 4 by the substitution of the following definition for the definition of solid fuel supplier:

“‘solid fuel supplier’ means any person or body which, within the State:

- (a) wholesales or distributes (i) bituminous coal, (ii) low smoke solid fuel, or (iii) low smoke biomass product; or
- (b) retails 50% or more of their total annual sales proceeds from the products listed at (a) above”;

(3) in Regulation 4 by the deletion of “‘bagging operator’ means a person or body engaged in the business of bagging or bailing solid fuel;”;

(4) in Regulation 4 by the deletion of “‘Bagging Operator’ means any person or body who or which carries out the business of bagging coal for residential supply within the State”;

(5) in Regulation 4 by the insertion of the following definition:

“‘Bagging Operator’ means a person or body engaged in the business of bagging or baling:

- (i) bituminous coal, (ii) low smoke solid fuel, or (iii) low smoke biomass product;”;

(6) in Regulation 4 by the insertion of the following definition:

“‘Licensed Premises’ has the same meaning as it has in the Intoxicating Liquor Act 2008 (No. 17 of 2008)”;

(7) in Regulation 4 by the insertion of the following definition:

“‘retailer’ means a person who for the purpose of trade or otherwise in the course of business sells bituminous coal, approved fuel or low smoke biomass product to other persons”;

(8) in Regulations 5, 6, 6A, 6B, 7, 10, Schedule 1, Schedule 2 and Schedule 4, by the substitution of “Low Smoke Zone” for “Specified Area”, and by the substitution of “Low Smoke Zones” for “Specified Areas”, in each place they occur;

(9) in Regulation 5, by the substitution of the following for paragraph (7):

“(7) The records to be kept and maintained by bagging operators relating to Low Smoke Solid Fuel products shall be sufficient to enable the certification body to determine compliance with the requirements of these regulations, including, inter alia, the sulphur content and the smoke emission rate of the solid fuel products, and include at a minimum, those specified in Schedule 7.”;

(10) in Regulation 5(2), by the substitution of the following for subparagraph (b):

“(b) there is printed on such a bag a notice in the form:

- (i) set out in Schedule 3 to these regulations in the case of low smoke solid fuel; or
- (ii) set out in Schedule 6 to these regulations in the case of low smoke biomass product.”

(11) in Regulation 5(6), by the insertion of the word ‘current’ before ‘certificate of conformity’;

(12) in Regulation 6B, by the substitution of ‘direct space heating’ for ‘space heating’;

(13) by the insertion after 6B of the following:

“Prohibition on the Marketing, Sale, Distribution or Burning of High Sulphur Fuels

6C. With effect from 1 March 2017, a person or body shall not place on the market, sell, distribute or burn for domestic heating purposes any solid fuel having a sulphur content greater than 2% by weight on a dry ash-free basis.”

(14) in Regulation 7, by the substitution of the following for paragraph (3):

“(3) The records to be kept and maintained by bagging operators relating to bituminous coal shall be sufficient to enable the certification body to determine compliance with the requirements of these regulations, including,

inter alia, the sulphur content of the bituminous coal, and include at a minimum, those specified in Schedule 7.”

(15) in Regulation 7A, by the substitution of the following for paragraph (3):

“(3) The records to be kept and maintained by bagging operators relating to biomass products shall be sufficient to enable the certification body to determine compliance with the requirements of these regulations, including, inter alia, the biomass content of low smoke biomass product, smoke emission rate, and include at a minimum, those specified in Schedule 7.”

(16) by the substitution of the following for Regulation 9A

“9A For the purposes of establishing compliance with the standards, specifications and procedures set out in these Regulations a bagging operator shall be audited on an annual basis by a certification body.”

(17) by the insertion after Regulation 10(8) of the following:

“(9) A retailer selling bituminous coal, approved fuel or low smoke biomass product shall display a copy of the current certificate of conformity issued to the bagger of that product pursuant to an audit under Regulation 9A.”

(18) by the insertion after Regulation 11(3) of the following:

“(4) Each local authority shall carry out, or cause to be carried out— (a) such inspections as it deems necessary or as may be required by the Agency for the purposes of verifying compliance with these Regulations; and (b) such sampling and analysis of products as it deems necessary or as may be required by the Agency for the purposes of paragraph (a).”

(19) by the substitution of the following for Schedule 3:

“Schedule 3

Form of notice referred to in regulation 5(2)(b) — Mark or Logo requirements for Approved Fuel

The notice referred to in Regulations 5(2)(b) shall, in the period up to and including 31 August 2017, conform to either the requirements of A or B below, and in the period after 31 August 2017, conform to the requirements of B below:

- A. The notice shall bear, in letters at least 2 centimetres high and in a form which is clearly legible—
 - (i) the name and address of the person who packed the bag, and
 - (ii) the text "SMOKELESS FUEL — Contents comply with the Air Pollution Act Regulations"

B. The notice shall:

(I) Be:

- (i) Printed as part of the packaging;
- (ii) Non-detachable;
- (iii) Of a minimum height of 80mm;
- (iv) Undistorted;
- (v) Either colour, or black and white, on a contrasting background;
- (vi) Tamperproof; and

(II) Include the following:

- (i) Such logo, in such format as may be prescribed pursuant to obtaining a certificate of conformity;
- (ii) The name of the bagging operator;
- (iii) The current EPA Registration Number of the bagging operator in the form “EPA REG No F00XX-0X” supplied by the Environmental Protection Agency;
- (iv) In a form which is clearly legible on the front of the packaging the text “APPROVED FUEL”; and

(III) Be accompanied by, in letters at least 2 centimetres high in a form which is clearly legible, the text “Contents comply with the Air Pollution Act Regulations”.

For the purposes of this Schedule, a reference to the “Air Pollution Act Regulations” shall be construed as a reference to these Regulations.”

(20) By the replacement of Schedule 5 with the following:

“Schedule 5

Form of notice referred to in regulation 7(1)(e) — Mark or Logo requirements for Bituminous Coal

The notice referred to in Regulations 7(1)(e) shall, in the period up to and including 31 August 2017, conform to either the requirements of A or B below, and in the period after 31 August 2017, conform to the requirements of B below:

A. The notice shall bear, in letters at least 2 centimetres high and in a form which is clearly legible—

- (i) the name and address of the person who packed the bag, and
- (ii) the text "0.7% SULPHUR COAL"

B. The notice shall:

(I) Be:

- (i) Printed as part of the packaging;
- (ii) Non-detachable;
- (iii) Of a minimum height of 80mm;
- (iv) Undistorted;
- (v) Either colour, or black and white, on a contrasting background;
- (vi) Tamperproof; and

(II) Include the following:

- (i) Such logo, in such format as may be prescribed pursuant to obtaining a certificate of conformity;
- (ii) The name of the bagging operator;
- (iii) The current EPA Registration Number of the bagging operator in the form "EPA REG No F00XX-0X" supplied by the Environmental Protection Agency;
- (iv) In a form which is clearly legible on the front of the packaging the text "0.7% SULPHUR COAL"; and

(III) Be accompanied by, in letters at least 2 centimetres high, the text "Contents comply with the Air Pollution Act Regulations"

For the purposes of this Schedule, a reference to the "Air Pollution Act Regulations" shall be construed as a reference to these Regulations."

(21) By the replacement of Schedule 6 with the following:

"Schedule 6

Form of notice referred to in Regulation 7A(2) — Mark or Logo requirements for Low Smoke Biomass Product

The notice referred to in Regulations 7A(2) shall:

(I) Be:

- (i) Printed as part of the packaging;

- (ii) Non-detachable;
 - (iii) Of a minimum height of 80mm;
 - (iv) Undistorted;
 - (v) Either colour, or black and white, on a contrasting background;
 - (vi) Tamperproof; and
- (II) Include the following:
- (i) Such logo, in such format as may be prescribed pursuant to obtaining a certificate of conformity;
 - (ii) The name of the bagging operator;
 - (iii) The current EPA Registration Number of the bagging operator in the form “EPA REG No F00XX-0X” supplied by the Environmental Protection Agency;
 - (iv) In a form which is clearly legible on the front of the packaging the text “50% Biomass” where the biomass content is greater than or equal to 50%, or “30% Biomass” where the biomass content is between 30% and 50%, by weight on a dry matter basis.”

(22) By the replacement of Schedule 7 with the following:

“Schedule 7

Records referred to in Regulations 5(7), 7(3) and 7A(3)

(1) Records for traceability and compliance of fuels, within the scope of Regulations 5(7), 7(3) and 7A(3) shall be:

- (i) Kept in appropriate media (e.g. paper and/or electronic form);
- (ii) Retained for 6 years: and
- (iii) Stored and/or archived to ensure satisfactory accessibility, legibility, and freedom from corruption or intentional alteration.

(2) The types of records kept shall include, as a minimum, the following:

- (a) Delivery records for raw materials delivered to the bagger and/or producer, showing:
 - (i) The as delivered weight;
 - (ii) The certificate of analysis;

- (iii) Traceability to certificate of analysis;
- (iv) The delivery vehicle licence plate number or ship reference: and
- (v) The date of delivery;
- (b) Calibration and maintenance records for the weighbridges;
- (c) Calibration and maintenance records for the weighing equipment and check weighing, where used;
- (d) Records of investigations and timely corrective action following any weighing equipment malfunction or loss of accuracy;
- (e) Production reports showing the number of bags filled including any bags which were discarded and any coal contained in filled bags which was returned to the stockpile(s);
- (f) Annual stocktakes of raw materials and bagged coal on year end or nearest working day;
- (g) Accreditation certificates to I.S. EN ISO/IEC 17025, or equivalent, as carrying out testing to the applicable standard, for all calibration contractors and analytical laboratories which carry out work relevant to the process;
- (h) Coal treatment records (if any);
- (i) Sales records for all fuel sold;
- (j) Market surveillance feedback records (if any);
- (k) Feedback and complaints records (if any); and
- (l) in the case of manufactured biomass product:
 - (i) Production records confirming control parameters (quality); and
 - (ii) Records of production runs (duration, product, quantity) (manufactured biomass product).”

Part 4

REVOCATIONS

Revocations

10. (1) Regulations 2 and 3 of the Environmental Protection Agency Act (Registration of Coal Bagging Operators and Solid Fuel Suppliers) Regulations 2012 (S.I. No. 454 of 2012) are revoked.

(2) Regulation 8 of the Fuel Regulations is revoked.



GIVEN under my Official Seal,
17 November 2016.

DENIS NAUGHTEN,
Minister for Communications, Climate Action and
Environment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations specify registration and application requirements for the Fuels Register established under Section 22A of the Air Pollution Act, 1987 (inserted by Section 24 of the Environment (Miscellaneous Provisions) Act 2015).

The Regulations also, through amendments to the 'Fuel Regulations' (S.I. 326 of 2012), refine certain elements of the verification and enforcement mechanisms for domestic solid fuels. These amendments include revised definitions and labelling requirements.

Finally the regulations provide for a national sulphur standard of 2% for all solid fuels intended for domestic heating outside the current ban areas.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

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