



STATUTORY INSTRUMENTS.

S.I. No. 342 of 2012



EUROPEAN UNION (LABELLING OF TYRES) (FUEL EFFICIENCY)
REGULATIONS 2012

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I, PAT RABBITTE, Minister for Communications, Energy and Natural Resources, 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 full effect to Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Labelling of Tyres) (Fuel Efficiency) Regulations 2012.

(2) These Regulations come into operation on 1 November 2012.

Interpretation

2. (1) In these Regulations—

“appropriate Court” means—

(a) where the product concerned is at a particular location, the judge of the Circuit Court within whose circuit the product is located, or

(b) in any case or where the product concerned is generally located throughout the State, the High Court;

“authorised officer” means a person appointed as an authorised officer under Regulation 16;

“compliance direction” means a direction under Regulation 10;

“EU Regulation” means Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009¹, as amended by Commission Regulation (EU) No 1235/2011 of 29 November 2011²;

“Minister” means Minister for Communications, Energy and Natural Resources;

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

¹OJ No. L 342, 22.12.2009, p. 46

²OJ No. L 62, 9.3.2011, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 14th September, 2012.*

Offence — failure to comply with EU Regulation

3. A supplier or distributor who fails to comply with Article 4, 5 or 6 of the EU Regulation commits an offence.

Warning measure

4. (1) Where the Minister forms an opinion that a product regulated by the EU Regulation does not comply with Article 4, 5 or 6 of the EU Regulation, the Minister may give a warning of non-compliance to the supplier or distributor of the product concerned.

(2) A warning of non-compliance under paragraph (1) shall advise the recipient of the forming of the opinion by the Minister and shall require the supplier or distributor concerned—

- (a) to take measures to bring the product into conformity with the product requirements for the product within the period specified in the warning,
- (b) to keep records of the carrying out of the measures,
- (c) where appropriate, to carry out the measures in such order specified in the warning as the Minister considers necessary, and
- (d) to comply with requirements of the Minister in relation to monitoring and inspection by an authorised officer, as the Minister considers appropriate.

(3) A warning shall specify the grounds on which it is proposed to make the warning concerned and shall inform the recipient that he or she may make representations to the Minister in relation to the warning not later than 14 days after the date of the warning.

Compliance direction

5. (1) The Minister shall consider any representations in relation to a warning made under Regulation 8 by the recipient and shall, not more than 28 days after the expiry of the period under Regulation 4(3) within which representations may be made, give to the supplier or distributor concerned of the product—

- (a) a compliance direction to comply with the warning, with or without variation, or
- (b) a notice withdrawing the warning.

(2) The Minister may at any time, where necessary, amend or withdraw a compliance direction.

(3) A compliance direction shall—

- (a) specify the grounds upon which the direction is made,
- (b) state when it is to come into effect, and

- (c) advise the recipient of his or her right to appeal or to apply to suspend its operation.

Withdrawal from market

6. (1) Where the recipient of a compliance direction does not comply with the direction within the period specified in the direction the Minister may give a further direction to the recipient—

- (a) not to place the product on the market or put it into service, or
- (b) where appropriate, to withdraw the product from the market or service.

(2) Where, in the opinion of the Minister the immediate withdrawal from the market of a product regulated by the EU Regulation is required because of the gravity of the non-compliance with the EU Regulation, the Minister may, notwithstanding Regulations 4 and 5 and paragraph (1) give a direction to the supplier or distributor of the product—

- (a) not to place the product on the market or put it into service, or
- (b) where appropriate, to withdraw the product from the market.

(3) A person who—

- (a) places a product in the market in contravention of a direction under this Regulation, or
- (b) fails to withdraw a product from the market in compliance with a direction under this Regulation, commits an offence.

Effect of direction

7. (1) A direction under Regulation 5 or 6 takes effect—

- (a) where the direction so provides, immediately the direction is received by the person on whom it is served, and
- (b) in any other case—
 - (i) where no appeal is taken against the direction, on the expiration of the period during which such an appeal may be taken or the day specified in the direction as the day on which it is to come into effect, whichever is the later, or
 - (ii) in case such an appeal is taken, on the day on which the direction is confirmed on appeal, or the appeal is withdrawn or the day specified in the direction is the day on which it is to come into effect, whichever is the later.

(2) A direction under Regulation 5 or 6 remains in force—

- (a) unless it is discharged or varied on appeal,

- (b) until the Minister revokes it, or
- (c) until the Minister issues a notice to the recipient stating that the direction has been complied with.

Appeal from direction

8. (1) The bringing of an appeal against a direction which is to take effect in accordance with Regulation 7(1) does not have the effect of suspending the operation of the direction, but the appellant may apply to the District Court to have the operation of the direction suspended until the appeal is disposed of and the judge, if he or she is satisfied that there are reasonable grounds for so doing in the interests of justice and having regard to the objectives of the EU Regulation, may direct that the operation of the direction is suspended until the appeal is disposed of.

(2) A person who is aggrieved by a direction under Regulation 5 or 6 may, within 14 days in relation to a direction beginning on the day on which the direction is issued to him or her, appeal against the direction to a judge of the District Court in the District Court district in which the direction was issued and in determining the appeal the judge may if he or she is satisfied that in the circumstances of the case it is reasonable to do so, in the interests of justice and having regard to the objectives of the EU Regulation—

- (a) confirm the direction, with or without variation, or
- (b) cancel the direction.

(3) Where, on the hearing of an appeal under this Regulation a direction is confirmed, notwithstanding paragraph (1) the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period as in the circumstances of the case in the interests of justice and having regard to the objectives of the EU Regulation the judge considers appropriate.

(4) A person who appeals against a direction or who applies to have the operation of the direction suspended shall at the same time notify the Minister of the appeal or application and the Minister shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

Application to appropriate court for failure to comply with direction

9. (1) Where a supplier or distributor does not comply with a direction under Regulation 5 or 6, the Minister may apply to the appropriate court for an order directing compliance.

(2) Where the appropriate court, on application to it under paragraph (1), is satisfied that the supplier or distributor has failed or refused to comply with or disobeyed or continues to disobey the direction or part of it, within the time specified within the direction, the court may—

- (a) by order require the person to comply with the direction or part of it,

- (b) make an order for the forfeiture to the Minister of the product to which the direction applies, or
 - (c) by order make such other provision, including provision in relation to the payment of costs, as the court considers appropriate.
- (3) An application for an order under this Regulation shall be by motion, and the court when considering the matter may make such interim or interlocutory orders as it considers appropriate.
- (4) The court, in making an order under this Regulation—
- (a) shall, unless satisfied that there are special and substantial reasons for not so doing, order the person concerned to pay to the Minister the costs and expenses measured by the court, and
 - (b) may make such other provision as the court considers appropriate in relation to matters such as payment of costs, including costs incurred by the Minister in relation to the investigation of and detection of a failure or refusal to comply with a direction or part of a direction in the time specified in the direction.

Service of directions

10. (1) A direction shall—
- (a) be in writing, and
 - (b) be served on the supplier or distributor of the product.
- (2) A direction shall be addressed to the supplier or distributor of the product and may be served on that person in one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address;
 - (c) by sending it by post in a prepaid registered letter to the address at which that person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
 - (d) in a case where the Minister considers that the direction should be issued immediately, by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which that person ordinarily resides or, in a case in which an address for service has been furnished, at that address, but only if the sender's—
 - (i) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

(ii) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction,

and the direction is also given in one of the other ways mentioned in any of the preceding subparagraphs.

(3) For the purposes of paragraph (2), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(4) In any proceedings a document purporting to be a warning given under Regulation 4 or a direction given under Regulation 5 or 6 and to be signed by or on behalf of the Minister shall be received in evidence and deemed to be such direction, without further proof, until the contrary is shown.

(5) In this Regulation, “direction” means a direction under Regulation 5 or 6 and includes a warning under Regulation 4 and a notice under Regulation 5(1)(b) or 7(2)(c).

Appointment of authorised officer

11. (1) The Minister may appoint such and so many persons to be authorised officers for the purposes of enforcing these Regulations and the EU Regulation and such appointment may be specified to be for a fixed period.

(2) An authorised officer appointed under this Regulation shall be furnished with a warrant of appointment and shall, when exercising any power conferred on him or her by this Regulation, if requested by a person affected, produce the warrant of appointment or a copy of it to that person.

(3) An appointment under this Regulation as an authorised officer shall cease—

(a) if the Minister revokes the appointment, or

(b) if the appointment is for a fixed period, on the expiry of that period.

Powers of authorised officer

12. (1) An authorised officer shall, for the purposes of enforcing these Regulations and the EU Regulation, have the power to do one or more than one of the following:

(a) subject to paragraph (5), at any time enter, inspect, examine and search any place at which, the authorised officer has reasonable grounds to believe, a product regulated by the EU Regulation is being kept;

(b) inquire into, search, examine and inspect—

(i) any place referred to at paragraph (a),

- (ii) any process being carried out at that place,
 - (iii) any product regulated by the EU Regulation at that place, or
 - (iv) any records relating to a matter referred to at clause (ii) or (iii),
to ascertain whether these Regulations have been or are being complied with and for that purpose take with him or her from the place any equipment, material or product regulated by the EU Regulation;
- (c) require that that place and anything at it be left undisturbed for so long as is reasonably necessary for the purpose of any search, examination, investigation, inspection or inquiry under these Regulations;
 - (d) require the person in charge to produce to the authorised officer—
 - (i) any product regulated by the EU Regulation which is in the possession or under the control of such person, and
 - (ii) any records and, in the case of such information in a non-legible form, to reproduce it in a legible form and to give to the authorised officer such information as the authorised officer may reasonably require in relation to any entries in those records;
 - (e) inspect and take copies of, or extracts from, any such records or any electronic information system at that place, including in the case of information in a non-legible form, copies of, or extracts from, such information in a permanent legible form or require that such copies be provided;
 - (f) require a person at that place by whom or on whose behalf a computer is or has been used to produce or store records or any person having control of, or otherwise concerned with the operation of the computer, to afford the authorised officer access thereto and all reasonable assistance as the authorised officer may require;
 - (g) remove from that place and retain the records (including documents stored in a non-legible form) and copies taken and detain the records for such period as the authorised officer reasonably considers to be necessary for further examination or until the conclusion of any legal proceedings;
 - (h) require that records at that place be maintained for such period as may be reasonable;
 - (i) require the person in charge to give the authorised officer such information as the authorised officer may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;

- (j) require the person in charge to give the authorised officer such assistance and facilities within the person's power or control as are reasonably necessary to enable the authorised officer to exercise any of his or her powers under these Regulations;
- (k) require by notice, at a time and place specified in the notice, any person (including the person in charge) to give the authorised officer any information that the authorised officer may reasonably require in relation to the place, any product regulated by the EU Regulation, activity, installation or procedure at the place, and to produce to the authorised officer any records that are under that person's power or control;
- (l) examine any person whom the authorised officer reasonably believes to be able to give to the authorised officer information relevant to any search, examination, investigation, inspection or inquiry under these Regulations and require the person to answer such questions as the authorised officer may ask relative to the search, examination, investigation, inspection or inquiry including documents referred to at Article 4(4) of the EU Regulation and to sign a declaration of the truth of the answers;
- (m) require that any procedure be followed for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
- (n) take any measurements or photographs or make any tape, electrical or other recordings that the authorised officer considers necessary for the purposes of any search, examination, investigation, inspection or inquiry under these Regulations;
- (o) where appropriate, install, use and maintain at that place monitoring instruments, systems and seals for the purposes of these Regulations;
- (p) there, or at any other place, carry out, or have carried out, such testing, examination or analysis of any product regulated by the EU Regulation found at that place, as he or she reasonably considers to be necessary, and for that purpose—
 - (i) require the person in charge to supply the authorised officer without charge any product regulated by the EU Regulation, or
 - (ii) remove any product regulated by the EU Regulation;
- (q) cause any product regulated by the EU Regulation or part thereof found at that place in respect of which there has been or there appears to the authorised officer to have been a contravention of these Regulations to be subjected to any testing, examination or analysis in accordance with subparagraph (p) (but not so as to damage or destroy it unless this is necessary for the purposes of these Regulations) and where an authorised officer proposes to exercise the power conferred

by this paragraph in the case of a product regulated by the EU Regulation or part thereof found at any place, he or she shall, if so requested by the person in charge and provided that the person in charge is present at his or her own expense, cause anything that is to be done by virtue of that power to be done in the presence of that person;

- (r) remove and retain for such period as is necessary any product or part of it found at that place for all or any of the following purposes—
 - (i) to examine or arrange for the examination, testing or analysis of the product regulated by the EU Regulation or part thereof,
 - (ii) to ensure that it is not tampered with before the examination of it under clause (i) is completed, or
 - (iii) to ensure that it is available for use as evidence in any proceedings.

(2) Where a product regulated by the EU Regulation is found at a place, and an inquiry is made by an authorised officer in the course of a search, examination, investigation or inspection as to the identity of the person who supplied that product regulated by the EU Regulation the person in charge shall give the authorised officer the name and address of the supplier from whom the product regulated by the EU Regulation was purchased or otherwise obtained.

(3) Before exercising any of the powers conferred by subparagraphs (*p*) and (*q*) of paragraph (1), an authorised officer shall, in so far as it is practicable, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing what he or she proposes to do under those subparagraphs.

(4) Where under the powers conferred by paragraph (1)(*r*), an authorised officer removes and retains any product regulated by the EU Regulation found at a place, he or she shall, in so far as is practicable, take a sample thereof and give it to the person in charge, marked by the authorised officer in a manner sufficient to identify it.

(5) An authorised officer shall not enter a dwelling other than—

- (a) with the consent of the occupier, or
- (b) in accordance with a warrant of the District Court issued under paragraph (7) authorising such entry.

(6) Where an authorised officer in the exercise of his or her powers under this Regulation is prevented from entering any place, an application may be made to the District Court for a warrant under paragraph (7) authorising such entry.

(7) Without prejudice to the powers conferred on an authorised officer by or under any other provision of this Regulation, if a judge of the District Court is satisfied by the sworn information of an authorised officer that there are reasonable grounds for believing that—

- (a) there are any products regulated by the EU Regulation at any place or any records (including documents stored in a non-legible form) or information, relating to a place, that the authorised officer requires to inspect for the purposes of these Regulations or the EU Regulation, held at any place, or
- (b) there is, or such an inspection is likely to disclose, evidence of a contravention of these Regulations or the EU Regulation,

the judge may issue a warrant authorising an authorised officer, accompanied by such other authorised officers as may be appropriate or members of the Garda Síochána as may be necessary, at any time or times, within one month from the date of issue of the warrant, on production of the warrant if requested, to enter the place, if necessary by the use of reasonable force, and perform the functions conferred on an authorised officer by these Regulations.

(8) Where an authorised officer has reasonable grounds for believing that it is necessary in the performance of his or her functions under these Regulations, he or she may be accompanied by a member of the Garda Síochána when performing those functions.

(9) A statement or admission made by a person pursuant to a requirement under subparagraph (i), (k) or (l) of paragraph (1) shall not be admissible in proceedings brought against that person for an offence (other than an offence under paragraph (11)).

(10) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(11) A person who—

- (a) obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or a warrant under paragraph (7),
- (b) impedes the exercise by the authorised officer or member, as the case may be, of such power, or
- (c) fails or refuses to comply with a request or requirement of, or to answer a question asked by an authorised officer or such member pursuant to a power conferred by these Regulations, or in purported compliance with such request or requirement or in answer to such question gives information to the authorised officer or member that he or she knows to be false or misleading in any material respect,

commits an offence.

(12) In this Regulation—

“person in charge” means, in relation to a place—

- (a) the person under whose direction and control the activities at that place are being conducted, or
- (b) the person whom the authorised officer has reasonable grounds for believing is in control of that place;

“place” means any structure, premises, land or other location or part of such place, and includes any container, railway wagon, vessel, aircraft, motor or other vehicle;

“record” includes any memorandum, book, report, statement, register, plan, chart, map, drawing, specification, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 and 2003) are held, any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically, and anything that is a part or copy, in any form, of any of, or any combination of, the foregoing.

Penalties

13. (1) A person who commits an offence under Regulation 12(11) is liable on summary conviction to a class A fine.

(2) A person who commits an offence under Regulation 3 or 6(3) is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.

Offence body corporate

14. (1) Where an offence under these Regulations is committed by 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 officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she had committed the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) 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 or manager of the body corporate.

Prosecutions

15. (1) Summary proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Minister.



GIVEN under my Official Seal,
10 September 2012.

PAT RABBITTE,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

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

These Regulations provide for the appointment of authorised officers to carry out inspections that will ensure compliance by tyre suppliers and distributors and vehicle suppliers and distributors with Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters, which was subsequently amended by Commission Regulation (EU) No 1235/2011 of 29 November 2011 amending Regulation (EC) No 1222/2009 of the European Parliament and of the Council with regard to the wet grip grading of tyres, the measurement of rolling resistance and the verification procedure.

Regulation (EC) No 1222/2009 requires that from November 1 2012, light and heavy duty vehicle tyres (C1, C2 and C3 tyres) must be supplied with information that informs consumers about fuel efficiency, wet grip and noise classes in any technical promotional material, including websites. Retreaded tyres, off-road professional tyres and racing tyres will be exempt from this requirement.

The tyre label will use classes ranging from best-performance (green “A” class) to worst (red “G” class). In addition to indicating how much the tyre affects the car’s fuel efficiency, it will also give information about its performance in wet conditions and its external rolling noise in decibels.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

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