



Number 52 of 2019

Microbeads (Prohibition) Act 2019



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ACTS REFERRED TO

Customs Act 2015 (No. 18)

Environmental Protection Agency Act 1992 (No. 7)

Irish Medicines Board Act 1995 (No. 29)

Planning and Development (Amendment) Act 2018 (No. 16)

Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28)

Water Services (Amendment) Act 2012 (No. 2)

Water Services Act 2007 (No. 30)



Number 52 of 2019

MICROBEADS (PROHIBITION) ACT 2019

An Act to provide for the prohibition on the manufacture or placing on the market of certain products containing microbeads; to impose restrictions in relation to the disposal of substances containing microbeads; and to provide for matters connected therewith.

[26th December, 2019]

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“Act of 1992” means the Environmental Protection Agency Act 1992;

“Agency” means the Environmental Protection Agency established by the Act of 1992;

“authorised person” means—

- (a) an authorised person appointed under the Act of 1992, or
- (b) an officer of customs within the meaning of the Customs Act 2015;

“body surface” means the skin, mucous membrane, hair, nails, teeth or gums of a person;

“cleaning product” means any substance (including any detergent, fabric softener, conditioner, bleaching agent or solvent) that is intended to be used at any stage during—

- (a) the cleaning of any surface, article or material, or
- (b) the preparation for cleaning of any surface, article or material;

“cosmetic product” means any substance or combination of substances produced for the purpose of cleaning, protecting or maintaining a body surface or changing the appearance or improving the condition of a body surface;

“microbead” means a solid plastic particle that is—

- (a) not water soluble,
- (b) not more than 5 millimetres at its widest point, and
- (c) not less than one nanometre at its narrowest point;

“Minister” means the Minister for Housing, Planning and Local Government;

“place on the market” means—

- (a) sell,

- (b) offer or expose for sale,
- (c) invite the making by a person of an offer to purchase,
- (d) distribute free of charge,
- (e) import,
- (f) export, or
- (g) supply for any of those purposes (whether or not for profit);

“plastic” means a synthetic polymer that—

- (a) can be moulded, extruded or physically manipulated into different shapes, and
- (b) that retains its final manufactured shape when used for the purpose for which it was manufactured;

“record” includes, in addition to a record in writing—

- (a) a plan, chart, map, drawing, diagram or pictorial or graphic image,
- (b) a disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (c) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (d) a photograph.

Prohibition

2. (1) A person shall not manufacture or place on the market a cosmetic product that—
- (a) is water soluble, and
 - (b) contains microbeads in excess of the permitted concentration.
- (2) A person shall not manufacture or place on the market a cleaning product that—
- (a) is water soluble, and
 - (b) contains microbeads in excess of the permitted concentration.
- (3) A person who contravenes *subsection (1)* or *(2)* shall be guilty of an offence.
- (4) It shall be a defence to proceedings for an offence consisting of a contravention of *subsection (1)* or *(2)* for the defendant to show that he or she took all measures reasonably necessary to prevent such contravention.
- (5) In this section “permitted concentration” means, in relation to a cosmetic product or cleaning product containing microbeads, a concentration of microbeads that does not result in the aggregate weight of the microbeads in the product exceeding 0.01 per cent of the weight of the product.

Exemption

3. (1) *Section 2* shall not apply to—
- (a) a medicinal product (within the meaning of the Irish Medicines Board Act 1995) the manufacture or placing on the market of which is not prohibited under an enactment other than this Act,
 - (b) any product the purpose of which is to protect the skin from the effects of ultra violet radiation,
 - (c) the supply of a product to—
 - (i) a relevant provider within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012, or
 - (ii) an approved body,for the purpose of the performance by it of its functions,
 - (d) products in transit through the State from a place outside the State to another place outside the State, or
 - (e) a product to which regulations under *subsection (3)* apply.
- (2) The Agency may approve a body (in this section referred to as an “approved body”) in writing for the purposes of this section if it is satisfied that it is a function of the body to engage in scientific research or carry out scientific examinations of substances.
- (3) The Minister may make regulations exempting any product or class of product essential to the carrying out of a specified industrial cleaning process from the application of this Act if he or she is satisfied that—
- (a) that process would not be capable of being effected without such product, and
 - (b) there is no effective cleaning method that could be employed as an alternative to that process.
- (4) Regulations under this section shall specify—
- (a) the product or class of product to which the exemption under the regulations shall apply, and
 - (b) the industrial cleaning process for which that substance is required.
- (5) Regulations under this section may specify conditions in relation to—
- (a) the use of a product to which an exemption under the regulations applies, or
 - (b) the storage and disposal of such product.
- (6) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Disposal of microbeads

4. (1) A person shall not dispose, or cause the disposal, of a substance containing microbeads in—

- (a) the maritime area or the inland waters of the State,
- (b) any drain, service connection or waste water works,
- (c) any domestic waste water treatment system, or
- (d) on the high seas from an Irish ship.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to show that he or she took all measures reasonably necessary to prevent a contravention of *subsection (1)*.

(4) In this section—

“Act of 2007” means the Water Services Act 2007;

“domestic waste water treatment system” has the meaning assigned to it by Part 4A (inserted by section 4 of the Water Services (Amendment) Act 2012) of the Act of 2007;

“drain”, “groundwater”, “service connection” and “waste water works” have the meanings assigned to them by the Act of 2007;

“inland waters” means all inland or internal waters of the State (whether or not artificially created) and includes all rivers, lakes, streams, ponds, aquifers, canals, reservoirs and groundwater;

“maritime area” has the meaning assigned to it by Part 5 of the Planning and Development (Amendment) Act 2018.

Powers of authorised persons

5. (1) For the purposes of this Act, an authorised person may—

(a) subject to *subsection (2)*, enter (at all reasonable times and, if necessary, by the use of reasonable force) and inspect any premises at which he or she has reasonable grounds for believing that—

- (i) any trade, business or activity connected with the manufacture, placing on the market, disposal, storage, packaging or labelling of products containing microbeads is being or has been carried on, or
- (ii) books, records or other documents (including documents stored in non-legible form) relating to such trade, business or activity are kept,

(b) at such premises inspect and take copies of—

- (i) any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, or

- (ii) labels or packaging relating to products containing microbeads,
that he or she finds in the course of his or her inspection,
- (c) remove any such books, records, documents, labels or packaging from such premises and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (d) conduct, or cause to be conducted, such examinations and inspections of—
 - (i) any products containing microbeads,
 - (ii) packaging of such products,
 - (iii) any article or substance used in connection with the manufacture, labelling, packaging or storage of such products, or
 - (iv) any equipment, machinery or plant,
found at the premises as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (e) require any person at the premises, the owner or person in charge of the premises or any person employed therein to—
 - (i) give to the authorised person such assistance and information, and
 - (ii) produce to the authorised person—
 - (I) such labels or packaging relating to products containing microbeads, and
 - (II) books, documents or other records (and in the case of documents or records stored in non-legible form, a legible reproduction thereof),
that are in that person's possession or procurement, as the authorised person may reasonably require for the purposes of his or her functions under this Act,
- (f) require any person at the premises (including the owner, person in charge of the premises and any person employed therein) to answer such questions as the authorised person may ask relative to any matter in connection with compliance with this Act,
- (g) for the purposes of analysis and examination, take samples of—
 - (i) any substance or product—
 - (I) containing microbeads, or
 - (II) that he or she has reasonable grounds for believing contains microbeads,
 - (ii) packaging relating to any such substance or product, or
 - (iii) any article or substance used in the manufacture, labelling, packaging or storage of any such substance or product,
found at the premises,
- (h) direct that any—

- (i) substance or product—
 - (I) containing microbeads, or
 - (II) that he or she has reasonable grounds for believing contains microbeads, or
 - (ii) packaging relating to any such substance or product,
that is found at the premises not be moved from the premises without his or her consent,
- (1) secure for later inspection the premises, or any part of the premises, in which—
- (i) any substance or product—
 - (I) containing microbeads, or
 - (II) that he or she has reasonable grounds for believing contains microbeads,
 - (ii) packaging relating to any such substance or product, or
 - (iii) any article or substance used in the manufacture, labelling, packaging or storage of any such substance or product,
is found or ordinarily kept, for such period as may reasonably be necessary for the purposes of his or her functions under this Act, or
 - (j) take possession of, remove from the premises and retain (for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act) for examination and analysis—
 - (i) any substance or product containing microbeads,
 - (ii) packaging relating to any such substance or product, or
 - (iii) any article or substance used in the manufacture, labelling, packaging or storage of any such substance or product,
found at the premises.
- (2) An inspector shall not enter a dwelling, other than—
- (a) with the consent of the occupier of the dwelling, or
 - (b) pursuant to a warrant under *subsection (3)*.
- (3) Upon the sworn information of an authorised person, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—
- (a) any trade, business or activity connected with the manufacture, placing on the market, disposal, storage, packaging or labelling of products containing microbeads, is being or has been carried on, or
 - (b) information, books, records or other documents (including information, books, records or documents stored in non-legible form) relating to such trade, business or activity are kept,

at a dwelling, issue a warrant authorising a named authorised person, accompanied by such other authorised persons or members of the Garda Síochána as the judge considers necessary to—

- (i) enter the dwelling (if necessary by the use of reasonable force),
- (ii) inspect the dwelling, and
- (iii) perform the functions of an authorised person under *paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of subsection (1),*

at any time or times before the expiration of one month from the date of issue of the warrant.

(4) Where an authorised person, upon reasonable grounds, believes that a person has committed an offence under this Act, the authorised person may require the person to provide the authorised person with his or her name and the address at which he or she ordinarily resides and documentary confirmation thereof.

(5) A person who—

- (a) obstructs or interferes with an authorised person or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under *subsection (3)* or impedes the exercise by the authorised person or member, as the case may be, of such power,
- (b) fails or refuses to comply with a requirement of an authorised person or member of the Garda Síochána pursuant to *paragraph (e) or (f) of subsection (1) or subsection (7)*, or in purported compliance with such requirement gives information or makes a declaration to the authorised person or member that he or she knows to be false or misleading in any material respect, or
- (c) fails or refuses to comply with a direction of an authorised person or member of the Garda Síochána pursuant to *paragraph (h) of subsection (1)*,

shall be guilty of an offence.

(6) A statement or admission made by a person pursuant to a requirement under *paragraph (e) or (f) of subsection (1)* shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under *subsection (5)*).

(7) Where an authorised person, in the course of performing functions under this section, finds any substance or product containing microbeads at the premises concerned, he or she may require the person in charge of the premises to provide him or her with the name of the person who supplied that product and the address at which the person who supplied that product resides or has his or her principal place of business.

(8) In this section—

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

- (a) the person under whose direction and control any activities at that premises are being conducted, or

- (b) the person whom the authorised person reasonably believes to be directing and controlling any activities taking place at that premises;

“premises” includes vehicle, vessel, ship, aircraft and railway carriage.

Offences by bodies corporate

- 6. Where an offence under this Act is committed by a body corporate with the consent or connivance of any 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 shall, as well as the body corporate, 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.

Penalties

- 7. (1) A person guilty of an offence under this Act (other than an offence under *subsection (5) of section 5*) shall be liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
 - (b) on conviction on indictment, to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding 5 years or both.
- (2) A person guilty of an offence under *subsection (5) of section 5* shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both.

Prosecution of offences

- 8. (1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Agency.
- (2) Where a person is convicted of an offence under this Act, the court shall order the person to pay to the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence unless the court is satisfied that there are special and substantial reasons for not so doing.

Information and reports, and review of operation of Act

- 9. (1) The Minister may, from time to time by direction in writing, require the Agency to—
 - (a) give him or her such information (including information of a statistical nature) as is specified in the direction, or
 - (b) prepare, and submit to him or her, such report or reports as is or are specified in the direction,within such period as may be so specified.
- (2) The Minister may, from time to time by direction in writing, require the Agency to

conduct (within such period as is specified in the direction) such review of the operation of this Act as is specified in the direction.

- (3) The Agency shall comply with a direction under this section.

Expenses

- 10.** The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Short title, commencement and collective citation

- 11.** (1) This Act may be cited as the Microbeads (Prohibition) Act 2019.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.