

Subsidiary Legislation made under s.18.

Environment (Labelling and Standard Product Information) Regulations 2011

LN.2011/144

Commencement **22.9.2011**

Amending
enactments

Relevant current
provisions

Commencement
date

LN. 2014/090 r. 16(1)-(3)

5.6.2014

EU Legislation/International Agreements involved:
Directive 2010/30/EU

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In exercise of the powers conferred upon it by section 18 of the Environment Act 2005 and for the purpose of transposing into the law of Gibraltar Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, the Government has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Environment (Labelling and Standard Product Information) Regulations 2011 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations–

“dealer” means a retailer or other person who sells, hires, offers for hire-purchase or displays products to end-users;

“delegated act” means such legislation as is promulgated by the European Commission in accordance with the provisions in Articles 10 to 13 of the Directive;

“direct impact” means the impact of products that actually consume energy during use;

“Directive” means Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, as amended from time to time;

“energy-related product” or “product” means any good having an impact on energy consumption during use, which is placed on the market and/or put into service in the European Union, including parts intended to be incorporated into energy-related products covered by these Regulations which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently;

“fiche” means a standard table of information relating to a product;

“indirect impact” means the impact of products that do not consume energy, but contribute to energy conservation during use;

“market surveillance authority” means the person designated under regulation 4;

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“other essential resources” means water, chemicals or any other substance consumed by a product in normal use;

“supplementary information” means other information concerning the performance and features of a product which relate to, or are helpful in evaluating, its use of energy or other essential resources based on measurable data;

“supplier” means the manufacturer or its authorised representative in the European Union or the importer who places or puts into service the product on the European Union market, and in their absence, any natural or legal person who places on the market or puts into service products covered by these Regulations shall be considered a supplier;

“placing on the market” means making a product available for the first time on the European Union market with a view to its distribution or use within the European Union, whether for reward or free of charge and irrespective of the selling technique;

“putting into service” means the first use of a product for its intended purpose in the European Union;

“unauthorised use of the label” means the use of the label, other than by Gibraltar authorities or the authorities of a Member State or the European Union institutions, in a manner not provided for in the Directive or a delegated act.

(2) Expressions used but not defined in these Regulations shall have the meaning given to them in the Directive.

Scope.

3.(1) These Regulations apply to energy-related products which have a significant direct or indirect impact on the consumption of energy and, where relevant, on other essential resources during use.

(2) These Regulations shall not apply to—

- (a) second-hand products;
- (b) any means of transport for persons or goods;
- (c) the rating plate or its equivalent affixed for safety purposes to products.

Designation of and reporting by market surveillance authority.

4.(1) The Minister with responsibility for the environment is designated as the market surveillance authority for Gibraltar.

(2) The Minister may authorise, in writing, such persons as he deems appropriate to assist him in discharging his duties under these Regulations.

(3) In these Regulations a reference to an act by the market surveillance authority includes an act by a person authorised by the Minister pursuant to this regulation.

(4) The Minister, in accordance with subregulation (5), shall ensure that a report is submitted to the European Commission in which there shall be included details regarding the enforcement activities undertaken and the level of compliance with these Regulations.

(5) The report referred to in subregulation (4) shall be submitted to the European Commission by 20 June 2015 and thereafter every 4 years.

Responsibilities of suppliers.

5.(1) No supplier shall place on the market or put into service a product in respect of which a delegated act applies unless—

- (a) the product is supplied with a label and a fiche, where this is required either by these Regulations or a delegated act;
- (b) the product is accompanied by technical documentation which is sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed.

(2) The technical documentation referred to in subregulation (1)(b) shall comprise—

- (a) a general description of the product;
- (b) the results of design calculations carried out, if relevant;
- (c) test reports, where available, including those carried out by relevant notified organisations as defined under other European Union legislation;
- (d) where values are used for similar models, the references allowing for the identification of those models.

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(3) Documentation already established in accordance with requirements laid down in relevant European Union legislation may be used by suppliers in fulfilment of the obligation under subregulation (1)(b).

(4) Suppliers must make the technical documentation available for inspection purposes for a period ending 5 years after the last product concerned was manufactured.

(5) Suppliers must make available an electronic version of the technical documentation on request to—

- (a) the market surveillance authority; and
- (b) the European Commission,

within 10 working days of receipt of a request by the market surveillance authority or the European Commission.

(6) In addition to the foregoing, suppliers must—

- (a) provide the necessary labels free of charge to dealers;
- (b) promptly deliver labels on request from dealers, without prejudice to the suppliers' choice of system for delivery of labels;
- (c) provide a product fiche;
- (d) include a product fiche in all product brochures but where product brochures are not provided by the supplier, the supplier must provide fiches with other literature provided with the product.

(7) Suppliers shall be responsible for the accuracy of the labels and fiches that they supply and are deemed to have given consent to the publication of the information provided on the label or in the fiche.

Responsibilities of dealers.

6.(1) Dealers must display labels so that they are visible and legible and make the fiche available in the product brochure or other literature that accompanies the product when sold to end-users.

(2) Whenever a product covered by a delegated act is displayed, the dealer must attach an appropriate label, in English, in a clearly visible position, as specified in the applicable delegated act.

Prohibition of certain labels, marks etc.

7. If these Regulations apply to a product, the display of other labels, marks, symbols or inscriptions which do not comply with the requirements of these Regulations and of the relevant delegated acts is prohibited if such display is likely to mislead or confuse end-users with respect to the consumption of energy or, where relevant, other essential resources during use.

Educational and promotional information.

8. It shall be the duty of the market surveillance authority to ensure that the introduction of the system of labels and fiches concerning energy consumption or conservation is accompanied by educational and promotional information campaigns aimed at promoting energy efficiency and more responsible use of energy by end-users.

Enforcement notice.

9.(1) Where the market surveillance authority is satisfied that a product does not comply with all the relevant requirements set out in these Regulations and any applicable delegated acts for the label and the fiche, it shall issue the supplier with a notice in writing, “an enforcement notice”.

(2) An enforcement notice issued under subregulation (1) shall set out the measures that the supplier must comply with to make the product compliant with the requirements of these Regulations and any applicable delegated act and must also state the date by which compliance with the notice must be achieved.

Prohibition order.

10.(1) Where a supplier fails to comply with the terms of an enforcement notice, the market surveillance authority shall issue a prohibition order.

(2) A prohibition order may-

- (a) restrict or prohibit the placing on the market or the putting into service of the product, or both; or
- (b) require the withdrawal of the product from the market.

(3) The market surveillance authority may seize a product which remains on the market in contravention of a prohibition order.

(4) The market surveillance authority may dispose of any product seized under this regulation after the expiry of the time limit for appealing against the seizure or, in the case of an appeal being lodged, the determination of the appeal.

European Commission and Member States to be notified.

11. Where the market surveillance authority prohibits the placing on the market or requires the withdrawal of a product it shall ensure that the European Commission and the Member States are immediately informed of its decision.

Appeals.

12.(1) A person who is dissatisfied with—

- (a) an enforcement notice;
- (b) a prohibition order; or
- (c) the seizure of a product,

may appeal to the Magistrates' Court within 21 days of the service of the enforcement notice, prohibition order or seizure of the product, as the case may be.

(2) Upon hearing an appeal under subregulation (1) the Magistrates' Court may confirm, vary or quash the enforcement notice, prohibition order or seizure of the product, or substitute it by an order of its own.

Information to be supplied.

13.(1) A person who offers for sale, hire, hire-purchase or displays to end-users directly or indirectly by any means of distance selling, including the internet, shall bring to the attention of end-users information relating to the consumption of—

- (a) electric energy;
- (b) other forms of energy; and
- (c) other essential resources during use, where relevant,

by means of a fiche and a label related to products.

(2) In respect of built-in or installed products, the information referred to in subregulation (1) need only be provided where this is required by an applicable delegated act.

(3) A person who advertises a specific model of energy-related product which is covered by an applicable delegated act must include a reference to the energy efficiency class of the product if the advertisement contains information regarding the price or other energy-related information.

(4) A person who, via electronic means or in the form of printed matter, provides any technical promotional material concerning an energy-related product in which the specific technical parameters of that product are described, such as a manufacturers' brochure or technical manual, must include information regarding the energy consumption of the product or shall include a reference to the energy efficiency class of the product.

Presumption of compliance.

14.(1) Labels and fiches shall be deemed to comply with the provisions of these Regulations and any applicable delegated act unless the market surveillance authority has evidence to the contrary.

(2) Where the market surveillance authority has any reason to suspect that information on any label or fiche is incorrect it may require a supplier to provide it with information concerning the accuracy of any information supplied.

(3) An enforcement notice under regulation 9 may be issued in respect of a request for the provision of information under this regulation.

Penalties.

15. (1) A person who without lawful excuse—

- (a) fails to provide information requested under regulation 5(5) within the time stipulated therein; or
- (b) fails to comply with the terms of a prohibition order issued under regulation 10(1),

commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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(2) A person commits an offence if he obstructs seizure of a product, in accordance with regulation 10(3), by the market surveillance authority.

(3) A person who is guilty of an offence under subregulation (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Public procurement

Public procurement and incentives.

16.(1)-(3) *Repealed*

(4) Where the Government provides an incentive for a product covered by a delegated act it shall aim at the highest performance levels including the highest class of energy efficiency laid down in the applicable delegated act, and for the purpose of this subregulation, taxation and fiscal measures do not constitute incentives.

(5) Where the Government provides incentives for products, both for end-users using highly efficient products and for industries which promote and produce such products, it shall express the performance levels in terms of classes as defined in the applicable delegated act, except where it imposes higher performance levels than the threshold for the highest energy efficiency class in the delegated act.