

2005 No. 2748

ENVIRONMENTAL PROTECTION

**The Restriction of the Use of Certain Hazardous Substances in
Electrical and Electronic Equipment Regulations 2005**

Made - - - - - *25th September 2005*
Laid before Parliament *7th October 2005*
Coming into force - - - *1st July 2006*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in respect of measures relating to the restriction of the use of hazardous substances in electrical and electronic equipment, in exercise of the powers conferred on him by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2005 and shall come into force on 1st July 2006.

Interpretation

2. In these Regulations—

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under categories set out in Annex 1A to Directive 2002/96/EC on waste electrical and electronic equipment(c) and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“enforcement authority” shall be construed in accordance with regulation 10;

“hazardous substance” means lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers in quantities exceeding the maximum concentration value levels set out below—

0.1% by weight in homogenous materials for lead;

0.1% by weight in homogenous materials for hexavalent chromium;

0.1% by weight in homogenous materials for mercury;

0.1% by weight in homogenous materials for polybrominated biphenyls;

0.1% by weight in homogenous materials for polybrominated diphenyl ethers; and

(a) S.I. 2004/706 and SI 2003/2901.

(b) 1972 c. 68.

(c) OJ No. L37, 13.2.2003, p. 24.

0.01% by weight in homogenous materials for cadmium; and

“producer” means any person who, irrespective of the selling technique used, including by means of distance communication according to Directive 97/7/EC(a) on the protection of consumers in respect of distance contracts:

- (i) manufactures and sells electrical and electronic equipment under his own brand;
- (ii) resells under his own brand equipment produced by other suppliers, but for these purposes a reseller shall not be regarded as the producer if the brand of the producer appears on the equipment, as provided for in (i); or
- (iii) imports or exports electrical and electronic equipment on a professional basis into a member State, Norway, Iceland or Liechtenstein(b).

Electrical and electronic equipment to which these Regulations apply

3. These Regulations apply to electrical and electronic equipment that is within the categories set out in Schedule 1 and to electric light bulbs and to luminaires for use in households.

Electrical and electronic equipment to which these Regulations do not apply

4.—(1) These Regulations shall not apply to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1st July 2006.

(2) These Regulations shall not apply to the applications of lead, mercury, cadmium and hexavalent chromium listed in Schedule 2.

5. These Regulations shall not apply to the use of hazardous substances in electrical and electronic equipment which complies with any other Act or enactment with which such equipment would have been required to comply for it to be lawfully put on the market in the United Kingdom before 1st July 2006.

Existing legislation

6. Nothing in these Regulations shall affect the application of existing Community legislation and national legislation as regards —

- (a) safety and health requirements; and
- (b) waste management.

Prohibition on hazardous substances

7. A producer shall ensure that new electrical and electronic equipment put on the market on or after 1st July 2006 does not contain hazardous substances.

Requirements for technical documentation

8. A producer shall prepare and, at the request of the Secretary of State, submit to him within 28 days of the date of the request, technical documentation or other information showing that electrical and electronic equipment which he has put on the market complies with the requirements of regulation 7.

(a) OJ No. L144, 4.6.1997, p 19 as amended by Directive 2002/65/EC (OJ No. L271, 9.10.2002, p 16).

(b) The application of Directive 2002/95/EC of the European Parliament and of the Council on the Restriction of the Use of Hazardous Substances in Electrical and Electronic Equipment (OJ No. L37, 13.2.2003 p.19) as amended by Commission Decision 2005/618/EC establishing the maximum concentration values for certain hazardous substances in electrical and electronic equipment (OJ No. L214, 19.8.05, p. 65) was extended to the European Economic Area from 8th November 2003 by virtue of Decision 147/2003 of the EEA Joint Committee.

Retention of technical documentation

9. A producer shall retain the technical documentation or other information in respect of electrical and electronic equipment referred to in regulation 8 for a period of four years from the date that he puts the equipment on the market.

Enforcement authority

10.—(1) It shall be the duty of the Secretary of State to enforce these Regulations and in carrying out his duties he may appoint a third party to act on his behalf.

(2) The Secretary of State shall not commence proceedings for an offence in Scotland.

Compliance notice

11.—(1) Where the Secretary of State has reasonable grounds for suspecting that any or all of the requirements of the following regulations have not been complied with—

- (a) regulation 7;
- (b) regulation 8; and
- (c) regulation 9,

he may serve a notice on the producer.

(2) A notice which is served under paragraph (1) shall—

- (a) state that the Secretary of State suspects a requirement of these Regulations has been contravened;
- (b) specify the reason it is suspected that a requirement of these Regulations has been contravened;
- (c) require the producer to whom notice is given —
 - (i) to comply with the requirements of these Regulations; or
 - (ii) to provide evidence to the Secretary of State demonstrating that the requirements of these Regulations have been met;
- (d) specify the period of time within which the producer must comply with the notice issued by the Secretary of State; and
- (e) warn the producer that unless the requirement is complied with, or evidence has been provided within the period specified in the notice, he may be prosecuted under regulation 13.

Test purchases

12.—(1) The Secretary of State may, for the purpose of ascertaining whether the requirements of regulation 7 have been met, make, or authorise an officer of the Secretary of State to make, any purchase of electrical and electronic equipment.

(2) Where—

- (a) electrical and electronic equipment purchased under this regulation by or on behalf of the Secretary of State is submitted to a test; and
- (b) the test leads to the bringing of proceedings for an offence under regulation 13; and
- (c) the Secretary of State is requested to do so and it is practicable for the Secretary of State to comply with the request,

the Secretary of State shall allow the person from whom the electrical and electronic equipment was purchased or any person who is a party to the proceedings or has an interest in electrical and electronic equipment to which the notice relates, to have the electrical and electronic equipment tested.

Offences

13. A person who contravenes or fails to comply with any of the requirements of—

- (a) regulation 7;
- (b) regulation 8; or
- (c) regulation 9

shall be guilty of an offence.

Penalties

14.—(1) A person who is guilty of an offence under regulation 13 (a) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) A person who is guilty of an offence under regulation 13 (b) or (c) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement of proceedings

15. In England and Wales, a magistrates' court may try an information and in Northern Ireland a magistrates' court may try a complaint in relation to an offence committed under these Regulations if the information is laid or if the complaint is made within twelve months from the time when the offence is committed. In Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

Defence of due diligence

16.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against a person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

the person shall not, without leave of the court, be entitled to rely on the defence unless, not later than 7 clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

17.—(1) Where the commission by any person of an offence under these Regulations is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of any 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 functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

Service of documents etc.

18.—(1) Any document required or authorised by virtue of these Regulations to be served on a person may be so served —

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
- (b) if a person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that sub-paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978(a) (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served by virtue of these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

Amendment of the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004

19. Schedule 1 to the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 (b) is amended by the addition, at the end, of the following entry—

“The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2005.”.

25th September 2005

Malcolm Wicks
Minister of State for Energy
Department of Trade and Industry

(a) 1978 c.30.
(b) S.I.2004/693.

SCHEDULE 1

Regulation 3

Categories of electrical and electronic equipment

1. Large household appliances.
2. Small household appliances.
3. IT and telecommunication equipment.
4. Consumer equipment.
5. Lighting equipment.
6. Electrical and electronic tools (with the exception of large-scale stationary industrial tools).
7. Toys, leisure and sports equipment.
8. Automatic dispensers.

SCHEDULE 2

Regulation 4(2)

Exempt applications

1. Mercury in compact fluorescent lamps not exceeding 5 mg per lamp.
2. Mercury in straight fluorescent lamps for general purposes not exceeding
 - (a) 10 mg for halophosphate,
 - (b) 5mg for triphosphate with normal lifetime, and
 - (c) 8 mg for triphosphate with long lifetime.
3. Mercury in straight fluorescent lamps for special purposes.
4. Mercury in other lamps not specifically mentioned in this Schedule.
5. Lead in glass of cathode ray tubes, electronic components and fluorescent tubes.
6. Lead as an alloying element in steel containing up to 0.35% lead by weight, aluminium containing up to 0.4% lead by weight and as a copper alloy containing up to 4% lead by weight.
7. Lead—
 - (a) in high melting temperature type solders (i.e. tin-lead solder alloys containing more than 85% lead),
 - (b) in solders for servers, storage and storage array systems,
 - (c) in solders for network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunication, and
 - (d) in electronic ceramic parts (eg piezoelectronic devices).
8. Cadmium plating except for applications banned under Directive 91/338/EEC(a) amending Directive 76/769/EEC(b) relating to restrictions on the marketing and use of certain dangerous substances and preparations.
9. Hexavalent chromium as an anti-corrosion of the carbon steel cooling system in absorption refrigerators.

(a) OJ No. L 186, 12.7.1991, p.59.

(b) OJ No. L 262, 27.9.1976., p.201.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the European Parliament and Council Directive 2002/95/EC (OJ No L37, 13.3.2003, p.19) on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (“the Directive”), as amended by Decision 2005/618/EC (OJ No L214, 19.8.05, p.65) establishing maximum concentration values for certain hazardous substances in electrical and electronic equipment.

These Regulations apply to electrical and electronic equipment within the categories set out in Schedule 1 and to electric light bulbs and to luminaires for use in households. They do not apply to :

- (a) spare parts for the repair of electrical and electronic equipment or to the reuse of such equipment put on the market before 1st July 2006 (regulation 4 (1));
- (b) applications of lead, mercury, cadmium and hexavalent chromium listed in Schedule 2 (regulation 4 (2)); and
- (c) use of hazardous substances in electrical and electronic equipment lawfully put on the market before 1st July 2006 (regulation 5).

General requirements relating to the putting on the market on or after 1st July 2006 of electrical and electronic equipment are set out in regulations 7 to 9. New equipment put on the market must not contain more than the permissible maximum concentration values of hazardous substances (regulation 7). Producers must retain technical documentation demonstrating compliance with the requirements of regulation 7 for a period of four years from the date of putting on the market (regulation 9) and must submit such technical documentation to the Secretary of State on request (regulation 8).

The Secretary of State has the duty of enforcing the Regulations (regulation 10) and may appoint a third party to act on his behalf. The enforcement powers of the Secretary of State include a power to serve a compliance notice (regulation 11) and make test purchases (regulation 12).

Any person who contravenes or fails to comply with a requirement of regulation 7, 8 or 9 shall be guilty of an offence (regulation 13). Penalties for such offences are set out in regulation 14. The current maximum fine under level 5 on the standard scale is £5000. Proceedings in relation to offences may be commenced within 12 months of the offence being committed (regulation 15). A defence of due diligence is provided in regulation 16 and the liability of persons other than the principal offender is set out in regulation 17. There is provision for service of documents under the Regulations under regulation 18.

Regulation 19 amends the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004 (S.I. 2004/693) by including these Regulations amongst the subordinate legislation which has been specified for the purposes of Part 9 of the Enterprise Act 2002, relating to the disclosure of information.

A Regulatory Impact Assessment (RIA) in respect of these Regulations is available and a copy can be obtained from the Department of Trade and Industry. As these Regulations transpose the Directive, a transposition note (TN) setting out how the Government will transpose the Directive into UK law has been prepared. Copies of the RIA and TN are available from SD 8, Technical Innovation and Sustainable Development Directorate, 151 Buckingham Palace Road, London SW1W 9SS. Copies of these documents have been placed in the libraries of both Houses of Parliament.

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