

STATUTORY INSTRUMENTS

S.I. No. 341 of 2005

**WASTE MANAGEMENT (RESTRICTION OF CERTAIN HAZARDOUS
SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT)
REGULATIONS 2005**

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S.I. No. 341 of 2005

**WASTE MANAGEMENT (RESTRICTION OF CERTAIN HAZARDOUS
SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT)
REGULATIONS 2005**

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by sections 7, 27, 28, 29, 53H, and 62 of the Waste Management Acts 1996 to 2005 and section 53 of the Environmental Protection Agency Acts 1992 and 2003, and following consultation with the Minister for Enterprise, Trade and Employment hereby makes the following Regulations:

PART I

PRELIMINARY AND GENERAL

Citation.

1. These Regulations may be cited as the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005.

Purpose of regulations.

2. The purposes for which these Regulations are made include the purpose of giving effect to provisions of European Parliament and Council Directive 2002/95/EC¹ on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

Interpretation of regulations.

3. (1) In these Regulations, any reference to a Schedule or article that is not otherwise identified is a reference to a Schedule or article of these Regulations.
(2) In these Regulations, any reference to a sub-article or paragraph that is not otherwise identified is a reference to the sub-article or paragraph of the provision in which the reference occurs.
(3) In these Regulations, save where the context otherwise requires –

¹ O.J. No. L37, 13.02.2003, p.19.

“the Waste Management Acts 1996 to 2005” mean the Waste Management Act 1996 (No. 10 of 1996) as amended by the Waste Management (Amendment) Act 2001 (No. 36 of 2001), Part 3 of the Protection of the Environment Act 2003 (No. 27 of 2003) and the Waste Management (Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 290 of 2005);

“the Environmental Protection Agency Acts 1992 and 2003” means the Environmental Protection Agency Act 1992 (No. 7 of 1992) as amended by Part 2 of the Protection of the Environment Act 2003 (No. 27 of 2003);

“the Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“Authorised Officer” means a person appointed under Article 15 of these Regulations to be an authorised officer;

“the Board” means the Board of the Environmental Protection Agency;

“the Directive” means European Parliament and Council Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment;

“distance communication” is as defined in Article 2(4) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts² or, as appropriate, means sales and marketing services by electronic communication, voice telephony services, including telesales and telemarketing or non-electronic direct marketing services, including mail order;

“distribute” means

- (i) to sell in exchange for any consideration including money whether or not by finance agreement, including but not exclusive to any loan, lease, hiring or deferred sale agreement or arrangement relating to any electrical and electronic equipment whether or not the terms of that agreement or arrangement or any collateral agreement or arrangement provide that a transfer of ownership of that equipment will or may take place, or
- (ii) giving as a prize or otherwise making a gift;

² O.J. No. L144, 04.06.1997, p.19

“distributor” means any person who provides electrical and electronic equipment on a commercial basis to the party who is going to use it;

“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 the categories set out in Annex IA of European Parliament and Council Directive 2002/96/EC on waste electrical and electronic equipment³ and designed for use with a voltage rating not exceeding 1,000 volt for alternating current and 1,500 volt for direct current;

“producer” means any person who, irrespective of the selling technique used, including by means of distance communication –

- (i) manufactures and sells electrical and electronic equipment under his or her own brand,
- (ii) resells electrical and electronic equipment produced by other suppliers under his or her own brand,
- (iii) imports electrical and electronic equipment on a professional basis into the State,
- (iv) exports electrical and electronic equipment on a professional basis from the State to another Member State of the European Union, or
- (v) distributes electrical and electronic equipment from a producer who is deemed not to be registered under the provisions of regulations made in accordance with section 53J of the Waste Management Acts 1996 to 2005;

with the exception of a person or persons exclusively engaged in the provision of financing under or pursuant to any finance agreement unless also acting as a producer within the meaning of subparagraphs (i) to (v);

“the WEEE Directive” means European Parliament and Council Directive 2002/96/EC of 27 January 2003 on waste electrical and electronic equipment and shall be read in accordance with European Parliament and Council Directive 2003/108/EC⁴ of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment.

Scope of regulations.

4. (1) These Regulations, save where the context otherwise requires, shall apply –

³ O.J. No. L37, 13.02.2003, p.24.

⁴ O.J. No. L345, 31.12.2003, p. 106.

- (a) to electrical and electronic equipment falling under categories 1, 2, 3, 4, 5, 6, 7 and 10 set out in the *First Schedule* and to electric light bulbs, and luminaires in private households, and
 - (b) without prejudice to Community Acts on –
 - (I) safety and health requirements, and
 - (II) waste management legislation.
- (2) Without prejudice to sub-article (1)(a), the –
- (a) paragraphs numbered 1 to 10 of the *Second Schedule* shall be taken into account when determining the category set out in the *First Schedule* into which each type of electrical and electronic equipment falls, and
 - (b) exclusion of a type of electrical and electronic equipment in the *Second Schedule* should not be taken as meaning that such equipment does not fall within the scope of these Regulations.
- (3) Without prejudice to sub-article (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 1 July 2006.

PART II

PROHIBITION ON MARKETING OF ELECTRICAL AND ELECTRONIC EQUIPMENT CONTAINING SPECIFIED HAZARDOUS SUBSTANCES

Prohibition of specified hazardous substances.

5. On and from 1 July 2006, –
- (a) producers, shall be prohibited from placing on the market, or, as appropriate,
 - (b) distributors shall be prohibited from distributing,
- electrical and electronic equipment listed in categories 1, 2, 3, 4, 5, 6, 7 and 10 of the *First Schedule* together with electric light bulbs and luminaires in private households which contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated biphenyl ethers (PBDE).

Record keeping.

6. On and from 1 July 2006, each producer shall ensure that he or she or a third party acting on his or her behalf has access at all times, at an address in the State, to records of certification of –
- (a) compliance by the suppliers of any component utilised in the production, or, as appropriate,

- (b) laboratory testing where such testing has been commissioned by the producer,

of electrical and electronic equipment, in order to verify that it complies with the requirements of article 5 and that such records be maintained for a period of six years, starting from the end of the year in which the electrical and electronic equipment concerned was last placed on the market.

Exemptions.

- 7. The provisions of this part shall not apply to –
 - (a) products that do not exceed the applications of any substance or, as appropriate material specified in the Annex to the Directive, subject to any amendment that may be made to that Annex from time to time, or
 - (b) spare parts for the repair, or to the reuse, of electrical and electronic equipment placed on the market prior to 1 July 2006.

PART III

FUNCTIONS OF THE AGENCY AND THE BOARD

Enforcement.

- 8. The Agency shall be responsible for the enforcement of these Regulations within the State and shall take such steps as are necessary for this purpose.

Duty to inform the Agency.

- 9. (1) Where a producer or, as appropriate, a distributor of electrical and electronic equipment knows or, on the basis of information in his or her possession and as a professional, ought to know, that electrical and electronic equipment which he or she has placed on the market which is prohibited under the provisions of article 5, he or she shall immediately inform the Agency, the details of which shall include –
 - (a) information enabling a precise identification of the product or batch of products in question,
 - (b) a full description of the prohibited hazardous substances, and
 - (c) all available information relevant for tracing the product.
- (2) A producer or, as appropriate, a distributor of electrical and electronic equipment shall, on request being made to him or her by the Agency, provide every reasonable assistance to the Agency.

Functions of the Board.

- 10. (1) For the purposes of ensuring that electrical and electronic equipment

placed on the market complies with the requirements of the Directive and that producers and distributors of such equipment comply with their obligations under these Regulations, the Board or, as appropriate, an Authorised Officer may take all reasonable measures, including such of the following as is decided to be appropriate in each case –

- (a) for any electrical and electronic equipment, to –
 - (i) organise, even after it has been placed on the market, appropriate checks on its components, on an adequate scale, up to the final stage of use or consumption,
 - (ii) request all necessary information in relation to the electrical and electronic equipment from any person who, in the opinion of the Board or, as appropriate, an Authorised Officer, may be in a position to provide such information, or, as appropriate,
 - (iii) take samples of electrical and electronic equipment and subject them to such checks as are considered necessary in order to determine compliance with the requirements of the Directive,
 - (b) for any electrical and electronic equipment that could be prohibited under the provisions of article 5, issue a direction prohibiting the supply, offer to supply or display of the electrical and electronic equipment pending the carrying out of the safety evaluations, checks and controls necessary to establish that it does not contain prohibited hazardous substances,
 - (c) for any electrical and electronic equipment prohibited under the provisions of article 5, –
 - (i) issue a direction prohibiting the placing of the product on the market, or
 - (ii) if already on the market, take all appropriate steps, including if necessary issuing a direction, to ensure –
 - (A) the immediate withdrawal of such electrical and electronic equipment from the marketplace, its recall from final users and its environmentally sound management in accordance with the provisions of the WEEE Directive, and
 - (B) that final users are alerted to the prohibited hazardous substances contained in such electrical and electronic equipment.
- (2) A direction issued under sub-article (1) shall be addressed to such of the following as is appropriate –
- (a) the producer,
 - (b) any person involved as a distributor, or, as appropriate,

- (c) any other person, where necessary, with a view to co-operation in action taken to avoid risks arising from such electrical and electronic equipment.

Decisions of the Commission in relation to hazardous substances in electrical and electronic equipment.

- 11. (1) Where the Board or, as appropriate, an Authorised Officer becomes aware that the Commission has adopted a decision as provided for in Articles 4, 5 and 6 of the Directive, the Board or, as appropriate, the Authorised Officer concerned may take such measures specified in article 10 as may be required by the decision.
- (2) Any measure as provided for in sub-article (1) shall, unless a different period is specified in the decision, be taken within 20 days of the receipt by the Board or, as appropriate, an Authorised Officer of the decision.
- (3) Where the Board or, as appropriate, an Authorised Officer, takes any measure as provided for in sub-article (1), the parties concerned shall be given an opportunity to submit their views to the Board or, as appropriate, an Authorised Officer, within one month and the Board or, as appropriate, the Authorised Officer concerned shall inform the Commission accordingly.

Procedure in relation to directions of the Board.

- 12. (1) Where it is feasible, the Board or, as appropriate, an Authorised Officer shall give –
 - (a) an opportunity to any person, to whom the Board or, as appropriate, the Authorised Officer concerned is considering issuing a direction to under these Regulations, to submit his or her views on the proposed direction to the Board or, as appropriate, the Authorised Officer concerned before the adoption of any measure in the proposed direction, or
 - (b) if an opportunity is not given to any person, to whom the Board or, as appropriate, the Authorised Officer concerned has issued a direction to under these Regulations, because of the urgency of the measures to be taken, an opportunity shall be given by the Board or, as appropriate, the Authorised Officer concerned to the relevant person to submit his or her views in due course after the direction has taken effect.
- (2) A direction made or issued by the Board or, as appropriate, an Authorised Officer under these Regulations shall be in writing, shall state the appropriate reasons on which it is based, shall, as soon as possible, be published by placing a notice relating to the direction in at least three national newspapers published in the State and, where the Board or, as appropriate, an Authorised Officer is aware of the identity

of a person to whom the direction is addressed, shall, as soon as possible, be sent or given to that person in any of the following ways –

- (a) by delivering it to that person,
- (b) by leaving it at the address at which that person carries on business,
- (c) by sending it by prepaid registered post to the person at the address at which he or she carries on business,
- (d) if an address for the service of directions has been furnished by the person to the Board or, as appropriate, an Authorised Officer, by leaving it at, or sending it by pre-paid registered post to, that address, or
- (e) in any case where the Board or, as appropriate, an Authorised Officer considers that the immediate giving of the direction is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.

(3) A direction made under these Regulations may require that the measures to be taken in the direction be undertaken –

- (a) immediately, because of the urgency of the measures to be taken,
- (b) from a specified date,
- (c) by a specified date, or
- (d) between specified dates.

(4) A direction made or issued by the Board or, as appropriate, an Authorised Officer under these Regulations, subject to article 13(2), takes effect on the date specified in the direction and shall indicate the appeal procedure under article 13.

(5) Without prejudice to article 10(1)(c) the person to whom a direction has been issued under these Regulations to –

- (a) recall electrical and electronic equipment from the marketplace or, as appropriate, from final users, or, as appropriate,
- (b) notify final users that electrical and electronic equipment contains prohibited hazardous substances,

shall place a notice over three consecutive days to that effect in at least three national newspapers published in the State.

(6) A notice in accordance with the provisions of sub-article (5) shall cover at least –

- (a) half of one page of a broadsheet, or
- (b) one page of a tabloid,

newspaper.

Appeals against Directions of the Board.

13. (1) Any person aggrieved by a direction made by the Board, or as appropriate, an Authorised Officer under these Regulations may, within 21 days of receipt of the direction, appeal to the judge of the Circuit Court in whose Circuit the person carries on business.
- (2) Where an appeal is made under sub-article (1), the appellant may make an application to the Court that the direction shall stand suspended until the appeal is determined or withdrawn.
- (3) On hearing an appeal under sub-article (1), the Court may either confirm or vary the direction, or allow the appeal.
- (4) A decision of the Circuit Court on an appeal under sub-article (1) shall be final, save that, by leave of the Court, an appeal from the decision shall lie to the High Court on a specified question of law.

Injunctions.

14. Where a person fails to comply with a direction of the Board or, as appropriate, an Authorised Officer under these Regulations, the Board or, as appropriate, the Authorised Officer concerned may, in lieu of any summary proceedings against the person in respect of an offence under articles 5, 7, 9, 10(2) and 11 institute in the High Court, proceedings for an order requiring the person to comply with the terms of the direction.

Authorised Officers

15. The Board or, as appropriate, an Authorised Officer may appoint such persons as it considers appropriate to be Authorised Officers for the purposes of these Regulations. Such Authorised Officers shall have the powers and obligations conferred on them by the Waste Management Acts 1996 to 2005 or, as appropriate, the Environmental Protection Agency Acts 1992 and 2003 or such other legislation as may be enacted from time to time.

FIRST SCHEDULE

CATEGORIES OF ELECTRICAL AND ELECTRONIC EQUIPMENT

1. Large household appliances
2. Small household appliances
3. IT and telecommunications 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. Medical devices (with the exception of all implanted and infected products)
9. Monitoring and control instruments
10. Automatic dispensers

SECOND SCHEDULE

LIST OF ELECTRICAL AND ELECTRONIC EQUIPMENT WHICH SHALL BE TAKEN INTO ACCOUNT FOR THE PURPOSE OF THESE REGULATIONS AND WHICH FALL UNDER THE CATEGORIES SET OUT IN THE FIRST SCHEDULE

1. Large household appliances
 - Large cooling appliances
 - Refrigerators
 - Freezers
 - Other large appliances used for refrigeration, conservation and storage of food
 - Washing machines
 - Clothes dryers
 - Dish washing machines
 - Cooking Equipment
 - Electric stoves
 - Electric hot plates
 - Microwaves
 - Other large appliances used for cooking and other processing of food
 - Electric heating appliances
 - Electric radiators
 - Other large appliances for heating rooms, beds, seating furniture
 - Electric fans
 - Air conditioner appliances
 - Other fanning, exhaust ventilation and conditioning equipment

2. Small household appliances
 - Vacuum cleaners
 - Carpet sweepers
 - Other appliances for cleaning
 - Appliances used for sewing, knitting, weaving and other processing for textiles
 - Irons and other appliances for ironing, mangling and other care of clothing
 - Toasters
 - Fryers
 - Grinders, coffee machines, other small appliances used for cooking and other processing of food and equipment for opening or sealing containers or packages
 - Electric knives
 - Appliances for hair-cutting, hair drying, tooth brushing, shaving, massage and other body care appliances
 - Clocks, watches and equipment for the purpose of measuring, indicating or registering time
 - Scales

3. IT and telecommunications equipment
 - Centralised data processing:
 - Mainframes

- Minicomputers
 - Printer units
 - Personal computing:
 - Personal computers (CPU, mouse, screen and keyboard included)
 - Laptop computers (CPU, mouse, screen and keyboard included)
 - Notebook computers
 - Notepad computers
 - Printers
 - Copying equipment
 - Electrical and electronic typewriters
 - Pocket and desk calculators
 - and other products and equipment for the collection, storage, processing, presentation or communication of information by electronic means
 - User terminals and systems
 - Facsimile
 - Telex
 - Telephones
 - Pay telephones
 - Cordless telephones
 - Cellular telephones
 - Answering systems
 - and other products or equipment of transmitting sound, images or other information by telecommunications
4. Consumer equipment
- Radio sets
 - Television sets
 - Videocameras
 - Video recorders
 - Hi-fi recorders
 - Audio amplifiers
 - Musical instruments
 - And other products or equipment for the purpose of recording or reproducing sound or images, including signals
 - or other technologies for the distribution of sound and image than by telecommunications
5. Lighting equipment
- Luminaires for fluorescent lamps with the exception of luminaires in households
 - Straight fluorescent lamps
 - Compact fluorescent lamps
 - High intensity discharge lamps, including pressure sodium lamps and metal halide lamps
 - Low pressure sodium lamps
 - Other lighting or equipment for the purpose of spreading or controlling light with the exception of filament bulbs
6. Electrical and electronic tools (with the exception of large-scale stationary industrial tools)

- Drills
 - Saws
 - Sewing machines
 - Equipment for turning, milling, sanding, grinding, sawing, cutting, shearing, drilling, making holes, punching,
 - folding, bending or similar processing of wood, metal and other materials
 - Tools for riveting, nailing or screwing or removing rivets, nails, screws or similar uses
 - Tools for welding, soldering or similar use
 - Equipment for spraying, spreading, dispersing or other treatment of liquid or gaseous substances by other means
 - Tools for mowing or other gardening activities
7. Toys, leisure and sports equipment
- Electric trains or car racing sets
 - Hand-held video game consoles
 - Video games
 - Computers for biking, diving, running, rowing, etc.
 - Sports equipment with electric or electronic components
 - Coin slot machines
8. Medical devices (with the exception of all implanted and infected products)
- Radiotherapy equipment
 - Cardiology
 - Dialysis
 - Pulmonary ventilators
 - Nuclear medicine
 - Laboratory equipment for in-vitro diagnosis
 - Analysers
 - Freezers
 - Fertilization tests
 - Other appliances for detecting, preventing, monitoring, treating, alleviating illness, injury or disability
9. Monitoring and control instruments
- Smoke detector
 - Heating regulators
 - Thermostats
 - Measuring, weighing or adjusting appliances for household or as laboratory equipment
 - Other monitoring and control instruments used in industrial installations (e.g. in control panels)
10. Automatic dispensers
- Automatic dispensers for hot drinks
 - Automatic dispensers for hot or cold bottles or cans
 - Automatic dispensers for solid products
 - Automatic dispensers for money
 - All appliances which deliver automatically all kind of products

Given under the Official Seal of
the Minister for the Environment,
Heritage and Local Government this 5th
day of July 2005

L.S.

DICK ROCHE

Minister for the Environment, Heritage,
and Local Government

EXPLANATORY NOTE

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

These Regulations are designed to minimise waste arisings of certain hazardous substances by prohibiting the use of certain heavy metals in electrical and electronic equipment as required by Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

The Regulations impose obligations on persons who supply electrical and electronic equipment to the Irish market, whether as retailers, importers or manufacturers.