

Explanatory Notes in Respect of the RoHS Regulations (S.I. 341 of 2005)

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.

PART 1 PRELIMINARY AND GENERAL

Article 1 – Citation

Provides that these Regulations be referred to as “The Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005”.

Article 2 – Purpose of regulations

States that the purpose of these Regulations is to implement the RoHS Directive¹.

Article 3 – Interpretation of regulations

Defines terms used in these Regulations. In particular, –

a “**producer**” means a manufacturer, importer, exporter, brand owner, or a retailer who sells electrical and electronic equipment (EEE) from any of the aforementioned persons who fails to register with the Registration Body that has been established for the purposes of implementing the WEEE Directive²,

a “**distributor**” means a retailer, and

“**distribute**” means to sell including by hire purchase, or to give as a prize or gift.

Article 4 – Scope of Regulations

Sub-article (1) provides that these regulations will apply to –

- Large household appliances
- Small household appliances
- IT and telecommunications equipment
- Consumer equipment
- Lighting equipment
- Electrical and electronic tools (with the exception of large-scale stationary industrial tools)
- Toys, leisure and sports equipment
- Automatic dispensers, and
- Electric light bulbs and luminaries in private households.

¹ O.J. No. L37, 13.02.2003, p.19.

² O.J. No. L37, 13.02.2003, p.24.

Sub-article (2) provides guidance as to the category various types of EEE falls into. However this is not an exhaustive list. Therefore exclusion of any type of equipment does not exclude it from the scope of these Regulations.

Sub-article (3) confirms that these Regulations shall not apply to spare parts for the repair of EEE put on the market prior to 1 July 2006 or to the reuse of EEE originally placed on the market prior to 1 July 2006.

**PART II PROHIBITION ON MARKING OF ELECTRICAL AND
ELECTRONIC EQUIPMENT CONTAINING SPECIFIED
HAZARDOUS SUBSTANCES**

Article 5 - Prohibition of specified hazardous substances

Provides that on and from 1 July 2006, –

- Large household appliances
- Small household appliances
- IT and telecommunications equipment
- Consumer equipment
- Lighting equipment
- Electrical and electronic tools (with the exception of large-scale stationary industrial tools)
- Toys, leisure and sports equipment
- Automatic dispensers, and
- Electric light bulbs and luminaries in private households.

containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated biphenyl ethers (PBDE) may not be placed on the market by a producer and/or sold by a retailer.

Article 6 - Record keeping

Requires producers, i.e. manufacturers, importers, exporters, brand owners etc. to have access at all times at an address in the State to records of any documentation issued by any person including suppliers of components and/or parts that can be used to verify that EEE placed on the market complies with the requirements of the RoHS directive.

Article 7 - Exemptions

Paragraph (a) exempts EEE that does not exceed the applications specified in the Annex to the Directive. The Annex to the Directive as of 5 July 2005 is at Appendix 1.

Paragraph (b) exempts EEE placed on the market prior to 13 August 2005 that is spare parts for the repair of EEE, or EEE placed on the market prior to 13 August 2005 that is re-used.

PART III FUNCTIONS OF THE AGENCY AND THE DIRECTOR

Article 8 - Enforcement

Stipulates that the Environment Protection Agency (EPA) is responsible for ensuring compliance with the RoHS Directive.

Article 9 - Duty to inform the Agency

Sub-article (1) requires a producer i.e. a manufacturer, importer, exporter, brand owner etc. and/or a retailer to notify the EPA as soon as he or she becomes aware that he or she placed on the market or sold EEE that was in contravention of the RoHS Directive and provide any such information that will identify and trace the products concerned, together with details of the prohibited hazardous substances.

Sub-article (2) requires a producer i.e. a manufacturer, importer, exporter, brand owner etc. and/or a retailer to provide every reasonable assistance to the EPA.

Article 10 - Functions of the Board

Sub-article (1) empowers the Board of the EPA or an Authorised Officer of the Board to –

- arrange for and/or commission testing of EEE, and/or request any information in relation to EEE placed on the market in order to ensure its compliance with the requirements of the RoHS Directive,
- prohibit EEE undergoing evaluation and/or testing from being placed on the market or sold until it is established that it complies with the requirements of the RoHS Directive,
- prohibit EEE that does not comply the requirements of the RoHS Directive from being placed on the market, and
- order the recall of EEE that does not comply the requirements of the RoHS Directive from, the market place including retailers, and consumers who must be alerted that the EEE in question contains prohibited hazardous substances, and
- order that recalled EEE is managed and treated in accordance with the requirements of the WEEE Directive.

Sub-article (2) provides that a direction prohibiting EEE being placed on the market and/or sold, or ordering its recall shall be addressed to the producer, distributor(s) any other person the Board of the EPA or an Authorised Officer of the Board considers appropriate.

Article 11 - Decisions of the Commission in relation to hazardous substances in electrical and electronic equipment

Sub-article (1) enables the Board of the EPA or an Authorised Officer of the Board to take any measures in accordance with the provisions of article 10 of these Regulations as soon as it is known that the EU Commission has made a decision to amend the Annex to the RoHS Directive, i.e. concerning matters such as –

- the maximum concentration values of certain hazardous substances that may be tolerated, and/or
- materials and components that may be exempted

if such measures are required by the aforementioned decision.

If a decision to amend the Annex to the RoHS Directive requires the Director of the EPA to take any measures in accordance with the provisions of Article 10 of these Regulations **Sub-article (2)** requires the Board of the EPA or an Authorised Officer of the Board to do so within 20 days of the decision, unless the decision specifies a different period.

If the Board of the EPA or an Authorised Officer of the Board takes any measures in accordance with the provisions of Article 10 of these Regulations **Sub-article (3)** requires that any person affected be given one month to submit his or her views in the matter to the Board or the Authorised Officer concerned who shall notify the Commission of any comments received.

Article 12 - Procedure in relation to directions of the Director

Sub-article (1) requires the Board of the EPA or an Authorised Officer of the Board when it is being considered to issue a direction in accordance with the provisions of these Regulations to give, where it is feasible, the person to whom the direction is to be addressed to an opportunity to submit his or her views before issuing the direction. However, where this isn't feasible on account of the urgency of the matter, the Board of the EPA or the Authorised Officer concerned is required to give the person to whom the direction is to be addressed to an opportunity to submit his or her views after the direction is issued.

Sub-article (2) requires that a direction from the Board of the EPA or an Authorised Officer of the Board in accordance with the provisions of these Regulations shall be in writing, shall state the reasons and shall be published by placing a notice in at least three national newspapers that are published within the State. In addition, where the Board of the EPA or the Authorised Officer concerned knows the identity of the person to whom the direction is to be addressed to, it shall also be either –

- handed to him or her,
- left at the address where he or she carries out business,
- by registered post to the address where he or she carries out business,
- by sending it to an address provided by the person concerned to the Director, or
- if immediate notification of the direction is required, by sending it to a fax or e-mail address at the address where that person carries out business.

Sub-article (3) enables the Board of the EPA or an Authorised Officer of the Board to require any measure specified in a direction issued in accordance with the provisions of these Regulations, to be taken either immediately, from a specified date, by a specified date, or between specified dates.

Sub-article (4) stipulates that a direction made by the Board of the EPA or an Authorised Officer of the Board under the provisions of these Regulations –

- takes effect from the date specified in the direction, and
- shall advise the person to whom the direction is to be addressed of the appeal procedures available to him or her.

Sub-article (5) requires the person to whom a direction has been addressed to issue recall notices and notify consumers that EEE that he or she has placed on the market

or sold contains prohibited hazardous substances by placing a notice in at least three national newspapers that are published within the State.

Sub-article (6) specifies the size of notices required to be placed by the person to whom a direction has been addressed, i.e. half a page of a broadsheet or the full page of a tabloid.

Article 13 - Appeals against directions of the Director

Sub-article (1) enables any person in receipt of a direction from the Board of the EPA or an Authorised Officer of the Board under the provisions of these Regulations to lodge an appeal to the Circuit Court within 21 days of receipt of the direction.

Sub- article (2) enables the person appealing a direction of the Board of the EPA or an Authorised Officer of the Board to apply to the court to have such a direction suspended until the appeal is decided upon or withdrawn.

Sub-article (3) enables the Presiding Judge to confirm, vary or over rule the direction.

Sub- article (4) stipulates that a decision of the Circuit Court may only be appealed to the High Court on a specified point of law.

Article 14 - Injunctions

Enables the Board of the EPA or an Authorised Officer of the Board to apply for an injunction to the High Court against a person failing to comply with a direction from the Director under the provisions of these Regulations for the purpose of obtaining an order requiring him or her to comply, in lieu of instigating summary proceedings,

Article 15 - Authorised Officers

Enables the Board of the EPA to appoint Authorised Officers to enforce these Regulations. It also provides that such authorised Officers shall have the powers of entry and enforcement as provided for in –

- the Waste Management Acts 1996 to 2005,
- the Environmental Protection Agency Acts 1992 and 2003, or
- any other legislation as may be enacted from time to time.

SCHEDULES

First Schedule - Categories of Electrical and Electronic Equipment

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

Appendix 1

APPLICATIONS OF LEAD, MERCURY, CADMIUM AND HEXAVALENT CHROMIUM, WHICH ARE EXEMPTED FROM THE REQUIREMENTS OF THE RoHS DIRECTIVE AS OF 5 JULY 2005.

1. Mercury in compact fluorescent lamps not exceeding 5 mg per lamp.
2. Mercury in straight fluorescent lamps for general purposes not exceeding:
 - halophosphate 10 mg
 - triphosphate with normal lifetime 5 mg
 - triphosphate with long lifetime 8 mg.
3. Mercury in straight fluorescent lamps for special purposes.
4. Mercury in other lamps not specifically mentioned in this Annex.
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 in
 - high melting temperature type solders (i.e. tin-lead solder alloys containing more than 85 % lead),
 - solders for servers, storage and storage array systems (exemption granted until 2010),
 - solders for network infrastructure equipment for switching, signaling, transmission as well as network management for telecommunication,
 - electronic ceramic parts (e.g. piezoelectronic devices).
8. Cadmium plating except for applications banned under Directive 91/338/EEC¹ amending Directive 76/769/EEC² 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.

¹ O.J. L186, 12.7.1991, p.59.

² O.J. L262, 27.9.1976, p.201.