

Explanatory Notes in Respect of the Regulations Amending the Waste Management Acts (S.I. 290 of 2005)

EXPLANATORY NOTE

The purpose of these Regulations is to amend the Waste Management Act 1996 for the purpose of giving legislative effect in Ireland to two EU Directives:

- EU Directive 2002/95/EC on the Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS), and
- EU Directive 2002/95/EC 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)

These Regulations are designed to

- promote the recovery of waste electrical and electronic equipment. They will facilitate in particular the achievement of the targets for the collection, treatment, recovery and disposal of waste electrical and electronic equipment in an environmentally sound manner established by Directive 2002/96/EC on waste electrical and electronic equipment.
- 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 will facilitate the imposition of obligations on persons who supply electrical and electronic equipment to the Irish market, whether as retailers, importers or manufacturers. An exemption from these obligations will be available to persons who participate in a scheme for the collection, treatment, recovery and disposal of waste electrical and electronic equipment in an environmentally sound manner operated by an approved body.

PART I – PRELIMINARY AND GENERAL

Article 1 – Citation

Provides that these Regulations be referred to as ‘The Waste Management (Electrical and Electronic Equipment) Regulations 2005’. Part II of these Regulations along with the Waste Management Acts 1996 to 2003 may be referred to as the Waste Management Acts 1996 to 2005.

Article 2 – Commencement

Provides that these Regulations come into force on the 1 July 2005

Article 3 – Interpretation

Provides that within these Regulations the Waste Management Act 1996 is defined as “the Act of 1996” and the Protection of the Environment Act 2003 is defined as “the Act of 2003”.

PART II – AMENDMENT OF ACT OF 1996

Article 4 – Amendment of Section 2 of Act of 1996

Provides for the amendment of Section 2 of the Waste Management Act 1996 by inserting the title of the two relevant EU Directives on

- European Parliament and Council Directive 2002/95/EC of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS), and
- European Parliament and Council Directive 2002/96/EC of 27 January 2003 on waste electrical and electronic equipment as amended by European Parliament and Council Directive 2003/108/EC of 8 December 2003 (WEEE)

respectively.

Article 5 – Insertion of Part VB in Act of 1996 (Waste Electrical and Electronic Equipment)

Provides for the main provisions in relation to RoHS and WEEE by inserting Sections 53G to 53N after the existing Section 53F of the Act of 1996.

PART VB – WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

Section 53G – Interpretation (Part VB)

Defines terms used in this Part VB.

Section 53H – This section will enable the making of regulations by the Minister in consultation with the Minister for Enterprise, Trade and Employment for the purposes of promoting, supporting or facilitating the prevention, minimisation or restriction of hazardous substances in waste in accordance the RoHS Directive and the producer responsibility requirements of the WEEE Directive. It provides for the imposition of an obligation on producers (defined in section 53G as “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 such 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 non-registered producer ”)

This section also prohibits the use of specified hazardous substances, in EEE and also provides for the removal of EEE containing hazardous substances from the market.. It also places an obligation in relation on producers when designing products to take into account and facilitate the dismantling and recovery and in particular the reuse and recycling of WEEE.

Subsection (1) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment, may make regulations

- prohibiting the use of specified hazardous substances in any electrical and electronic equipment including electric light bulbs and luminaries placed on the market,
- imposing the obligation specified in subsection (2),
- providing for the removal of electrical and electronic equipment containing specified hazardous substances from the market.

Subsection (2) explicitly provides for the obligation of producers to

- take into account and facilitate the dismantling and recovery and in particular the reuse and recycling of WEEE,
- encourage waste electrical and electronic equipment being reused through specific design features or manufacturing processes, and
- ensure that electrical and electronic equipment placed on the market does not contain specified hazardous substances

Subsection (3) provides that the provisions of subsection (2) shall also apply to distributors or producers from within the European Union or from third countries supplying electrical and electronic equipment in or into the state by means of distance communication.

Subsection (4) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment, make regulations to provide for the removal of electronic and electrical equipment containing specified hazardous substances from the market.

Subsection (5) stipulates that any person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.

Section 53I

This section provides for distributor and producer responsibility for the take back, treatment and recovery of WEEE. This section places an obligation on

- producers to finance the collection, treatment, recovery and environmentally sound disposal of WEEE which he/she has placed on the market,
- distributors to take back household WEEE from the final user on a one-for-one basis, at least free of charge, and
- a final user (defined in section 53G as any person who discards EEE for which they have no further use but doesn't include "any person who on behalf of or

as a service to any other person buys, sells or arranges for the purchase, sale or transfer of waste from one person to another or arranges for the collection, recovery or disposal of waste”), of business to business WEEE that is not being replaced with new equivalent products or with new products fulfilling the same function to finance its collection, treatment, recovery and environmentally sound disposal.

Subsection (1) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment– with effect from dates to be prescribed in regulations – imposing the obligations specified in subsection (2) and providing that sub-section (2) may not apply in cases where the WEEE contains waste which does not derive from EEE.

Subsection (2) explicitly provides for the obligation of

- a distributor to take back household WEEE from the final user, on a one-for-one basis at least free of charge, unless that WEEE is contaminated and therefore poses a health and safety risk. Contaminated WEEE cannot be refused however if such contamination is on account of a distributor’s liability under the Sale of Goods and supply of Services Act 1980 (No. 16 of 1980),
- a producer to finance the collection, treatment, recovery and environmentally sound disposal of –
 - household WEEE deposited at an approved collection facility in respect of electrical and electronic equipment which–
 - that producer places on the market on or after 13 August 2005, and/or
 - was originally placed on the market by that producer prior to 13 August 2005 in proportion to his or her respective share of the market by type of equipment
 - business to business WEEE in respect of electrical and electronic equipment which-
 - that producer places on the market on or after 13 August 2005, and
 - was originally placed on the market prior to 13 August 2005, that he or she replaces with new equivalent products or with new products fulfilling the same function
- a final user of business to business WEEE that is not being replaced with new equivalent products or with new products fulfilling the same function to finance its collection, treatment, recovery and environmentally sound disposal.

Subsection (3) provides that the provisions of subsection (2) shall also apply to distributors or producers from within the European Union or from third countries

supplying electrical and electronic equipment in or into the state by means of distance communication.

Subsection (4) enables the making of regulations to provide

- (a) the establishment of a collective compliance scheme(s) that will enable
 - distributors in co-operation to fulfil their individual obligations to take back WEEE on a one-to-one basis.
 - producers in co-operation to fulfil their individual obligations to finance the collection, treatment, recovery and environmentally sound disposal of WEEE,
- (b) the contributions payable by distributors and producers participating in a collective scheme or schemes,
- (c) with regard to (b) provides for
 - (i) a collective scheme to collect from
 - producers the monies necessary to fulfil their individual obligations to finance the collection, treatment, recovery and environmentally sound disposal of WEEE,
 - distributors membership fees to cover cost that may be incurred if distributors decide to co-operate in providing central take back facilities for household WEEE,
 - (ii) producers and distributors to provide to a collective scheme any information as may be required,
 - (iii) the collective scheme to determine the time that monies necessary to fulfil the individual obligations of producers and distributors and/or membership fees will become payable, together with the method of payment,
 - (iv) the requirement to keep records by producers and/or distributors in relation to the provision of monies necessary to fulfil their individual obligations and / or membership fees and the specification of the form those records,
 - (v) the deferral of monies necessary to fulfil their individual obligations and / or membership fees in circumstances that may be specified in regulations,
 - (vi) the keeping of financial records by a collective scheme,
 - (vii) enabling the refund of monies and / or membership fees made available by specified distributors or producers, as appropriate, to be made to them;

- (viii) enabling a collective scheme to enter into arrangements with producers, including producers who are not members of a collective scheme and/or distributors, whereby that person or those persons remit to the approved body monies necessary to fulfil their individual obligations and / or membership fees including arrears within a specified period of time after liability in respect of the making available of those amounts arises;
- (d) the exemption of producers and/or distributors who are members of, and are satisfactorily participating in a WEEE recovery collective scheme approved under subsection (5)(e) – see below - from all or any the requirements of regulations under this section i.e. the exempting of producers and/or distributors who are members of a voluntary industry-led producer responsibility initiative (collective scheme) established for the purpose of fulfilling the main requirements of the WEEE Directive viz. distributors facilitating the free take-back of WEEE as specified in article 5.2 of the Directive and provided for in subsection 2(a); producers financing the collection, treatment, recovery and environmentally sound disposal of WEEE as specified in Articles 8 and 9 of the Directive and provided for in subsection 2(b) and the achievement of the WEEE recovery/recycling targets as specified in article 7.2 of the Directive;
- (e)
 - (i) the granting of approval to an association or body corporate (collective scheme which producers and or distributors may join) formed or established for the purposes of taking back and/or recovering WEEE, and the attaching of conditions to any such approval relating to the financial/administrative/reporting arrangements of any such approved body; the waste recovery activities to be carried on by any such approved body and the manner in which they are to be carried on; and the targets to be achieved by any such approved body (i.e. the recovery/recycling targets specified in article 7.2 of Directive 2000/96/EC);
 - (ii) enabling the varying of any condition attached to an approval or the revoking of such an approval by the Minister in specified circumstances;
 - (iii) providing the means by which a collective scheme shall determine whether a producer and/or distributor is participating satisfactorily in the approved WEEE recovery and/or take back compliance scheme;
 - (iv) allowing for the grant or revocation by a collective scheme of a certificate to members, and the notifications to be given by it in respect of such a grant or revocation to the specified party concerned and other specified party;
- (f) the exemption of a producer and/or distributor who will be opting for self compliance (rather than the exemption which allows participation in a collective scheme) from any or all of the requirements set out in Section 53I(5) relating to the latter;

- (g) the display of environmental management costs which are separately indicated from the price of the product at the time of its sale;
- (h) any matters consequential on, or incidental to the foregoing.

Subsection (5) states that approval of retailers and/or producers to participate in a collective compliance scheme shall not authorise them to –

- conclude anti-competitive agreements or act in collusion to prevent, restrict or distort competition in contravention of section 4(1) of the Competition Act, 2002 (No. 14 of 2002) and/or Article 81 of the Treaty of Rome, and/or
- abuse a dominant position in contravention of section 5(1) of the Competition Act 2002 (No. 14 of 2002) and/or Article 82 of the Treaty of Rome.

Subsection (6) stipulates that any person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.

Section 53J – Registration Body

The WEEE Directive requires that Member States shall draw up a register of producers and collect information, including substantiated details, on an annual basis on the quantities and categories of electrical and electronic equipment put on their market, collected through all routes, reused, recycled and recovered within the Member States, and on collected waste exported.

Subsection (1) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment– with effect from dates to be prescribed in regulations – to enable the establishment of a registration body and the powers vested in it.

Subsection (2) specifically provides for

- (a) the requirement of each producer to register with the registration body,
 - (i) to fulfil his or her obligations under the WEEE Directive, and provide to the registration body details of a third party who may be authorised to act on his or her behalf in relation to the recovery of waste electrical and electronic equipment, details of financial guarantees provided by him or her to finance the collection, recovery and environmentally sound disposal of waste electrical and electronic equipment, data relating to the quantities of products placed on the market, and details of any environmental management costs applied on electrical and electronic equipment.
 - (ii) to verify his or her compliance with the RoHS Directive by providing to the satisfaction of the registration body, appropriate information and data for the purposes of confirming that electrical and electronic

equipment placed on the market does not contain specified hazardous substances;

- (b) the requirement of each producer to satisfy the registration body that he or she or a third party acting on his or her behalf contributes in full to his or her share of the costs of the collection, treatment, recovery and environmentally sound disposal of waste electrical and electronic equipment,
- (c) the contributions payable by producers registering with a registration body,
- (d) the collection arrangements relating to the fees remitted by producers for the purposes of registering, including –
 - (i) the conferral of powers on the registration authority to collect and recover fees relating to registration,
 - (ii) the time at which the payment of the registration fees shall be made by producers and the form and manner of such payment,
 - (ii) enabling a registration body to enter into arrangements with one or more specified persons whereby that person or those persons remit to the registration body amounts by way of financial resources within a specified period of time after liability in respect of the making available of those amounts arises,
- (e) the power of the registration authority –
 - (i) to examine the audited accounts of a producer and/or a collective scheme, and/or obtain a statement from the external auditors of a producer and/or a collective scheme in order to verify the adequacy of financial guarantees, market share, and the accuracy of information submitted,
 - (ii) to take whatever action is deemed appropriate such as the examination of records or the commissioning of testing to ensure compliance with the RoHS Directive and the WEEE Directive.
- (f) enabling the refund of registration fees paid by specified producers to be made to those producers,
- (g) requiring the submission of specified documentation, information and particulars to any person who may be specified in regulations,
- (h) the removal from the register of producers failing to comply with regulations
- (i) the granting of a certificate of registration and/or a certificate of renewal of registration by the registration body;
- (j) the refusal of the registration body to grant a certificate of registration and/or a certificate of renewal of registration;

- (k) requiring that producers accept decisions made by the registration body, and
- (l) enabling the Minister to monitor the activities of the registration body and seek the submission of reports from time to time as required; and
- (m) any matters consequential on, or incidental to the foregoing.

Subsection (3) provides that the provisions of subsection (2) apply to producers from within the European Union or from third countries supplying electrical and electronic equipment in or into the state by means of distance communication.

Subsection (4) stipulates that only one Registration Body may perform the registration functions at any one time.

Subsection (5) enables the Registration Body to procure some or all of its functions.

Subsection (6) stipulates that any person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.

Section 53K – *Obligation to Mark Electrical and Electronic Equipment placed on the market*

European Parliament and Council Directive 2002/96/EC of 27 January 2003 on WEEE as amended by European Parliament and Council Directive 2003/108/EC of 8 December 2003 requires that Member States shall ensure from 13 August 2005, that producers mark electrical and electronic equipment put on the market to indicate that it was placed from that date onwards and that it should not be disposed of as unsorted municipal waste.

Subsection (1) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment imposing the obligation on producers to apply a mark on electrical and electronic equipment.

Subsection (2) specifically provides for each item of electrical and electronic equipment placed on the market to incorporate a mark to –

- (a) indicate it should not be disposed of as unsorted municipal waste
- (b) identify the producer,
- (c) indicate that the electrical and electronic equipment is placed on the market after a specific date (The WEEE Directive requires that electrical and electronic equipment placed on the market from 13 August 2005 onwards is marked to indicate this.), and
- (d) indicate that the electrical and electronic equipment placed on the market after a specific date does not contain specified hazardous substances (The RoHS Directive requires that electrical and electronic equipment placed on the

market from 1 July 2006 onwards does not contain specified hazardous substances).

Subsection (3) provides that the provisions of subsection (2) apply to producers from within the European Union or from third countries supplying electrical and electronic equipment in or into the state by means of distance communication.

Subsection (4) provides for

- (a) the appropriate application of symbols and marks on electrical and electronic equipment, or the packaging, on the instructions for use and on the warranty of the equipment concerned
- (b) any matters consequential on, or incidental to, the foregoing.

Subsection (5) stipulates that any person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.

Section 53L – *Obligation to Provide Information to the Users of Electrical and Electronic Equipment*

European Parliament and Council Directive 2002/96/EC of 27 January 2003 on WEEE as amended by European Parliament and Council Directive 2003/108/EC of 8 December 2003 requires that Member States shall ensure that users of electrical and electronic equipment in private households are given the necessary information about

- the requirement not to dispose of WEEE as unsorted municipal waste and to collect such WEEE separately;
- the return and collection systems available to them;
- their role in contributing to reuse, recycling and other forms of recovery of WEEE;
- the potential effects on the environment and human health as a result of the presence of hazardous substances in electrical and electronic equipment;
- the meaning of the wheeled bin symbol.

Subsection (1) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment– with effect from dates to be prescribed in regulations – to impose the obligation on distributors and producers to provide the above information.

Subsection (2) specifically provides that distributors or producers as appropriate must inform purchasers of EEE of

- (a) the benefits to the environment of recycling WEEE and not disposing of it in landfill,
- (b) how they can return WEEE,
- (c) how they can contribute to re-use, recycling and other forms of recovery,

- (d) the potential impacts of hazardous substances in EEE to human health and the environment, and
- (e) the meaning of the symbols on EEE as required in section 53K.

Subsection (3) provides that the provisions of subsection (2) apply to distributors and producers from within the European Union or from third countries supplying electrical and electronic equipment in or into the state by means of distance communication.

Subsection (4) provides for

- (a) any specific requirements relating to the provision of information to users of electrical and electronic equipment in private households,
- (b) any matters consequential on, or incidental to, the foregoing.

Subsection (5) stipulates that any person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.

Section 53M – Obligation to Provide Information to Recovery Facilities

European Parliament and Council Directive 2002/96/EC of 27 January 2003 on WEEE as amended by European Parliament and Council Directive 2003/108/EC of 8 December 2003 requires that Member States shall take the necessary measures to ensure that producers provide reuse and treatment information for each type of new EEE put on the market within one year after the equipment is put on the market.

Subsection (1) provides that the Minister, following consultation with the Minister for Enterprise, Trade and Employment– with effect from a date to be prescribed in regulations – to impose the obligation on producers to provide the above-mentioned information.

Subsection (2) specifically provides for the provision of reuse and treatment information, including the location of dangerous substances and preparations, for each type of electrical and electronic equipment placed on the market to recovery facilities carrying out the refurbishment, treatment, recycling and recovery of waste electrical and electronic equipment

Subsection (3) provides that the provisions of subsection (2) apply to producers from within the European Union or from third countries supplying electrical and electronic equipment in or into the state by means of distance communication.

Subsection (4) provides for

- (a) any specific requirements relating to the provision of information to recovery facilities,
- (b) any matters consequential on, or incidental to, the foregoing.

Subsection (5) stipulates that any person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.
