

STATUTORY INSTRUMENTS

S.I. No. 290 of 2005

**WASTE MANAGEMENT (ELECTRICAL AND ELECTRONIC
EQUIPMENT) REGULATIONS 2005**

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European Parliament and Council Directive 2003/108/EC of 8 December 2003¹ amending Directive 2002/96/EC on waste electrical and electronic equipment”.

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

5.–The Act of 1996 is hereby amended by inserting the following Part after section 53F:

“Part VB

Waste Electrical and Electronic Equipment

Interpretation (Part VB)

53G.–In this Part save where the context otherwise requires–

“civic amenity facility” means a purpose-designed facility operated by or on behalf of a local authority or a private sector operator which is provided for the efficient reception and temporary storage of recyclable and non-recyclable waste materials, including segregated waste electrical and electronic equipment arising from private households;

“collection point” means –

- (i) a civic amenity facility, or
- (ii) other facility for the receipt, storage or recovery of waste electrical and electronic equipment

subject to such a facility being appropriately licensed, permitted or registered under Regulations made pursuant to Section 39 of the Act, or other such facilities as may be prescribed in Regulations;

“dangerous substance or preparation” means any substance or preparation which has to be considered dangerous under Council Directive 67/548/EEC² or, as appropriate, Directive 1999/45/EC of the European Parliament and of the Council³;

“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 contracts⁴ 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;

“distributor” means any person who provides electrical and

¹ O.J. No. L 345/106, 31 December, 2003

² O.J. No. L 196/1, 16 August, 1967

³ O.J. No. L 200/1, 30 July, 1999

⁴ O.J. No. L 144/19, 04 June, 1997

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 equipment and designed for use with a voltage rating not exceeding 1,000 volt for alternating current and 1,500 volt for direct current;

“environmental management costs” means the costs of the environmentally sound management of waste electrical and electronic equipment from private households arising from electrical and electronic equipment placed on the market prior to 13 August 2005;

“environmentally sound management of waste electrical and electronic equipment” means the collection, storage, treatment and recovery or, as appropriate, disposal of waste electrical and electronic equipment in an environmentally sound manner;

“final user” means any person who discards electrical and electronic equipment, for which they have no further use or, as appropriate, who intends to or is required to discard it, but shall not include any person who on behalf of or as a service to any other person—

- (a) buys, sells or arranges for the purchase, sale or transfer of waste from one person to another, or
- (b) arranges for the collection, recovery or disposal of waste;

“finance agreement” means any loan, lease, hiring or deferred sale agreement or arrangement relating to any 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;

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

- (a) manufactures and sells electrical and electronic equipment under his or her own brand,
 - (b) resells electrical and electronic equipment produced by other suppliers under his or her own brand,
 - (c) imports electrical and electronic equipment on a professional basis into the State,
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- (d) exports electrical and electronic equipment on a professional basis from the State to another Member State of the European Union, or
- (e) 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;

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 (a) to (e);

“recovery” means any of the applicable operations provided for in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste¹;

“recycling” means the reprocessing in a production process of the waste materials for the original purpose or for other purposes, but excluding energy recovery which means the use of combustible waste as a means of generating energy through direct incineration with or without other waste but with recovery of the heat;

“reuse” means any operation by which waste electrical and electronic equipment or components thereof are used for the same purpose for which they were conceived, including the continued use of the equipment or components thereof which are returned to collection points, distributors, recyclers or manufacturers;

“RoHS Directive” means 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;

“treatment” means any activity after the waste electrical and electronic equipment has been handed over to a facility for depollution, disassembly, shredding, recovery or preparation for disposal and any other operation carried out for the recovery or, as appropriate, the disposal of the waste electrical and electronic equipment;

“waste electrical and electronic equipment” means electrical and electronic equipment, which is waste within the meaning of article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, including all components, subassemblies and consumables which are part of the product at the time of discarding;

¹O.J. No. L194/39, 25 July, 1975

“waste electrical and electronic equipment from private households” means waste electrical and electronic equipment which comes from private households, and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households;

“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/EC of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment.

Regulations for purposes of promoting, supporting or facilitating the prevention, minimisation, or restriction of hazardous substances in waste

53H.–(1) The Minister may, following consultation with the Minister for Enterprise, Trade and Employment, make regulations—

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

(2) The obligation mentioned in subsection (1) is an obligation on a producer with effect from a date specified in regulations, or in an order made by the Minister, to—

- (a) take into account and facilitate the dismantling and recovery and, in particular, the reuse and recycling of waste electrical and electronic equipment, including materials and components contained therein, in the design and production of electrical and electronic equipment,
- (b) encourage waste electrical and electronic equipment, including materials and components contained therein, to be reused through specific design features or manufacturing processes, unless such specific design features or manufacturing processes present overriding advantages with regard to the protection of the environment or, as appropriate, safety requirements, and
- (c) ensure that electrical and electronic equipment, including materials and components contained therein, placed on the market does not contain substances specified in regulations under this section.

(3) The provisions of subsection (2) shall also apply to distributors or producers, as appropriate, operating from within the European Union or from third countries supplying electrical and electronic equipment in or into the State by means of distance communication or otherwise.

(4) A person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.

Distributor and producer responsibility for the take back, treatment and recovery of waste electrical and electronic equipment

53I.—(1) The Minister may, following consultation with the Minister for Enterprise, Trade and Employment, make regulations –

- (a) imposing the obligation specified in subsection (2); and
- (b) providing that subsection 2(a) may not apply where the waste electrical and electronic equipment contains waste other than that deriving from electrical and electronic equipment.

(2) The obligation mentioned in subsection (1) is an obligation, with effect from a date to be specified in regulations, or in an order made by the Minister, on–

(a) a distributor to take back from the final user on a one-for-one basis at least free of charge waste electrical and electronic equipment from private households that is replaced by equipment of equivalent type or has fulfilled the same functions as the supplied electrical and electronic equipment, other than contaminated waste electrical and electronic equipment that presents a health and safety risk, unless 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);

(b) a producer to finance the environmentally sound management of–

(i) waste electrical and electronic equipment arising from private households deposited at a collection point in respect of electrical and electronic equipment which that producer originally–

(I) places on the market on or after 13 August 2005, and

(II) placed on the market prior to 13 August 2005 in proportion to that producer's

respective share of the market by type of equipment when the respective costs occur,

(ii) waste electrical and electronic equipment from users other than private households in respect of electrical and electronic equipment which –

(I) that producer places on the market on or after 13 August 2005, and

(II) was placed on the market prior to 13 August 2005, and that producer replaces with new products of equivalent type or new products fulfilling the same function,

(c) a final user to finance the environmentally sound management of waste electrical and electronic equipment other than from private households, that is not being replaced with new products of equivalent type or new products fulfilling the same function.

(3) The provisions of subsection (2) shall also apply to distributors or producers, as appropriate, operating from within the European Union or from third countries supplying electrical and electronic equipment in or into the State by means of distance communication or otherwise.

(4) Regulations under this section may provide for–

(a) the making of arrangements by distributors or producers, separately or in combination, for the purpose of ensuring that the obligations of each of them under the regulations are fulfilled,

(b) the provision by distributors or producers, as appropriate, of the financial resources (the ‘resources’) necessary to ensure that those foregoing obligations are fulfilled,

(c) the following matters in relation to the provision of the resources–

(i) the conferral of powers on a specified person or persons for the purpose of operating a scheme to provide for the environmentally sound disposal of waste electrical and electronic equipment (here and after is referred to in this section as an ‘approved body’) with respect to securing and recovering the resources,

- (ii) requiring the submission of information by a distributor or producer, as appropriate, as may be prescribed in regulations made under this section to the approved body,
 - (iii) the time at which an amount of resources shall be made available by a distributor or producer, as appropriate, and the form and manner in which they shall be made available,
 - (iv) requiring specified records to be kept by specified persons in respect of matters connected with the making available of the resources and specifying the form of such records,
 - (v) enabling the making available of resources by specified distributors or producers, as appropriate, to be deferred in specified circumstances,
 - (vi) requiring specified records and accounts to be kept by an approved body in respect of the resources made available to it or to be made available to it,
 - (vii) enabling the refund of resources made available by specified distributors or producers, as appropriate, to be made to them,
 - (viii) enabling an approved body to enter into arrangements with a producer or, as appropriate, a distributor whereby that producer or, as appropriate, that distributor remits to the approved 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,
- (d) the exemption of a person or persons from all or any of the requirements of regulations under this section who is certified by an approved body to be either—
- (i) a member or shareholder of that approved body, as the case may be, or
 - (ii) participating in a satisfactory manner, in a scheme for the carrying on of the relevant activities referred to in this paragraph or complying with any requirements specified by that approved

body.

- (e) (i) the granting by the Minister of approvals for the purpose of regulations under paragraph (d) and the conditions which he or she may attach to such approvals, including conditions relating to—
 - (I) the financial and administrative arrangements to be made by the approved body concerned,
 - (II) the relevant activities referred to in paragraph (d) to be carried out by an approved body and the manner in which they are to be carried out,
 - (III) targets to be achieved by the approved body concerned with respect to the carrying on of those activities by it,
 - (ii) enabling the Minister to vary as he or she thinks fit any condition attached to an approval aforesaid or to revoke such an approval in specified circumstances,
 - (iii) the means by which an approved body shall determine, for the purpose of regulations under paragraph (d), whether a person is participating, in a satisfactory manner, in a scheme referred to in that paragraph or, as the case may be, is complying with requirements referred to in that paragraph,
 - (iv) the grant and revocation by an approved body of a certificate for the purpose of regulations under paragraph (d) and the notifications to be given by it in respect of such grant or revocation to the person concerned and other specified persons,
- (f) the exemption of a distributor or producer, as appropriate, from all or any of the requirements of regulations under this section (being a distributor or producer, as appropriate, who is not otherwise exempted by virtue of regulations under paragraph (d)) where he or she shows to the satisfaction of the Minister or another person specified for this purpose that he or she has put arrangements in place to ensure that the take back of each item of waste electrical and electronic equipment can be deposited by the final user thereof for the purpose of its being deposited at a collection point or, as appropriate, at a civic amenity facility or for the purposes of the environmentally sound management of that waste electrical and electronic equipment, as appropriate in

accordance with subsection (2),

- (g) the making of arrangements relating to the display of environmental management costs, for a period of time specified in regulations made under paragraph (d), by a distributor or producer, as appropriate, to the purchasers of electrical and electronic equipment,
- (h) any matters consequential on, or incidental to the foregoing.

(5) Nothing in subsection 4(a) shall be construed as authorising distributors or, as appropriate, producers to –

- (a) make arrangements which are prohibited by section 4(1) of the Competition Act, 2002 (No. 14 of 2002) or, as appropriate, by Article 81 of the Treaty of Rome, or, as appropriate,
- (b) act in a manner prohibited by section 5(1) of the Competition Act 2002 (No. 14 of 2002) or, as appropriate, by Article 82 of the Treaty of Rome.

(6) A person who fails to comply with a provision of regulations made under this section, shall be guilty of an offence.

Registration

53J.–(1) The Minister, following consultation with the Minister for Enterprise, Trade and Employment, may make regulations relating to the granting of an approval by the Minister to any person, association or body corporate (who is referred to in this section as the ‘registration body’) including himself or herself for the purpose of carrying out of certain registration functions as provided for in regulations made under this Section.

(2) Regulations under this section may provide 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 specified –
 - (I) 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,
 - (II) details of financial guarantees as required

- under Article 8.2 of the WEEE Directive,
- (III) data relating to the quantities of products placed on the market and the form and manner in which the data shall be made available, and
- (IV) details of any environmental management costs applied on electrical and electronic equipment.

- (ii) to submit evidence verifying his or her compliance with the requirements of the RoHS Directive by providing to the satisfaction of the registration body, as appropriate, all or any information and data pertaining thereof;

- (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 environmentally sound management of waste electrical and electronic equipment;

- (c) the provision by producers of the financial resources (the 'fees') necessary to ensure that those foregoing obligations are fulfilled;

- (d) the collection arrangements relating to the fees remitted by producers for the purposes of registering, including–

- (i) the conferral of powers on any specified person or persons 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, and

- (iii) enabling the 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 the fees within a specified period of time after liability in respect of the making available of those amounts arises,

- (e) empowering the registration body to–

- (i) examine the audited accounts of a producer or an approved body, as appropriate, or require a

producer to submit to the registration body documentary evidence in order to verify, validate or require a producer to submit documentary evidence of market share;

(ii) take whatever action is deemed appropriate by the registration body to ensure compliance with the RoHS Directive and the WEEE Directive; and

(iii) keep and preserve records and particulars relating to information submitted by a producer or an approved body for the purposes of registration;

(f) enabling the refund of registration fees paid by specified producers to be made to the relevant producers;

(g) the submission of specified documentation, information and particulars to a specified person or, as appropriate, specified persons;

(h) the removal from the register of any producer who does not comply with a provision of regulations under this section;

(i) the granting of a certificate of registration or, as appropriate, a certificate of renewal of registration by the registration body;

(j) the refusal of the registration body to grant a certificate of registration or, as appropriate, a certificate of renewal of registration;

(k) requiring the acceptance of decisions made by the registration body;

(l) enabling the Minister to monitor the activities of the registration body and seek the submission of reports which the Minister may require from time to time; and

(m) any matters consequential on, or incidental to the foregoing.

(3) The provisions of subsection (2) shall also apply to producers operating from within the European Union or from third countries supplying electrical and electronic equipment in or into the State by means of distance communication or otherwise.

(4) Without prejudice to sub-section (1) where a person or persons, or association, or body corporate undertakes the registration function only one registration body shall be permitted to perform these functions at any one time.

(5) Without prejudice to sub-section (2) where a person or persons, or association, or body corporate undertakes the registration function it may procure any or all of the functions allotted in accordance with regulations under this section.

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

Obligation to mark electrical and electronic equipment placed on the market

53K.–(1) The Minister may, following consultation with the Minister for Enterprise, Trade and Employment, make regulations imposing the obligation specified in subsection (2).

(2) The obligation mentioned in subsection (1) is an obligation on a producer to ensure that each item of electrical and electronic equipment placed on the market with effect from a date or dates to be specified in regulations, or in an order or orders made by the Minister, made under this section, incorporates 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, or, as appropriate,
- (d) indicate that the electrical and electronic equipment placed on the market after a specific date does not contain specified hazardous substances.

(3) The provisions of subsection (2) shall also apply to producers operating from within the European Union or from third countries supplying electrical and electronic equipment in or into the State by means of distance communication or otherwise.

(4) Regulations under this section may provide for–

- (a) the appropriate application of symbols and marks on–
 - (i) electrical and electronic equipment, or

(ii) the packaging, the instructions for use and the warranty of the equipment concerned

(b) any matters consequential on, or incidental to, the foregoing.

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

Obligation to provide information to users of electrical and electronic equipment

53L.—(1) The Minister may, following consultation with the Minister for Enterprise, Trade and Employment, make regulations imposing the obligation specified in subsection (2).

(2) The obligation mentioned in subsection (1) is an obligation on a distributor or producer, as appropriate, to ensure that purchasers of electrical and electronic equipment with effect from a date to be specified in regulations, or in an order made by the Minister, are informed of—

- (a) the environmental benefits of not disposing of waste electrical and electronic equipment as unsorted municipal waste and of transferring such waste electrical and electronic equipment for appropriate reuse, treatment, recycling and recovery,
- (b) the return and collection systems available to them,
- (c) their role in contributing to reuse, recycling and other forms of recovery of waste electrical and electronic equipment,
- (d) the potential effects on the environment and human health as a result of the presence of hazardous substances in electrical and electronic equipment, and
- (e) the meaning of any symbols specified in regulations made under section 53K.

(3) The provisions of subsection (2) shall also apply to distributors or producers, as appropriate, operating from within the European Union or from third countries supplying electrical and electronic equipment in or into the State by means of distance communication or otherwise.

(4) Regulations under this section may provide for—

- (a) specified requirements relating to the provision of information to purchasers of electrical and electronic equipment placed on the market,

(b) any matters consequential on, or incidental to, the foregoing.

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

Obligation to provide information to recovery facilities

53M.–(1) The Minister may following consultation with the Minister for Enterprise, Trade and Employment, make regulations imposing the obligation specified in subsection (2) with effect from a date specified in the regulations, or in an order made by the Minister.

(2) The obligation mentioned in subsection (1) is an obligation on a producer to ensure that reuse and treatment information, the different components and materials, including the location of dangerous substances and preparations for each type of electrical and electronic equipment placed on the market from the date specified in the regulations, or in the order made by the Minister, is furnished to recovery facilities carrying out the maintenance, upgrade, refurbishment, treatment, recycling and recovery of waste electrical and electronic equipment.

(3) The provisions of subsection (2) shall also apply to producers operating from within the European Union or from third countries supplying electrical and electronic equipment in or into the State by means of distance communication or otherwise.

(4) Regulations under this section may provide for–

(a) specified requirements relating to the provision of information to recovery facilities carrying out the maintenance, upgrade, refurbishment, treatment recycling and recovery of waste electrical and electronic equipment,

(b) any matters consequential on, or incidental to, the foregoing.

(5) A person who fails to comply with a provision of regulations under this section, shall be guilty of an offence.”

Given under the Official Seal of the
Minister for the Environment,
Heritage, and Local Government, this
22nd day of June 2005.



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 a legal interpretation.)

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 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) as amended by Directive 2003/108/EC of 8 December 2003.

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.