STATUTORY INSTRUMENTS.

S.I. No. 513 of 2012

EUROPEAN UNION (RESTRICTION OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT) REGULATIONS 2012

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I, PHIL HOGAN, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2011/65/EU[1] of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment hereby make the following Regulations:

PART I

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2012.

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 2011/65/EU[2] on the restriction of the use of certain hazardous substances in electrical and electronic equipment with a view to contributing to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste electrical and electronic equipment.

Interpretation of Regulations

3. (1) In these Regulations, save where the context otherwise requires—

"Act of 1996" means the Waste Management Act 1996 (No. 10 of 1996);

"active implantable medical device" means any active implantable medical device within the meaning of point (*c*) of Article 1(2) of Council Directive 90/385/EEC[3] of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices;

"Agency" means the Environmental Protection Agency established under Section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

[1]O.J. No. L174, 1.07.2011, page 88
[2]O.J. No. L174, 1.07.2011, page 88
[3]O.J. No. L189, 20.7.90, page 17

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 28*th December*, 2012.

"authorised person" means a person who is appointed in writing by the Minister, a local authority, the Agency or such other person as may be required to be an authorised person for the purposes of the Act of 1996 or any Part or section thereof;

"authorised representative" means any natural or legal person established within the European Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;

"cables" means all cables with a rated voltage of less than 250 volts that serve as a connection or an extension to connect EEE to the electrical outlet or to connect two or more EEE to each other;

"CE marking" means a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing;

"conformity assessment" means the process demonstrating whether the requirements of these Regulations relating to EEE, are met;

"dependent" means, with regards to EEE, needing electric currents or electromagnetic fields to fulfil at least one intended function;

"the Directive" means European Parliament and Council Directive 2011/65/EU[4] on the restriction of the use of certain hazardous substances in electrical and electronic equipment;

"distributor" means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes EEE available on the market;

"economic operator" means the manufacturer, the authorised representative, the importer and the distributor;

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

"harmonised standard" means a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC[5] of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and Regulations and of rules on Information Society services on the basis of a request made by the European Commission in accordance with Article 6 of Directive 98/34/EC[6];

"homogeneous material" means one material of uniform composition throughout or a material, consisting of a combination of materials, that cannot be disjointed or separated into different materials by mechanical actions such as unscrewing, cutting, crushing, grinding and abrasive processes;

[4]O.J. No. L174, 1.07.2011, page 88
[5]O.J. No. L204, 21.7.98, page 37
[6]O.J. No. L204, 21.7.98, page 37

"importer" means any natural or legal person established within the Union, who places EEE from a third country on the Union market;

"in vitro diagnostic medical device" means an in vitro diagnostic medical device within the meaning of point (*b*) of Article 1(2) of Directive 98/79/EC[7];

"industrial monitoring and control instruments" means monitoring and control instruments designed for exclusively industrial or professional use;

"large-scale fixed installation" means a large-scale combination of several types of apparatus and, where applicable, other devices, which are assembled and installed by professionals, intended to be used permanently in a pre-defined and dedicated location, and de-installed by professionals;

"large-scale stationary industrial tools" means a large-scale assembly of machines, equipment, and/or components, functioning together for a specific application, permanently installed and de-installed by professionals at a given place, and used and maintained by professionals in an industrial manufacturing facility or research and development facility;

"making available on the market" means any supply of EEE in the course of a commercial activity (whether in return for payment or free of charge) for distribution, consumption or use on the Union market;

"manufacturer" means any natural or legal person who manufactures EEE or who has EEE designed or manufactured and markets it under that person's name or trademark;

"market surveillance" means the activities carried out by the Agency to ensure that EEE complies with the requirements set out in this Regulation and does not endanger health, safety, or other issues of public interest protection;

"medical device" means a medical device within the meaning of point (*a*) of Article 1(2) of Directive 93/42/EEC[8] and which is also EEE;

"non-road mobile machinery made available exclusively for professional use" means machinery, with an on-board power source, the operation of which requires either mobility or continuous or semi-continuous movement between a succession of fixed working locations while working, and is made available exclusively for professional use;

"placing on the market" means making EEE available on the Union market for the first time;

"prosecutor" means the Agency or Director of Public Prosecutions;

"recall" means any measure aimed at achieving the return of EEE that has already been made available to the end user;

[7]O.J. No. L331, 7.12.98, page 1
[8]O.J. L169, 12.7.93, p.1

"Regulation (EC) No. 765/2008"[9] means Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products;

"spare part" means a separate part of EEE that can replace a part of EEE and—

(*a*) the EEE cannot function as intended without that part; and

(*b*) the functionality of the EEE is restored or upgraded when the part is replaced by the spare part;

"technical specification" means a document that prescribes technical requirements to be fulfilled by a product, process or service;

"withdraw" means take any measure aimed at preventing EEE in the supply chain from being made available on the market.

Scope of Regulations

4. (1) These Regulations shall apply to EEE which—

(*a*) falls within the categories set out in Schedule 1 and is placed on the market on or after 2nd January 2013;

(*b*) was placed on the market before 2nd January 2013 as set out in Regulation 35(2),

without prejudice to European Union legislation on-

(I) safety and health requirements,

(II) chemicals, in particular, as set out in Regulation (EC) No 1907/2006[10],

(III) waste management legislation.

(2) These Regulations shall apply to EEE which falls within the categories set out in *Schedule 3* from the dates set out in that Schedule.

(3) These Regulations do not apply to EEE which falls within the categories set out in *Schedule 2*.

(4) These Regulations do not apply in respect of the applications listed in Annexes III and IV to the Directive.

(5) Without prejudice to the provisions of paragraphs 1 and 2 of *Schedule 3*, any EEE to which these Regulations apply but which was outside the scope of the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 341 of 2005) as amended by the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2008 (S.I. No. 376 of 2008) may continue to be made available on the market until

[9]O.J. No. L218, 13.08.2008 p.30
[10]O.J. No. L396, 30.12.06, p.1

22nd July 2019 even if the EEE does not comply with the provisions of these Regulations.

PART II

PROHIBITIONS AND OBLIGATIONS ON ECONOMIC OPERATORS

Prohibition of specified hazardous substances

5. (1) EEE placed on the market shall not contain the substances listed in Annex II to the Directive.

(2) Without prejudice to paragraph (1), the presence of those substances in quantities no greater than the maximum concentration value by weight in homogeneous materials as specified in Annex II to the Directive, is permitted.

Manufacturers' obligations

General

6. (1) Manufacturers shall-

(*a*) ensure that EEE placed on the market complies with the requirements of Regulation 5,

(*b*) ensure that the EEE has been designed and manufactured to comply with the requirements of Regulation 5,

(*c*) draw up the required technical documentation and carry out and comply with their obligations under the internal production control procedure in line with module A of Annex II to Decision No 768/2008/EC[11] of the European Parliament and of the Council on a common framework for the marketing of products.

(2) Where other applicable European Union legislation requires the application of a conformity assessment procedure which is at least as stringent, compliance with the requirements of Regulation 5(1) may be demonstrated within the context of that procedure and a single set of technical documentation may be drawn up.

EU Declaration of Conformity and CE Marking

7. (1) Where compliance of EEE with the requirements of Regulation 5 has been demonstrated by the procedures referred to in Regulation 6 (1) (*c*) or Regulation 6 (2), manufacturers shall-

(*a*) draw up an EU declaration of conformity which shall state that it has been demonstrated that the requirements specified in Article 4 of the Directive have been met in relation to the EEE; and

(*b*) affix the CE marking in relation to the finished EEE as set out in Regulation (EC) No. 765/2008[12].

[11]O.J. L218, 13.8.08, p.82
[12]O.J. L218, 13.8.08, p.82

(2) The EU declaration of conformity shall follow the structure and include the information specified in Annex VI to the Directive.

(3) Manufacturers shall keep the EU declaration of conformity drawn up in relation to EEE fully updated.

(4) Manufacturers shall translate the EU declaration of conformity into the languages required by Member States on the market of which the EEE is placed or made available.

(5) An EU declaration of conformity in relation to EEE which is made available on the market in Ireland shall be drawn up in or translated into Irish or English.

(6) By drawing up the EU declaration of conformity, the manufacturer assumes responsibility for the compliance of the EEE with the Directive.

(7) Manufacturers shall keep the technical documentation and the EU declaration of conformity for EEE available for inspection by the Agency for a period of ten years from the day on which the EEE was placed on the market.

(8) The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No. 765/2008[13].

(9) The CE marking shall be affixed visibly, legibly and indelibly to-

(a) the EEE; or

(b) a data plate affixed to the EEE.

(10) Where due to the nature of the EEE it is not possible to or not warranted for the CE marking to be affixed in accordance with Regulation 7 (9) the manufacturer shall instead affix the CE marking to-

(a) the packaging of the EEE; and

(b) any documents that accompany the EEE.

(11) The CE marking shall be affixed before the EEE is placed on the market.

(12) Any EEE which bears the CE marking is presumed to comply with the provisions of these Regulations.

(13) Materials, components and EEE-

(a) on which tests and measurements demonstrating compliance with the requirements of Regulation 5 have been performed; or

(b) which have been assessed for compliance with the requirements of Regulation 5 in accordance with harmonised standards,

[13]O.J. L218, 13.8.08, p.82

are presumed to comply with the requirements of Regulation 5.

Compliance procedures for series production

8. Manufacturers of EEE which is manufactured by means of series production shall ensure that procedures are in place to ensure that any EEE so manufactured complies with the requirements of Regulation 5 and in so doing shall take adequate account of-

(a) any changes in the design or characteristics of the EEE; and

(b) any changes to any harmonised standards or technical specifications referred to in the EU declaration of conformity drawn up in relation to the EEE.

Register of EEE

9. Manufacturers shall keep a register of-

(a) any EEE placed on the market in relation to which any provision of these Regulations has not been complied with; and

(b) any EEE which has been recalled

and keep distributors informed thereof.

Identifying EEE and manufacturer

10. (1) Manufacturers shall ensure that a type, batch or serial number or other element allowing the EEE to be identified is marked-

(a) on their EEE; or

(b) where the size or nature of the EEE does not allow this, on the packaging of the EEE or in a document accompanying the EEE.

(2) Manufacturers shall indicate their name, registered trade name or registered trade mark and a single address at which they can be contacted-

(a) on the EEE; or

(b) where that is not possible, on the packaging of the EEE or in a document accompanying the EEE.

(3) Where other applicable EU legislation contains provisions for the affixing of the manufacturer's name and address which are at least as stringent, those provisions shall apply.

Non-compliant EEE

11. Manufacturers who consider or have reason to believe that EEE which they have placed on the market is not in conformity with any provision of these Regulations shall immediately-

(a) take the necessary corrective measures to ensure that the provision of these Regulations is complied with including the withdrawal or recall of the EEE, if appropriate; and

(b) provide the Agency and the competent national authorities of any other Member States in which they made the EEE available with information of the non-compliance and of any corrective measures taken.

Co-operation with National Authorities

12. (1) The Agency may, during the period of 10 years from the day on which EEE was placed on the market, request the manufacturer who placed the EEE on the market to—

(a) provide it, within such period as the Agency may specify, with all the information and documentation necessary to demonstrate that the provisions of these Regulations have been complied with; and

(b) co-operate with the Agency on any action, specified by the Agency, taken or to be taken to ensure that the provisions of these Regulations are complied with.

(2) The information and documentation referred to in Regulation 12 (1)(*a*) shall be drawn up in or translated into Irish or English.

(3) A request under Regulation 12 (1) shall be accompanied by the reasons for making the request.

(4) The manufacturer shall comply with a request made under Regulation 12 (1).

Authorised Representatives

13. (1) Manufacturers may appoint an authorised representative by written mandate to act on their behalf in relation to specified tasks for the purpose of conforming with these Regulations.

(2) The mandate shall allow the authorised representative to perform at least the following-

(a) keep the EU declaration of conformity and the technical documentation at the disposal of the Agency for 10 years following the placing on the market of the EEE;

(b) upon request, provide the Agency with all the information and documentation necessary to demonstrate the conformity of EEE with the Regulations;

(c) upon request, co-operate with the Agency on any action taken to ensure compliance with these Regulations covered by their mandate.

(3) An authorised representative may not be appointed to perform the manufacturer's obligations under Regulation 6 (1)(*b*) or Regulation 6 (1)(*c*) of these Regulations.

(4) An authorised representative shall comply with all the duties imposed on the manufacturer in relation to each obligation under these Regulations that the representative is appointed by the mandate to perform and accordingly-

(a) as far as those duties are concerned, references in these Regulations to the manufacturer are to be taken as including a reference to the authorised representative; and

(b) if the authorised representative contravenes or fails to comply with any of those duties, the authorised representative may be proceeded against as though the authorised representative were the manufacturer.

(5) A manufacturer who has appointed an authorised representative to perform on the manufacturer's behalf an obligation under these Regulations remains responsible for the proper performance of that obligation.

Importer Responsibility

General

14. Importers may only place EEE on the market when-

(*a*) the EEE complies with the requirements of Regualtion 5;

(*b*) they have ensured that the manufacturer has completed the following in relation to the EEE-

(i) carried out the conformity assessment procedure and drawn up the technical documentation in accordance with Regulation 6 (1) (*b*);

(ii) affixed the CE marking in accordance with Regulation 7;

and

(iii) complied with the requirements of Regulation 10 (2).

Non compliant EEE

15. (1) Where an importer considers or has reason to believe that EEE which they were intending to place on the market does not conform with Regulation 5, they shall inform the manufacturer and the Agency of the non-compliance;

(2) Where an importer considers or has reason to believe that EEE which they have placed on the market is not in conformity with any provision of these Regulations they shall immediately-

(*a*) take the necessary corrective measures to ensure that the provision of these Regulations is complied with including the withdrawal or recall of the EEE, if appropriate; and

(*b*) provide the Agency and the competent national authorities of any other Member States in which they made the EEE available with information of the non-compliance and of any corrective measures taken.

Information identifying importers

16. (1) Importers shall ensure that the following information is marked on the EEE-

(*a*) the importer's name, registered trade name or registered trade mark; and

(*b*) an address at which the importer can be contacted.

(2) Where it is not possible to mark the information on the EEE the information may instead be marked on the packaging of the EEE or in a document accompanying the EEE.

(3) Where other applicable EU legislation contains provisions for the affixing of the importer's name and address which are at least as stringent, those provisions shall apply.

Monitoring of EEE

17. Importers shall maintain a register of-

(*a*) any EEE placed on the market not in compliance with any provision of these Regulations; and

(*b*) any EEE which has been recalled,

and keep distributors informed of these matters.

Retention of documentation and co-operation with authorities

18. (1) Importers shall for a period of ten years from the date they placed an item of EEE on the market-

(*a*) keep a copy of the EU declaration of conformity; and

(*b*) ensure that the technical documentation is available for inspection by the Agency upon request.

(2) The Agency may during the ten year period request an importer who has placed EEE on the market to-

(*a*) provide it, within such period as the Agency may specify, with all the information and documentation necessary to demonstrate that the provisions of these Regulations have been complied with; and

(*b*) co-operate with the Agency on any action taken or to be taken to ensure that the provisions of these Regulations are complied with.

(3) The information and documentation referred to in Regulation 18 (2) (*a*) shall be drawn up or translated into Irish or English.

(4) A request under Regulation 18 (2) shall be accompanied by the reasons for making the request.

(5) The importer shall comply with a request made under Regulation 18 (2).

Duty in certain circumstances to comply with manufacturers' duties in place of importers' duties

19. An importer who places EEE on the market under the importer's name or trademark shall comply with all of the duties imposed by these Regulations on manufacturers, and in such a case, a reference to the manufacturer in these Regulations is to be taken as being a reference to the importer.

Distributor Responsibility

General

20. (1) When making EEE available on the market, distributors shall act with due care in relation to the requirements applicable, in particular by verifying that-

(*a*) the EEE bears the CE marking;

(*b*) the EEE is accompanied by the required documents in a language which can be easily understood by consumers and other end-users in the Member State in which the EEE is to be made available on the market;

(*c*) the manufacturer has complied with Regulation 10;

(*d*) the importer has complied with Regulation 16.

(2) Distributors shall not make EEE available on the market if they have reason to believe that the EEE does not comply with the requirements of Regulation 5.

Non-compliant EEE

21. (1) Where a distributor considers or has reason to believe that EEE is not in conformity with the provisions of Regulation 5, they shall inform the following to that effect-

(*a*) the importer; or

(*b*) the manufacturer; and

(*c*) the Agency.

(2) Distributors who consider or have reason to believe that EEE which they have made available on the market is not in conformity with these Regulations shall-

(*a*) take the corrective measures which are necessary to ensure that the provision is complied with in relation to the EEE, withdraw the EEE or recall it if appropriate; and

(*b*) immediately provide the Agency and the competent national authorities of any other Member States in which they made the EEE available with information about the non-compliance and any corrective measures taken.

Co-operation with National Authorities

22. (1) The Agency may request a distributor who has made EEE available on the market to-

(*a*) provide it, within such period as the Agency may specify, with all the information and documentation necessary to demonstrate that the provisions of these Regulations have been complied with; and

(*b*) co-operate with the Agency on any action, specified by the Agency, taken or to be taken to ensure that the provisions of these Regulations are complied with.

(2) The distributor shall comply with a request made under Regulation 22(1).

Duty in certain circumstances to comply with manufacturers' duties in place of distributors' duties

23. A distributor who modifies EEE already placed on the market in such a way that compliance with the requirements of Regulation 5 may be affected shall comply with all of the duties imposed by these Regulations on manufacturers, and in such a case, a reference to the manufacturer in these Regulations is to be taken as being a reference to the distributor.

Identification of economic operators

24. (1) The Agency may, for ten years following the placing on the market of the EEE, request an economic operator to identify to the Agency, within such period as the Agency may specify-

(*a*) any economic operator who has supplied it with EEE; and

(*b*) any economic operator to whom it has supplied EEE.

(2) The economic operator shall comply with the request made under Regulation 24(1).

PART III

FUNCTIONS OF THE AGENCY

Enforcement.

25. 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.

Markets Surveillance Activities.

26. Market surveillance activities with respect to these Regulations shall be carried out by the Agency in accordance with Articles 15 to 29 of Regulation (EC) No. 765/2008.

Functions of the Agency.

27. (1) For the purposes of ensuring that EEE placed on the market complies with the requirements of the Directive and that manufacturers, authorised representatives, importers and distributors of such EEE comply with their obligations under these Regulations, the Agency may take all reasonable measures, including such of the following as is decided by the Agency to be appropriate in each case—

(*a*) for any EEE, 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 EEE from any person who, in the opinion of the Agency may be in a position to provide such information or, as appropriate;

(iii) take samples of EEE and subject them to such checks as are considered necessary in order to determine compliance with the requirements of the Directive;

(*b*) for any EEE that could be prohibited under the provisions of Regulation 5, issue a direction prohibiting the placing on the market of EEE pending the carrying out of the safety evaluations, checks and controls necessary to establish that the EEE complies with Regulation 5;

(*c*) for any EEE prohibited under the provisions of Regulation 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 EEE from the marketplace, its recall from final users and its environmentally sound

management in accordance with the provisions of European Union legislation on Waste Electrical and Electronic Equipment (WEEE) and

(B) that final users are alerted to the prohibited hazardous substances contained in such EEE.

(2) A direction issued under paragraph (1) shall be addressed to such of the following as is appropriate—

(*a*) the manufacturer;

(*b*) the distributor;

(*c*) the importer;

(*d*) the authorised representative, or, as appropriate,

(*e*) any other person, where necessary, with a view to co-operation in action taken to avoid risks arising from such EEE.

Procedure in relation to directions of the Agency.

28. (1) Where it is feasible, the Agency shall give—

(*a*) an opportunity to any person to whom the Agency is considering issuing a direction under these Regulations, to submit his or her views on the proposed direction to the Agency before the adoption of any measure in the proposed direction, or

(*b*) if an opportunity is not given to any person to whom the Agency has issued a direction under these Regulations, because of the urgency of the measures to be taken, an opportunity shall be given by the Agency 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 Agency 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 Agency 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*) in any manner prescribed in Section 16 of the Act of 1996, or

(*b*) by leaving it at the address at which that person carries on business, or

(*c*) by sending it by prepaid registered post to the person at the address at which he or she carries on business, and

(*d*) in any case where the Agency 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 complied with—

(*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 Agency under these Regulations, subject to Regulation 28(2), takes effect on the date specified in the direction and shall indicate the appeal procedure under Regulation 29.

(5) Without prejudice to Regulation 27(1)(*c*) the person to whom a direction has been issued under these Regulations to—

(*a*) recall EEE from the marketplace or, as appropriate, from final users or, as appropriate,

(*b*) notify final users that the EEE 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 paragraph (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 Agency.

29. (1) Any person in receipt of a direction served by the Agency under Regulation 28 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 paragraph (1), the appellant may make an application to the Circuit Court that the direction shall stand suspended until the appeal is determined or withdrawn.

(3) On hearing an appeal under paragraph (1), the Circuit Court may either confirm or vary the direction, or allow the appeal.

(4) A decision of the Circuit Court on an appeal under paragraph (1) shall be final, save that, by leave of the Circuit Court, an appeal from the decision shall lie to the High Court on a question of law.

Injunctions.

30. Where a person fails to comply with a direction of the Agency under these Regulations, the Agency may institute in the Circuit Court proceedings for an order requiring the person to comply with the terms of the direction.

Authorised Persons

31. (1) An authorised person may, for any purpose connected with these Regulations

(a) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises or that such pollution is occurring, enter any premises and bring thereon such other persons (including members of An Garda Síochána) or equipment as he or she may consider necessary for the purpose, and

(b) at any time halt (if necessary) and board any vehicle and have it taken, or require the driver of the vehicle to take it, to a place designated by the authorised person, and such a vehicle may be detained at that place by the authorised person, for such period as he or she may consider necessary for the purpose.

(2) An authorised person shall not, other than with the consent of the occupier, enter into a private dwelling under this Regulation unless he or she has obtained a warrant from the District Court under paragraph 5(*b*) authorising such entry.

(3) Every authorised person when exercising any power conferred on him or her by or under these Regulations, shall, if requested by any person affected, produce the certificate furnished to him or her under Section 14(3) of the Act of 1996.

(4) Whenever an authorised person enters any premises or boards any vehicle, pursuant to these Regulations, the authorised person may therein, as appropriate—

(a) make such plans, take such photographs, record such information on data loggers, make such tape, electrical, video or other recordings and carry out such inspections,

(b) make such copies of documents and records (including records in electronic form) found therein and take such samples,

(c) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for such period,

(d) require from an occupier of the premises or any occupant of the vehicle or any person employed on the premises or any other person on the premises, such information,

(e) require the production of and inspect such records and documents, (including records held in electronic form) and take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents,

as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her, by or under these Regulations.

(5) (*a*) Where an authorised person in the exercise of his or her powers under this Regulation is prevented from entering any premises or if an authorised person has reason to believe that evidence related to a suspected offence under these Regulations may be present in any premises and that the evidence may be removed therefrom or destroyed, the authorised person or the person by whom he or she was appointed may apply to a judge of the District Court, in whose District the premises is located, for a warrant under this paragraph authorising the entry by the authorised person into the premises.

(*b*) If on application being made to him or her under this paragraph, a Judge of the District Court is satisfied, on the sworn information of the applicant, that the authorised person concerned has been prevented from entering a premises as aforesaid or that the authorised person has reasonable grounds for believing the other matters aforesaid, the judge may issue a warrant under his or her hand authorising that person, accompanied, if the judge deems it appropriate so to provide, by such number of members of An Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the powers referred to in paragraph (4) or (5).

(6) An authorised person may, in the exercise of any power conferred on him or her by these Regulations involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other power conferred on him or her by or under this Regulation, request a member of the Garda Síochána to accompany him or her in the exercise of such a power.

Offences

32. (1) Any person who—

(*a*) contravenes or fails to comply with a provision, or provisions, of these Regulations, or

(*b*) provides information which is false or to his or her knowledge misleading in a material way, or

(*c*) obstructs or interferes with an authorised person in the exercise of a power conferred by these Regulations

shall be guilty of an offence.

(2) Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Prosecutions and Penalties.

33. (1) A prosecution for a summary offence on account of contravention or failure to comply with these Regulations may be taken by the Agency.

(2) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence on account of contravention or failure to comply with any Regulation of these Regulations may be commenced—

(*a*) at any time within 12 months from the date on which the offence was committed, or

(*b*) at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's knowledge,

whichever is the later: provided that no such proceedings shall be initiated later than 2 years from the date on which the offence concerned was committed.

(3) Without prejudice to paragraph (2), a certificate signed by or on behalf of the person initiating the proceedings for an offence on account of contravention or failure to comply with any Regulation of these Regulations as to the date on which evidence relating to the offence came to his or her knowledge shall be prima facie evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this paragraph and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(4) A person guilty of an offence under these Regulations is liable—

(*a*) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(*b*) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or both.

(5) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under a Regulation of these Regulations, prosecuted by the Prosecutor, it shall, on the application of the Prosecutor (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Prosecutor.

(6) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Prosecutor, the costs and expenses, measured by the court, incurred by the Prosecutor in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers engaged by the Prosecutor.

Commencement

34. These Regulations shall come into operation on 2 January 2013.

Revocation

35. (1) The Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 341 of 2005) as amended by the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2008 (S.I. No. 376 of 2008) are revoked with effect from the date specified in Regulation 34.

(2) Where the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment)Regulations 2005 (S.I. No. 341 of 2005) as amended by the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2008 (S.I. No. 376 of 2008) applied to any electrical and electronic equipment which was placed on the market before 2 January 2013-

(*a*) obligations that arose under the 2005 Regulations, as amended, may be enforced under these Regulations;

(*b*) obligations under these Regulations which arise after the placing on the market of the EEE apply.

(3) References to the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 341 of 2005) as amended by the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2008 (S.I. No. 376 of 2008) in any Act or instrument made under such Act shall be construed as references to the European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2012.

SCHEDULE 1

CATEGORIES OF ELECTRICAL AND ELECTRONIC EQUIPMENT TO WHICH THESE REGULATIONS APPLY

1. Large household appliances.

2. Small household appliances.

3. IT and telecommunications equipment.

4. Consumer equipment.

5. Lighting equipment.

6. Electrical and electronic tools.

7. Toys, leisure and sports equipment.

8. Medical devices.

9. Monitoring and control instruments including industrial monitoring and control instruments.

10. Automatic dispensers.

11. Other EEE not covered by any of the categories above.

SCHEDULE 2

ELECTRICAL AND ELECTRONIC EQUIPMENT TO WHICH THESE REGULATIONS DO NOT APPLY

1. Equipment which is necessary for the protection of the essential interests of the security of EEA States, including arms, munitions and war material intended for specifically military purposes;

2. Equipment designed to be sent into space;

3. Equipment which is specifically designed, and is to be installed, as part of another type of equipment to which these Regulations do not apply, which can fulfil its function only if it is part of that equipment, and which can be replaced only by the same specifically designed equipment;

4. Large-scale stationary industrial tools being a large-scale assembly of machines, equipment, and/or components—

(*a*) functioning together for a specific application;

(*b*) permanently installed and de-installed by professionals at a given place;

and

(*c*) used and maintained by professionals in an industrial manufacturing facility or research and development facility.

5. Large-scale fixed installations being a large-scale combination of several types of apparatus and, where applicable, other devices, which are—

(*a*) assembled and installed by professionals;

(*b*) intended to be used permanently in a pre-defined and dedicated location; and

(*c*) de-installed by professionals;

6. Means of transport for persons or goods, excluding electric two-wheel vehicles which are not type-approved;

7. Non-road mobile machinery made available exclusively for professional use being machinery, with an on-board power source, the operation of which requires either mobility or continuous or semi-continuous movement between a succession of fixed working locations while working, and which is made available exclusively for professional use;

8. Active implantable medical devices;

9. Photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location

to produce energy from solar light for public, commercial, industrial and residential applications;

10. Equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

SCHEDULE 3

CATEGORIES OF ELECTRICAL AND ELECTRONIC EQUIPMENT WITH SPECIAL RULES OF APPLICATION

1. These Regulations apply

(a) to medical devices and monitoring and control instruments placed on the market on or after 22nd July 2014;

(b) to in vitro diagnostic medical devices placed on the market on or after 22nd July 2016; and

(c) to industrial monitoring and control instruments placed on the market on or after 22nd July 2017.

2. These Regulations do not apply to cables or spare parts for the repair, the reuse, the updating of functionalities or upgrading of capacity of the following—

(a) EEE placed on the market before 1st July 2006;

(b) medical devices placed on the market before 22nd July 2014;

(c) in vitro diagnostic medical devices placed on the market before 22nd July 2016;

(d) monitoring and control instruments placed on the market before 22nd July 2014;

(e) industrial monitoring and control instruments placed on the market before 22nd July 2017;

(f) EEE which benefited from an exemption listed in an Annex to the Directive or the previous Directive and which was placed on the market before that exemption expired, provided that the specific exemption concerned those cables or spare parts.

3. These Regulations do not apply to reused spare parts—

(a) recovered from EEE placed on the market before 1st July 2006; and

(b) used in equipment placed on the market before 1st July 2016,

provided that reuse takes place in auditable closed-loop business-to-business return systems, and that the reuse of parts is notified to the consumer.

L.S.

GIVEN under my Official Seal,
19 December 2012.

PHIL HOGAN,
Minister for the Environment, Community and Local Government.

EXPLANATORY NOTE

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

These Regulations give effect to the provisions of European Parliament and Council Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE) and revoke the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations 2005 (S.I. No. 341 of 2005) as amended by the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations 2008 (S.I. No. 376 of 2008).

These Regulations aim to improve the safety of electronic products and prevent the release of hazardous substances into the environment. The prohibition on heavy metals and other dangerous chemicals in electrical and electronic equipment has now been extended to a wider range of products. The previous RoHS Regulations covered several categories of electrical and electronic equipment including household appliances, IT and consumer equipment, but the scope has now been extended to all electronic equipment, cables and spare parts.

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