

2009 No. 581

ENVIRONMENTAL PROTECTION

**The Restriction of the Use of Certain Hazardous Substances in
Electrical and Electronic Equipment (Amendment) Regulations
2009**

<i>Made</i>	- - - -	<i>8th March 2009</i>
<i>Laid before Parliament</i>		<i>11th March 2009</i>
<i>Coming into force</i>	- -	<i>6th April 2009</i>

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in respect of measures relating to the restriction of the use of hazardous substances in electrical and electronic equipment.

The Secretary of State, in exercise of the powers conferred on him by section 2(2), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2009 and come into force on 6th April 2009.

Amendments

2.—(1) The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008^(c) are amended as follows.

(2) In regulation 3, for the definition of “infringing goods”, substitute the following—

““infringing goods” means electrical and electronic equipment placed on the market on or after 1 February 2008—

- (a) the contents of which are not such as are permitted or required by regulation 7; or
- (b) in respect of which the producer of that equipment has not complied with the requirements of regulation 8(a) or (b);”

(3) In regulation 10(2)(b), for “regulation 15(1)(a)” substitute “regulation 16(1)(a)”.

(4) In regulation 13—

- (a) in paragraph (2), for “paragraph (3)(a)” substitute “regulation 12(3)(a)”; and
- (b) delete paragraphs (4) and (5).

(a) S.I. 2003/2901 and S.I. 2004/706.
(b) 1972 c.68.
(c) S.I. 2008/37.

(5) For regulation 14, substitute the following regulation—

“Compliance notice

14.—(1) The Secretary of State may serve a notice on a producer who—

- (a) puts on the market; or
- (b) supplies or makes available in the United Kingdom in the course of business,

electrical and electronic equipment which the Secretary of State has reasonable grounds to suspect are infringing goods.

(2) A notice served under paragraph (1) (a “compliance notice”) shall—

- (a) identify the alleged infringing goods (the “specified goods”);
- (b) state why the Secretary of State suspects that the specified goods are infringing goods;
- (c) specify what action the Secretary of State considers the person on whom the notice is served needs to take, or to refrain from taking, in order—
 - (i) to cause the specified goods to cease to be infringing goods, or
 - (ii) where it is not possible for them to cease to be infringing goods, to withdraw them from the market or cease to supply or to make them available in the United Kingdom; and
- (d) state that, if that person does not take, or refrain from taking, such action within such period as the notice specifies, and the Secretary of State considers that the specified goods continue to be infringing goods, the Secretary of State may—
 - (i) take further action under regulation 15; or
 - (ii) commence proceedings under regulation 16(1)(a) or (b).

(3) No proceedings shall be commenced against a person under regulation 16(1)(a) or (b) in respect of an alleged contravention of a requirement of Part 2 where—

- (a) a compliance notice has been served on that person in respect of the alleged contravention; and
- (b) the period specified under paragraph (2)(d) in that notice has not come to an end.”

(6) For regulation 15, substitute the following regulation—

“Enforcement notice

15.—(1) Where the Secretary of State serves a compliance notice on a person and, at the end of the period specified in the notice under regulation 14(2)(d)—

- (a) it appears to the Secretary of State that that person has failed to take, or to refrain from taking, the action specified in the compliance notice under regulation 14(2)(c); and
- (b) the Secretary of State has reasonable grounds for considering that the specified goods are infringing goods,

the Secretary of State may serve a further notice on that person.

(2) A notice served under paragraph (1) (an “enforcement notice”) shall—

- (a) identify the specified goods;
- (b) state why the conditions in paragraph (1) are satisfied in relation to the specified goods;
- (c) specify the period ending not less than twenty-one days from the date of the notice, within which the person on whom the notice is served is required to take, or to refrain from taking, such action as is specified in the notice;

- (d) state that, if that person does not take, or refrain from taking, such action within the period specified in the notice, and the Secretary of State considers that the specified goods continue to be infringing goods, the Secretary of State may commence proceedings under regulation 16(1); and
 - (e) state the judicial remedies available to that person and the time limits to which those remedies are subject.
- (3) An enforcement notice may—
- (a) require the specified goods to be modified so as to cease to be infringing goods;
 - (b) require the taking of any action which is necessary to secure compliance with regulation 8(a) or (b) in relation to the specified goods;
 - (c) require the specified goods to be withdrawn from the market;
 - (d) prohibit or restrict the specified goods from being supplied or made available in the United Kingdom in the course of business; or
 - (e) prohibit or restrict the placing on the market of the specified goods.
- (4) No proceedings shall be commenced against a person under regulation 16(1) in connection with any specified goods which it is alleged are infringing goods where—
- (a) an enforcement notice has been served on that person in respect of those specified goods; and
 - (b) the period specified under paragraph (2)(c) in that notice has not come to an end.
- (5) In this regulation “specified goods” means the alleged infringing goods that have been identified in a compliance notice in accordance with regulation 14(2)(a).”.

8th March 2009

Stephen Carter
Minister for Communications, Technology and Broadcasting
Department for Business, Enterprise and Regulatory Reform

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37) (“the principal Regulations”), which implement European Parliament and Council Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (OJ L 37, 13.3.2003, p. 19). Regulation 2(3) and (4)(a) correct drafting errors in the principal Regulations. Regulation 2(5) and (6) make minor revisions to the enforcement procedures relating to the issuing of compliance and enforcement notices. Regulation 2(4)(b) deletes regulation 13(4) and (5) of the principal Regulations. The Regulations are not expected to have any material effect on either the costs or benefits associated with the principal Regulations. An Impact Assessment in respect of the principal Regulations is available and a copy can be obtained from the Environment and Technical Regulations Directorate, Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London SW1H 0ET.

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