

2009 No. 0000

ENERGY CONSERVATION

**The Ecodesign for Energy-Using Products (Amendment)
Regulations 2009**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st January 2010</i>

The Secretary of State has been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the ecodesign of energy-using products and makes the following Regulations under the powers conferred by that section:

Citation and commencement

1. These Regulations—
 - (a) may be cited as the Ecodesign for Energy-Using Products (Amendment) Regulations 2009; and
 - (b) come into force on 1st January 2010.

Amendment of the Ecodesign for Energy-Using Products Regulations 2007

2. The Ecodesign for Energy-Using Products Regulations 2007^(c) are amended in accordance with regulations 3 to 13.

Amendment of Part 1

- 3.—(1) Part 1 (introduction and interpretation) is amended as follows.
 - (2) In paragraph (1) of regulation 2 (interpretation)—
 - (a) for the definition of “authorised person”, substitute—

““authorised person” means a person authorised by the enforcing authority for the purposes of regulation 20(2);”;
 - (b) for the definition of “enforcing authority”, substitute—

““enforcing authority” means the Secretary of State;”;
 - (c) after the definition of “non-conformity notice”, insert—

““the non-directional household lamps Regulation” means Commission Regulation

(a) S.I. 2006/608. The power of the Secretary of State to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1999 (c.46).
(b) 1972 c.68.
(c) S.I. 2007/2037.

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(EC) 244/2009(a) implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps;”;

(d) for the definition of “product requirements”, substitute—

““product requirements” means the requirements that must be met by a listed product as set out in Schedule 2;”;

(e) after the definition of “product requirements”, add—

““the SSTB Regulation” means Commission Regulation (EC) 107/2009(b) implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes;

“the standby Regulation” means Commission Regulation (EC) 1275/2008(c) implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment; and

“the tertiary lighting Regulation” means Commission Regulation (EC) 245/2009(d) implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without integrated ballast, high intensity discharge lamps and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council.”.

Amendment of Part 3

4.—(1) Part 3 (Presumption of conformity, non-conformity, misleading markings and documentation) is amended as follows.

(2) For paragraph (3) of regulation 8 (non-conformity), substitute—

“(3) Such a person who withdraws a listed product from the market must as soon as possible notify that withdrawal in writing to the authorised person or if no such person is authorised, the enforcing authority.”.

Amendment of Part 4

5.—(1) Part 4 (Notified bodies) is amended as follows.

(2) For sub-paragraph (b) of paragraph 1 of regulation 16 (non-conformity notices), substitute—

“(b) the authorised person.”.

Amendment of Part 5

6.—(1) Part 5 (Enforcement) is amended as follows.

(2) In regulation 20 (powers of an enforcing authority and authorisation), for paragraph (3), substitute—

“(3) Where the enforcing authority authorises a person under paragraph (2), it must publish details—

(a) identifying that person, and

(b) of the extent of the authorisation, including any limitation or conditions,

on the Department for Environment, Food and Rural Affairs website.”.

(3) For regulation 21 (appeals against enforcement notices), substitute—

(a) O J No L 76, 24.3.2009, p.3.

(b) O J No L 36, 5.2.2009, p.8.

(c) O J No L339, 18.12.2008, p.45.

(d) O J No L76, 24.3.2009, p.17.

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“Enforcement notices

21.—(1) If the enforcing authority is of the opinion that—

- (a) a person has contravened, is contravening or, having considered all the relevant circumstances, the enforcing authority is of the opinion such person is likely to contravene the provisions referred to in paragraph (1) of regulation 18 (enforcement), or
- (b) a person is otherwise supplying or is making available in the UK in the course of business listed products that do not comply with these Regulations,

the enforcing authority may serve notice on that person (an “enforcement notice”).

(2) An enforcement notice must—

- (a) state that the enforcing authority is of that opinion;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) require the person on whom the notice is served—
 - (i) to remedy the contravention or to remedy the matters making it likely that the contravention may arise, as the case may be;
 - (ii) to provide evidence to the enforcing authority demonstrating that the contravention or the matters making it likely that the contravention may arise have been remedied, as the case may be; or
 - (iii) to take such other steps as may be specified in the notice;
- (d) specify the period within which the person on whom the notice is served must comply with the notice (such period to be not less than 10 days from the date beginning on the day after service of the notice);
- (e) state the potential consequences of non-compliance with the enforcement notice for the person on whom the notice is served; and
- (f) set out the appeal process available to the person on whom the notice is served and the relevant time limits that apply.

(3) An enforcement notice may require that a listed product is or specified parts of it are withdrawn from the market or from service.

(4) An enforcing authority may withdraw any enforcement notice at any time.

(5) If after the expiration of the time specified in the notice any steps required by the notice have not been taken, the enforcing authority may take those steps and may recover from the person on whom the notice was served any expenses reasonably incurred in connection with taking such steps.”.

(4) For paragraph (1) of regulation 22 (notification of enforcement notices) substitute—

“(1) The enforcing authority must inform the Commission without delay and the appropriate authorities in other member States of—

- (a) any enforcement notice that is served which has, or will have the effect of, restricting or prohibiting a listed product from being placed on the market; and
- (b) details of any civil proceedings intended to be brought under regulation 19 in which the remedy sought (if the proceedings were brought by the enforcing authority) would have that effect.”.

Amendment of Part 6

7.—(1) Part 6 (offences and penalties) is amended as follows.

- (2) At the end of regulation 23(1)(c), omit “or”.
- (3) At the end of regulation 23(1)(d) insert “or”.
- (4) After regulation 23(1)(d), insert—

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“(e) for a person to fail to comply with an enforcement notice,”.

(5) For regulation 25 (commencement of summary proceedings), substitute—

“Time limit for prosecution of offences

25.—(1) An offence under these Regulations may be tried by summary proceedings if—

- (a) in England and Wales, the information is laid,
- (b) in Northern Ireland, the complaint is made, or
- (c) in Scotland, the proceedings are begun,

before the end of the period of 12 months beginning on the day after the date on which evidence which the enforcing authority thinks is sufficient to justify the proceedings comes to the enforcing authority’s knowledge.

(2) For the purposes of subsection (1)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence came to the enforcing authority’s knowledge shall be conclusive evidence of that fact, and
- (b) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved.”.

(6) After regulation 27 (remediation orders), insert—

“Recovery of expenses of enforcement

27A.—(1) This regulation applies where a court convicts a person of an offence under regulations 23 or 24.

(2) The Court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the enforcing authority for any expenditure which the enforcing authority has reasonably incurred in investigating the offence, including in purchasing or in testing or examining any listed product, or any part of it, in respect of which the offence was committed.”.

Amendment of Schedule 1

8.—(1) Schedule 1 (listed products) is amended as follows.

(2) For paragraph 1, substitute—

“1.“Listed product” means—

- (a) a boiler or appliance, as defined in this Schedule;
- (b) a refrigerator appliance, as defined in this Schedule;
- (c) a ballast for fluorescent lighting, as defined in this Schedule;
- (d) electrical and electronic household and office equipment, as defined in and within the scope of, the standby Regulation;
- (e) a simple set-top box (SSTB), as defined in and within the scope of, the SSTB Regulation;
- (f) a fluorescent lamp without integrated ballast, as defined in and within the scope of, the tertiary lighting Regulation;
- (g) a high intensity discharge lamp, as defined in and within the scope of, the tertiary lighting Regulation;
- (h) a ballast or luminaire able to operate the lamps referred to in paragraph (f) or (g), as defined in and within the scope of, the tertiary lighting Regulation; and
- (i) a non-directional lamp, as defined in and within the scope of, the non-directional household lamps Regulation.”.

(3) At the end of paragraph 2, add—

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“;

- (d) electrical and electronic household and office equipment, means the standby Regulation;
- (e) a simple set-top box (SSTB), means the SSTB Regulation;
- (f) a fluorescent lamp without integrated ballast, a high intensity discharge lamp or a ballast or luminaire able to operate such lamps, means the tertiary lighting Regulation; and
- (g) a non-directional household lamp, means the non-directional household lamps Regulation.”.

Amendment of Schedule 2

9.—(1) After Part 4 of Schedule 2 (product requirements), add—

“Part 5

Other Listed Products

1. The product requirements that must be met by a listed product that is not included in Parts 2, 3 or 4 of this Schedule are set out in the table below.

<i>Type of listed product</i>	<i>Product requirements</i>
Electrical and electronic household and office equipment	The requirements related to standby and off mode electric power consumption specified in Article 3 of the standby Regulation
A simple set-top box (SSTB)	The requirements specified in Article 3 of the SSTB Regulation
A fluorescent lamp without integrated ballast, a high intensity discharge lamp or a ballast or luminaire able to operate such lamps	The requirements specified in Article 3 of the tertiary lighting Regulation
A non-directional household lamp	The requirements specified in Article 3 of the non-directional household lamps Regulation

”.

Amendment of Schedule 3

10.—(1) After Part 4 of Schedule 3 (conformity assessment procedures applicable to a listed product) , add—

“Part 5

Other Listed Products

1. The conformity assessment procedure or procedures applicable to listed product that is not included in Parts 2, 3 or 4 of this Schedule are set out in the table below.

<i>Type of listed product</i>	<i>Applicable procedures</i>
Electrical and electronic household and office equipment	The procedure specified in Article 4 of the standby Regulation
A simple set-top box (SSTB)	The procedure specified in Article 5 of the

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	SSTB Regulation
A fluorescent lamp without integrated ballast, a high intensity discharge lamp or a ballast or luminaire able to operate such lamps	The procedure specified in Article 4 of the tertiary lighting Regulation
A non-directional household lamp	The procedure specified in Article 4 of the non-directional household lamps Regulation

”.

Amendment of Schedule 5

11.—(1) Schedule 5 (declaration of conformity) is amended as follows.

(2) In the table of listed products and implementing measures in paragraph 4 of Schedule 5, after the third entry (a ballast for fluorescent lighting), insert—

“4 Electrical and electronic household and office equipment	Council Regulation (EC) 1275/2008 of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment
5 A simple set-top box (SSTB)	Commission Regulation (EC) 107/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes
6 A fluorescent lamp without integrated ballast, a high intensity discharge lamp or a ballast or luminaire able to operate such lamps	Commission Regulation (EC) 245/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without integrated ballast, high intensity discharge lamps or ballasts or luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council
7 A non-directional household lamp	Commission Regulation (EC) 244/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps”.

Amendment of Schedule 8

12.—(1) Schedule 8 (appeals) is amended as follows.

(2) For Schedule 8, substitute—

Appeals

1. An appeal must be made within two months of the date of the non-conformity notice.
2. The parties to an appeal may agree a late appeal be brought.
3. Where an appeal is brought, this does not suspend the operation of the non-conformity notice.
4. On determination of an appeal, the appeal body may—
 - (a) affirm the non-conformity notice;
 - (b) withdraw it;
 - (c) make a further non-conformity notice, whether not it affirms or withdraws the original non-conformity notice,and may do so subject to such conditions as the appeal body sees fit.
5. An appeal body may deal with an appeal in such a matter as it sees fit.”.

Amendment of Schedule 9

- 13.**—(1) Schedule 9 (powers of enforcing authorities) is amended as follows.
- (2) After paragraph 4 of Part 4 (test purchases and testing), add—
- “**5.**—(1) An authorised person may charge a fee to a manufacturer, authorised representative or an importer in respect of the exercise of any power by the authorised person under paragraph 1 in this Part.
- (2) Such a fee must not exceed the cost of the work incurred, or to be incurred in exercising the power.
- (3) Any unpaid sums due by way of, or on account of, any fees payable under subparagraph (2) are recoverable as debts.”.
- (3) Omit paragraphs 2 to 6 of Part 5 (notices).

Signatory text

Address	Parliamentary Under Secretary of State	<i>Name</i>
Date		Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Ecodesign for Energy-Using Products Regulations 2007 (S.I. 2037/2007) (“the EuP Regulations”).

Regulation 3(2)(e) amends regulation 2 (interpretation) to include the following implementing measures made under Directive 2005/32/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-using products: Commission Regulation (EC) 107/2009 (simple set-top boxes); Commission Regulation (EC) 1725/2008 (standby and off mode electric power consumption of electrical and electronic household and office equipment); and Commission Regulation (EC) 245/2009 (fluorescent lamps

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without integrated ballast, high intensity discharge lamps and for ballasts and luminaires able to operate such lamps).

Regulation 4 amends regulation 8(3) (non-conformity) to provide for where a manufacturer, an authorised representative or importer of a listed product withdraws a listed product from the market such person must as soon as possible notify any authorised person or if no such person is authorised, the enforcing authority.

Regulation 5 amends regulation 16 (non-conformity notices) requiring a notified body to supply a copy of any non-conformity notice which has the effect of restricting or prohibiting a listed product from being placed on the market to any authorised person.

Regulation 6(3) replaces regulation 21 (appeals against enforcement notices) and provides for what must be included in an enforcement notice, what a recipient of an enforcement notice is required to do to comply with the notice and specifies the period within which the recipient must comply with the notice.

Regulation 7(4) amends regulation 23 (offences and penalties in respect of regulations 3 to 5 and 8 to 10). The offence of failing to comply with an enforcement notice is now included in the offences in regulation 23.

Regulation 7(5) replaces regulation 25 (commencement of summary proceedings). The effect of this is that the enforcement regime under the EuP Regulations is not subject to the “6 month rule” that applies in proceedings before the Magistrates’ Court, in the absence of any contrary legislative provision. The amendment provides the enforcing authority a period of 12 months to bring a prosecution under the EuP Regulations, applicable from the date that it considers it has sufficient evidence to bring proceedings.

Regulation 7(6) inserts new regulation 27A which provides a power for the court to include the costs of purchasing testing or examining listed products in an order for costs following a conviction.

Regulation 12 amends Schedule 8 (appeals) so as to limit the appeal procedure under that schedule to non-conformity notices. The procedure for appeals against enforcement notices is to be set out in the enforcement notice (see regulation 21(2)(f)).

Regulation 13 amends Schedule 9 (powers of enforcing authorities) to provide for the recovery of testing and purchasing costs incurred by the enforcing authority. Unpaid debts are to be recoverable as civil debts.

A full impact assessment on the effect that this instrument has on the costs of business and the voluntary sector has been prepared in respect of these Regulations. A transposition note setting out how these Regulations transpose the provisions of the implementing measures set out above has also been prepared. Copies of both documents are available from [insert address] and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).