

## **Department for Environment, Food and Rural Affairs**

### **Guidance notes on the Eco-design for Energy-using Products Regulations 2007 (August 2007)**

The following notes are intended to assist businesses and enforcing authorities in their understanding of the Eco-design for Energy-using Products Regulations 2007 (SI 2007, No 2037) (the “EUP statutory instrument”). They do not purport to be an exhaustive guide to the meaning and effect of the EUP statutory instrument.

It is not for Defra to provide definitive interpretations of the EUP statutory instrument since such interpretations can only be provided by a Court of Law. Information contained in these notes should, therefore, be regarded as nothing more than statements of Defra’s current informal views. It is strongly recommended that independent legal advice is obtained on all points of interpretation.

#### **Section 1: purpose and intended effect**

1.1 The EUP statutory instrument, which came into force on 11 August 2007, seeks to implement in the UK Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of eco-design requirements for energy-using products (the “EUP Directive”). The EUP Directive requires European Union (EU) Member States to transpose its provisions in their respective territories by this date.

1.2 Under the EUP Directive, the European Commission, assisted by a committee of Member States, will adopt implementing measures relating to individual product types. However, in respect of hot water boilers, household refrigerators, freezers and their combinations and ballasts for fluorescent lighting, the existing directives setting energy efficiency requirements for these product types<sup>1</sup> are deemed to be implementing measures for the purpose of the EUP Directive.

1.3 The eco-design requirements of products address the environmental impacts resulting from product manufacture (processes and materials used), usage (energy/water consumption and emissions) and disposal (waste generation).

#### **Section 2: background**

2.1 The UK Government is committed to seeking cost-effective ways to achieve emissions reductions targets in support of Climate Change policy. It has already supported and implemented a range of related EU common and co-ordinated policy measures aimed at improving energy efficiency standards

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<sup>1</sup> See paragraph 2.2 of these guidance notes

for traded goods. Promotional measures including subsidies can be effective in raising awareness and in accelerating existing market trends, but can be expensive and are inappropriate for underpinning eco-design requirements.

2.2 To this end, the UK supported the adoption of directives prescribing eco-design requirements (specifically relating to energy efficiency) for hot water boilers (92/42/EEC), household refrigerators, freezers and their combinations (96/57/EC), and ballasts for fluorescent lighting (2000/55/EC). These 3 directives were implemented in the UK by the Boiler (Efficiency) Regulations 1993 (as amended by the Boiler (Efficiency) (Amendment) Regulations 1994 and the Boiler (Efficiency) (Amendment) Regulations 2006), the Energy Efficiency (Refrigerators and Freezers) Regulations 1997 (as amended by the Energy Information and Energy Efficiency (Miscellaneous Amendments) Regulations 2001) and the Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001 respectively.

2.3 As part of the implementation of the EUP Directive, the provisions of these 6 statutory instruments will be consolidated in the EUP statutory instrument. A transposition note setting out how the main elements of the EUP Directive and Directives 92/42/EEC, 96/57/EC and 2000/55/EC have been implemented in the EUP statutory instrument is annexed to these notes.

### **Section 3: availability**

3.1 The EUP statutory instrument may be viewed on the Office of Public Sector Information's website at: [www.opsi.gov.uk/si/si2007/20072037.htm](http://www.opsi.gov.uk/si/si2007/20072037.htm). Alternatively, printed versions may be purchased at a cost of £3.00 per copy from TSO (The Stationery Office), PO Box 29, Norwich NR3 1GN (telephone 0870 600 5522, fax 0870 600 5533, email [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk), website [www.tsoshop.co.uk](http://www.tsoshop.co.uk)), quoting ISBN number 978-0-11-077895-2.

3.2 A Braille copy of the EUP statutory instrument can be purchased at the same price as the print edition.

### **Section 4: scope**

4.1 Part 1 (regulations 1 & 2) and Schedules 1 & 2 set out definitions, in particular of listed products (currently hot water boilers, household refrigerators, freezers and their combinations and ballasts for fluorescent lighting) which are subject to the Regulations and the product requirements for listed products.

4.2 Parts 2 and 3 (regulations 3 – 10 and Schedules 3 – 6) set out restrictions covering the placing on the market<sup>2</sup> of listed products. These restrictions apply to **product manufacturers** and their authorised representatives and to importers into the EU of listed products. The conformity

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<sup>2</sup> See paragraph 5.1 of these guidance notes

assessment and CE conformity marking obligations required by these restrictions are also set out. The CE conformity marking, which is illustrated in Schedule 6, must not be less than 5mm high and must always keep the same proportions as shown. Supporting documentation<sup>3</sup> relating to a particular product model must be kept for at least 10 years after the last product was manufactured and provided upon request to an enforcing authority<sup>4</sup> within 10 days of the request being made.

4.3 Part 4 (regulations 11 – 17) and Schedules 7 and 8 set out matters concerning notified bodies. Such bodies must be approved by the Secretary of State for Environment, Food and Rural Affairs under regulation 11(3). Notified bodies are the organisations responsible for checking various procedures under the conformity assessment requirements.

4.4 Part 5 (regulations 18 – 22) and Schedule 9 set out provisions relating to the enforcement of this statutory instrument. Pending the outcome of a fundamental review which Defra is currently conducting, the responsibility for enforcing the requirements of the EUP statutory instrument falls to **local authority trading standard departments** (referred to as local weights and measures authorities in the Regulations) in England, Wales and Scotland, and to the **Department of Enterprise, Trade and Investment** in Northern Ireland.

4.5 Part 6 (regulations 23 – 27) sets out the penalties, including criminal offences, which may be committed under the EUP statutory instrument. The limits of fines not exceeding the statutory maximum and level 5 on the standard scale are currently both £5,000.

4.6 Part 7 (regulation 28) and Schedule 10 list the statutory instruments which are to be revoked as a result of the EUP statutory instrument. These all relate to the existing implementing measures<sup>5</sup>. The statutory instruments to be revoked are as follows:-

- The Boiler (Efficiency) Regulations 1993 (SI 1993/3083)
- The Boiler (Efficiency) (Amendment) Regulations 1994 (SI 1994/3083)
- The Energy Efficiency (Refrigerators and Freezers) Regulations 1997 (SI 1997/1941)
- The Energy information and Energy Efficiency (Miscellaneous Amendments) Regulations 2001 (SI 2001/3142) – Regulation 11 only
- The Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001
- The Boiler (Efficiency) (Amendment) Regulations 2006 (SI 2006/170)

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<sup>3</sup> Detailed in regulation 10(1)

<sup>4</sup> See paragraph 4.4 of these guidance notes

<sup>5</sup> See paragraph 1.2 of these guidance notes

## Section 5: frequently asked questions

### 5.1 What does “placing on the market” mean?

This term means the initial action of making a product available for the first time on the Community market, with a view to distribution or use in the Community. Making available can be either for payment or free of charge. Further guidance is contained in section 2.3 of the “Guide to the implementation of directives based on the New Approach and the Global Approach” published by the European Commission in 2000. For ease of reference, the relevant paragraphs and footnotes are reproduced below:-

“A product is placed on the Community market when it is made available for the first time. This is considered to take place when a product is transferred from the stage of manufacture with the intention of distribution or use on the Community market. Moreover, the concept of placing on the market refers to each individual product, not to a type of product, and whether it was manufactured as an individual unit or in series.

“The transfer of the product takes place either from the manufacturer, or the manufacturer’s authorised representative in the Community, to the importer established in the Community or to the person responsible for distributing the product on the Community market<sup>6</sup>. The transfer may also take place directly from the manufacturer, or authorised representative in the Community, to the final consumer or user.

“The product is considered to be transferred either when the physical hand-over or the transfer of ownership has taken place. This transfer can be for payment or free of charge, and it can be based on any type of legal instrument. Thus, a transfer of a product is considered to have taken place, for instance, in the circumstances of sale, loan, hire, leasing and gift.

“Placing on the market is considered not to take place where a product is:

- transferred from the manufacturer in a third country to an authorised representative in the Community whom the manufacturer has engaged to ensure that the product complies with the directive;

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<sup>6</sup> The distribution chain can also be the commercial chain of the manufacturer or the authorised representative.

- transferred to a manufacturer for further measures (for example assembling, packaging, processing or labelling)<sup>7</sup>;
- not (yet) granted release for free circulation by customs, or has been placed under another customs procedure (for example transit, warehousing or temporary importation), or is in a free zone<sup>8</sup>;
- manufactured in a Member State with a view to exporting it to a third country;
- displayed at trade fairs, exhibitions or demonstrations<sup>9</sup>; or
- in the stocks of the manufacturer, or the authorised representative established in the Community, where the product is not yet made available, unless otherwise provided for in the applicable directives.

“A product offered in a catalogue or by means of electronic commerce is deemed not to have been placed on the Community market until it is actually made available for the first time. In order to respect the rules and principles aiming to prohibit misleading advertising, a non-compliance of a product intended for the Community market should be clearly indicated.”

## 5.2 What is a “fluorescent lighting ballast”?

This is the generic term used for electrical or electronic components which control the current passing through a fluorescent discharge tube. These are essential components of all functional fluorescent light fittings and can take a variety of forms. A ballast dissipates some energy itself but, more importantly, significantly affects the light output efficiency of fluorescent lighting.

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<sup>7</sup> In these situations the person considered as the manufacturer has the sole and ultimate responsibility for the conformity of the product to the applicable directives, and must be able to do so

<sup>8</sup> In accordance with Council Regulation (EEC) No 2913/92 establishing the Community customs code, non-Community goods placed under a suspensive customs procedure or in a free zone are subject to customs supervision and do not benefit from the free circulation in the internal market. Before benefiting from the free circulation in the internal market, these goods must be declared for release for free circulation. That entails application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due.

<sup>9</sup> However, in such circumstances a visible sign must clearly indicate that the product in question may not be placed on the market or put into service until it has been made to comply.

## Annex: EUP Directive transposition note

### Table A

Showing how elements of Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of eco-design requirements of energy-using products (the EUP Directive) have been implemented by the Eco-design for Energy-using Products Regulations 2007(SI 2007/2037)

### Tables B to D

Showing how these Regulations implement elements of Council Directive 92/42/EEC (boilers and appliances), Directive 96/57/EC of the European Parliament and of the Council (refrigerators appliances), and Directive 2000/55/EC of the European Parliament and of the Council (ballasts for fluorescent lighting). These Directives are deemed to be implementing measures under Directive 2005/32/EC.

### Table A – Directive 2005/32/EC

Provision of Directive	Provision of Regulations	Comment
<b>Article 2</b> (definitions)	Regulation 2(3)(b)	
<b>Article 3(1)</b> (EuPs to comply with implementing measures and bear CE marking)	Regulations 3 to 6	
<b>Article 3(2)</b> (designation of the authorities responsible for market surveillance)	Regulation 2(1) Regulation 18 Schedule 9	Under regulation 2(1) the enforcing authorities are defined as local weights and measures authorities (GB) and the Department of Enterprise, Trade and Investment (NI). Those bodies are required to enforce these Regulations under regulation 18. The powers of those

Provision of Directive	Provision of Regulations	Comment
		authorities are set out in Schedule 9.
<b>Article 4</b> (responsibilities of the importer)	Regulation 5	
<b>Article 5(1)</b> (affixing CE conformity marking and declaration of conformity)	Regulation 4	
<b>Article 5(2)</b> (form of CE marking)	Schedule 6	
<b>Article 5(3)</b> (contents of declaration of conformity)	Schedule 5	
<b>Article 5(4)</b> (misleading markings)	Regulation 9	
<b>Article 6(3)</b> (display of EuPs)	Regulation 6	
<b>Article 7(1) and (2)</b> (action by Member States for non-compliance)	Regulation 18	Enforcement is carried out by the enforcing authorities described in relation to Article 3(2). If a notified body finds during a conformity assessment procedure that a product does not meet the product requirements, it may give a non-conformity notice under chapter 4 of Part 1 of Schedule 4
<b>Article 7(3)</b> (notification to the Commission of non-compliance)	Regulations 16(2) and 22(3)	
<b>Article 8(1)</b> (assessment of conformity)	Regulation 4	
<b>Article 8(2)(first paragraph)</b> (conformity assessment procedures and modules described in Decision	Schedule 4	The modules described in Decision 93/465/EEC are implemented by Schedule 4 insofar as they apply to the products included in these Regulations. The application of those modules, with amendments, to particular

Provision of Directive	Provision of Regulations	Comment
93/465/EEC)		<p>products is set out in Schedule 3. Tables B-D deal with those products.</p> <p>The notified bodies referred to in these modules and their functions are provided for in Part 4 of, and Schedule 7 to, these Regulations</p>
<b>Article 8(3)</b> (keeping relevant documents)	Regulation 10	
<b>Article 9(1)</b> (presumption of conformity)	Regulation 7(1)	
<b>Article 9(2)</b> (harmonised standards and deemed compliance)	Regulation 7(2)	
<b>Article 9(3)</b> (ecodesign requirements and deemed compliance)	Regulation 7(3)	
<b>Article 20</b> (penalties)	Regulations 27 to 31	
<b>Article 21</b> (amendments)	Part 6 of these Regulations	<p>Council Directive 92/42/EEC (boilers and appliances), Directive 96/57/EC of the European Parliament and of the Council (refrigerators appliances), and Directive 2000/55/EC of the European Parliament and of the Council (ballasts for fluorescent lighting), are deemed to be implementing measures under Directive 2005/32/EC.</p> <p>Specific requirements of those Directives are implemented by these Regulations as set out in tables B to D.</p>

Provision of Directive	Provision of Regulations	Comment
		The existing legislation implementing those Directives is revoked.

**Table B – Directive 94/42/EEC**

Provision of Directive	Provision of Regulations	Comment
<b>Article 2 and 3</b> (definitions of boilers and appliances)	Part 2 of Schedule 1	
<b>Article 5</b> (useful energy requirements)	Part 2 of Schedule 2	
<b>Article 7(2)</b> (conformity assessment procedures)	Part 2 of Schedule 3	
<b>Article 4(3)</b> (back boilers and boilers in living spaces)	Paragraph 4 of Part 2 of Schedule 2	
<b>Article 8(1)</b> (notification of notified bodies)	Regulation 15(4)	These provisions in this Directive have general application to notified bodies under the conformity assessment procedures
<b>Article 8(2) and (3)</b> (appointment and removal of appointment of notified bodies)	Part 4 of and Schedule 7 to these Regulations	These provisions in this Directive have general application to notified bodies under the conformity assessment procedures

**Table C – Directive 96/57/EC**

<b>Provision of Directive</b>	<b>Provision of Regulations</b>	<b>Comment</b>
<b>Article 1</b> (definition of refrigerator appliances)	Part 3 of Schedule 1	
<b>Article 2(1)</b> (useful energy requirements)	Part 3 of Schedule 2	
<b>Article 4</b> (conformity assessment procedures)	Part 3 of Schedule 3	

**Table D – Directive 2000/55/EC**

<b>Provision of Directive</b>	<b>Provision of Regulations</b>	<b>Comment</b>
<b>Article 1</b> (definition of ballasts)	Part 4 of Schedule 1	
<b>Article 9(1)</b> (useful energy requirements)	Part 4 of Schedule 2	
<b>Article 4(1) and (2)</b> (conformity assessment procedures)	Part 4 of Schedule 3	