

2009 No. 2560

ENERGY CONSERVATION

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

<i>Made</i>	- - - -	<i>20th September 2009</i>
<i>Laid before Parliament</i>		<i>23rd September 2009</i>
<i>Coming into force</i>	- -	<i>15th October 2009</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 15th October 2009.

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 14.

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 in accordance with regulation 20(2);”;
 - (b) after the definition of “declaration of conformity”, insert—

““the electric motors Regulation” means Commission Regulation (EC) 640/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors^(d);”;
 - (c) for the definition of “enforcing authority”, substitute—

(a) S.I. 2006/608.
(b) 1972 c.68.
(c) S.I. 2007/2037.
(d) OJ No L 191, 23.7.09, p26.

- ““enforcing authority” means the Secretary of State;”;
- (d) after the definition of “enforcing authority”, insert—
- ““the external power supplies Regulation” means Commission Regulation (EC) 278/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies(a);”;
- (e) after the definition of “general technical documentation”, insert—
- ““the glandless circulators Regulation” means Commission Regulation (EC) 641/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products(b);
- “the household refrigerating appliances Regulation” means Commission Regulation (EC) 643/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances(c);”;
- (f) after the definition of “non-conformity notice”, insert—
- ““the non-directional household lamps Regulation” means 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(d);”;
- (g) 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;”;
- and
- (h) after the definition of “product requirements”, add—
- “the SSTB Regulation” means 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(e);
- “the standby Regulation” means Commission Regulation (EC) 1275/2008 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(f);
- “the televisions Regulation” means Commission Regulation (EC) 642/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for televisions(g); and
- “the tertiary lighting Regulation” means 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 and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council(h).”.

(a) OJ No L 93, 7.4.09, p3.
 (b) OJ No L 191, 23.7.09, p35.
 (c) OJ No L 191, 23.7.09, p53, corrected by OJ No L 226, 28.08.09, p23.
 (d) OJ No L 76, 24.3.09, p3.
 (e) OJ No L 36, 5.2.09, p8.
 (f) OJ No L 339, 18.12.08, p45.
 (g) OJ No L 191, 23.7.09, p42.
 (h) OJ No L 76, 24.3.09, p17.

Amendment of Part 2

4.—(1) Part 2 (Restriction on listed products, conformity assessments, declarations of conformity and the CE conformity marking) is amended as follows.

(2) After regulation 6 (displays of listed products not restricted), insert—

“Restriction on special purpose lamps

6A.—(1) This regulation applies to special purpose lamps within the scope of the non-directional household lamps(a) Regulation.

(2) A person must not place a special purpose lamp on the market unless the requirements of Article 3(2) of the non-directional household lamps Regulation are met.”.

Amendment of Part 3

5.—(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 an authorised person or if no such person is authorised, the enforcing authority.”.

Amendment of Part 4

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

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

“(b) an authorised person.”.

Amendment of Part 5

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

(2) In regulation 18 (enforcement)—

(a) after paragraph (1)(c), insert—

“(ca) regulation 6A (restriction on special purpose lamps);”;

(b) omit paragraph (2).

(3) In regulation 20 (powers of an enforcing authority and authorisation)—

(a) for paragraph (2), substitute—

“(2) The enforcing authority may authorise in writing such persons who appear suitable to act on its behalf to carry out any functions and to exercise any power conferred on the enforcing authority by these Regulations, subject to any limitations or conditions as it sees fit.”; and

(b) 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.”.

(a) For the definition of a special purpose lamp, see Article 2(4) of 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.

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

“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, 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 United Kingdom in the course of business a listed product that does 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 contravention likely, as the case may be,
 - (ii) to provide evidence to the enforcing authority demonstrating that the contravention or the matters making contravention likely 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) Upon receipt of a notice of appeal the Secretary of State must appoint an appeal body.

(4) Schedule 8 has effect.

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

(6) The enforcing authority may withdraw any enforcement notice at any time.

(7) 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.”.

(5) 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

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

(2) For regulation 23 (offences and penalties in respect of regulations 3 to 5 and 8 to 10), substitute—

“Offences and penalties

23.—(1) It is an offence—

- (a) for a person to contravene—
 - (i) regulation 3 (restriction on listed products),
 - (ii) regulation 6A (restriction on special purpose lamps), or
 - (iii) regulation 9 (misleading markings);
- (b) for a manufacturer to contravene regulation 4 (conformity assessments, declarations of conformity and the CE conformity marking);
- (c) for an authorised representative or an importer of a listed product to contravene regulation 5 (authorised representatives and importers);
- (d) for a manufacturer, authorised representative or an importer of a listed product to contravene regulation 8 (non-conformity) or 10 (documentation for inspection); or
- (e) for a person to fail to comply with an enforcement notice.”.

(3) 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 is to 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.”.

(4) 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 or any authorised person 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

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

(2) For paragraph 1 of Part 1 (listed products and implementing measures), substitute—

“1.—(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) a non-directional household lamp within the scope the non-directional household lamps Regulation;

(2) On and after 7th January 2010 “listed product also includes—

- (a) electrical and electronic household and office equipment within the scope of the standby Regulation; and
- (b) a television within the scope of the televisions Regulation.

(3) On and after 25th February 2010 “listed product” also includes a simple set-top box within the scope of the SSTB Regulation.

(4) On and after 13th April 2010 “listed product” also includes—

- (a) a fluorescent lamp without integrated ballast within the scope of the tertiary lighting Regulation;
- (b) a high intensity discharge lamp within the scope of the tertiary lighting Regulation; and
- (c) a ballast or luminaire able to operate the lamps referred to in paragraph (a) or (b) within the scope of the tertiary lighting Regulation.

(5) On and after 27th April 2010 “listed product” also includes an external power supply within the scope of the external power supplies Regulation.

(6) On and after 1st July 2010 “listed product” also includes a household refrigerating appliance within the scope of the household refrigerating appliances Regulation.

(7) On and after 16th June 2011 “listed product” also includes a motor within the scope of the electric motors Regulation.

(8) On and after 1st January 2013 “listed product” also includes a glandless standalone circulator within the scope of the glandless circulators Regulation.

(9) On and after 1st August 2015 “listed product” also includes a glandless circulator integrated in a product within the scope of the glandless circulators Regulation.”.

(3) At the end of paragraph 2, add—

“;

- (d) an electrical power supply, means the external power supplies Regulation;
- (e) electrical and electronic household and office equipment, means the standby Regulation;
- (f) a simple set-top box, means the SSTB Regulation;
- (g) 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;
- (h) a non-directional household lamp, means the non-directional household lamps Regulation;
- (i) a television, means the televisions Regulation;
- (j) a glandless standalone circulator or glandless circulator integrated in a product, means the glandless circulators Regulation;

- (k) a motor, means the electric motors Regulation; and
- (l) a household refrigerating appliance, means the household refrigerating appliances Regulation.”.

Amendment of Schedule 2

10.—(1) In Schedule 2 (product requirements) after Part 4 (ballasts for fluorescent lighting), 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.

Table of other listed products and product requirements

<i>Type of listed product</i>	<i>Product requirements</i>
An external power supply	The requirements related to no-load condition electric power consumption and average active efficiency specified in Article 3 of the external power supplies Regulation
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	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
A television	The requirements specified in Article 3 of the televisions Regulation
A glandless standalone circulator or glandless circulator integrated in a product	The requirements specified in Article 3 of the glandless circulators Regulation
A motor	The requirements specified in Article 3 of the electric motors Regulation
A household refrigerating appliance	The requirements specified in Article 3 of the household refrigerating appliances Regulation”.

Amendment of Schedule 3

11. In Schedule 3 (conformity assessment procedures applicable to a listed product) after Part 4 (ballasts for fluorescent lighting), 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.

Table of other listed products and applicable procedures

<i>Type of listed product</i>	<i>Applicable procedures</i>
An external power supply	The procedure specified in Article 4 of the external power supplies Regulation
Electrical and electronic household and office equipment	The procedure specified in Article 4 of the standby Regulation
A simple set-top box	The procedure specified in Article 5 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 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
A television	The procedure specified in Article 4 of the televisions Regulation
A glandless standalone circulator or glandless circulator integrated in a product	The procedure specified in Article 4 of the glandless circulators Regulation
A motor	The procedure specified in Article 4 of the electric motors Regulation
A household refrigerating appliance	The procedure specified in Article 4 of the household refrigerating appliances Regulation”.

Amendment of Schedule 5

12.—(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), add—

“4 An external power supply	Council Regulation (EC) 278/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies
5 Electrical and electronic household and office equipment	Council Regulation (EC) 1275/2008 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
6 A simple set-top box	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
7 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

8 A non-directional household lamp	luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council 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
9 A television	Commission Regulation (EC) 642/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to the ecodesign requirements for televisions
10 A glandless standalone circulator or a glandless circulator integrated in a product	Commission Regulation (EC) 641/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to the ecodesign requirements for glandless standalone circulators and glandless circulators integrated in products
11 A motor	Commission Regulation (EC) 640/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for electric motors
12 A household refrigerating appliance	Commission Regulation (EC) 643/2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances”.

Amendment of Schedule 9

13.—(1) In Schedule 9 (powers of enforcing authorities) omit paragraphs 2 to 6 of Part 5 (notices).

References to enforcing authority

14. For “an enforcing authority” (in each place where it occurs in the Regulations) substitute “the enforcing authority”.

20th September 2009

Dan Norris
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

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) 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) 278/2009 (external power supplies); Commission Regulation (EC) 1725/2008 (standby and off mode electric power consumption of electrical and electronic

household and office equipment); Commission Regulation (EC) 107/2009 (simple set-top boxes); Commission Regulation (EC) 245/2009 (fluorescent lamps without integrated ballast, high intensity discharge lamps and for ballasts and luminaires able to operate such lamps); Commission Regulation (EC) 244/2009 (non-directional household lamps); Commission Regulation (EC) 642/2009 (televisions); Commission Regulation (EC) 641/2009 (glandless standalone circulators and glandless circulators integrated in a product); Commission Regulation (EC) 640/2009 (electric motors); and Commission Regulation (EC) 643/2009 (household refrigerating appliances).

Regulation 4 inserts new regulation 6A which introduces new requirements when placing a special purpose lamp on the market.

Regulation 5 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 6 amends regulation 16 (non-conformity notices) requiring a notified body to also 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 an authorised person.

Regulation 7(4) 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. Consequential amendments are made to Schedule 9 (powers of enforcing authorities) by way of Regulation 14 to avoid duplication of these provisions.

Regulation 8(2) replaces regulation 23 (offences and penalties in respect of regulations 3 to 5 and 8 to 10). Failing to comply with regulation 6A and failing to comply with an enforcement notice are now included in the list of offences.

Regulation 8(3) 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 (England, Wales and Northern Ireland) and the Sheriff Court (Scotland), 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 8(4) 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.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Sustainable Products and Consumers Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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STATUTORY INSTRUMENTS

2009 No. 2560

ENERGY CONSERVATION

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£5.50