

**EXPLANATORY MEMORANDUM TO  
THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN  
ELECTRICAL AND ELECTRONIC EQUIPMENT (AMENDMENT)  
REGULATIONS 2009**

**2009 No. 581**

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 These Regulations correct drafting errors in the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment 2008 (S.I. 2008/37, “the principal Regulations”). Regulation 2(3) and (4)(a) correct mistaken cross-references in the principal Regulations. Regulation 2(4)(b) revokes regulation 13(4) and (5) of the principal Regulations, which are superfluous in view of the fact that the principal Regulations are specified for the purposes of section 237 of the Enterprise Act 2002 by regulation 26 of the principal Regulations. This means that the kind of disclosure by enforcement officers and others involved in investigations under the principal Regulations which is prohibited by regulation 13(4) constitutes an offence under section 245 of that Act. The protections available under that Act to those who may otherwise be found to have committed that offence are broadly equivalent in effect to regulation 13(5).

2.2 The Regulations (regulation 2(2), (5) and (6)) also replace the provisions of the principal Regulations relating to compliance notices and enforcement notices (and the associated definition of “infringing goods”). In particular, provision is made that no proceedings shall be commenced in respect of a failure to comply with regulations 7 and 8 which is the subject of an outstanding compliance or enforcement notice; and, where there has been a failure to comply with regulation 8 and a compliance notice has not been complied with, the option of issuing an enforcement notice (rather than proceeding to prosecution under regulation 16) is made available.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 In its Tenth Report for the session 2007-2008, the Committee pointed out that the principal Regulations were defective in that they did not provide for a penalty to apply to those convicted of the offence created in regulation 13(4) (<http://www.publications.parliament.uk/pa/jt200708/jtselect/jtstatin/61/6105.htm>). The removal of regulation 13(4) makes further amendment in response to the Committee’s report unnecessary.

#### **4. Legislative Context**

4.1 The principal Regulations 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).

##### ***Commencement Date***

4.2 These Regulations will come into force at the next common commencement date, 6 April 2009.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

#### **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

7.1 As noted in section 2 above, the amendments made to the principal Regulations by these Regulations fall into two groups: correction of drafting errors and amendment of the provisions on compliance and enforcement notices. The second group of amendments has been made in the light of the further consideration that was given to the enforcement of single market environmental directives during the preparation of the Batteries and Accumulators (Placing on the Market) Regulations 2008 (S.I. 2008/2164), which implement certain provisions of the Batteries Directive (2006/66/EC, OJ L 266, 26.9.2006, p.1). The Batteries Regulations impose a regime in respect of batteries which is similar to that imposed on electrical and electronic equipment by the principal Regulations.

7.2 In their original form, the principal Regulations did not prevent the possibility of criminal proceedings being initiated under regulation 16 in respect of a failure to comply with regulation 7 or 8 while a compliance or enforcement notice relating to the same failure was still outstanding. It was also somewhat anomalous that where there had been failure to comply with a compliance notice issued in respect of a failure to comply with regulation 8, enforcers had no option to issue an enforcement notice, rather than proceeding to prosecution. These defects have now been remedied by prohibiting prosecutions in respect of matters which are the subject of outstanding compliance or enforcement notices, and making it possible to issue enforcement notices in cases of failure to comply with regulation 8, as an intermediate step between the issue of a compliance notice and prosecution.

## ***Consolidation***

7.3 This is the first amendment of the principal Regulations and it is not considered appropriate to consolidate.

## **8. Consultation outcome**

8.1 Notice was given during the consultation on the Batteries Regulations (<http://www.berr.gov.uk/files/file46162.pdf>, on page 18) that the changes which the Regulations make to the compliance and enforcement notice provisions would be made, subject to a favourable consultation outcome in respect of the provisions in the Batteries Regulations on which they have been based. This, together with the fact that no person or organisation (other than the enforcement authority) is required to do anything differently as a result of the amendment, meant that further specific consultation on these Regulations was not necessary.

## **9. Guidance**

9.1 Guidance will be issued to the enforcement authority before these Regulations come into force.

## **10. Impact**

10.1 Businesses, charities or voluntary bodies which comply with the principal Regulations will be unaffected by these Regulations. Those which do not comply will not suffer any increased burdens as a result of them.

10.2 The impact on the public sector is limited to enforcement officers changing their administrative procedures very slightly and no additional cost is involved.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

## **11. Regulating small business**

11.1 The Regulations impose no additional burden on small businesses.

## **12. Monitoring & review**

12.1 No review is foreseen. However, the European Commission has published a proposal to re-cast the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Directive (2002/95/EC). The proposal combines some new developments in certain aspects of the Directive with a consolidation of the various decisions taken since 2002 under the existing Directive which have exempted particular applications of restricted substances. If the proposal is adopted in some form, it will almost certainly be necessary to amend or replace the principal Regulations in order to implement the new Directive. The implementation process will provide an opportunity to revisit the existing implementing legislation to the extent that it is consistent with the new Directive.

### **13. Contact**

Iain Nicol at the Department for Business, Enterprise and Regulatory Reform (Tel 020 7215 1408 or e-mail [iain.nicol@berr.gsi.gov.uk](mailto:iain.nicol@berr.gsi.gov.uk)) can answer any queries regarding the instrument.