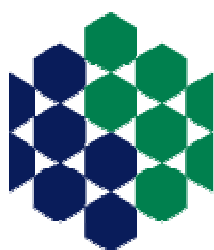


# CONSULTATION PAPER ON AMENDMENTS TO THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT (ROHS) REGULATIONS (S.I. 2006 NO. 1463)



Department of the  
**Environment**

[www.doeni.gov.uk](http://www.doeni.gov.uk)

## **FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS**

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs

below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

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This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
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For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>). For further information about this particular consultation please contact the consulting branch at:

Janice Harvey  
Planning and Environmental Policy Group  
20-24 Donegall Street  
Belfast  
BT1 2GP

The Department of the Environment is publishing this consultation paper to seek views on proposed amendments to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (ROHS) Regulations, (S.I. 2006 No. 1463).

The ROHS Regulations deal with a reserved matter, namely *technical standards and requirements in relation to products in pursuance of an obligation under Community Law* (paragraph 38 of Schedule 3 to the Northern Ireland Act 1998). The Department for Business, Enterprise and Regulatory Reform is therefore responsible for making the Regulations on a UK-wide basis. The Regulations transpose the ROHS Directive (2002/95/EC). The Directive aims to minimise the end of life environmental impact of electrical and electronic equipment by restricting the level of six hazardous substances that may be used during its manufacture. The substances in question are lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers.

The Regulations were made in June 2006 and came into force in July 2006. The enforcement body for the Regulations is the National Weights and Measures Laboratory. Schedule 2 to the Regulations contains a list of exempt applications (for example, lead in glass of cathode ray tubes) copied out from the ROHS Directive. The European Commission has since updated the list of exempt applications via Commission Decisions.

There are two proposed changes to the ROHS Regulations, plus consequential amendments. The first is to update the Regulations to take account of the Commission Decisions on exempt applications and the second is to update enforcement provisions in light of experience gained in the past year. The following consultation paper drafted by the Department for Business, Enterprise and Regulatory Reform explains these proposals in detail.

The Department of Environment is keen to hear your views on these proposals. Comments in relation to the consultation paper should be sent to arrive by 23 November 2007 to: Janice Harvey, Planning and Environmental Policy Group, Department of the Environment, 20-24 Donegall Street, Belfast, BT1 2GP, by email to [Janice.harvey@doeni.gov.uk](mailto:Janice.harvey@doeni.gov.uk) , by fax to 028 9054 4520 or by textphone to 028 9054 0642.

### **Equality Issues**

Under Section 75 of the Northern Ireland Act 1998, public authorities have a statutory duty to promote equality of opportunity. We have completed an equality screening of the draft regulations and have concluded that they do not impact on equality of opportunity on any of the groups specified in Section 75.

The Equality commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission have.

### **Human Rights Issues**

The Human Rights Act 1998 implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We have concluded that the draft regulations are compatible with the Human Rights Act.

The Human Rights Commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission have.

**Amendments to the  
Restriction of the Use of Hazardous Substances in Electrical and  
Electronic Equipment (RoHS) Regulations - SI 2006 No. 1463  
A Consultation Document**

**Introduction**

This consultation seeks views on proposed amendments to the Restriction of the Use of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Regulations, (SI 2006 No. 1463).

The Department for Business, Enterprise & Regulatory Reform (BERR) is seeking the views of producers of electrical and electronic equipment (as defined in Regulation 3 of the Regulations) and others on proposed amendments in relation both to exempt applications and enforcement.

**Important Note:**

**Please note that this consultation document does not seek views on the provisions of the Directive itself but on BERR's proposals to amend the RoHS Regulations.**

**Issued:** 3<sup>rd</sup> September 2007

**Respond by:** 23<sup>rd</sup> November 2007

**Enquiries to / how to respond:**

Please see Section 5 for details of how to respond.

# Contents Page

<b>Section</b>	<b>Page Number</b>
1. Executive Summary .....	6
2 Draft Revised RoHS Regulations - Key changes .....	6
3 Background the RoHS Directive and Regulations.....	11
4 What happens next? .....	12
5 How to respond.....	13
6 Additional copies.....	14
7 Confidentiality & Data Protection .....	14
8 Help with queries .....	14
9 Complaints.....	15
Annex A – Amendments to the RoHS Regulations .....	16
Annex B – Partial Impact Assessment.....	26
Annex C – Consultation Response Form .....	39
Annex D – The Consultation Code of Practice.....	44

## 1. Executive Summary

- 1.1 The RoHS Directive (2002/95/EC), (transposed into UK legislation by the RoHS Regulations), aims to minimise the end of life environmental impact of electrical and electronic equipment (EEE) by restricting the level of six hazardous substances that may be used during its manufacture.
- 1.2 The Directive applies primarily to those who manufacture EEE, but also to those who import these goods into the EU and those who re-brand equipment that has been produced by others.
- 1.3 The purpose of laying new RoHS Regulations is both to:
  - a. amend Schedule 2 to take account of any further Commission Decisions concerning exempt applications. The Department intends to take advantage of new provisions so as to refer to the RoHS Directive Annex “as amended from time-to-time”. This will remove the need for further amendments to the Annex of the Regulations every time new exempt applications of the restricted substances are approved, and bring the UK legislation simultaneously in line with the publication of Commission Decisions immediately; and
  - b. amend and clarify the enforcement provisions in the light of the experience of the UK RoHS Enforcement Authority’s first year of enforcing the RoHS Regulations. The Department proposes to amend the enforcement Regulations to make the regime a clearer and more effective means of securing compliance with producers’ obligations under the Regulations.

## 2 Draft Revised RoHS Regulations - Key changes

### Scope of proposed changes to the RoHS Regulations

- 2.1 The key obligations under the RoHS Regulations are those currently set out in regulations 7 to 9. They reflect the obligations to be imposed on producers of EEE under the RoHS Directive. It is not proposed to change the substance of these obligations, or the range of persons on whom they are imposed, in any respect (the current RoHS Regulations SI 2006 – 1463 can be found at <http://www.berr.gov.uk/files/file30080.pdf>.)
- 2.2 The proposed changes are limited to two areas. These are the way in which the Regulations refer to those applications of hazardous substances that are exempt from the RoHS Directive, and the provisions dealing with the investigation and enforcement of compliance with producers’ obligations. This is explained in greater detail below.

### Amending Schedule 2 of the RoHS Regulations

- 2.3 The RoHS Regulations need to be amended to take account of three Commission Decisions that amend the list of exempt applications in the original Annex to the EC’s RoHS Directive (2002/95/EC). In order to give effect to these Decisions, the Department intends to take advantage of new provisions inserted into the European Communities Act 1972 by the Legislative and Regulatory Reform Act 2006 so as to refer to the Directive Annex as amended from “time to time”.

- 2.4 This approach will avoid the need to propose amending Regulations whenever the list of exempt applications is changed, (as has happened on six separate occasions over the past two years). The list of exempt applications and supporting explanation will continue to be included in updated versions of BERR's non-statutory Government Guidance Notes on the Regulations, as well as being available from the European Commission and other EU legislation sources. In this way, by avoiding the delay inherent in making amending Regulations to transpose Commission Decisions into the RoHS Regulations, the UK legislation will be brought simultaneously into line with changes to the list of exempt applications in the Directive, and the potential for confusion, between seemingly different UK and EC legislative texts, will be reduced.

#### Current RoHS Regulations Specific to Enforcement

- 2.5 In addition to the main obligation to ensure that new EEE does not contain more than the permitted amounts of hazardous substances (Regulation 7), the application of the current RoHS Regulations may be summarised as follows. Producers are obliged: -
- a. to prepare, and supply within 28 days at the request of the Secretary of State, technical documentation or other information showing that the EEE they have put on the market complies with the Regulation 7 requirement (Regulation 8); and
  - b. to retain these documents or other information for a period of four years from the date of putting the EEE on the market (Regulation 9).
- 2.6 The following provisions are relevant to the enforcement of the requirements of Regulations 7 to 9:
- a. In order to establish whether EEE placed on the market complies with Regulation 7, the UK RoHS Enforcement Authority (the National Weights and Measures Laboratory or "NWML", formerly an executive agency of DTI and now one of the Department for Innovation, Universities and Skills), may make test purchases of EEE (Regulation 12(1)).
  - b. Where the UK RoHS Enforcement Authority has grounds to suspect that a producer has placed non-compliant products on the market or failed to comply with the requirements of Regulations 8 or 9, it may serve a compliance notice upon the Producer requiring them to comply or provide evidence of compliance within a specified period, warning them of the possibility of prosecution (Regulation 11).
  - c. Failure to comply with any of the requirements of Regulations 7 to 9 is an offence punishable by a fine (Regulations 13 and 14).
  - d. Where the test-purchase of a piece of EEE leads to prosecution and court proceedings under Regulation 13, the Producer, or any other interested party (e.g. a retailer from whom the item was purchased), is allowed to have it tested independently (Regulation 12(2)).

## Why Amend the RoHS Regulations specific to Enforcement?

- 2.7 Identifying that there are non-compliant products on the market and identifying who is responsible for placing them on the market (infringing Regulation 7), are often quite separate exercises.
- 2.8 The Enforcement Authority may make a test purchase of EEE from a retailer to establish if a product is compliant or not. However, the retailer will not, in many cases, be the “producer” of the EEE within the meaning of the Regulations. As a consequence of the complexity of the electrical and electronics sector supply chain, it can prove difficult for the RoHS Enforcement Authority to successfully pursue investigations.
- 2.9 This difficulty has, in turn, highlighted problems with the issue of compliance notices under Regulation 11. Compliance notices can only be served on a producer, so in cases where the Enforcement Authority has not been able to establish the identity of the producer of a non-compliant piece of equipment (for example, were the retailer is not the producer), they are of limited use.
- 2.10 In line with the principles of better regulation, the RoHS Regulations have been enforced under a “light-touch” regime, and NWML, as the Enforcement Authority, has focused its efforts on raising awareness and working with the industry to ensure compliance. The Regulations’ “light touch” enforcement mechanism work well in most cases. However, even light-touch regulation cannot be effective if, as has sometimes been the case under the current Regulations, the regulators cannot identify the producers, for the reasons given above.
- 2.11 It is also felt that the current RoHS Regulations could be made more effective with the inclusion of sanctions that are directed specifically at removing non-compliant goods from the market. Such sanctions are a feature many comparable product-related enforcement regimes.
- 2.12 In summary, the RoHS Regulations are to be effectively enforced, they require additional information-gathering powers and the kind of sanctions for non-compliance that are to be found under other consumer protection or environmental protection legislation. The purpose of the proposed amendments to the enforcement provisions of the Regulations is to enhance and clarify them and make the process of enforcement more efficient and effective.

## Explanation of the Proposed Amendments to the Regulations

- 2.13 The following paragraphs explain in more detail the changes which it is proposed to make to the RoHS Regulations. Provisions of the RoHS Regulations 2006 are referred to as the “current Regulations”. Provisions of the proposed new Regulations are referred to as the “new Regulations”. Note that, for ease of reference, the proposed new RoHS Regulations have been divided up into four parts:
- Part 1 – Preliminary;
  - Part 2 – Producers’ Responsibility;
  - Part 3 – Enforcement; and
  - Part 4 – Miscellaneous
- 2.14 Current Regulations 1 to 4 remain unchanged apart from the updating of references (e.g. citation of the new Regulations in new Regulation 1, revocation of the 2006

Regulations in new Regulation 2) and the addition of some new defined terms in new Regulation 3 as a consequence of changes to later parts of the Regulations).

- 2.15 Current Regulation 5 – It is proposed that the list of exempt applications of restricted substances currently in Schedule 2 should be removed. Exempt applications would instead be defined as those listed in the Annex to the Directive as amended from time to time. It is proposed to move paragraph (1) of the current Regulation 5 to new Regulation 23(2).
- 2.16 Current Regulations 6 to 9, which set out the substantive obligations placed on producers. Apart from the updating of a reference to the new Regulations in new Regulation 7 and the consolidation of Regulations 8 and 9 (Retention of technical documentation) into a single new Regulation 8, these Regulations remain unchanged.
- 2.17 Current Regulations 10 to 12 are amended slightly. It is proposed that Regulation 10 is amended in the corresponding new Regulation 9 by splitting current Regulation 10(1) into two separate paragraphs. New Regulation 10 aims to clarify the meaning of the current Regulation 12 without changing it. The changes to current Regulation 11 proposed in new Regulation 13 are simply consequential on changes elsewhere in the proposed new Regulations (most notably in paragraph (2)(e)(ii), referring to enforcement notices, as provided for in new Regulation 14).
- 2.18 New Regulations 11 (Power to require production of documents and information) and 12 are aimed at providing a sound basis for the Enforcement Authority to pursue inquiries which will enable them to establish the identity of the producer for any given item of EEE, and whether the producers' obligations under new Regulations 7 and 8 have been complied with. This will enable the Enforcement Authority to carry out its enforcement and awareness-raising functions more effectively in the small but significant number of cases where they may not meet with a co-operative response from businesses, (for example, when they ask a retailer or distributor who refuses to identify the supplier of a particular item of EEE).
- 2.19 New Regulation 11 would enable the Enforcement Authority to issue a written notice requiring a person (whom they reasonably believe has information or documents which may be relevant to establishing whether producers' obligations have been complied with) to provide them with that information or copies of those documents. New Regulation 15(3) would make it an offence to fail, without reasonable excuse, to comply with such a requirement, or knowingly to respond to it with false or misleading information. New Regulation 24 ensures that a notice under new Regulation 11 cannot require a person to supply legally privileged material, and cannot be used in prosecution evidence against the person to whom the notice is given except in very limited circumstances.
- 2.20 New Regulation 12 would enable officers of the Enforcement Authority to exercise certain powers where they believe that it would help them to establish whether there has been an infringement of the producers' obligations. These powers are set out in new Regulation 12(2) and are modelled on similar powers to enter commercial premises, take samples and make inquiries found in other legislation, such as Regulation 72 of the Waste Electrical and Electronic Equipment Regulations 2006, (SI 2006 No. 3289). However, in contrast to the WEEE Regulations, no provision is made for the Enforcement Authority to seek a warrant from magistrates so as to be able to enter premises against the will of the business occupying them.

- 2.21 As in the current Regulations, new Regulation 13 enables the Enforcement Authority to serve a compliance notice on producers where they have reasonable grounds to suspect the producer's obligations have not been met. The compliance notice enables the Enforcement Authority to detail its reasons for suspecting a contravention and provides the producer with an opportunity either to demonstrate that is already in compliance with its obligations or to bring itself into compliance within the period specified in the notice.
- 2.22 Where a producer's response (or lack of response) to a compliance notice indicates that it is continuing to ignore its obligations, the next step may sometimes be to proceed with a prosecution, although for a variety of reasons, this will often not be the case. However, even if a prosecution is not the appropriate course of action at this stage, it may be desirable for the Enforcement Authority to take further action to secure compliance or to ensure that infringing products which are already on the market are removed from circulation. It is therefore proposed that where a producer has failed to comply with a compliance notice requiring him to comply with the obligation not to place non-compliant goods on the market, the Enforcement Authority should be able to serve a further "enforcement notice". This is provided for in new Regulation 14, which is similar to provisions found in a number of UK consumer and environmental protection regimes.
- 2.23 It is proposed that as well as including a "final warning" requirement to comply with the producer's obligation not to place non-compliant goods on the market, an enforcement notice may require such goods to be withdrawn from the market, or prohibit or restrict their being put on the market. The notice must include the reasons why the Enforcement Authority believes the producer's obligations have not been complied with. Producers can apply to the court to challenge an enforcement notice if they consider it unjustified. However, it is proposed that unless an enforcement notice is set aside as a result of such a challenge, it should be an offence to fail to comply with its requirements (new Regulation 15(1)(c)). It is hoped that by giving the Enforcement Authority the option of utilising this further procedure, which occupies a step between the existing possibilities of serving a compliance notice and initiating a prosecution, the new Regulations will provide them with a better graduated range of responses to non-compliant behaviour. This should help to make the enforcement regime more proportionate and effective, and potentially reduce burdens on both businesses and the Enforcement Authority.
- 2.24 It is proposed that new Regulation 15 should include new procedural offences of obstruction and supplying false or misleading information as well as the offences found in current Regulation 13 and the offences in relation to new Regulations 11, 12 and 14 noted above. Experience of other enforcement regimes which include such procedural offences suggest that they are rarely used, but that they contribute significantly to the effectiveness of the primary enforcement activities that they underpin, such as gathering information about suspected infringements under statutory powers.
- 2.25 New Regulation 16 follows current Regulation 14 in limiting the amount of fines associated with procedural offences, with the maximum being level 5 on the standard scale, currently £5,000. The same limit would also continue to apply in relation to substantive offence (i.e. placing non-compliant products on the market) unless it is tried on indictment.
- 2.26 Like new Regulation 14, new Regulation 17 recognises that the primary objective of enforcement activity will often be to secure compliance rather than punish non-

compliance. Both new Regulation 17 and new Regulation 18 draw on provisions set out in the Electromagnetic Compatibility Regulations 2006, (SI 2006 No. 3418). New Regulation 17 would enable a court convicting a producer of a substantive offence or of a failure to maintain the required technical documentation to order the producer to take action to remedy the contravention of the Regulations, either in place of or in addition to imposing a fine. New Regulation 18 would permit a court convicting a producer of a substantive offence or for failure to comply with an enforcement notice to reimburse the Enforcement Authority's expenses of investigating the offence, notably as regards the testing of relevant items of EEE.

- 2.27 New Regulations 19 to 22 remain unchanged (corresponding to current regulations 15 to 18). Current Regulation 19 is updated by new Regulation 25 to reflect the proposed new Regulations.
- 2.28 New Regulation 23 ensures continuity of implementation of the RoHS Directive and producers' obligations when the current Regulations are replaced by the new Regulations. In particular, it provides (paragraph (3)) that, from the date when the new Regulations enter into force, the new enforcement powers detailed above apply whether the breach of the producers' obligations took place while the current Regulations were in force or after the new Regulations have entered into force.
- 2.29 As noted above, new Regulation 24 imposes strict limits on the extent to which material obtained by the Enforcement Authority under the powers to require production of information or documents in the new Regulations can be used as evidence in a prosecution of the person who provided the information or documents concerned.

### **3 Background the RoHS Directive and Regulations**

- 3.1 The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive (2002/95/EC) aims to minimise the environmental impact of electrical and electronic equipment at the end of its life by restricting the level of six hazardous substances that may be used during its manufacture.
- 3.2 The RoHS Directive requires Member States to ensure that electrical and electrical equipment put on the market on or after 1<sup>st</sup> July 2006 complied with the requirements of the Directive.
- 3.3 The RoHS Directive was adopted on 27<sup>th</sup> January 2003 and harmonized the laws of Member States on the use of hazardous substances in the manufacture of new electrical and electronic equipment. The RoHS Directive was first transposed into UK legislation through the Restriction of the Use of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Regulations 2005 - SI 2005 No. 2748.

- 3.4 The main requirement of the RoHS Directive is that Member States must ensure that any new electrical and electronic equipment placed on the market on or after 1 July 2006 **does not contain** more than the permitted levels of:
- Lead;
  - Mercury;
  - Cadmium;
  - hexavalent chromium;
  - polybrominated biphenyls (PBB);or
  - polybrominated diphenyl ethers (PBDE)

The permitted levels are that the substances should not exist in amounts exceeding maximum concentration values of 0.01% by weight in homogenous materials for cadmium and 0.1% by weight in homogeneous materials for the five other substances.

- 3.5 Article 2 of the RoHS Directive says that it applies to electrical and electronic equipment falling into eight of the ten broad product categories listed in Annex 1A of the complementary Waste Electrical and Electronic Equipment (WEEE) Directive (2002/96/EC), which was adopted at the same time. The two categories of the WEEE Directive that are currently outside the scope of the RoHS Directive are category 8 (medical devices) and category 9 (monitoring and control instruments).
- 3.6 Following three rounds of full public consultation (undertaken in March 2003, November 2003 and July 2004), the RoHS Directive was transposed into UK legislation by the 2005 Regulations, (SI 2005 No. 2748). Replacement Regulations, (SI 2006 No. 1463), were made on 25<sup>th</sup> May 2006 and laid before Parliament on 6<sup>th</sup> June 2006 to take account of a number of additional exempt applications of the six substances that had been agreed since the Directive was adopted. Final Regulatory Impact Assessments were placed in the libraries of both Houses at the same time as both sets of Regulations were made.

#### **4 What happens next?**

- 4.1 The results of this consultation exercise, including a summary of the views expressed, will be published after the close of the exercise on the BERR website, see <http://www.berr.gov.uk/consultations/index.html>
- 4.2 The summary will also be made available in hard copy form on request.
- 4.3 Please note that it is not the Directive on which we would like your comments - the text has been approved by the European Parliament and The Council and cannot be changed. It is on our proposals to amend the current RoHS Regulations that we seek your views.
- 4.4 Subject to Ministerial approval, it is expected that the new Regulations will be made and laid before Parliament at the beginning of 2008.
- 4.5 Once made, the revised Regulations will be published and can then be viewed on the OPSI (Office of Public Sector Information) web site at <http://www.opsi.gov.uk/stat.htm>.

## 5 How to respond

- 5.1 This consultation opens on 3<sup>rd</sup> September 2007 and closes on 23<sup>rd</sup> November 2007.
- 5.2 Responses should be sent to:

Marc Jay  
Department for Business, Enterprise and Regulatory Reform  
Sustainable Development & Regulation Directorate  
1 Victoria Street  
London  
SW1H 0ET.

or

Steven Andrews  
Department for Business, Enterprise and Regulatory Reform  
Sustainable Development & Regulation Directorate  
1 Victoria Street  
London  
SW1H 0ET.

- 5.3 Alternatively responses can be submitted by email to [marc.jay@berr.gsi.gov.uk](mailto:marc.jay@berr.gsi.gov.uk) or [steven.andrews@berr.gsi.gov.uk](mailto:steven.andrews@berr.gsi.gov.uk).
- 5.4 Responses can be also faxed to 020 7215 1340.
- 5.5 When submitting a response, please state whether you are doing so as an individual or you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 5.6 An electronic version of the whole consultation document is available in pdf format on the BERR central consultation webpage. See <http://www.berr.gov.uk/consultations/index.html> . And also on the Sustainable Development & Regulation Directorate website at <http://www.berr.gov.uk/innovation/sustainability/rohs/page29048.html>.
- 5.7 The Consultation Response form, (as a stand alone document), can also be downloaded from the Sustainable Development & Regulation Directorate pages of the BERR website at <http://www.berr.gov.uk/innovation/sustainability/rohs/page29048.html>.

## **6 Additional copies**

- 6.1 You may make copies of this document without seeking our permission. Alternatively, further printed copies of the consultation document can be obtained from:

BERR Publications Orderline

ADMAIL 528  
London  
SW1W 8YT

Tel: 0845 015 0010  
Fax: 0845 015 0020  
Minicom: 0845 015 0030

## **7 Confidentiality & Data Protection**

- 7.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 7.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 7.3 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## **8 Help with queries**

- 8.1 Questions about the policy issues raised in the document can be addressed to:

Marc Jay  
Department for Business, Enterprise and Regulatory Reform  
Sustainable Development & Regulation Directorate  
1 Victoria Street  
London  
SW1H 0ET.

Tel: 020 7215 4156

Email: [marc.jay@berr.gsi.gov.uk](mailto:marc.jay@berr.gsi.gov.uk)

or

Steven Andrews  
Department for Business, Enterprise and Regulatory Reform  
Sustainable Development & Regulation Directorate  
1 Victoria Street  
London  
SW1H 0ET.

Tel: 020 7215 1670

Email: [steven.andrews@berr.gsi.gov.uk](mailto:steven.andrews@berr.gsi.gov.uk)

## **9 Complaints**

- 9.1 If you have any comments or complaints about the way this consultation has been conducted these should be sent to:

Kathleen McKinlay  
Consultation Coordinator  
Department for Business, Enterprise and Regulatory Reform  
Bay 4112  
1 Victoria Street  
London  
SW1H 0ET

Tel: 020 7215 2811

E-mail [kathleen.mckinlay@berr.gsi.gov.uk](mailto:kathleen.mckinlay@berr.gsi.gov.uk)

- 9.2 A copy of the Code of Practice on Consultation is included at the end of Annex D.

**Amendments to the RoHS Regulations**

**Draft Amending Regulations**

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S T A T U T O R Y   I N S T R U M E N T S

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**2008 No. 0000**

**ENVIRONMENTAL PROTECTION**

**The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008**

*Made* - - - - - \*\*\*\* 2008

*Laid before Parliament* \*\*\*\* 2008

*Coming into force* - - - - - 1st February 2008

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> (“section 2(2)”) in respect of measures relating to the restriction of the use of hazardous substances in electrical and electronic equipment.

These Regulations make provision for a purpose mentioned in section 2(2) and it appears to the Secretary of State that it is expedient for the reference in regulation 5 to the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment<sup>(3)</sup> to be construed as a reference to that Annex as amended from time to time.

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

**PART 1**

Preliminary

**Citation and commencement**

1. These Regulations may be cited as the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 and shall come into force on 1st February 2008.

**Revocation**

2. The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006<sup>(4)</sup> (“the 2006 Regulations”) are revoked.

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<sup>(1)</sup> S.I. 2003/2901 and S.I. 2004/706.

<sup>(2)</sup> 1972 c.68, as amended by numerous subsequent Acts; however, the only amendments relevant for the purposes of these Regulations are those introduced by Part 3 of the Legislative and Regulatory Reform Act 2006 (c.51).

<sup>(3)</sup> OJ No. L37, 13.2.03, p. 19.

<sup>(4)</sup> S.I. 2006/1463.

## Interpretation

### 3. In these Regulations—

“compliance notice” has the meaning given in regulation 13(2);

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under categories set out in Annex 1A to Directive 2002/96/EC on waste electrical and electronic equipment<sup>(5)</sup> as amended by Directive 2003/108/EC<sup>(6)</sup> and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“enforcement notice” has the meaning given in regulation 14(2);

“enforcement officer” means a person authorised in writing to act on behalf of the Secretary of State under these Regulations;

“hazardous substance” means lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers in quantities exceeding the maximum concentration value levels set out below—

0.1% by weight in homogeneous materials for lead;

0.1% by weight in homogeneous materials for mercury;

0.1% by weight in homogeneous materials for hexavalent chromium;

0.1% by weight in homogeneous materials for polybrominated biphenyls;

0.1% by weight in homogeneous materials for polybrominated diphenyl ethers; and

0.01% by weight in homogeneous materials for cadmium;

“infringing goods” has the meaning given in regulation 14(2)(a);

“producer” means any person who, irrespective of the selling technique used, including by means of distance communication according to Directive 97/7/EC<sup>(7)</sup> as amended by Directive 2002/65/EC<sup>(8)</sup> on the protection of consumers in respect of distance contracts—

(a) manufactures and sells electrical and electronic equipment under his own brand;

(b) resells under his own brand equipment produced by other suppliers, but for these purposes a reseller shall not be regarded as the producer if the brand of the producer appears on the equipment, as provided for in (a); or

(c) imports or exports electrical and electronic equipment on a professional basis into an EEA state; and

“the 2006 Regulations” has the meaning given in regulation 2.

### Electrical and electronic equipment to which these Regulations apply

4. These Regulations apply to electrical and electronic equipment that is within the categories set out in the Schedule and to electric light bulbs and to luminaires for use in households.

### Electrical and electronic equipment to which these Regulations do not apply

5. These Regulations do not apply to those applications of lead, mercury, cadmium, hexavalent chromium and polybrominated diphenyl ethers which are listed in the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment, as that Annex is amended from time to time<sup>(9)</sup>.

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<sup>(5)</sup> OJ No. L37, 13.2.03, p. 24.

<sup>(6)</sup> OJ No. L345, 31.12.03, p. 106.

<sup>(7)</sup> OJ No. L144, 4.6.97, p. 19.

<sup>(8)</sup> OJ No. L271, 9.10.02, p. 16.

<sup>(9)</sup> The Annex to this Directive (OJ No. L37, 13.2.03, p. 19) has been amended on a number of occasions and is expected to continue to be amended from time to time. The amendments to the Directive in force as at the making of these Regulations are to be found at OJ No. L214, 19.8.05, p. 65 (Commission Decision 2005/618/EC); OJ No. L271, 15.10.05, p. 48 (Commission Decision 2005/717/EC); OJ No. L280, 25.10.05, p. 18 (Commission Decision 2005/747/EC); OJ No. L115, 28.4.06, p. 38 (Commission Decision 2006/310/EC); OJ No. L283, 14.10.06, p. 47 (Commission Decision 2006/690/EC); OJ No. L283, 14.10.06, p. 48 (Commission Decision 2006/691/EC); and OJ No. L283, 14.10.06, p. 50 (Commission Decision 2006/692/EC). The first of these decisions did not amend the Annex to the Directive, but all the others did.

## **Existing legislation**

6. Nothing in these Regulations shall affect the application of existing Community legislation and national legislation as regards—

- (a) safety and health requirements; and
- (b) waste management.

## **PART 2**

### **Producers' obligations**

#### **Prohibition on hazardous substances**

7. Producers shall ensure that new electrical and electronic equipment put on the market on or after 1st February 2008 does not contain any hazardous substance.

#### **Technical documentation**

8. Producers shall—

- (a) prepare technical documentation or other information showing that any electrical and electronic equipment which they have put on the market complies with the requirements of regulation 7; and
- (b) retain that technical documentation or other information for a period of four years from the date on which they put the equipment on the market.

## **PART 3**

### **Enforcement**

#### **Enforcement authority**

9.—• It shall be the duty of the Secretary of State to enforce these Regulations.

- (1) In carrying out this duty he may appoint any person to act on his behalf.
- (2) The Secretary of State shall not commence proceedings for an offence in Scotland.

#### **Test purchases**

10.—• The Secretary of State may purchase electrical and electronic equipment for the purpose of ascertaining whether the requirements of regulation 7 have been met.

(1) If—

- (a) equipment purchased under this regulation is submitted to a test;
- (b) the test leads to the bringing of proceedings for an offence under regulation 15(1)(a) or the serving of an enforcement notice; and
- (c) a person—
  - (i) from whom the equipment was purchased;
  - (ii) who is a party to the proceedings; or
  - (iii) who has an interest in equipment which is identified as infringing goods in an enforcement notice,requests the Secretary of State to allow him to have the equipment tested,

the Secretary of State shall, if it is practicable for such a test to be carried out, allow that person to have the equipment tested.

#### **Power to require production of documents and information**

11. If the Secretary of State reasonably believes that a person has in his possession information or documents which may be relevant to establishing whether the requirements of Part 2 have been complied with or contravened in any particular case or class of cases, he may, subject to regulation 24(1), require that person, by notice in writing, to provide him with that information, those documents, or copies of them.

## Entry and inspection

**12.**—○ The powers specified in paragraph (2) may be exercised where the Secretary of State reasonably believes that their exercise will assist him in establishing whether the requirements of Part 2 have been complied with or contravened in any particular case or class of cases.

(1) Subject to the production, if so requested, of a copy of his authorisation to act as an enforcement officer, an enforcement officer may—

- (a) enter at any reasonable time any premises other than premises occupied only as a person's residence;
- (b) examine and investigate any process of assembly or manufacture taking place on such premises;
- (c) take such measurements and photographs and make such recordings as are necessary for the purpose of any examination or investigation under sub-paragraph (b);
- (d) take samples of any articles or substances found on or in the vicinity of any such premises;
- (e) require the production of, or, where the information is recorded in computerised form, the furnishing of extracts in legible form from, any records—
  - (i) which are required to be kept under regulation 8, or
  - (ii) which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (b),and inspect and take copies of, or of any entry in, the records;
- (f) take possession of samples of the kind referred to in sub-paragraph (d) or records of the kind referred to in sub-paragraph (e), and detain them for so long as is necessary to—
  - (i) examine them, or cause them to be examined;
  - (ii) ensure that they are not tampered with before examination of them is completed; and
  - (iii) ensure that they are available for use in evidence in any proceedings for an offence under regulation 15(1) or (3); and
- (g) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the enforcement officer to exercise any of the powers conferred on him by sub-paragraphs (b) to (f).

(2) When an enforcement officer enters premises by virtue of paragraph (2)(a), he may take with him such other persons and such equipment or materials as he reasonably considers it necessary or expedient to have with him—

- (a) for the purpose of establishing whether there has been a contravention of the requirements of Part 2; and
- (b) to assist him in exercising any of his powers under paragraph (2)(b) to (f).

(3) An enforcement officer who enters any premises by virtue of paragraph (2)(a) may direct that those premises, or any part of them, or anything in them, shall be left undisturbed for so long, and to such extent, as is reasonably necessary for the purpose of the exercise of any his powers under paragraph (2)(b) to (f).

(4) Where an enforcement officer leaves any premises that he has entered by virtue of this regulation and such premises are unoccupied or their occupier is temporarily absent, he shall leave them as effectively secured against a trespasser as he found them.

(5) If an enforcement officer or other person who enters any premises by virtue of this regulation discloses to any person any information obtained by him in the premises with regard to any secret manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(6) It shall not be an offence under paragraph (6) for a person to disclose information in circumstances where—

- (a) the person from whom the information was received has consented to the disclosure; or
- (b) the information is disclosed more than 50 years after it was received.

## Compliance notice

**13.**—● Where the Secretary of State has reasonable grounds for suspecting that any of the requirements of Part 2 have not been complied with, he may serve a notice on the producer.

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

- (a) state that the Secretary of State suspects a requirement of Part 2 (a “relevant requirement”) has been contravened;
- (b) state why he suspects that the relevant requirement has been contravened and specify the goods in respect of which it has been contravened;
- (c) require the producer to whom notice is given—

- (i) to comply with the relevant requirement; or
- (ii) to provide evidence to the Secretary of State demonstrating that the relevant requirement has been complied with;
- (d) specify the period of time within which the producer must comply with the notice; and
- (e) warn the producer that, unless the requirements of the notice are complied with within the period specified which it specifies—
  - (i) he may be prosecuted; or
  - (ii) where a contravention of regulation 7 is suspected, the Secretary of State may take further action under regulation 14.

### **Enforcement notice**

**14.**—○ Where the Secretary of State serves a compliance notice on a producer on the grounds of a suspected contravention of regulation 7 and—

- (a) the producer fails to comply with a requirement in the compliance notice to comply with regulation 7; or
- (b) notwithstanding any evidence which the producer has provided in response to a requirement in the compliance notice to provide evidence demonstrating compliance with regulation 7, the Secretary of State has reasonable grounds for suspecting that the contravention has occurred and is continuing,

he may serve a further notice on the producer.

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

- (a) specify the goods in respect of which the Secretary of State considers that regulation 7 has been contravened (the “infringing goods”);
- (b) state—
  - (i) why he considers that the producer has contravened regulation 7; and
  - (ii) any respect in which he considers that the producer has failed to comply with a compliance notice;
- (c) specify the date, not less than 21 days from the date of the notice, by which the producer is required to comply with it; and
- (d) inform the producer of the judicial remedies available to him and of the time limits to which those remedies are subject.

(3) An enforcement notice may—

- (a) require the infringing goods to be withdrawn from the market; or
- (b) prohibit or restrict the putting on the market of the infringing goods.

### **Offences**

**15.**—○ A person who contravenes or fails to comply with any of the requirements of—

- (a) regulation 7,
- (b) regulation 8, or
- (c) an enforcement notice,

shall be guilty of an offence.

(2) A person who intentionally obstructs an enforcement officer who is acting pursuant to any provision of this Part shall be guilty of an offence.

(3) A person who is required to provide information, documents or records under regulation 11 or 12(2)(e) shall be guilty of an offence—

- (a) if he fails, without reasonable excuse, to comply with that requirement; or
- (b) if—
  - (i) any information, document or record which he provides in response to that requirement is false or misleading in a material respect; or
  - (ii) any statement which he makes in response to that requirement is false or misleading in a material respect, and he either knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

## Penalties

**16.—**• A person who is guilty of an offence under regulation 15(1)(a) or (c) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) A person who is guilty of an offence under regulation 15(1)(b), (2) or (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## Power of the court to require matter to be remedied

**17.—**○ Where a person is convicted of an offence under regulation 15(1) in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters.

(1) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(2) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be guilty of an offence under regulation 15(1) in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

## Recovery of expenses of enforcement

**18.—**○ This regulation applies where a court convicts a person of an offence under regulation 15(1)(a) or (c).

(1) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted to reimburse the Secretary of State for any expenditure which he has incurred in investigating the offence, including in having the electrical and electronic equipment in respect of which it was committed tested.

## Commencement of proceedings

**19.** In England and Wales a magistrates' court may try an information, and in Northern Ireland a magistrates' court may try a complaint, in relation to an offence under these Regulations if the information is laid or if the complaint is made within twelve months from the time when the offence is committed. In Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

## Defence of due diligence

**20.—**• Subject to the following provisions of this regulation, in proceedings against any person for an offence under these Regulations it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(1) Where, in any proceedings against a person for such an offence, the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

the person shall not, without leave of the court, be entitled to rely on the defence unless, not later than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice in accordance with paragraph (3) on the person bringing the proceedings.

(2) A notice under this regulation shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(3) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular to—

- (a) the steps which he took and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether he had any reason to disbelieve the information.

## **Liability of persons other than the principal offender**

**21.—**• Where the commission by a person of an offence under these Regulations is due to the act or default of another person in the course of any business of his, that other person shall be guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against the first person.

(1) Where a body corporate commits an offence and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body corporate; or
- (b) as a result of the negligence of an officer of the body corporate,

the officer, as well as the body corporate, shall be guilty of the offence.

(2) In paragraph (2) a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a person purporting to act as a director, manager, secretary or other similar officer; and
- (c) if the affairs of a body corporate are managed by its members, a member.

(3) In this regulation references to a “body corporate” include references to a partnership in Scotland, and in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

## **Service of documents**

**22.—**• Any document required or authorised by these Regulations to be served on a person may be so served—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
- (b) if a person is a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body corporate; or
- (c) if the person is a partnership, by serving it in accordance with sub-paragraph (a) on a partner or on a person having control or management of the partnership business.

(2) For the purposes of paragraph (1), and for the purposes of section 7 of the Interpretation Act 1978<sup>(10)</sup> (which relates to the service of documents by post) in its application to that paragraph, the proper address of any person on whom a document is to be served in accordance with these Regulations shall be his last known address except that—

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this paragraph, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

## **PART 4**

### **Miscellaneous**

#### **Continuity of obligations under the 2006 Regulations**

**23.—**○ Any act or omission which would have constituted a failure to comply with the provisions of regulations 7, 8 or 9 of the 2006 Regulations while they were in force may be treated in all respects as a contravention of the corresponding requirements of Part 2 of these Regulations.

(1) This includes any act or omission relating to spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market after 1st July 2006, but the provisions of these Regulations shall not be applied in respect of spare parts for the repair, or to the reuse, of electrical and electronic equipment put on the market before 1st July 2006.

(2) Any question as to whether a requirement of regulations 7, 8 or 9 of the 2006 Regulations was complied with while they were in force may be investigated as if it was a question about compliance with the corresponding requirement of Part 2 of these Regulations, and regulation 15(2) and (3) shall apply accordingly in respect of any such investigation.

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<sup>(10)</sup> 1978 c.30.

## Restrictions on enforcement powers and use of certain evidence under them

24.—○ Nothing in these Regulations shall be taken as requiring a person to produce any documents or records if he would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising a person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(1) A statement by a person in response to a requirement imposed by virtue of regulation 11 may only be used in evidence against him—

(a) on a prosecution for an offence under regulation 15(3)(b); or

(b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(2) But the statement may not be used against that person by virtue of paragraph (2)(b) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.

## Amendment of the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004

25.—○ The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Specification) Order 2004<sup>(1)</sup> is amended as follows.

(1) In Schedule 1, for the words “The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006” substitute “The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008”.

*[Minister's name]*

[Minister's title]

Date

Department for Business, Enterprise & Regulatory Reform

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<sup>(1)</sup> S.I. 2004/693.

## SCHEDULE

Regulation 4

### Categories of electrical and electronic equipment

1. Large household appliances.
2. Small household appliances.
3. IT and telecommunications equipment.
4. Consumer equipment.
5. Lighting equipment.
6. Electrical and electronic tools (with the exception of large-scale stationary industrial tools).
7. Toys, leisure and sports equipment.
8. Automatic dispensers.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 (S.I. 2006/1463) which implemented the European Parliament and Council Directive 2002/95/EC (OJ No. L37, 13.3.03, p.19) on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (“the Directive”), as amended by Commission Decision 2005/618/EC (OJ No. L214, 19.8.05, p.65), Commission Decision 2005/717/EC (OJ No. L271, 15.10.05, p. 48), Commission Decision 2005/747/EC (OJ No. L280, 25.10.05, p.18) and Commission Decision 2006/310/EC (OJ No. L115, 28.4.06, p.38).

Since the 2006 Regulations were made, the Directive has been amended by a further three decisions: Commission Decision 2006/690/EC (OJ No. L283, 14.10.2006, p.47), Commission Decision 2006/691/EC (OJ No. L283, 14.10.2006, p.48) and Commission Decision 2006/692/EC (OJ No. L283, 14.10.2006, p.50). All three decisions amend the list of exempt applications of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers to which the Directive does not apply, which is set out in the Annex to the Directive. It is expected that the Annex will be subject to further amending decisions over time: an up to date record of such decisions can be found on the European Commission’s website at [http://ec.europa.eu/environment/waste/weee/legis\\_en.htm](http://ec.europa.eu/environment/waste/weee/legis_en.htm) and an up to date list of exempt applications can be found at [BERR webpage reference to be inserted].

These Regulations apply to new electrical and electronic equipment within the categories set out in the Schedule and to electric light bulbs and to luminaires for use in households that are put on the market on or after 1st July 2006 (when the 2006 Regulations came into force: regulation 23(1)).

These Regulations do not apply to:

- (a) spare parts for the repair of electrical and electronic equipment or to the reuse of such equipment put on the market before 1<sup>st</sup> July 2006 (regulation 23(2)); and
- (b) the applications of lead, mercury, cadmium, hexavalent chromium and polybrominated diphenyl ethers listed in the Annex to the Directive, as amended from time to time (regulation 5).

General requirements relating to the putting on the market on or after 1st July 2006 of new electrical and electronic equipment are set out in Part 2. New equipment put on the market must not contain more than the permissible maximum concentration values of hazardous substances (regulation 7). Regulation 8 sets out requirements relating to technical documentation.

The Secretary of State has the duty of enforcing the Regulations (regulation 9) and may appoint any person to act on his behalf. The Secretary of State has the power to make test purchases (regulation 10), require production of documents and information (regulation 11) and serve compliance and enforcement notices in cases of suspected non-compliance with the requirements of Part 2 (regulations 13 and 14). Enforcement officers acting on the Secretary of State’s behalf have powers to enter premises and carry out various information-gathering functions (regulation 12).

Any person who contravenes or fails to comply with the requirements of Part 2 or an enforcement notice shall be guilty of an offence; there are also procedural offences of obstruction and providing false or misleading information (regulation 15). Penalties for such offences are set out in regulation 16. The current maximum fine under level 5 on the standard scale is £5000. Where regulation 7 has been contravened, the court may also order the defendant to take remedial action or pay the costs of the Secretary of State’s investigation (regulations 17 and 18). Proceedings in relation to offences may be commenced within 12 months of the offence being committed (regulation 19). A defence of due diligence is provided in regulation 20 and the liability of persons other than the principal offender is set out in regulation 21. There is provision for service of documents under the Regulations under regulation 22.

These Regulations will be included amongst the subordinate legislation which has been specified for the purposes of Part 9 of the Enterprise Act 2002 relating to the disclosure of information (regulation 25).

An Impact Assessment (IA) in respect of these Regulations is available and a copy can be obtained from the Department for Business, Enterprise & Regulatory Reform. As these Regulations transpose the Directive, a transposition note (TN) setting out how the Government will transpose the Directive into UK law has been prepared. Copies of the IA and TN are available from the Enterprise and Business Group, Department for Business, Enterprise & Regulatory Reform, 1 Victoria Street, London SW1H 0ET. Copies of these documents have been placed in the libraries of both Houses of Parliament.

<b>Summary: Intervention &amp; Options</b>		<b>Annex B</b>
<b>Department /Agency:</b> <b>Department for Business, Enterprise and Regulatory Reform</b>	<b>Title:</b> <b>Impact Assessment of Restriction of use of certain Hazardous Substances in Electrical and Electronic Equipment Regulation</b>	
<b>Stage:</b> Partial	<b>Version:</b> One	<b>Date:</b> 7 August 2007
<b>Related Publications:</b> Amendments to the UK Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment Regulations - A Consultation Document		

**Available to view or download at:**

<http://www.berr.gov.uk>

**Contact for enquiries:** Trevor Reid

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**What is the problem under consideration? Why is government intervention necessary?**

There are two main problems under consideration. The first relates to the placing of electrical and electronic equipment (EEE) on the EU market, and the second relates to the appropriate level of environmental protection where EEE is involved. Government intervention is necessary to establish the legal framework to protect and promote a 'single market' in EEE, and it is necessary because the 'full' social costs of EEE exceed the private costs and this can lead to environmental protection, where EEE is concerned, that is too low from the viewpoint of society as a whole.

**What are the policy objectives and the intended effects?**

The policy objective is to amend the existing UK RoHS Regulations so as to provide greater protection of the 'single market' in EEE so enabling UK businesses to compete on a level playing field across Europe. In addition, there is a policy objective of providing the appropriate level of environmental protection, and health and safety protection where EEE is concerned. The intended effects are that manufacturers and/or importers of EEE only place EEE on the EU market which meets the relevant restrictions of use of certain hazardous substances.

**What policy options have been considered? Please justify any preferred option.**

The main policy options considered were to leave the RoHS Regulations as they are ('business as usual') or to amend the Regulations in the light of experience gained and lessons learned from the first year of enforcement. The proposal to amend the Regulations is based on an assessment that the amended Regulations will provide for a more effective enforcement regime, and this will produce additional benefits, over and above any additional costs, in terms of more of a level-playing field for UK businesses producing EEE for the European market.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The policy will be reviewed by BERR in 2009 when the European Commission submits proposals to the European Parliament and Council in relation to the review of the RoHS Directive itself.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:.....

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b> Amendments to RoHS Regulations	<b>Description:</b> Amendments to Regulations in relation to exemptions and enforcement
---------------------------------------------------------	-----------------------------------------------------------------------------------------

<b>COSTS</b>	<b>ANNUAL COSTS</b>	<i>Description and scale of key monetised costs by 'main affected groups' Businesses that are acting in accordance with the RoHS Regulations are not expected to incur any additional costs from the proposed changes to the Regulations.</i>			
	One-off (Transition) Yrs				
	£ 0m				
	Average Annual Cost (excluding one-off)				
	£ 0m			<i>Total Cost (PV)</i> £ 0m	

*Other key non-monetised costs by 'main affected groups'*

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<i>Description and scale of key monetised benefits by 'main affected groups' Though benefits exist it is not possible to quantify these at this stage, but increases in expected compliance, and increases in environmental protection and protection of health are expected to exceed estimated costs.</i>			
	One-off Yrs				
	£ 0m				
	Average Annual Benefit (excluding one-off)				
	£ Not Quantified			<i>Total Benefit (PV)</i> £ Not Quantified	

*Other key non-monetised benefits by 'main affected groups' The amendments to the RoHS Regulations are expected to increase RoHS compliance and this will provide a more level-playing field for UK businesses competing in the European EEE market. Greater compliance will also produce environmental and health benefits.*

**Key Assumptions/Sensitivities/Risks** It is assumed that the increased powers given to the enforcement body under the proposed changes to the Regulations will lead to greater levels of compliance with the RoHS Regulations. It is this greater compliance which will produce the expected additional benefits.

Price Base Year 2007	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	1 February 2008				
Which organisation(s) will enforce the policy?	NWML				
What is the total annual cost of enforcement for these organisations?	£ 350,000				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ 0				
What is the value of changes in greenhouse gas emissions?	£ 0				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; text-align: center; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black;">Micro</td> <td style="width: 25%; border: 1px solid black;">Small</td> <td style="width: 25%; border: 1px solid black;">Medium</td> <td style="width: 25%; border: 1px solid black;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; text-align: center; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black;">No</td> <td style="width: 25%; border: 1px solid black;">No</td> <td style="width: 25%; border: 1px solid black;">N/A</td> <td style="width: 25%; border: 1px solid black;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

**Impact on Admin Burdens Baseline** (2005 Prices)

(Increase - Decrease)

Increase    £ 0                      Decrease    £ 0                      **Net**                      £ 0

**Key:**    Annual costs and benefits: Constant Prices    (Net) Present Value

## Evidence Base (for summary sheets)

### Purpose and intended effect

#### *Objective*

1. The Department for Business, Enterprise and Regulatory Reform (BERR) draft Statutory Instrument (SI), *The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008*, aims to revoke and replace the UK's existing Regulations<sup>12</sup> ('the RoHS Regulations') which transpose into UK law, Directive 2002/95/EC of the European Parliament and of the Council on *The Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment Directive*. ('the RoHS Directive').
2. The draft new Regulations make two changes to the existing UK RoHS Regulations. The first relates to exemptions from the requirements of the RoHS Directive as reflected in its Annex and following changes to its Annex. The second relates to enforcement of the RoHS Regulations.
3. In terms of exemptions to the RoHS Directive, the original Annex to the Directive has been revised by European Commission Decisions six times. Rather than make new Regulations every time a Decision is made, the draft Regulations refer to the Annex and any amendments to the Annex (Regulation 5). Future amendments to the Annex of the RoHS Directive will be reflected in the UK's non-statutory Guidance supporting the Regulations so avoiding the need for new Regulations to be made each time an amendment is made.
4. In terms of enforcement of the RoHS Regulations, the draft Regulations introduce powers to require persons to produce certain documents and information (Regulation 11), provide entry and inspection powers for the enforcement body (Regulation 12), and they introduce an 'Enforcement Notice' (Regulation 14) which is to follow failure to comply with the existing 'Compliance Notice'. The aim of these changes to the Regulations is to enable the enforcement body to enforce more effectively the RoHS Regulations in the UK.

#### *Background*

5. The RoHS Directive is a harmonising measure which has the legal basis of Article 95 of the Treaty establishing the Community. It aims to protect and promote a 'single market' in electrical and electronic equipment (EEE) across Europe, by requiring member States to restrict certain hazardous substances in EEE to the same extent.
6. In unison with this, the RoHS Directive aims to increase environmental protection, and to reduce risks to the health of workers from certain hazardous substances that have been historically used in the production of EEE. These hazardous substances can present a risk to the health of workers at the production stage of EEE and following its discard as waste (so-called 'WEEE'), and can present a risk to the environment when EEE is discarded and becomes WEEE.
7. The RoHS Directive, which is transposed in UK law by the existing RoHS Regulations (2006) applies to eight of the ten categories of electrical and electronic equipment (EEE) set out in the Waste Electrical and Electronic Equipment Directive. ('the WEEE Directive').

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<sup>12</sup> *The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations, 2006* (SI 2006 No.1463)

8. These eight categories of EEE are:

Category 1 - Large household appliances;  
Category 2 - Small household appliances;  
Category 3 - Information technology and telecommunications equipment;  
Category 4 - Consumer equipment;  
Category 5 – Lighting equipment;  
Category 6 – Electrical and electronic tools;  
Category 7 – Toys, leisure and sports equipment;  
Category 10 – Automatic dispensers.

9. The RoHS Directive does not apply to two categories of EEE in the “WEEE Directive currently, namely Category 8 – Medical devices, and Category 9 – Monitoring and control equipment. However, the RoHS Directive, unlike the WEEE Directive applies also to electric light bulbs and luminaires in households.

10. The RoHS Directive restricts the use of certain substances in the production of new EEE (i.e. EEE put on the market, for the first time, from 1 July 2006) that is within its scope. These substances are: lead; mercury; cadmium; hexavalent chromium; and two flame retardants – polybrominated biphenyls (PBB), and polybrominated diphenyl ethers (PBDE).

11. These substances have been highlighted as presenting particular risks to the environment and human health and animal health. These are outlined below as:<sup>13</sup>

- Lead. For humans, lead can result in a wide range of biological effects, with the main concern often being negative impacts on the central nervous system. Lead may accumulate in animal bone and cause deformities.
- Mercury. Mercury is toxic and possibly carcinogenic.
- Cadmium. Cadmium tends to bio-accumulate, with the main risk being kidney damage, but cadmium can produce a range of negative impacts on human health and on animal health.
- Hexavalent Chromium. Hexavalent Chromium can have a wide range of adverse effects on human and animal health ranging from irritation to cancer.
- PBBs, tetra-BDE, penta-BDE, and octa-BDE are toxic and dangerous to human and animal health.

12. Recognising that it is impossible to remove all traces of a substance, a European Commission decision<sup>14</sup> amending the RoHS Directive applies maximum concentration values (MCVs) to these substances in homogeneous materials.<sup>15</sup> These MCVs<sup>16</sup> are as follows:

- 0.1 per cent by weight in homogeneous materials for lead, mercury, hexavalent chromium, PBE, and PBDE; and

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<sup>13</sup> For more information see the European Commission's Explanatory Memorandum to the WEEE and RoHS Directives, COM(2000)347 final, and *Heavy Metals in Waste* (Commission DG Environment, 2002).

<sup>14</sup> Of 18 August 2005, 2005/618/EC.

<sup>15</sup> Homogeneous material means a material that cannot be mechanically disjointed into different materials.

<sup>16</sup> Which are based on existing Community chemicals legislation.

- 0.01 per cent by weight in homogeneous materials for cadmium.

13. The RoHS Directive, and so the UK's RoHS Regulations, place the obligation on producers<sup>17</sup> to ensure that the EEE they produce and that is within the scope of the legislation, does not exceed the MCVs for the six substances.

14. The RoHS Directive provides a number of exemptions from its requirements. These are for spare parts for the repair of EEE that was first placed on the market prior to 1 July 2006; the re-use of EEE that was first placed on the market prior to 1 July 2006; and to specific applications of lead, mercury, cadmium, and hexavalent chromium.

15. The exemptions for specific applications are listed in the Annex to the RoHS Directive. Since the RoHS Directive entered into force on 13 February 2003, there have been a number of revisions to the list of exemptions for specific applications. The majority of these have been in relation to applications of lead in EEE.

#### *Rationale for Government Intervention*

16. The RoHS Directive, and thus the UK's RoHS Regulations, aims to promote and protect a European 'single market' in EEE. Potential barriers to trade caused by adoption of diverging national laws or administrative measures are often considered in terms of, so-called, 'non-tariff trade barriers'. In attempting to remove such barriers, to obtain the benefits from trade liberalisation,<sup>18</sup> Government plays an important role in establishing the legislative framework in which businesses and consumers can conduct their transactions on a 'level playing field' within transparent and predictable rules.

17. The RoHS Directive, and so the UK's RoHS Regulations, aims to contribute to environmental protection and protection of human health and animal health. In terms of environmental protection, the use of hazardous substances in EEE can cause damage to the environment (for example, in terms of air, water, and soil quality) and damage to health. Where this damage is an unintended consequence it is unlikely to be taken into account by producers of EEE. Government may be able to establish the appropriate use of hazardous substances in EEE which more closely reflects the 'full' social costs of the use of hazardous substances in EEE.

#### *Consultation*

18. BERR, supported by DEFRA, represents the UK Government at Technical Advisory Committee (TAC) meetings in Europe where proposed amendments to exemptions, and other issues concerning the RoHS Directive are discussed.

19. This partial IA forms part of BERR's public consultation on draft new RoHS Regulations in the UK.

### **Options**

20. This partial IA considers the costs and benefits of proposed changes to the UK's RoHS Regulations, outlined in the consultation document and in the draft Regulations themselves, compared to the 'business-as-usual' case of no changes to the UK's existing RoHS Regulations.

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<sup>17</sup> Under the RoHS Directive, producers are manufacturers, re-sellers under 'own brand', and professional importers of EEE.

<sup>18</sup> The removal of such 'non-tariff trade barriers' can result in greater competition and increased innovation for the benefit of both business and consumers alike.

## **Costs and Benefits**

### *Sectors and groups affected*

21. Given the wide-ranging nature of the RoHS Directive it is difficult to provide exact figures on the number of businesses affected by the Directive, and so affected by the UK's Regulations. The range of business sectors includes: component suppliers; product assemblers; manufacturers; professional importers; and businesses re-branding equipment as their own.

22. One estimate is that there may be around 7,500 EEE manufacturers in the UK. Standard Industrial Classification (SIC) data suggests there may be in the region of 15,000 businesses which in theory may be directly affected by RoHS. However, of these two estimates it is in turn estimated that around 50 per cent of these manufacture products outside of the scope of the RoHS Directive, implying that some 3,750 – 7,500 UK businesses are potentially affected by the RoHS Regulations.

## **Benefits**

### **Exemptions (draft Regulation 5)**

23. The Annex to the original RoHS Directive provides for a number of exemptions from the RoHS Directive for certain applications of lead, mercury, cadmium and hexavalent chromium in EEE.

24. These exemptions mean that producers of EEE can still use these substances in the relevant application, above and beyond the maximum concentration values (MCVs) outlined in the RoHS Directive and quantified in the European Commission Decision of 18 August 2005.

25. Since the RoHS Directive came into force on 13 February 2003 there have been six Commission Decisions amending the original Annex to the RoHS Directive.<sup>19</sup> The majority of these Decisions are concerned with applications of lead.

26. UK legislation needs to reflect these Commission Decisions. The UK's original RoHS Regulations of 2005 (SI 2005/2748) were revoked and replaced in 2006 by SI No.1463 (2006) to incorporate the four Commission Decisions between 18 August 2005 and 21 April 2006.

27. Since 21 April 2006 there have been three more Decisions affecting the Annex of the RoHS Directive. Industry continues to seek exemptions from the RoHS Directive for certain applications of lead, mercury, hexavalent chromium, and cadmium because of existing technical and scientific constraints in finding and utilising substitutes.

28. This means that the UK's existing RoHS Regulations will need to be revoked and replaced by new Regulations every time the list of exemptions to the Directive itself changes.

29. As part of the Government's 'better regulation' agenda, new provisions inserted into the European Communities Act 1972, by the Legislative and Regulatory Reform Act 2006, enable Regulations to be written such that they refer to the annexes of Directives as revised from 'time to time'. This avoids the need for new Regulations to be made each time an annex of a Directive changes, and facilitates quicker implementation of community acts.

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<sup>19</sup> These Decisions are dated: 13 October 2005; 21 October 2005; 21 April 2006; and 12 October 2006. All of these Decisions are available on the Commission's website at [http://ec.europa.eu/environment/waste/weee/legis\\_en.htm](http://ec.europa.eu/environment/waste/weee/legis_en.htm).

30. The draft new RoHS Regulations (Regulation 5) introduce a reference to the Annex of the RoHS Directive, and a reference to any further amendments to this Annex.

31. This means that when the list of exemptions to the RoHS Directive is altered in the future, the UK's existing RoHS Regulations, at the time, will not need to be revoked and replaced by new Regulations. Rather, changes to the Annex of the RoHS Directive will be reflected in the UK's non-statutory Guidance Document which supports the RoHS Regulations.

32. This proposed change to the UK's RoHS Regulations should produce the following benefits:

- Cost savings from not having to produce new Regulations every time the Annex to the RoHS Directive is changed. Making new Regulations involves administrative costs in terms of the time taken and materials used to draft and make Regulations. Any cost savings are not expected to be very large, but should be significant enough to justify Regulation 5 of the draft RoHS Regulations, particularly where, as in this case, amendments are being made to reflect changes to a technical annex of a Directive.
- Reductions in the time-frame between Commission Decisions being published in the *Official Journal* and these Decisions being implemented in the UK. Currently, given the time taken to produce new draft Regulations, to consult on these, and to make them in Parliament, there is likely to be at least a six month delay between Decisions being published in the *Official Journal* and being implemented in the UK. This delay can lead to uncertainty for UK producers and for others in the EEE supply chain. Regulation 5 of the draft RoHS Regulations would enable the UK to implement Commission Decisions much more quickly, and this should bring greater certainty and clarity for UK businesses.

### **Enforcement (draft Regulations 11 and 12)**

33. Under the UK's RoHS Regulations producers of EEE are required to ensure that new EEE, that is within the scope of the RoHS Directive and that they place on the market, does not contain more than the MCVs of the hazardous substances restricted by the RoHS Directive.

34. In addition to this, producers are required to produce technical documentation and other relevant information, following a request from the Secretary of State for BERR, showing that the new EEE they have placed on the market is compliant with the RoHS Regulations. Producers are also required to retain this information for four years.

35. The UK's existing RoHS Regulations have been enforced, on behalf of the Secretary of State for BERR, by the National Weights and Measures Laboratory (NWML) since 2006.

36. The UK's current enforcement regime for RoHS consists of the following:

- The enforcement body can serve a compliance notice on a producer where that producer has not submitted to the Secretary of State for BERR, upon request and within 28 days, relevant information showing that the EEE that that producer has put on the market is compliant with the RoHS Regulations. A producer is also required to retain relevant information for a period of four years.
- The enforcement body can serve a compliance notice on a producer where the enforcement body has grounds to suspect that that producer has placed non-compliant goods on the market. A compliance notice requires a producer to comply or provide evidence of compliance, and warns that producer of the possibility of prosecution.

- The enforcement body can make test purchases of EEE to determine whether this EEE is compliant with the RoHS Regulations.

37. The supply chain for EEE can be quite long, as it can, for example, involve separate entities in terms of material and substance suppliers, parts and component suppliers, manufacturers, assemblers, distributors, and retailers.

38. The market for EEE is also international, involving many professional importers, and also involving many businesses that legitimately re-brand equipment manufactured/or assembled by a third party, as well as the vast number of brands and model types produced by the large multinationals, and original equipment manufacturers (OEMs).

39. The UK's RoHS Regulations were introduced in 2005 to be as 'light touch' as possible whilst achieving the internal market and environmental and health benefits of the RoHS Directive.

40. This 'light touch' approach was employed because of the relatively small amounts of cadmium, mercury, hexavalent chromium, and PBDE and PBB that were being used in EEE prior to the RoHS Directive coming into force. In addition to this, producers had been moving away from the use of these hazardous substances themselves for reasons of protection of the health and safety of workers, and for reasons of environmental protection.

41. In addition, and in terms of the use of lead, though relatively large amounts of lead were used in the production of EEE compared to the other substances targeted by RoHS, Japanese producers of EEE had voluntarily introduced lead-free solder, for environmental reasons, prior to the RoHS Directive coming into force in Europe. This had a 'knock-on' effect to non-Japanese producers of EEE, particularly those selling into Japan.

42. The initial steps taken to enforce the RoHS Regulations focused on education, and raising awareness amongst producers of EEE so as to enable them to comply effectively with the Regulations. It is now felt that enforcement needs to move a step forward and focus more on dealing with non-compliant businesses and products.

#### *Documents and Information*

43. Regulation 11 of the draft RoHS Regulations gives the Secretary of State for BERR the power to require a person to provide him with relevant information in respect of producer obligations under the Regulations. Regulation 15(3) of the draft Regulations makes it an offence to fail, without reasonable excuse, to comply with Regulation 11, or provide misleading or false information in complying.

44. The existing RoHS Regulations require a producer following a request by the Secretary of State for BERR, to supply him with relevant documentation and information within 28 days of the request.

45. Regulation 11 thus extends the power of the Secretary of State to obtain documentation and information, and applies it wider than just to a producer of EEE, and can, in theory, apply to any person in the EEE supply chain.

#### *Entry and inspection*

46. Regulation 12 of the draft RoHS Regulations gives powers to enforcement officers to enter and inspect commercial premises, and take possession of samples, measurements, photographs, information and records, and to retain any of these for as long as they deem necessary. This Regulation will enable the enforcement body to gather more effectively the relevant information it needs to determine non-compliance with the RoHS Regulations.

## *Enforcement Notice*

47. Regulation 14 of the draft Regulations introduces an enforcement notice. This is to be triggered when a producer fails to comply with a compliance notice, or a producer continues to contravene the RoHS Regulations. It is believed that this enforcement notice will enable the enforcement authority to provide a better graduated response to non-compliant behaviour.

## **Costs**

### **Exemptions**

48. The draft new RoHS Regulations (Regulation 5) introduce a reference to the Annex of the RoHS Directive, and a reference to any further amendments to this Annex.

49. This means that when the list of exemptions to the RoHS Directive is altered in the future, the UK's existing RoHS Regulations at the time, will not need to be revoked and replaced by new Regulations. Rather, changes to the Annex of the RoHS Directive will be reflected in the UK's non-statutory Guidance Document which supports the RoHS Regulations.

50. It could be argued that though Regulation 5 is a de-regulatory measure it could lead to an increase in costs to UK businesses because they would need to access two documents rather than one to establish their position with respect to RoHS. As it currently stands, businesses need to refer to the Regulations only to establish exemptions to RoHS. Under the proposed Regulation 5 they would need to additionally consult the UK's non-statutory Guidance Notes supporting the RoHS Regulations to establish exemptions.

51. However, it is unlikely that many businesses affected by RoHS do not currently consult both the UK's Regulations and non-statutory Guidance Notes to establish their position in relation to the RoHS Directive, or in fact consult only the Guidance. Indeed, 'hit' counts from the internet suggest that up to twice as many people access the Guidance than the Regulations. It is thus not clear that in practice the proposed changes to the UK's RoHS Regulations regarding exemptions will result in any additional costs to UK businesses.

## **Enforcement**

52. The proposed amendments to the RoHS Regulations give the enforcement authority increased investigative powers, and greater powers to deal with non-compliant activity. For businesses already complying with the RoHS Regulations it is not expected that there will be any additional costs to these businesses from the proposed amendments to the Regulations.

53. Currently, businesses responding to requests for information from the Secretary of State for BERR are estimated to spend up to one hour on average proving this information. Not all businesses are asked for information. Rather, a sample are asked based on an assessment of risk undertaken by the enforcement body. This is not expected to change in the future.

54. Businesses who at present do not respond to requests for information will receive follow-up requests, and where a non-response still results, these businesses and their products may well affect their 'risk profile'. This could lead the enforcement body to make test purchases and their own enquires of the supply chain for certain products.

55. Given that such test purchases and enquiries take place currently they are not expected to result in additional costs to business. Rather, the additional powers of the enforcement body

contained in the new draft Regulations are aimed at ensuring that non-compliant activity with respect to the RoHS Regulations is minimised.

### **Costs to Public Sector**

56. The proposal to enable changes to the Annex of the RoHS Directive to be reflected in the UK's Guidance Notes rather than requiring a new set of Regulations to be made is expected to reduce costs to the public sector of implementing the RoHS Directive in the UK. It is difficult to quantify these cost savings but there will be savings from not needing to make new Regulations every time the Annex to the RoHS Directive is changed.

57. The proposed new enforcement regime may result in additional resources being employed by the Secretary of State for BERR to increase compliance with the RoHS Regulations. The current enforcement regime costs £350,000 per annum.

### **Small Firms Impact Test**

58. The draft new RoHS Regulations are not expected to have any specific impacts on small firms as compared to large firms. The main obligations in respect of RoHS remain as they are in the current Regulations. Businesses that are complying with the RoHS Regulations are not expected to incur any additional costs as a consequence of the proposed changes to the Regulations.

### **Competition assessment**

59. Since 2002 it has been a requirement that RIAs (now IAs) contain an assessment of the potential impacts on competition of the proposal under consideration. The current competition assessment consists of four questions, to aid assessment of the impact of proposed regulation on markets.

60. The first question asks if the proposed regulation limits the number, or range, of suppliers. The draft RoHS Regulations do not limit the ability of businesses to place EEE on the market, provided it is RoHS compliant.

61. The second question asks if the proposal indirectly could limit supply by, for example, raising the costs of new compared to existing suppliers, or affecting entry into or exit from the market. The draft SI affects all businesses placing new EEE (within its scope) on the market, and costs will be incurred largely depending on the level of activity undertaken by businesses themselves.

62. The third question asks if the proposal limits the ability of suppliers to compete, for example, by limiting innovation, sales channels, or production processes, and the fourth question asks if the proposal reduces incentives for suppliers to compete. The draft RoHS Regulations do not specify particular technologies, or production methods, nor do they prevent suppliers from competing in the EEE market.

### **Enforcement, sanctions and monitoring**

63. Currently, the National Weights and Measures Laboratory (NWML) enforce the UK's RoHS Regulations on behalf of the Secretary of State for BERR.

64. In terms of sanctions, the RoHS Regulations limit the amount of fines associated with procedural offences to a maximum of level 5 on the standard scale. This is currently £5,000. Under the new draft Regulations the same limit would also continue to apply in relation to a substantive offence, i.e. placing non-compliant products on the market, unless it is tried on indictment.

65. The effectiveness and operation of the RoHS Regulations are monitored by BERR.

### **Summary of costs and benefits**

66. The proposed amendments to the UK's RoHS Regulations involve two main changes to the Regulations. The first relates to exemptions from the Regulations, and the second relates to the enforcement of the Regulations themselves. It is not straightforward to estimate the costs and benefits of these proposed amendments.

67. In terms of exemptions, the proposal to enable changes to the list of exemptions to be reflected in non-statutory Guidance as opposed to requiring new Regulations to be made should result in cost savings in terms of reductions in public sector, private sector, and parliamentary time taken in revising the RoHS Regulations. There should also be benefits in terms of reduced uncertainty and greater clarity from the UK being able to apply Commission Decisions within a shorter timeframe.

68. In terms of enforcement, UK businesses that are complying with the RoHS Regulations currently should not expect to incur any additional costs from the proposed changes to the enforcement regime. Current estimates are that some 5-10 per cent of businesses placing products placed on the EEE market may be placing non-compliant RoHS products on the market. It is also estimated that the additional powers of the enforcement body could reduce such non-compliance by up to 50 per cent. This would bring benefits to UK compliant businesses in terms of enabling them to compete on a more level playing field across the European EEE market. It would also bring benefits in terms of increased protection to workers and the environment from certain hazardous substances. However, these benefits are difficult to quantify.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### SPECIFIC IMPACT TESTS

#### Legal Aid

It is not clear to what extent those who would be subject to the draft SI amending the RoHS Regulations are eligible for legal aid, but as the draft SI is not expected to have any material effect on the criminal or civil liability of those who are subject to the proposed Regulations, they should not have any additional impact on legal aid in the UK.

#### Sustainable Development

The draft SI is expected to have a positive impact on sustainable development in terms of, for example, impacts on air and/or water quality, and impacts on waste management, where the Regulations lead to greater levels of compliance in relation to the restriction of use of the hazardous substances covered by the Regulations.

#### Carbon Impact Assessment

The draft SI is not expected to have any significant carbon impact. The main aims of the draft SI are to promote the European Single Market and to provide environmental protection and protection of health when EEE is produced, and following its discard as waste..

#### Other Environment

The draft SI has as one of its main aims protection of the environment and health where EEE is produced and following its discard as waste. These benefits are discussed in the main text of the Impact Assessment.

#### Race Equality Assessment

The draft SI does not have race equality as one of its aims specifically.

#### Disability Equality

The draft SI does not have disability equality as one of its aims specifically.

#### Gender Impact Assessment

The draft SI is not aimed at overcoming gender inequalities or eliminating barriers to inequality specifically.

#### Human Rights

The draft SI is not expected to impact on the rights and freedoms of individuals as set out in the Human Rights Act 1998.

#### Rural Proofing

The draft SI is not expected to have significant impacts on rural areas or circumstances specifically.

Annex C

## **Consultation on Amendments to the Restriction of the Use of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Regulations - SI 2006 No. 1463**

### **Consultation response form**

**The closing date for this consultation is  
23<sup>rd</sup> November 2007**

**Responses to this consultation document can be made by to  
the named person stated in Section 3 - How to respond as  
shown below:**

- a) detaching the consultation response form from this  
document and returning it by post**

**b) detaching the consultation response form from this document and returning it by fax**

**c) downloading the separate consultation response form from our website, saving it as a separate file, and returning it by email.**

## Consultation Response Form

The closing date for this consultation on amendments to the RoHS Regulations is **23<sup>rd</sup> November 2007**. You may find it helpful to set out your responses to the Consultation using this Response Form.

Name \_\_\_\_\_

Organisation (if applicable) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Return completed forms to:**

**Marc Jay or Steven Andrews as per Section 5 on 'How to Respond'**

Please tick one box from the following list of options that best describes you.

<input type="checkbox"/>	Small to Medium Enterprise
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Big Business
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Other (Please describe, eg. consultant or private individual)

Question  
1:

*Do you agree with the approach of not having a list of exempt applications in the new Regulations, referring instead to the Annex of the Directive as amended from time to time? If not, why not providing supporting evidence?*

## COMMENTS

Question  
2:

*Do the proposed amended Regulations specific to enforcement identify all the issues covered by the intention of the RoHS Regulations? If not, what do they fail to identify? If you think that any of the proposed new enforcement provisions are not necessary, please indicate which provisions these are with supporting evidence and why.*

## COMMENTS

Question  
3:

*Do you think that the (partial) Impact Assessment has fully identified the costs and benefits arising from the proposed amendments to the UK RoHS? If not, please say why, providing supporting evidence.*

## COMMENTS

Do you have any other comments that might aid the consultation process as a whole?

*Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.*

## COMMENTS

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the statement below.

**Please acknowledge this reply**

The Department for Business, Enterprise & Regulatory Reform carries out research on many different topics and consultations. As your views are valuable to us, are you willing to be contacted again from time to time either for research or to send through consultation documents?

Yes

No

## **Annex D**

### **The Consultation Code of Practise Criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely available.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address:

<http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

