Department
for Environment
Food & Rural Affairs

Consultation on proposed amendments to regulations on the use of Hazardous Substances in Electrical and Electronic Equipment.

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Introduction

1. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

2. The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (EEE) Regulations Directive (RoHS) Directive 2002/95/EC was adopted in 2003. Since then it has been amended many times, and recast once. The purpose of the Directive was to provide a European-wide legislative framework to restrict and reduce the quantities of 6 hazardous substances, (Lead, Mercury, Cadmium, Hexavalent chromium, Poly-brominated biphenyls (PBB) and Poly-brominated diphenyl ethers (PBDE) in new EEE.

3. Recast Directive 2011/65/EU (RoHS 2) lays down rules on the restriction of the use of certain hazardous substances in electrical and electronic equipment. RoHS 2 provisions apply to EEE placed on the EU market regardless whether they are produced in the EU or in third countries and then imported into the EU market. The production of EEE is a globalised activity which takes place in many countries across the world. Thus, RoHS 2 affects mainly industrial manufacturers, importers and distributors of EEE, and, to a lesser extent, EEE customers.

4. RoHS 2 is necessary to prevent barriers to trade and distortion of competition in the European Union, which could have been generated by disparities between the laws or administrative measures if these were adopted individually by the Member States and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste EEE and, at the same time.

5. RoHS 2 sets out rules on the restriction of six hazardous substances (ten from July 2019) in the manufacture of certain categories of electrical and electronic equipment (EEE) placed on the EU market. The Directive aims to prevent these substances from entering the production process, thereby keeping them out of the waste stream after the equipment is disposed of at end of life. It also ensures the free movement of goods and equipment across the Single Market by applying the same restrictions to producers placing product on the market across all EU Member States.

Issues introduced by the recast of the RoHS Directive.

6. RoHS 2 is a recast of the earlier RoHS Directive 2002/95/EC. It introduced new definitions and expanded the scope to cover medical devices and monitoring and control instruments. These provisions were already impact assessed with the Commission’s proposal in 2008. However, RoHS 2 also introduced further changes to introduce the concept of 'open scope' whereby all EEE is captured under the Directive requirements unless specifically exempt. It does this by, firstly, introducing a new category 11 "Other EEE not covered by any of the other categories", so that the Directive became applicable to all EEE and, secondly, a broader interpretation of EEE as a result of a new definition of the dependency on electricity. These

open scope provisions were introduced during the codecision procedure of the recast Directive and they were not specifically impact assessed.

7. RoHS 2 Article 2(4) provides a 10 entry list of specific equipment which is excluded from the new scope, this list only covers the EEE currently excluded from scope of the new Directive.

8. Moreover, to ease the phasing in of the additional EEE that had been introduced through the open scope, RoHS 2 provides for a transitional arrangement until 22 July 2019 for electrical and electronic equipment that was outside the scope of RoHS 1 and that is now in scope of RoHS 2. The phase in transition allows that EEE falling into scope for the first time can still be placed and circulated on the EU market until 22 July 2019, even if they contain restricted substances. However, unforeseen implications of this provision hampering secondary market operations were identified after the publication of RoHS 2. The extension of the EEE lifetime via repair, resale and refurbishment is both economically and ecologically desirable and a positive contribution to resource efficiency.

9. **DIRECTIVE (EU) 2017/2102 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** was published in the EU Official Journal on 21st November 2017.

The amendment directive seeks to address a number of unintended consequences introduced by the RoHS 2 as follows:

Secondary Market Problem.

10. The restriction of the second-hand sale of electrical equipment from July 2019 would be in conflict with the waste hierarchy, which puts reuse and refurbishment above recycling.

11. Secondary market operations for EEE, which involve repair, replacement of spare parts, refurbishment and reuse, and retrofitting, should be facilitated to promote a circular economy in the Union. A high level of protection of human health and the environment should be ensured, including through the environmentally sound recovery and disposal of waste EEE. Any unnecessary administrative burden on market operators should be avoided.

12. Recast Directive 2011/65/EU allows EEE that fell outside the scope of the original Directive 2002/95/EC of the European Parliament and of the Council, but which would not comply with Directive 2011/65/EU, to continue to be made available on the market until 22 July 2019. After that date, however, both the first placing on the market and secondary market operations of non-compliant EEE are prohibited. Such prohibition of secondary market operations is inconsistent with the general principles underlying Union measures for the approximation of laws relating to products and should therefore be removed.

Spare Parts Problem.

13. The inability to repair or upgrade equipment that falls within the scope of the Directive after July 2019, with new cables or spare parts would be undesirable from both an environmental and an economic perspective.

14. The possibility to repair a product placed on the EU market with a view to reusing or reselling it (repair-as-produced principle) underpins EU product legislation, including RoHS 2. This means that when specific legal requirements such as substance restrictions apply to a type of product from a specified date and an individual product of this type is placed on the EU market before that date, it can be repaired or upgraded with spare parts in the EU after that date without having to respect the newly applicable legal requirements. Once an individual product is placed on the EU market and it is therefore compliant with the applicable legal requirements at the time, all its spare parts are unaffected by the obligations of RoHS irrespective of the date of repair, upgrade, etc. The reasoning behind this is that in most cases the extension of the lifetime of a functional product is both economically and environmentally beneficial.

15. However, after 22 July 2019, RoHS 2 new-in-scope products other than medical devices and monitoring and control instruments can only be repaired with RoHS 2-compliant spare parts and only if the repair is not part of a secondary market operation (i.e. not for reselling).

16. It is often difficult and sometimes impossible to replace an original non-compliant part with a different, compliant spare part. As product reuse, refurbishment and extension of lifetime are both environmentally and economically beneficial, spare parts need to be sufficiently available.

Pipe Organs Problem.

17. An inadvertent ban of new pipe organs being placed on the EU market, as they would not be RoHS compliant due to the amount of lead required to produce the pipes.

18. Today 99% of pipe organs built use at least one electric blower. Some use other electrical or electronic components, all of which are compliant with RoHS 2. However, the presence of the electrical components used in pipe organs makes the whole organ, including the pipes, fall under the RoHS 2 scope. Indeed, RoHS 2 introduced an EEE definition where the word “dependent” means “necessary to fulfil at least one intended function”, and it added a product category “other EEE” which includes pipe organs. The combination of these provisions means that pipe organs are in the scope of RoHS 2, with full compliance requirements from 22 July 2019 for the whole product, pipes included.

19. The vast majority of pipes are made of lead alloys. The variation of lead and tin is used to vary the timbre of the organ sounds. No other material can be manufactured in the same way as the tin/lead alloy, meaning that there are no substitutes to the lead in organ pipes and neither can the product be modified for it to fulfil its intended function. Left unchanged, pipe organs containing lead will be non-compliant products under RoHS 2, due to a lack of possible substitutes for lead. Therefore, they cannot be placed on the EU market as from 22 July 2019 leading to the loss of jobs and market shares in this sector. The industry affected would be the organ builders industry and the cultural business of organ music concerts. As of today, there is no indication of health and environmental problem generated by the production and use of pipe organs, which are a product with an extremely long life.

Non-Road Mobile Machinery (NRMM) Problem.

20. NRMM is excluded from the scope of RoHS 2 when made available exclusively for professional use.

21. Certain types of machinery are produced in the same production line in models either with an on-board power source or with an external power source. In light of the reference of the Article 3(28) definition to an onboard power source, only the models with an on-board power source are excluded from the scope of RoHS 2, while the twin models with external power source fall under RoHS 2 scope.

22. The current NRMM definition would lead, after 22 July 2019, to a situation resulting in very similar types of equipment being regulated differently and inconsistently. Power cord connected non-road mobile machinery, such as professional cleaning machines would be in scope of the Directive whereas identical machinery powered by a battery or an on board power supply would be exempt.

23. Addressing these unintended consequences through amendments to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (RoHS Regulations) will enable the resale and repair of old equipment and clarify issues concerning product scope. This will bring lower costs to business in comparison to leaving the Regulations un-amended whilst still maintaining a high level of environmental protection.

24. The date by which member States must transpose the amendments to the RoHS Directive is 12 June 2019. The RoHS Regulations, which transpose the RoHS Directive, are made using powers in the European Communities Act 1972.

Our Approach

25. The UK has implemented the RoHS 2 Directive through the RoHS Regulations 2012. We have produced an assessment of costs and benefits set out in the Regulatory Triage Assessment published alongside this consultation. RoHS 2 and its amending Directives are “Single Market” measures, giving Member States very little flexibility around transposition. Our approach is to use section 2(2) European Communities Act 1972 to make the amending SI, Lay the Regs on 04/03/2019 so that the Regs are in force from 29/03/2019 and amendments to come in scope from July 2019.

Duration

26. This consultation will run for 4 weeks. This is in line with the Cabinet Office’s ‘Consultation Principles’ which advises government departments to adopt proportionate consultation procedures.

    The consultation opens **06 November 2018** - The consultation closes **04 December 2018**

Purpose of this consultation

27. The purpose of this consultation is to seek views on the approach which we are taking to transpose these Regulations.

    This consultation aims to transpose the amendment Directive seeking to address a number of unintended consequences introduced by the RoHS Directive (ROHS 2).

Geographical scope

28. RoHS is a reserved matter and the RoHS Regulations, which implement the RoHS Directive, apply across the UK.

Responsible body

29. This consultation is being carried out by Defra's Resources and Waste Team on behalf of the UK Government.

Audience

30. This is a public consultation and it is open to anyone with an interest to provide comments. The consultation should be of particular interest to EEE Manufacturers, Retailers, wholesalers, trade bodies, electrical repair and re-use organisations and non-governmental organisations (NGOs).

Responding to this consultation

31. Please respond to this consultation using the citizen space consultation hub at: https://consult.defra.gov.uk/waste-and-recycling/consultation-on-amendments-to-rohs-regulations

By email to env.regs@defra.gsi.gov.uk or in writing to: RoHS Amendments Consultation, Resources & Waste Team, Defra, Ground Floor, Seacole Building, 2 Marsham Street, London SW1P 4DF.

After the consultation

After the consultation, a summary of the responses to this consultation will be published and placed on the Government website at www.gov.uk/defra.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. 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.

The Department of Environment Food and Rural Affairs will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

This consultation is being conducted in line with the "Consultation Principles" as set out in the Better Regulation Executive guidance which can be found at https://www.gov.uk/government/publications/consultation-principles-guidance.

If you have any comments or complaints about the consultation process, please address them to: By e-mail: consultation.coordinator@defra.gsi.gov.uk, or in writing to: Consultation Coordinator, Area 1C, Nobel House, 17 Smith Square, London, SW1P 3JR.

Sector and Origin: It would be helpful for our analysis if you could indicate which of the sectors you most align yourself/your organisation with for the purpose of this consultation (please tick / circle one which is most applicable to you):

☐Public Body ☐Non-Governmental Organisation ☐Retail Industry ☐EEE Manufacturer ☐Member of the General Public☐ Electrical Repair and re-use Organisations ☐Other

Questions

1. **Do you agree with the approach we are taking to transpose the amending Directive 2017/2102?**

   Yes / No

   Please give reasons.

2. **To what extent have we accurately assessed the impacts in the UK of the changes set out in amending Directive 2017/2102 in the accompanying Regulatory Triage Assessment:**
   Very accurately 1 2 3 4 5 Not accurately

   Please provide any supporting evidence

3. **Is there anything else you would like to tell us regarding the transposition of this amending directive?**