



Department
for Environment
Food & Rural Affairs

Consultation on charging fees for applications for exemptions to restrictions in the Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment Regime

June 2022

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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www.gov.uk/defra

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Introduction

The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (RoHS Regulations) restricts the use of 10 hazardous substances in electrical and electronic equipment (EEE) with a view to contributing to the protection of human health and the environment, including the sound recovery and disposal of waste.

Industry can apply for exemptions to allow the supply of products using one or more of the restricted substances above the threshold limits set down in the RoHS Regulations where specified criteria are met. Applications for exemptions are made to the Secretary of State under regulation 6 of the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (2020 Regulations). Any exemption that is granted can be used across industry, not just the business that applied for the exemption. Exemptions are granted where it is determined that the necessary criteria have been met following a detailed evaluation conducted in accordance with regulation 5 of the 2020 Regulations.

The RoHS Regulations closely follow restrictions placed on the use of hazardous substances in EEE in the EU RoHS Directive(2011/65/EU)¹. Applications for exemptions in the EU are determined by the European Commission. Decisions are published and adopted by means of a delegated act. Following the UK's withdrawal from the EU, the function of granting, renewing and revoking exemptions were, in relation to Great Britain, transferred to the Secretary of State by the 2020 Regulations using powers in section 8 of the European Union (Withdrawal) Act 2018 (the Withdrawal Act).

This transferred function represents a new cost to the public purse which the government is now seeking to recover from organisations that submit applications for exemptions under the 2020 Regulations on a cost recovery basis.

Purpose of this consultation

The purpose of this consultation is to seek views on the proposal to introduce a fee for applications for exemptions to the substance restrictions in the RoHS Regulations.

Geographical extent

We are consulting on proposals applicable to England, Wales and Scotland only. The Secretary of State's transferred function only applies in relation to England, Scotland and Wales.

¹ <https://www.legislation.gov.uk/eudr/2011/65>

Northern Ireland is out of scope of this consultation. This is because the EU RoHS Directive is listed in the Northern Ireland Protocol (part of the Trade and Cooperation Agreement with the EU). As such, the EU RoHS Directive continues to apply in Northern Ireland and Northern Ireland continues to be bound by exemption decisions made by the EU.

The Government introduced legislation in June to remedy issues with operationalising parts of the Northern Ireland Protocol. This action is also taken with the aim of restoring power sharing, ensuring the delicate balance of the Belfast (Good Friday) Agreement is protected. The Northern Ireland Protocol Bill will allow the Government to address the practical problems the Protocol has created in Northern Ireland in four key areas: burdensome customs processes, inflexible regulation, tax and spend discrepancies and democratic governance issues. Given that we are not seeking to change how the RoHS Directive is applied in Northern Ireland, and are only consulting on matters applicable to England, Scotland, and Wales, our proposals are unlikely to impact Northern Ireland industry at present.

Audience

This is a public consultation and we welcome all views, particularly views from the electrical and electronic equipment manufacturing and supply industry and relevant trade bodies.

Responding to this consultation

Please respond to this consultation in one of the following ways:

Online using the Citizen Space consultation hub at Defra <https://consult.defra.gov.uk/>

For ease of analysis, responses via the Citizen Space platform would be preferred, but alternative options are provided below if required: By email to: rohs@defra.gov.uk

In writing to:

Consultation Coordinator, Defra

2nd Floor, Foss House, Kings Pool,

1-2 Peasholme Green, York, YO1 7PX

Or email: consultation.coordinator@defra.gov.uk

Please note, any responses sent by post must arrive at the above address by the closing date of the consultation (26th August 2022) to be counted. Unfortunately, any responses

received after this date will not be analysed. To ensure your response is included in the analysis, please consider responding online via Citizen Space.

Duration

This consultation will be open for 6 weeks from 15 July 2022 until 26 August 2022.

After the consultation

A summary of the responses to this consultation and the government response will be published and placed on government websites at www.gov.uk/defra

The summary will include a list of respondents and organisations that responded but not personal names, addresses or other contact details. However, information provided in response to this consultation document, including personal information, will be shared with the Devolved Administrations and may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes, for example Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018.

If you want information, including personal data that you provide to be treated as confidential, please say so clearly in writing when you submit your response to the consultation and explain why you need these details to be kept confidential.

If we receive a request for disclosure under the FOIA, we will take full account of your explanation, but due to the law we cannot provide 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 a confidentiality request.

Defra is the data controller in respect of any personal data that you provide, and Defra's [Personal Information Charter](#), which gives details of your rights in respect of the handling of your personal data.

This consultation is being conducted in line with the [Consultation Principles](#) set out in the Better Regulation Executive guidance.

If you have any comments or complaints about the consultation process, please address them to: By email: consultation.coordinator@defra.gov.uk

Or in writing to:

Consultation Co-ordinator,

Department for Environment, Food and Rural Affairs,

1C, Nobel House, 17 Smith Square, London

About You

A wide range of businesses, organisations and individuals are involved with or take an interest in the supply of electrical equipment. The questions below are intended to grasp this diversity and put your responses in perspective with those of other respondents.

Q1. What is your name?

Q2. What is your email address?

This is optional, but if you enter your email address you will be able to return to edit your consultation response in Citizen Space at any time until you submit it. You will also receive an acknowledgement email when you submit a completed response.

Q3. Which best describes you?

Please provide the name of the organisation/ business you represent and an approximate size/number of staff (where applicable). (Please tick one option. If multiple categories apply, please choose the one which best describes the organisation you are representing in your response.)

- Business representative organisation/trade body
- Producer of electrical and electronic equipment
- Business end-user of electrical or electronic equipment
- Public end-user of electrical or electronic equipment (eg NHS, educational institution)
- Distributor (including Online Marketplaces)
- Local government
- Community group
- Non-governmental organisation
- Charity or social enterprise
- Consultancy
- Academic or research
- Individual
- Other
- If you answered 'Other', please provide details:

Confidentiality and data protection information

A summary of responses to this consultation will be published on the Government website at: www.gov.uk/defra. An annex to the consultation summary will list all organisations that

responded but will not include personal names, addresses or other contact details. Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (for example home address, email address, etc).

If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (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. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only. This consultation is being conducted in line with the Cabinet Office "Consultation Principles" and be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

Please find our latest privacy notice uploaded as a related document alongside our consultation document.

If you have any comments or complaints about the consultation process, please address them to:

- Consultation on amendments to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations
- Consultation Coordinator, Defra
2nd Floor, Foss House, Kings Pool,
1-2 Peasholme Green, York, YO1 7PX
- Or email: consultation.coordinator@defra.gov.uk

Q4. Would you like your response to be confidential?

Yes / No If you answered 'Yes', please provide your reason.

Background

The EU RoHS Directive limits the use of specified hazardous substances in the manufacture of certain electrical and electronic products. The UK played a key role in developing the original European legislation, and the RoHS Regulations transposed the EU RoHS Directive into UK law. The RoHS Regulations limits for the use of 10 substances and maximum concentration values tolerated by weight in homogeneous materials as follows:

Lead (0.1%)

Mercury (0.1%)

Cadmium (0.01%)

Hexavalent chromium (0.1%)

Polybrominated biphenyls (PBB) (0.1%)

Polybrominated diphenyl ethers (PBDE) (0.1%)

Butyl benzyl phthalate (BBP) (0.1%)

Dibutyl phthalate (DBP) (0.1%)

The scope of the RoHS Regulations is wide ranging, covering most types of electrical and electronic equipment intended for household or commercial use. A limited list of products is exempt such as large-scale fixed installations, large-scale industrial tools, military equipment, items designed specifically for R&D, and most forms of transport and active implant devices.

As explained above, businesses can apply for exemptions that allow the manufacture and supply of products that exceed these threshold limits where it can be proven that alternative less hazardous substances are not available. Following the UK withdrawal from the EU, the Secretary of State now has the power to determine applications for exemptions for products supplied to or in Great Britain. Businesses can apply to the Secretary of State for new exemptions and renewal of existing exemptions. A list of

existing exemptions can be found in Table 1, Schedule A2, of the 2012 RoHS Regulations².

Impacts on Business

Our initial analysis indicates that the overall impact the charge will have on businesses will be low. Annual costs to businesses are expected to be below the £5m per annum threshold for which an impact assessment is required. It should be noted that applications for exemptions are regularly made by trade associations on behalf of their members thus allowing the costs incurred to be spread across several companies operating in a given sector. Successful applications are often made for up to 5 years (7 years for medical equipment) meaning that cost can be amortised across several years.

There are currently five exemptions for which a renewal application could in future be received and for which the application fee would be applied. In addition, the Secretary of State is considering 12 cases in relation to lamps that were submitted to the EU whilst the UK was a member state. If these are approved, then a further renewal could be sought in future. Since leaving the EU and the end of the Transition Period in January 2021 we have only received one application for a new exemption. We therefore do not anticipate more than five or six applications a year.

Industry is already familiar with the existing legislation in this area and have already largely adjusted their products such that they no longer use the listed hazardous substances, or have already applied for any necessary exemptions. The current recast EU RoHS Directive was adopted some 10 years ago and industry has largely adapted to the substance restrictions. Indeed, six of the restricted substances were covered by the original EU RoHS Directive adopted in 2002. The scope of the recast EU RoHS Directive in 2012 was extended to medical equipment and industrial control and monitoring devices but those sectors have also largely responded to ensure equipment placed on the market now meets the requirements. Thus, we do not anticipate these changes will significantly change the behaviour or plans of companies in the affected sectors

The Proposal

We propose to use powers in the EU Withdrawal Act (Schedule 4, Part 1, paragraph 1) to make new regulations that would allow the Secretary of State to charge a fee to recover costs incurred by government in determining applications for exemptions to the substance restrictions in the RoHS Regulations.

² Table 1, Schedule A2 of the 2012 RoHS Regulations
<https://www.legislation.gov.uk/ukSI/2012/3032/schedule/A2>

How much is the fee, and how would it be calculated?

We propose a flat fee of £39,721 per application. This sum is based on the cost of external technical support procured to support the determination of applications, our experience of costs associated with determining recent applications made under transitional provisions in the 2020 Regulations and estimated costs of consulting on applications. It is proposed that the fee:

- is paid at the time the application is submitted.
- is refunded on a pro-rata basis should the application be withdrawn, to ensure only costs incurred up to that point are charged to the applicant.
- is partially refunded where it is deemed the resources incurred in processing and appraising the application falls below the level of fee charged

The fee payable would be set in Regulations or in any charging scheme the Secretary may subsequently make under the Regulations. Such a scheme would allow us to adjust the level of the fee in future, for example to allow us to account for inflation, or to reflect changes to the costs of external technical support following completion of a competitive tender process. Any proposals contained in a charging scheme will be consulted on before publication.

What happens if Defra cannot process an application?

As is the case now, the onus will be on the applicant to provide all the information necessary to process their application. If the applicant is unable to provide all the necessary information the fee will be retained and the processing of the application will be suspended until the information is received or until the application is withdrawn.

When would a fee be introduced?

We intend subject to the outcome of this consultation, to lay Regulations in Parliament this year. Once approved by Parliament, these Regulations would make provision for the introduction of an application fee from **6 April 2023**.

In which circumstances would a fee not be required?

The 2020 Regulations made provision for transitional measures (regulations 9 and 10) in respect of the applications made to the EU before the end of the Transition Period but where a decision on those applications had not been made before 31 December 2020. These transitional measures remove the need for businesses to make separate applications to GB and allow the Secretary of State to decide whether or not to follow EU decisions on these transitional cases.

The proposal to charge a fee for determining applications for exemptions made under regulation 6 of the 2020 Regulations will not apply to these transitional cases. In other words, the fee will not apply to applications for exemptions that were submitted to the EU

while the UK was still a member of the EU for which a decision remained outstanding on 31 December 2020.

Where the Secretary of State uses powers in Regulation 5 of the 2020 regulations to grant an application with no fee is payable.

Table 1: breakdown of fees

Activity	Cost
<p>Consideration of matters relevant to the application, including matters in regulation 5(2) to (5) of the 2020 Regulations and the technical support required to consider such matters.</p> <p>Matters include</p> <ul style="list-style-type: none">• the availability and reliability of substitute materials and the socio-economic impact of substitution• whether the duration of the exemption, which will usually be either 5 or 7 years, will have any adverse impacts on innovation• the overall environmental, social and economic impacts of the exemption for the duration of the exemption	£14,835

<ul style="list-style-type: none"> the exemption does not breach environmental protection afforded by GB REACH 	
Preparation and publication of consultation	£11,583
Analysis of consultation responses and publication of summary of responses to the consultation	£12,452
Other administrative costs including publication of a summary of the application	£851
Total	£39,721

Questions:

5. Do you agree or disagree that the gov should introduce a fee, charged on a cost recovery basis, for processing applications for an exemption to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations?

Agree

Disagree

Don't know

Please provide evidence to support your answer

6. Do you agree or disagree that the proposed fee of £39,721 appears to be reflective of the costs likely to arise in appraising and processing applications?

Agree

Disagree

Don't know

Please provide evidence to support your answer

7. Do you agree or disagree that, should an application be withdrawn, the fee should be refunded on a pro-rata basis, to reflect costs incurred until that point?

Agree

Disagree

Don't know

Please provide evidence to support your answer

8. Do you agree or disagree that, in circumstances where we are able to process an application more quickly or cheaply than expected, we should refund the difference back to the applicant?

Agree

Disagree

Don't know

Please provide evidence to support your answer

9. Do you agree or disagree that a commencement date of 6th April 2023 for the charging is sufficient time for business to adjust to the introduction of an application fee?

Agree

Disagree

Don't know

Please provide evidence to support your answer

10. Do you agree or disagree with our assessment of the impact that the application fee will have on business?

Agree

Disagree

Don't know

Please provide evidence to support your answer

11. Please provide any further comments on the proposal to introduce a fee for processing applications for exemptions to the RoHS Regulations.