EXPLANATORY MEMORANDUM TO

THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2012

2012 No. 3032

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

2. Purpose of the instrument

2.1 These Regulations implement Directive 2011/65/EU of the European Parliament and Council on the Restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) ("RoHS Directive"), and revoke and replace the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (SI 2008/37) ("the 2008 Regulations"). They restrict the use of hazardous substances including some heavy metals and certain flame retardants in a defined number of categories of electrical and electronic equipment (EEE), requiring compliant products to be CE marked. They place obligations on economic operators to meet certain requirements and provide the Secretary of State with powers for the enforcement of those obligations.

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

3.1 None.

4. Legislative Context

4.1 The Regulations implement the RoHS Directive. The regulations revoke the 2008 Regulations that implemented 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 2002/95/EC). The UK transposed Directive 2002/95/EC into UK law by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 (SI 2006/1463) ("the 2006 Regulations"). The 2006 Regulations were updated and replaced by the 2008 Regulations, which were subsequently amended by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulation 2009 (SI 2009/581).

4.2 An explanatory memorandum (17333/08) was submitted on 6 January 2009 on the Proposal for a recast Directive of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment. The Commons European Scrutiny Committee considered it politically important and cleared it (Report 29, Session 08/09). The Lords Select Committee on the EU cleared it (Progress of Scrutiny 23/01/2009, Session 08/09).

4.3 A Transposition Note has been prepared and is attached as an Annex.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The purpose of the RoHS Directive, and therefore these Regulations, is to approximate the laws of EU Member States on the restriction of the use of hazardous substances in EEE and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste EEE. The primary objective is to remove disparities between the legislative measures adopted by Member States in respect of the use of hazardous substances in the manufacture of EEE and to consequently secure the free movement of such goods within the internal market. The RoHS Directive and these Regulations are also important in taking forward the EU strategy for waste management and prevention of environmental pollution. They ensure significant reductions to health and environmental risks by implementing EU wide rules limiting the presence of such substances in products and thus encouraging the substitution of alternative, less damaging, materials.

7.2 The RoHS Directive is a recast of Directive 2002/95/EC. It has a broader scope than Directive 2002/95/EC and introduces CE marking and conformity assessments, as well as placing obligations on economic operators throughout the supply chain (manufacturers, importers and distributors of electrical and electronic equipment).

7.3 The Regulations give effect to the RoHS Directive by severely restricting the use of six hazardous substances (lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers) in the manufacture of EEE falling within 11 broad categories. The maximum concentration values for the use of these substances are 0.01% by weight in homogeneous materials for cadmium and 0.1% by weight in homogeneous materials for the other five substances.

7.4 Eight of the 11 categories of EEE covered by the Regulations are already subject to Directive 2002/95/EC. The additional categories are phased in over a period ending in July 2019. The categories already in scope are large household appliances; small household appliances; IT & telecommunications equipment; consumer equipment; lighting equipment; electrical & electronic tools; toys, leisure & sports equipment; and automatic dispensers. New categories are phased in as follows: medical devices and monitoring and control instruments placed on the market from 22 July 2014; in vitro diagnostic medical devices placed on the market from 22 July 2016; and industrial monitoring and control instruments placed on the market from 22 July 2017. There is also a transitional period until 2019, for EEE that was considered outside the scope of Directive 2002/95/EC by Member States.

7.5 There are ten exclusions which apply to certain sectors or specific product groups. These include, for example, large-scale stationary industrial tools, equipment designed to be sent into space, and means of transport for persons or goods.

7.6 There are exemptions for specific applications of hazardous substances as defined in the Annexes to the RoHS Directive. The validity period of each exemption depends on the category of the product and when the exemption came into effect, unless a deadline is indicated in the text. There are also exemptions for spare parts produced for the repair, the re-use and upgrading of equipment that was put on the market before 1 July 2006, and EEE which benefited from an exemption and which was placed on the market before that specific exemption expired. There are further exemptions for spare parts for the other new categories coming into scope, except for category 11 which has no exemption. In addition the restrictions do not apply to reused spare parts recovered from EEE placed on the market before 1 July 2006 and used in equipment placed on the market before 1 July 2016, where that reuse takes place in auditable closed-loop business-to-business return systems, and the reuse of parts is notified to the consumer.

7.7 The RoHS Directive creates an additional impact on the second hand markets in these products from 2019, as a result of Article 2.2. The effect is that some products already in the distribution chain or in use will not be able to be marketed after this date despite having been placed on the market in accordance with the existing law. Whilst this has been transposed in the Regulations to ensure compliance with the Directive, it is expected that the European Commission will bring forward an amendment to the Council and the Parliament to change this, as they did not consider this an intended impact.

8. Consultation outcome

8.1 BIS has been in regular contact with the main affected industries and stakeholders both throughout the negotiating period for the RoHS Directive and since the RoHS Directive was agreed and published in July 2011.

8.2 BIS ran an online public consultation during the period 12 April to 6 July 2012. Interested parties likely to be directly affected by these Regulations were invited to comment on the proposals via an email mail-out. These included businesses, individuals and a range of representative bodies. The consultation paper and supporting documents were made available through the BIS website www.bis.gov.uk. At the end of the consultation period BIS had received 20 responses from stakeholders representing companies to large trade associations. The formal government response to the consultation can be obtained from the BIS publications section of the website quoting reference URN 12/1005.

9. Guidance

9.1 Information on the new regulations can be found on the BIS website www.bis.gov.uk. Government Guidance Notes can be obtained from the BIS publications section of the website quoting reference URN 12/1167. The UK guidance is complementary to the provisional European Commission “Frequently Asked Questions” document which can be

downloaded from http://ec.europa.eu/environment/waste/rohs_eee/events_rohs3_en.htm. The enforcement body, the National Measurement Office may provide guidance following the publication of the post-consultation version of the European Commission guidance.

10. Impact

10.1 The Regulations apply to all businesses, charities or voluntary bodies.

10.2 The impact on the public sector is thought to be two-fold. Firstly it will increase enforcement costs, and secondly it will impact on the resale value of non-compliant equipment that cannot be re-sold after July 2019. This impacts mostly on the NHS in the public sector. There is an expectation that the proposed amendment of the Directive will mitigate that impact before we reach 2019. The annual costs of funding RoHS enforcement in the UK are set out in the Impact Assessment.

10.3 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 As a single market European measure (obligating universal application of the Directive by all member states), and one applying to environmental protection and human health, it is not possible or appropriate to make adaptations or minimise the impact of the requirements on firms employing up to 20 people. The approach taken to small businesses is therefore no different to the rest of the market.

12. Monitoring & review

12.1 These Regulations provide for the Secretary of State to publish, before the end of the period of five years beginning with the day on which these Regulations come into force, a review of the Regulations. The RoHS Directive provides for the European Commission to review the scope of the RoHS Directive no later than 22 July 2014, to be presented to the European Parliament and Council accompanied by a legislative proposal if appropriate. The RoHS Directive also requires the Commission to carry out a general review of the Directive no later than July 2021.

13. Contact

Peter Askew at the Department for Business, Innovation and Skills Tel: 020 7215 5000 or email: peter.askew@bis.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION TABLE

This table has been prepared by the Department for Business, Innovation & Skills. It sets out the objective of each article of the Directive, and how it is to be implemented in the United Kingdom. The Secretary of State is responsible for implementation.

The domestic legislation transposing Directive 2011/65/EU must be adopted and published by 2 January 2013.

The transposition of Directive 2011/65/EU takes effect through the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. These Regulations repeal the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008.

Directive Article	Objective	Provision in Regulations
Article 1 Subject Matter	States the purpose of the Directive	N/a
Article 2 Scope		
Para 1	Sets out the general scope of the Directive	regulation 5(1)
Para 2	Provides a transitional provision enabling EEE that was outside the scope of Directive 2002/95/EC to continue to be made available on the market until 22 July 2019	regulation 6
Para 3	Clarifies the relationship between the Directive and certain other EU legislation	regulation 8
Para 4	Sets out certain equipment which is outside the scope of the Directive	regulation 5(2) and Schedule 1, Part 2
Article 3 Definitions	Definitions used in the Directive	All definitions are in regulation 2, except as set out below
Para 1	Defines 'electrical and electronic equipment' (EEE)	regulation 4 (1)
Para 2	Meaning of 'dependent' in the definition of EEE	regulation 4 (2)
Paras 3 & 4	Defines 'large-scale stationary industrial tools' and 'large-scale fixed installation'	Schedule 1, Part 2, paragraph 15 and 16
Para 17	Defines 'market surveillance'	n/a – not transposed as exact phrase not used
Para 20	Defines 'homogenous material'	regulation 3(3)
Paras 25 & 26	Defines 'availability of a substitute' and 'reliability of a substitute'	n/a – not transposed as phrases not used
Para 28	Defines 'non-road mobile machinery made available exclusively for professional use'	Schedule 1, Part 2, paragraph 18
Article 4 Prevention		
Para 1	Requires that EEE placed on the market, including cables and spare parts for its repair, its reduce, updating of its functionalities or upgrading of its capacity, does not contain the substances listed in Annex II	regulation 3(1)
Para 2	Provides for tolerance level of substances listed in Annex II, as specified in that Annex	regulation 3(2)
Para 3	Provides delayed dates for the application of Article 4(1) in respect of certain categories of EEE	regulation 5(3), and Schedule 1 Part 3, paragraph 22 - the domestic Regulations provide delayed dates of application for aspects of the Regulations in respect of certain categories of EEE, reflecting the practical effect of Article 4(1).
Para 4	Provides delayed dates for the application of Article 4(1) in respect of cables or spare parts for the repair, the reuse, the updating of functionalities or upgrading of capacity of certain categories of EEE placed on the market before certain dates.	regulation 5(3) and Schedule 1 Part 3, paragraph 23 - the domestic Regulations provide delayed dates of application for aspects of the Regulations in respect of certain categories of EEE, reflecting the practical effect of Article 4(1).
Para 5	Provides exemption for reused spare parts from certain EEE, placed on the market before 1 July 2016, provided that reuse takes place in auditable closed-loop	regulation 5(3) and Schedule 1 Part 3, paragraph 24 - the domestic Regulations provide delayed dates

Directive Article	Objective	Provision in Regulations
	business-to-business return systems, and reuse is notified to the consumer	of application for aspects of the Regulations in respect of certain categories of EEE, reflecting the practical effect of Article 4(1).
Para 6	Exempts applications listed in Annexes III and IV from Article 4(1)	regulation 3(4)
Article 5 Adaption of the Annexes to scientific and Technical progress	Gives the Commission delegated powers to amend exemptions in Annexes III and IV, and provides for the duration of exemptions, and the process surrounding applications for exemptions. It also enables the Commission to create harmonised formats for applications by implementing act.	n/a - this is not transposed as it relates to actions to be taken at EU level. Note that regulation 3 incorporates these annexes (including any amendments) by reference.
Article 6 Review and amendment of list of restricted substances in Annex II	Imposes an obligation on the Commission to review the restricted substances listed in Annex II, and gives the Commission delegated powers to adopt measures as set out in Article 6.	n/a – - this is not transposed as it relates to actions to be taken at EU level. Note that regulation 3 incorporates this annex (including any amendments) by reference.
Article 7 Obligations of manufacturers	Article 7 has been broken up into separate regulations to reflect the different paragraphs, with an overarching obligation in regulation 10	regulations 10 to 21
(a)	Requires Manufacturers to ensure EEE has been designed and manufactured in accordance with requirements set out in Article 4	regulation 10(1) and (2) and regulation 11
(b)	Requires manufacturers to draw up required technical documentation and carry out internal production control procedure	regulation 12 (1)
(c)	Requires manufacturers to draw up an EU declaration of conformity and affix the CE marking on the finished product. Provides for interaction with out conformity assessment procedures.	regulation 12(2) and Regulation 13
(d)	Require manufacturers to keep technical document and EU declaration of conformity for 10 years after EEE is placed on the market	regulation 15
(e)	Requires manufacturers to ensure procedures are in place to ensure series production is in conformity.	regulation 17
(f)	Requires manufacturers to keep a register of non-conforming EEE and product recalls, and to inform distributors.	regulation 19
(g)	Requires manufactures to ensure EEE (or in certain circumstances, their packaging or an accompanying document) bears a type, batch or serial number of other element allowing its identification.	regulation 18(1)
(h)	Requires manufacture to indicate their name, registered trade name or registered trade mark, and address on the EEE (or in certain circumstances, on the packaging or in an accompanying document). Also addresses interaction with other EU legislation.	regulation 18(2) and (3)
(i)	Requires manufacturers of non-compliant EEE placed on the market to take corrective measures and inform competent national authorities.	regulation 20

Directive Article	Objective	Provision in Regulations
(j)	Requires manufacturers to comply with reasoned requests from competent national authorities to provide information and documentation necessary to prove conformity of EEE, and cooperate, on request, with any action required to be taken to ensure compliance of EEE placed on the market	regulation 21
Article 8 Obligations of authorised representatives		
(a)	Enables manufacturers to appoint authorised representatives and limits what can form part of an authorised representatives mandate	regulation 22(1) and (3)
(b)	Specifies the minimum that a mandate must allow an authorised representative to do	regulation 22(2)
Article 9 Obligations of importers		
(a)	Requires importers to only place EEE that complies with the Directive on the EU market.	regulation 23
(b)	Requires importers to check CE marking and documentation, and check that the manufacturer has complied with certain specified obligations	regulation 23(b), (c)
(c)	Requires importers not to place EEE on the market if it believes it is non-compliant, and to inform manufacturers and market surveillance authorities	regulation 26(1) and regulation 23(a)
(d)	Requires importers to indicate their name, registered trade name or registered trademark and address on the EEE (or in certain circumstances the packaging or an accompanying document). Also addresses interaction with other EU legislation	regulation 24, regulation 23(d)
(e)	Requires importers to keep a register of non-compliant and recalled EEE, and keep distributors informed	regulation 25
(f)	Requires importers that place non-compliant EEE on the market to take corrective measures and inform competent national authorities	regulation 26 (2)
(g)	Requires importers to keep a copy of the EU declaration of conformity and ensure technical documentation can be made available for a period of ten years following the placing on the market of EEE	regulation 27
(h)	Requires importers to comply with reasoned requests from competent national authorities to provide information and documentation necessary to prove conformity of EEE, and cooperate, on request, with any action required to be taken to ensure compliance of EEE placed on the market	regulation 27
Article 10 Obligations of distributors		
(a)	Requires distributors to act with due care, check for CE marking and	regulation 29 (1)

Directive Article	Objective	Provision in Regulations
	documentation, and check that importers and manufacturers have complied with certain specified obligations	
(b)	Requires distributors not to make EEE available that doesn't conform with Article 4, and to inform manufacturers or importers and the market surveillance authorities	regulation 29(2) and regulation 30(1)
(c)	Requires distributors who have made non-compliant EEE available to take corrective measure and inform competent national authorities	regulation 30(2)
(d)	Requires distributors to comply with reasoned requests from competent national authorities to provide information and documentation necessary to demonstrate conformity of EEE, and cooperate, on request, with any action required to be taken to ensure compliance of EEE placed on the market	regulation 31
Article 11 Cases in which obligations of manufacturers apply to importers and distributors	Requires an importer or distributor to be made subject to manufacturer obligations when the EEE is placed on the market under the importer or distributor's name, or if the EEE is modified by the importer or distributor after being placed on the market.	regulation 28, regulation 32
Article 12 Identification of economic operators	Enables economic operators to be identified by requiring economic operators to identify, on request, any economic operator that they have either supplied EEE to, or been supplied with EEE by.	regulation 33
Article 13 EU declaration of conformity		
Para 1	Requires an EU declaration of conformity to state that it has been demonstrated that the requirements specified in Article 4 have been met	regulation 14
Para 2	Sets out the format of EU declaration of conformity, language requirements and addresses interaction with other EU legislation that also requires a conformity assessment procedure.	regulation 14 (2), (3), (4), (5) regulation 12(2)
Para 3	States that by drawing up the EU declaration of conformity, the manufacturer assumes responsibility for the compliance of the EEE	regulation 14(6)
Article 14 General principles of the CE marking	Provides that CE marking shall be subject to the general principle set out in Article 30 of Regulation (EC) No 765/2008 (RAMS)	Regulation 765/2008 is directly applicable, supporting provisions have been included in regulation 34
Article 15 Rules and conditions for affixing the CE marking		

Directive Article	Objective	Provision in Regulations
Para 1	Requires CE marking to be affixed visibly, legibly and indelibly to the finished EEE or its data plate, unless that is not possible or warranted, in which case it must be on the packaging and accompanying documents	regulation 16
Para 2	Requires the CE marking to be affixed before EEE is placed on the market	regulation 10
Para 3	Requires Member States to ensure correct application of the regime governing CE marking, and take appropriate action in the event of improper use.	regulation 34, regulation 37(5)
Article 16 Presumption of conformity		
Para 1	Creates a rebuttable presumption that CE marked EEE is compliant	regulation 9
Para 2	Creates a rebuttable presumption of conformity for EEE, materials and components on which tests and measurements demonstrating compliance with the requirements of Article 4 have been performed, or which have been assessed, in accordance with harmonised standards.	regulation 9
Article 17 Formal objection to a harmonised standard	The paragraphs in this article create an EU-level procedure for Member States or the Commission to raise concerns over harmonised standards	n/a - this is not transposed as it relates to actions to be taken at EU level.
Article 18 Market Surveillance and controls of EEE entering the Union market	Requires member states to carry out market surveillance in accordance with Articles 15 to 29 of Regulation (EC) No 765/2008	Part 3, which provides for enforcement, fulfils this obligation
Article 19 Committee procedure	This provides for a committee procedure at EU level	n/a - this is not transposed as it relates to actions to be taken at EU level.
Article 20 Exercise of the delegation	This provides the necessary constraints on, and procedure for, the creation of delegated acts by the Commission.	n/a - this is not transposed as it relates to actions to be taken at EU level.
Article 21 Revocation of the delegation	This enables the Council or European Parliament to revoke the delegation of power to the Commission	n/a - this is not transposed as it relates to actions to be taken at EU level.
Article 22 Objections to delegated acts	This provides a process for the European Parliament or the Council to object to a delegated act	n/a - this is not transposed as it relates to actions to be taken at EU level.
Article 23 Penalties	This requires Member States to provide penalties for infringement of national regulations implementing the Directive.	Part 3 of the Regulations, and Schedule 3, provide for enforcement. Penalties are in regulation 39 and

Directive Article	Objective	Provision in Regulations
		Schedule 3 paragraph 9
Article 24 Review	This obliges the Commission to carry out a general review of the Directive by 22 July 2014, and in particular, to examine the need to amend the scope of the Directive in respect of the EEE referred to in Article 2.2	n/a - this is not transposed as it relates to actions to be taken at EU level. However, the Regulations provide for a separate, UK level review.
Article 25 Transposition	Requires Member States to adopt and publish the necessary laws, regulations and administrative provisions to comply with the Directive by 2 January 2013	regulation 1 – the Regulations come into force on 2 January 2013
Article 26 Repeal	Repeals Directive 2002/95/EC as amended	regulation 7 revokes the Regulations that implemented Directive 2002/95/EC
Article 27 Entry into force	States when the Directive enters into force	n/a
Article 28 Addressees	States that the Directive is addressed to the Member States	n/a
ANNEX I	Lists categories of EEE covered by the Directive	Schedule 1, Part 1
ANNEX II	Lists restricted substances referred to in Article 4(1) and the maximum concentration values tolerated by weight in homogenous materials	regulation 3 incorporates this annex, as amended from time to time, by reference.
ANNEX III	Lists applications exempted from the restriction in Article 4(1)	regulation 3 incorporates this annex, as amended from time to time, by reference.
ANNEX IV	Lists applications exempted from the restriction in Article 4(1) specific to medical devices and monitoring and control instruments	regulation 3 incorporates this annex, as amended from time to time, by reference.
ANNEX V	Provides minimum requirements for an application for an exemption.	n/a – this relates to an EU-level procedure involving the Commission
ANNEX VI	Sets out format of EU Declaration of Conformity	regulation 14 incorporates this annex by reference.
ANNEX VII	Lists the amending Directives that this Directive repeals	n/a
ANNEX VIII	Provides a correlation table	n/a