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## EXPLANATORY NOTE

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

These Regulations transpose the main provisions of Council Directive 2012/19/EU of 4th July 2012 on waste electrical and electronic equipment (OJ No L197, 24.7.2012, p.38) (“the Directive”) which recasts Council Directive 2002/96/EC (OJ no. L37, 13.2.2003, p.24) as amended by Council Directive 2003/108/EC (OJ No. L345, 31.12.2003, p.106).

Part 1 (General) deals with extent (regulation 1), interpretation (regulations 2 and 3) and service of documents (regulation 4). Regulations 59 and 65, which deal with charges, do not extend to Northern Ireland. The following terms used in these regulations have the same meaning as in the Directive: “active implantable medical device”, “collection”, “disposal”, “distributor”, “electrical and electronic equipment (“e””, “hazardous waste”, “in vitro diagnostic medical device”, “large scale fixed installations”, “large scale industrial tools”, “making available on the market”, “medical device”, “non-road mobile machinery”, “prevention”, “producer”, “recovery”, “recycling”, “reuse”, “separate collection”, “treatment”, “waste electrical and electronic equipment” (“WEEE”) and “WEEE from private households”.

Part 2 (Application) provides that these Regulations will apply, with certain exceptions, to the categories of EEE specified in Schedule 1, during the transitional period (i.e. the period from 1st January 2014 to 31st December 2018). The products listed in Schedule 2 fall within the categories listed in Schedule 1 (regulation 5). From 1st January 2019, these regulations will apply, with certain exceptions, to the categories of EEE specified in Schedule 3. The products listed in Schedule 4 fall within the categories listed in Schedule 3 (regulation 6). Regulation 9 provides that these regulations will have effect in relation to the first compliance period (i.e. the period from 1st January 2014 to 31st December 2014) subject to the amendments made by Schedule 5.

Part 3 (Producer obligations) provides that all producers who place EEE on the market in the United Kingdom in a compliance period will be responsible for financing the costs of the collection, treatment, recovery and environmentally sound disposal of (a) WEEE from private households that is deposited at designated collection facilities, or returned under regulation 43 in that compliance period (regulation 11); and WEEE from users other than private households that arises during that compliance period (regulation 12). Regulation 13 places certain obligations on producers supplying EEE to a Member State other than the United Kingdom and; together with regulation 14 provides that any producer who has an obligation under regulations 11 and 12 must join a producer compliance scheme, either on their own behalf or by appointing an authorised representative unless, he is registered with the Environment Agency as a small producer. Any producer who is registered with a producer compliance scheme will be exempt from complying with any obligation they have under regulations 11 and 12 for the period during which his membership of the scheme subsists.

Where a schemes’ approval is withdrawn, the obligations under regulations 11 and 12 will revert back to individual members of that scheme (i.e. producers) who will be notified of any such obligation in relation to WEEE from private households by the appropriate authority. Regulation 11 sets out rules for working out the level of a producer’s financing obligation under that regulation. Regulations 15 to 17 set out the obligations that are placed upon a producer who falls within the definition of “small producer” set out in regulation 2. A producer must provide a declaration of compliance, together with supporting evidence, to the appropriate authority (regulation 19). Schedule 7 specifies the information that must be included in a declaration of compliance. For the purposes of these Regulations, the appropriate authority will be the EA, the NRBW, the SEPA or the Department of the Environment in Northern Ireland (regulation 2).

*Status: This is the original version (as it was originally made).*

A producer must mark EEE that he puts on the market with the crossed out wheeled bin symbol shown in Schedule 6 (regulation 22) and a date mark (regulation 23). A producer must also provide information on reuse and environmentally sound treatment for each new type of EEE that they put on the market (regulation 24).

Part 4 (Scheme obligations) requires an operator of an approved compliance scheme to register or notify the appropriate authority of each producer who is a member of that scheme (regulations 25 and 26). Regulation 27 and Schedule 8 set out the procedure for registering producers who are members of a scheme. An operator of an approved scheme must meet the financing obligations that its members would have had, but for their membership of the scheme. Any financing obligation placed upon a producer by regulations 11 and 12 will be passed to an operator of a scheme where a producer is a member of that scheme (regulations 28 and 29). An operator of a scheme has certain obligations in relation to the reuse of whole appliances (regulation 30), treatment (regulation 31) and recovery (regulation 32) for any WEEE that he is responsible for under these Regulations. An operator of a scheme who has not discharged the financing obligation of the members of that scheme may elect to discharge this obligation by paying a compliance fee (regulation 33). An operator of a scheme also has an obligation, in certain circumstances, to collect WEEE that has been deposited at a designated collection facility upon the request of the operator of that facility (regulation 34). An operator of a scheme also has reporting (regulations 35 to 38), compliance (regulation 39) and record keeping (regulations 40 and 41) obligations.

Part 5 (Distributor obligations and rights) provides that a distributor will be responsible for providing an in-store take back service for customers in relation to specified WEEE unless he is a member of a distributor take back scheme or he has received approval to use existing take back facilities where such facilities are likely to be at least as effective (regulations 42 and 46). A distributor who supplies new EEE must make specified information available to users if EEE in private households (regulation 44). A distributor has a right to return WEEE from private households free of charge to a system set up by a compliance scheme (regulation 43). Regulation 45 imposes a record keeping obligation upon distributors.

Part 6 (Miscellaneous) places a financing obligation on users other than private households in relation to WEEE that arises from EEE that was placed on the market in the United Kingdom before 13th August 2005 (regulation 47). A person who collects or transports WEEE must ensure that the reuse or recycling of that equipment, or its components, is optimised (regulation 48). A person has a right to refuse to handle contaminated WEEE (regulation 49). An operator of a scheme may establish and operate a system to take back WEEE from private households (regulation 50). No person may show a purchaser at the time of sale of new EEE the costs of the collection, treatment and environmentally sound disposal of WEEE (regulation 51). A final holder of WEEE from private households free of charge to a take back system established by an operator of a scheme under regulation 50 (regulation 52). Regulation 53 provides that an operator of a designated collection facility may choose to retain WEEE deposited at that facility in certain circumstances. Regulation 54 imposes an obligation approved exporters who transport EEE outside of the European Union to comply with the minimum requirements set out in Schedule 9.

Part 7 (Approval of proposed schemes and withdrawal of approval of schemes) sets out the procedure for applying for approval as a scheme (regulation 55 and Schedule 10). Provision is made for refusal of approval (regulation 56), conditions of approval (regulation 57) and withdrawal of approval (regulation 58). The charges that must be paid to the EA, the NRW or the SEPA under this part are specified in regulation 59.

Part 8 (Approval of authorised treatment facilities and exporters) sets out the procedure for applying for approval as an authorised treatment facility (“ATF”) or an exporter for the purpose of issuing evidence of compliance by a producer or a scheme under these Regulations (60 to 62 and Schedule 10). Provision is made for conditions of approval (regulation 63) and suspension or cancellation of approval (regulation 64). The charges that must be paid to the EA, the NRW or the SEPA under this part are specified in regulation 65. Approved authorised treatment

facilities (“AATFs”) and approved exporters also have reporting (regulation 66) and record keeping (regulation 67) obligations.

Part 9 (Powers and duties of the Secretary of State) provides the Secretary of State with a power to approve a distributor take back scheme (regulations 68 and 69) and designated collection facilities (“DCFs”) (regulations 70 and 71 and Schedule 11). The Secretary of State has a power to approve a code of practice for the purpose of providing practical guidance to DCFs and operators of schemes (regulation 72). He also has a duty to approve the format of evidence notes issued by an AATF or approved exporter (regulation 73). The Secretary of State must promote the design and production of EEE, that it facilitates the dismantling and recovery of WEEE (regulation 74).

Part 10 (Duties of the appropriate authorities) provides that an appropriate authority is under a duty to maintain and make available a register of producers. The appropriate authority also has responsibilities in relation to applications for registration of small producers (regulation 75). Regulation 76 sets out the duties of the Secretary of State in relation to establishing a methodology by which the compliance fee payable under regulation 33 will be calculated. The Secretary of State must register producers and authorised representatives (regulation 77 and Schedule 12) and monitors the performance of specified obligations of producers, operators of schemes, AATFs and approved exporters (regulation 78). This part also imposes duties on an appropriate authority in relation to the approval of compliance schemes (regulation 79) and AATFs and approved exporters (regulation 81). An appropriate authority must also publish information about WEEE placed on the market in the United Kingdom and WEEE deposited at DCFs (regulation 80).

Part 11 (Disclosure of information) makes provision for the disclosure of information by the Secretary of State, an appropriate authority and an enforcement authority to any person for the purpose of facilitating the carrying out of any function under these Regulations.

Part 12 and Schedule 11 (Appeals) sets out the right and procedure of an appeal against certain decisions of an appropriate authority.

Part 13 (Enforcement) provides that regulations 11 to 20, 33, 34, 48, 54, 57, 60, 61, 66 and 67 and part 4 will be enforced in England by the EA, in Wales by the NRBW, in Scotland by the SEPA and in Northern Ireland, by the Department of the Environment in Northern Ireland; and that the remainder of these Regulations will be enforced by the Secretary of State (regulation 87) (together “the enforcement authorities”). The enforcement authorities are provided with powers to serve enforcement notices (regulation 88) and enter and inspect premises (regulation 89).

Part 14 (Offences and penalties) details the offences (regulation 90) and penalties (regulation 91) relating to any contravention of these regulations. Regulation 92 deals with commencement of proceedings.

Regulation 93 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

This part also includes consequential amendments (regulation 94) transitional provisions (regulation 95) and revocations and savings (regulation 96).

A Regulatory Impact Assessment (“RIA”) in respect of these Regulations is available and a copy can be obtained from the Advanced Manufacturing Services Directorate, Department for Business, Innovation and Skills (“BIS”), 1 Victoria Street, London SW1H 0ET and at: <https://www.gov.uk/government/consultations/waste-electrical-and-electronic-equipment-weee-implementing-the-recast-directive-and-uk-system-changes>. As these Regulations transpose a Directive, a transposition note setting out how the government has transposed the Directive in the United Kingdom has been prepared. A copy of the transposition note is available from BIS as above. Copies of the RIA and the Transposition Note have been placed in the libraries of both Houses of Parliament.