

EXPLANATORY MEMORANDUM TO
THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS
2013

2013 No. 3113

1. This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament.

The memorandum contains information for the Joint Committee on Statutory Instruments.

2. Propose of the instrument

2.1 These Regulations transpose the main provisions of Directive 2012/19/EU (“the Directive”) on waste electrical and electronic equipment (WEEE) which recasts Directive 2002/96/EC.

2.2 The main purpose of the Directive is the protection of the environment and human health. It provides that producers of electrical and electronic equipment (“EEE”) will be financially responsible for managing the waste that arises from products they place on the Union market. This policy is intended to promote greater efficiencies in the management of waste from this type of equipment. Producers must also be registered with the national authorities in any Member State where they place EEE onto the market either directly or by appointing an authorised representative to act on their behalf. The Directive provides that Member States must establish systems for the collection, treatment, recovery and environmentally sound disposal of most types of waste electrical and electronic equipment (“WEEE”); and that the costs of these systems must be largely borne by the producers of such equipment. Distributors of EEE also have obligations under the Directive to establish systems for the return of WEEE from private households (i.e. from consumers) free of charge.

2.3 These regulations provide for all WEEE that arises in the United Kingdom to be collected at designated collection facilities (“DCFs”) (DCFs are usually local amenity sites) and transported to an approved authorised treatment facility (‘AATF’) or approved exporter for treatment, recovery, recycling or reuse. They also provide for the registration of all producers who put EEE on the market in the United Kingdom and for the establishment and financing by producers of systems to collect, treat, recover and dispose of WEEE that arises in the United Kingdom. Most producers will discharge their obligations through membership of a producer compliance scheme. Producers that place less than 5 tonnes of EEE onto the market in a year will discharge their obligation by registering with the appropriate authorities. Distributors are required to take back certain types of WEEE free of charge. These regulations also provide for the approval of DCFs, producer compliance schemes, authorised treatment facilities and exporters.

2.4 These regulations also provide for a wider range of products to be covered by the Directive with effect from 1st January 2019, as required by the Directive.

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

3.1 The Directive poses significant challenges both in terms of transposition and practical implementation. The Government's approach to implementation seeks to balance the need to deliver the objectives of the Directive against creating a fair and enforceable waste management system for all stakeholders in the United Kingdom.

3.2 The first matter of interest to the Committee is the Government's approach to the implementation of Article 12 of the Directive. Article 12 of the Directive is identical to Article 8 of the 2002 Directive and, our implementation of Article 12 follows the same format as the implementation of Article 8 in the Waste Electrical and Electronic Regulations 2006 ("the WEEE Regulations 2006") (SI. 2006/3289).

3.3 Article 12 of the Directive provides that producers must finance the costs of collection, treatment, recovery and environmentally sound disposal ('the waste management costs') of WEEE from private households that was deposited at collection facilities set up by a Member State under Article 5(2) of the Directive. The financing obligations imposed by the Directive in relation to EEE put on the market before 13th August 2005 ('historical WEEE') are significantly different to those in relation to WEEE placed on the market after this date.

3.4 The Directive permits Member States to allow producers to finance historical WEEE 'collectively' by splitting the cost between themselves. New WEEE, placed on the market after 13th August 2005 is to be dealt with by the specific producer who placed that product which has now become waste on the market. This is a principle known as individual producer responsibility ('IPR'). The Government supports IPR in principle but takes the view that it is not technically feasible or economically viable at present in relation to WEEE from private households (a view supported by the great majority of producers and the waste industry). This is because implementation of IPR would require systems to be in place to allow for the identification of each producer's own waste products. No other Member State has been able to introduce systems to do this and the European Union is aware of the difficulties being encountered by Member States in implementing this aspect of the Directive. Therefore, in transposing Article 12 of the Directive these Regulations do not distinguish between 'new' and 'historical' WEEE. The financing of all WEEE from private households which is deposited at collection facilities or taken back by distributors is financed collectively by the producers who place EEE onto the market in the United Kingdom in a given compliance period.

3.5 The second matter of interest to the Committee is the Government's approach to the implementation of the move to 'open scope'. The Directive imposes certain record keeping and reporting requirements on stakeholders, to ensure there is a record of the amount of EEE put onto the market in certain categories of EEE and how much WEEE within each category is collected, treated and recovered in accordance with the Directive. The majority of these obligations are imposed in order to assess the extent to which Member States are meeting their collection targets, set out in Article 7 of the Directive. Until 14th August 2018, the Directive has a closed scope, and stakeholders have to supply information upon products falling within ten categories of EEE set out in Schedule 1 of these regulations. From 15th August 2018, the Directive moves to an 'open scope' and stakeholders will need to supply

information in relation to the six categories of EEE specified in Schedule 3. The Government fully supports the move to open scope however, following extensive consultation with stakeholders; the decision was made to introduce the open scope requirements with effect from 1st January 2019, to coincide with the beginning of the 2019 compliance period and thereby remove the administrative and financial burdens that would be placed on stakeholders by asking them to transfer to new record keeping and reporting requirements part way through a compliance period. Following the move to open scope, stakeholders will be required to supply information in relation to six categories of EEE rather than the ten categories which apply while the Directive remains closed scope. Therefore, it will be possible for the Government to comply with the obligations placed on Member states with effect from 15th August 2018 and supply information in the six categories listed in schedule 2 of the regulations by using the data that is provided by stakeholders in the ten categories specified in Schedule 1 of the Regulations.

3.6 The third matter of interest to the Committee is that regulation 96 of these regulations makes a consequential amendment to section 56(1) the Environment Act 1995 (c.25) in order to replace references to the WEEE Regulations 2006, that were inserted into that act by those regulations, with references to these regulations.

4. Legislative Context

4.1 These Regulations implement the main provisions of the Directive by introducing a waste management system for WEEE in the United Kingdom. This system is intended to:

- (a) minimise the disposal of WEEE as unsorted municipal waste by establishing a network of DCFs;
- (b) ensure that all WEEE from private households that is collected at such DCFs is sent for treatment, recovery or recycling to an AATF or approved exporter, approved under these regulations;
- (c) achieve the recovery targets set out in the Directive; and
- (d) provide that producers of EEE are registered with the Member state authorities either directly or by appointing an authorised representative to act on their behalf and, are responsible for financing the costs of managing WEEE that arises from EEE in each compliance period. Obligations are imposed on distributors (i.e. retailers) in relation to the right of consumers to return certain pieces of WEEE to distributors free of charge.

4.2 Regulations 59 and 65, which specify the charges to be paid to the Environment Agency, Scottish Environmental Protection Agency and the National Resources Body for Wales, under these regulations. Regulations 59 and 65 do not extend to Northern Ireland. Provision for charges to be paid to the Department of the Environment in Northern Ireland is made in the Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2006.

4.3 An EM was submitted by BIS on 15 January 2009 based on the European Commission proposal 17367/08 to recast Directive 2002/96/EC on Waste Electrical and Electronic Equipment. An Initial Impact Assessment was submitted to the House of Commons European Scrutiny Committee and the House of Lords EU Select Committee on 3 June 2009.

The House of Commons Scrutiny Committee debated it on 14 July 2009 and sought clarification on a number of points. That scrutiny reserve was lifted on 14 October 2009. The Lords EU Select Committee lifted its scrutiny reserve on 14 October 2009. The outcome of the 1st reading of the Commission proposal 17367/08 was reported to both scrutiny committees on 17 August 2011 along with an updated Impact Assessment. The outcome of negotiations resulting in Directive 2012/19/EU of the European Parliament and of the Council on Waste Electrical and Electronic Equipment (WEEE) (recast) was reported to both Select Committees. This was acknowledged in the fifty-ninth Report of Session 2010-12 of the European Scrutiny Committee.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The purpose of the Directive is to address the environmental impacts of WEEE, and to encourage its separate collection (i.e. *separate* from the municipal waste stream), and its subsequent treatment, reuse, recovery, recycling and environmentally sound disposal. The Directive seeks to improve the environmental performance of all operators involved in the life cycle of EEE, especially those dealing with WEEE. Accordingly, it sets certain requirements relating to the separate collection of WEEE, standards for its treatment at permitted facilities and, requires collection and recovery targets to be met by Member States. It makes producers responsible for financing most of these activities. Distributors, who are mainly retailers of EEE, must provide facilities for the free take back of WEEE by their customers.

7.2. An extensive range of WEEE fell within scope of the 2002 Directive and the 2006 regulations which implemented it. The 2012 Directive maintains this status quo until 31st December 2018, as do these regulations. From 1st January 2019, the Directive moves to open scope meaning that all EEE will be in scope of the Directive (and any implementing legislation) unless expressly excluded.

7.3. Responses to the public consultations have reflected a lack of consensus on the preferred approaches to a range of issues. There were consistent concerns from stakeholders, in particular producer compliance schemes, about the need for the WEEE management system established under the 2006 regulations to be reformed in order to create a fairer system for all stakeholders and minimise the costs of compliance. BIS have continued to engage with a range of stakeholders throughout the policy development process and Ministers have met with a range of stakeholders to consider their views on the proposals. All of these discussions, in conjunction with the consultation responses and informal feedback received have been taken into account in finalising these regulations.

7.4. These regulations obligate producers to join a compliance scheme to discharge their financial responsibilities in respect of the treatment, reuse, recovery, recycling and environmentally sound disposal of EEE that they have placed on the market and which has become WEEE. A network of AATFs and approved exporters will process WEEE and provide evidence notes to producer compliance schemes detailing the amount in tonnes of WEEE that have been received for treatment from that scheme. They will also obtain evidence of recovery and recycling of WEEE materials from re-processors in order to be able to provide compliance schemes with evidence of both treatment and recovery of WEEE.

7.5. The Directive requires Member States to bring appropriate domestic laws into force to implement the Directive by 14th February 2014. The decision to bring these regulations into force on 1st January 2014 has been made in order to minimise disruption to stakeholders meaning that the entire 2014 compliance period will be subject to the 2013 regulations. This proposal has been welcomed by stakeholders in their responses to consultation.

8. Consultation outcome

8.1 The Government launched its first consultation on 17th April 2013 consulted on a number of proposals for the possible reform of the waste management system in the UK and a set of draft regulations which implemented the changes to the regulations which were required by the recast of the Directive. The consultation closed on 21st June 2013. Respondents strongly supported the Government various proposals on transposition of the recast WEEE Directive. On reform of the current WEEE management system, 95% of respondents chose the option of a collection target combined with a compliance fee as their first or second choice amongst the four options described in the consultation. The adoption of this option by the Government has been broadly welcomed across the stakeholder community.

8.2. On 11th October 2013 the Government launch a second consultation. This consultation sought views on draft regulations which implemented the preferred option which emerged following the Government's consideration of responses to the consultation that was launch in April 2013. This consultation closed on 1st November 2013.

9. Guidance

9.1 The Department has issued interim guidance in relation to these regulations which can be found at:

<https://www.gov.uk/government/publications/weee-regulations-2013-government-guidance-notes>

This guidance will be supplemented by further guidance from the appropriate authorities regarding how producers and scheme operators comply with their obligations to register with that authority.

10. Impact

10.1 The Department has prepared an impact assessment in relation to this proposal and can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186971/bis-13-763-impact-assessment-of-recast-directive-2012-19-eu-on-waste-electrical-and-electronic-equipment-weee.pdf

11. Regulating Small Business

11.1 These Regulations will apply to small businesses.

11.2 In accordance with the work undertaken in response to the feedback received by the Government as part of the environmental theme of the Red Tape Challenge and to minimise the impact of the requirements on small businesses employing up to twenty people, the approach taken is to provide an exemption to small producers from complying with some of their financial and administrative obligations which are met by third parties on their behalf to ensure that the United Kingdom complies collectively with the requirements of the Directive.

12. Monitoring and Review

12.1 The success criteria for the instrument are that it successfully implements the environmental objectives of the Directive by creating an effective waste management system in the UK and minimising the disposal of unsorted municipal waste in a way which minimises the burdens placed on stakeholders and maximises public engagement with waste management.

12.2 The Directive and these regulations five years after they come into force on 1st January 2019 and legislation may be amended accordingly.

Contact

13.1 David Styles
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

0207 215 0211

David.styles@bis.gsi.gov.uk