

EXPLANATORY MEMORANDUM TO
THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (AMENDMENT)
(NO. 2) REGULATIONS 2018

2018 No. 1214

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Waste Electrical and Electronic Equipment Regulations 2013(S.I.2013/3113) (the “2013 WEEE Regulations”). The 2013 WEEE Regulations implement Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (OJ No L 197, 24.07.2012, p.38) (“the WEEE Directive”).

2.2 These Regulations amend the 2013 WEEE Regulations to:

- (a) implement the open scope principle to bring all electrical and electronic equipment (EEE) into the scope of the Directive unless exempt or excluded and retain the current UK WEEE system product categories;
- (b) make membership by all producer compliance schemes (PCSs) of the PCS Balancing System (PBS) mandatory and for the Secretary of State to approve such a PBS. This will ensure that all requests made under regulation 34 will be dealt with by a PCS and the cost shared on a market share basis amongst all PCSs in the United Kingdom;
- (c) ensure that where a charging scheme of an appropriate authority (the Environment Agency, the Natural Resources Body for Wales and the Scottish Environment Protection Agency (SEPA)) supersedes the annual producer charge laid down in the 2013 WEEE Regulations in regulation 59, the charge payable by each scheme member will go to the relevant appropriate authority according to the location of its registered office, or where the scheme member does not have a registered office, its principal place of business;
- (d) substitute for the references to the Northern Ireland Department of the Environment a reference to the Northern Ireland Department of Agriculture, Environment and Rural Affairs, as the former department ceased to exist in 2016; and
- (e) provide that reports submitted by approved authorised treatment facilities (AATFs) must be submitted in the format published by the appropriate authority or online. This amendment ensures that when the reporting format is updated by the appropriate authority, AATFs will be obligated to adhere to the new format. An AATF is a facility that receives WEEE for treatment, recovery, recycling or reuse in the United Kingdom on behalf of producer compliance schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument, other than regulations 17 to 19, is all of the United Kingdom. Regulations 17 to 19 do not extend to Northern Ireland.

4.2 The territorial application of this instrument, other than regulations 17 to 19, is all of the United Kingdom. Regulations 17 to 19 do not extend to Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The main purpose of the WEEE 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. The Directive requires the introduction of open scope which brings all items of EEE within the scope of the Regulations, unless subject to a specific exemption or exclusion. The 2013 WEEE Regulations transpose the requirements of the WEEE Directive.

6.2 The provision in Regulation 17 (set out in paragraph 2.2 (c)), which amends regulation 59 relates to charges to be paid to the Environment Agency, Scottish Environmental Protection Agency and the National Resources Body for Wales, under these regulations. It does not extend to Northern Ireland. The Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2014 deal with the producer charge provisions for Northern Ireland which is not amended by these Regulations.

7. Policy background

7.1 The purpose of the WEEE Directive is to address the environmental impacts of WEEE, and to encourage its collection, treatment, reuse, recovery, recycling and environmentally sound disposal. The WEEE Directive introduces “open scope” with effect from 15 August 2018 in which all electrical and electronic equipment (EEE) placed on the market falls into scope unless specifically exempt or excluded (e.g. equipment designed specifically to be sent into space or for military purposes). The full list of exemptions and exclusions is set out in regulations 7 and 8 of the 2013 WEEE Regulations. The changes in the Directive include a re-categorisation of EEE from the existing 10 categories (the UK has four additional sub-categories) to six new categories. The UK has an additional four sub-categories to ensure a fair distribution

of the cost of collection, reuse, recycling and treatment of the WEEE. Some products are hazardous and require specialist recycling process which cost more. The sub-categories address this point.

- 7.2 Financial obligations imposed on UK producers of EEE are based on their market share in each of the existing categories. The categories reflect the different sectors in which producers place product onto the UK market, Examples include toys, tools, refrigeration, lighting, large domestic appliances and monitors. The six new categories are temperature exchange equipment; screens, monitors, and equipment containing screens with a surface greater than 100 cm²; lamps; small IT and telecommunications equipment; other large equipment; and other small equipment. An assessment of costs and benefits demonstrated that the move to allocation based on 6 categories would result in huge changes to individual producers' market shares in each category. This would result in large swings to many individual producers' costs under the WEEE Regulations with many producers paying significantly more in collection, recycling and reuse that was not reflective of the costs associated with the equipment they placed on the market.
- 7.3 These Regulations therefore will provide for the introduction of open scope from 1 January 2019 whilst maintaining the existing categories to minimise burdens of EU legislation on businesses at a time when the UK is leaving the EU. It will avoid the potential swings in compliance costs set out above for UK producers of electrical and electronic equipment. Defra is working with industry to establish protocols that will map data from the 14 UK categories to the six Directive product categories to be used when reporting to the European Commission. This will ensure compliance with Member State reporting obligations.
- 7.4 The 2013 WEEE Regulations provided for the introduction of open scope from 1 January 2019, rather than 15 August 2018, as set out in the Directive, to align with the WEEE compliance year (which runs from 1 Jan to 31 Dec each year). To introduce a change mid-way through the year would have brought significant additional reporting burdens on all obligated businesses and undermined the operability of the UK system.
- 7.5 The 2013 WEEE Regulations require producers to join a producer compliance scheme (PCS) 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. Regulation 34 provides for operators of local authority controlled designated collection facilities (DCF) who do not have a contract with a PCS for WEEE collections to request WEEE collections from any PCS that is approved to collect household WEEE. This ensures that even if all PCSs decline to enter a contract with a local authority DCF operator, local authorities are guaranteed that a PCS will finance the collection and treatment of WEEE deposited at its DCF.
- 7.6 The PCS Balancing System (PBS) ensures that the cost of collections under regulation 34 are shared amongst all its members (PCSs) on a market share basis. The PBS is currently a voluntary system established by a number of PCSs that provides a service that minimises disruption to collection services. The voluntary PBS ensures that regulation 34 requests are fulfilled and costs are divided by market share amongst the member PCSs. Not all PCSs in the UK are currently members of the PBS and so some currently avoid costs arising from regulation 34. Without the continued confidence amongst its members of its commercial and economic benefit the voluntary PBS could

be at risk of folding. This would lead to significant disruption of services to local authority DCFs requesting regulation 34 WEEE collections.

- 7.7 These Regulations therefore provide for mandatory membership of all PCSs of a PBS that is approved by the Secretary of State. This will ensure that all requests made under regulation 34 are dealt with and the cost shared on a market share basis amongst all PCSs in the United Kingdom. A collection of regulation 34 WEEE will likely include WEEE from many different producers of EEE. Mandatory membership for all PCSs ensures that all producers contribute to the costs of regulation 34 collections within the categories that they put products on the market.
- 7.8 The 2013 WEEE Regulations provide for the English, Scottish and Welsh regulators to revise their charging schemes as necessary to supersede the annual producer charge laid down in the 2013 WEEE Regulations. PCSs which are approved under regulation 55 of the 2013 WEEE Regulations pay an annual producer charge to the appropriate authority for operating a compliance scheme. The total charge is based on the number of producer members in the PCS and the producer turnover and VAT status.
- 7.9 The relevant Northern Ireland provisions are in the Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2014. The Environment Agency consulted on charging proposals from 2018 and have updated their producer charging scheme to implement higher charges on businesses located in England. The Natural Resources Body for Wales and the Scottish Environment Protection Agency (SEPA) have not reviewed their charging schemes.
- 7.10 These Regulations provide that PCS members pay charges according to the appropriate authority in the nation where each scheme member's registered office, or, where the scheme member does not have a registered office, the scheme member's principal place of business, is based.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Department has no plans to consolidate this amending legislation.

10. Consultation outcome

- 10.1 A full public consultation was undertaken in relation to this instrument seeking views on the amendments made in this instrument. The consultation ran from 20 October to 8 December 2017 and can be found here: https://consult.defra.gov.uk/environmental-quality/weee-regulations-amendments/supporting_documents/WEEE%20Regulations%20Amendments%20Open%20Scope%20consultation%20document%202017.pdf. This SI will amend the 2013 WEEE Regulations in line with the Government's preferred options set out in the consultation.

107 responses to the consultation on the proposed amendments to the 2013 WEEE Regulations were received from producers of EEE, PCSs, trade bodies, distributors of EEE, local authorities, WEEE treatment facilities, waste management companies (WMCs), charities and social enterprises, an electrical reuse organisation, and

individuals. 75% of respondents supported the proposal for amending the 2013 WEEE Regulations to retain the current system of 14 categories with new flexibility to allocate products previously out of scope to one of the 14 categories and to develop protocols allowing the UK to report, if necessary, to the EU under the six WEEE Directive categories, as their preferred option. 92 responses were received to the question regarding amending the WEEE Regulations to make membership of the PCS Balancing System (PBS) a mandatory requirement. 76% were supportive of making membership of the PBS a mandatory requirement. 90 responses were received to the question on the principle of allocating the EEE producer registration fees to the regulator in the nation in which the producer is based. 75% supported the principle. The summary of consultation responses and the UK government's response to proposed amendments is published here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709447/weee-consult-sum-resp.pdf.

11. Guidance

- 11.1 Minor changes to existing guidance on the 2013 WEEE Regulations are required as a consequence of the amendments introduced by this instrument. The existing guidance can be found at <https://www.gov.uk/government/publications/weee-regulations-2013-government-guidance-notes>

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is set out in the Regulatory Triage Assessment which accompanied the summary of responses and Government response to the consultation on the proposed amendments to the 2013 WEEE Regulations.
- 12.2 There is no impact on the public sector beyond those set out in the Impact Assessment which accompanied the 2013 WEEE Regulations.
- 12.3 The impact on business was below the threshold for which an Impact Assessment is required. A Regulatory Triage Assessment (RTA) was prepared and published in relation to the public consultation for regulatory amendments to the 2013 WEEE Regulations. Following consultation the RTA was updated and published with the summary of consultation responses and the Government response to the consultation. The RTA was updated to include options 1 (the 'do nothing option') and option 2 (retain the current broader system of 14 categories, with flexibility to allocate new 'in scope' products to one of the 14 categories. This was the Government's preferred option. The RTA estimated a net benefit (present value) of £0.61m. This is a non-qualifying regulatory provision as it falls below the +/- £5m equivalent annual net direct cost to business (EANDCB) threshold. The RTA can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708479/weee-consult-ia.pdf

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses with obligations under the 2013 WEEE Regulations. This is because the WEEE Directive does not provide for any exemptions from its obligations for small business.

Small businesses will however benefit from the changes to the introduction of Open Scope set out in paragraph 7.3.

- 13.3 It should however be noted small producers of EEE (placing less than 5 tonnes of EEE on the market per year) will in many cases be small businesses. Producers placing less than 5 tonnes of EEE or less onto the UK market must register directly with the Environment Agency and supply data. They are not obligated to join a PCS nor finance a share of costs associated with collections of WEEE. They will therefore not be directly affected by the impacts of new reporting categories on market share based obligations under PCSs.

14. Monitoring & review

- 14.1 The 2013 WEEE Regulations will be reviewed in early 2019, five years after they came into force on 1st January 2014. This review will take place every five years. Should it be decided that the legislation is no longer fit for purpose following this review, the legislation will be amended accordingly.

15. Contact

- 15.1 Graeme Vickery at the Department for Environment, Food and Rural Affairs, Ground Floor, Seacole Building, 2 Marsham Street, London, SW1P 4DF, Telephone: 020 8225 7406 and email: graeme.vickery@defra.gsi.gov.uk can answer any queries regarding the instrument.
- 15.2 Chris Preston, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Dr Thérèse Coffey at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.