

**EXPLANATORY MEMORANDUM TO  
THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN  
ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2008**

**2008 No. 37**

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise & Regulatory Reform and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

This statutory instrument revokes and replaces the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 (S.I. 2006/1463), which transposed the requirements of Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (“the RoHS Directive”) relating to a ban on the placing on the EU market of new electrical and electronic equipment (“EEE”) containing more than agreed levels of lead, cadmium, mercury, hexavalent chromium and both polybrominated biphenyl and polybrominated diphenyl ether flame retardants from 1 July 2006. There are, however, a number of exempted applications for these substances.

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

Regulation 5 takes advantage of the new provisions inserted into the European Communities Act 1972 by the Legislative and Regulatory Reform Act 2006 so as to refer to the Annex of Directive 2002/95/EC as amended “from time to time”.

4. **Legislative Background**

4.1 These Regulations implement the RoHS Directive, as amended by Commission Decision 2005/618/EC setting the maximum concentration values for certain hazardous substances and Commission Decisions 2005/717/EC, 2005/747/EC, 2006/310/EC, 2006/690/EC, 2006/691/EC and 2006/692/EC concerning the list of exempt applications in the Annex, and provide for enforcement of its requirements. A Transposition Note has been prepared and is attached as an Annex to this explanatory memorandum.

4.2 The Department of Trade and Industry has previously submitted Explanatory Memoranda on both the RoHS Directive and Directive 2002/96/EC (the Waste Electrical and Electronic Equipment Directive (“the WEEE Directive”)).

4.3 The DTI submitted an explanatory memorandum (10802/00) on 2 October 2000 on a "Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment and a Proposal for a 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 for debate, which was held on 28 March 2001 in European Standing Committee "C" (Report 1,

Item 21540, Session 00/01). The Lords Select Committee on the EU cleared it from Sub Committee D (Progress of Scrutiny, 11/5/01, Session 00/01).

4.4 An unnumbered (OTNYR) EM was submitted by DTI on 7 December 2000, which was an update on EM 10802/00, based on an Environment Working Party document of 23 November 2000. The Commons European Scrutiny Committee debated it together with EM 10802/00 on 28 March 2001. The Lords Select Committee on the EU cleared it from scrutiny in Sub-Committee D (Progress of Scrutiny, 11/5/01, Session 00/01).

4.5 EM 10143/01 on the "Amended proposal for a Directive of the European Parliament and of the Council on the restriction on the use of certain hazardous substances in electrical and electronic equipment" was submitted by DTI on 11 July 2001. The Commons European Scrutiny Committee considered it politically important and debated it on 17 July 2002 together with documents on the WEEE Directive (Report 32, Item 22499, Session 01/02). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny, 30/7/01, Session 01/02).

4.6 An explanatory memorandum (10731/02) was submitted on 15 March 2002 by DTI on the "Common position on a Proposal for a European Parliament and Council Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS)". The Commons European Scrutiny Committee considered it politically important and it was debated on 17 July 2002 together with documents on the WEEE Directive (Report 32, Item 23309, Session 01/02). The Lords Select Committee on the EU cleared it from Sub-Committee D at their meeting of 8 May 2002 (Progress of Scrutiny, 20/5/02, Session 01/02).

4.7 An explanatory memorandum (12610/04) was submitted on 21 October 2004 on a proposal for a Commission Decision amending Directive 2002/95/EC (the RoHS Directive) for the purposes of establishing the maximum concentration values for certain hazardous substances in electrical and electronic equipment. The Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report 35, Session 03/04). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny, 1/11/04, Session 03/04).

4.8 An explanatory memorandum (9932/05) was submitted on 29 July 2005 on a proposal for a Commission Decision amending Directive 2002/95/EC (the RoHS Directive) for the purposes of adapting the list of specific applications of certain hazardous substances that will be exempted from the requirements of Article 4(1). The Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report 6, Session 05/06). The Lords Select Committee on the EU cleared it from scrutiny in Sub-Committee G on 13/10/05 (Progress of Scrutiny, 24 October 2005, Session 05/06).

4.9 Finally, DTI submitted a further explanatory memorandum (5403/07) on 6 February 2007 on a "Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment, as regards the implementing powers conferred to the Commission". The Commons European Scrutiny Committee considered it politically and legally important and cleared it (Report 15, Session 06/07). The Lords Select Committee on the EU did not report on it (Progress of Scrutiny, 16/3/07, Session 06/07).

## **5. Extent**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 The primary objective of the RoHS Directive, which the 2006 Regulations and these Regulations implement, 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, thereby, secure the free movement of such goods within the internal market. The RoHS Directive and the Regulations also contribute to Community policy on waste management and environmental protection by reducing exposure to certain potentially harmful substances which will reduce the negative impacts on health and the environment of EEE.

7.2 The 2006 RoHS Regulations (S.I. 2006/1463) and these replacement Regulations give effect to the Directive by severely restricting the use of six hazardous substances in the manufacture of new electronic and electronic equipment falling within eight broad categories from 1 July 2006. The six hazardous substances are lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers. The eight broad categories are large household appliances; small household appliances; IT and telecommunications equipment; consumer equipment; lighting equipment; electrical and electronic tools; toys, leisure and sports equipment; and automatic dispensers. The maximum concentration values for the use of these substances have been established as 0.01% by weight in homogeneous materials for cadmium and 0.1% by weight in homogeneous materials for the other five substances.

7.3 Certain applications are exempt. These include lead in the glass of cathode ray tubes and fluorescent tubes, mercury in a range of specified lamps, lead in high melting temperature type solders and cadmium plating. There is also an exemption for spare parts produced for the repair and the re-use of equipment that was put on the market before 1 July 2006. The exempt applications are listed in the Annex to the RoHS Directive. The Annex has so far been amended six times by Commission Decisions. It is because of the frequency of such amendments to the Annex that regulation 5 takes advantage of the new provisions inserted into the European Communities Act 1972 by the Legislative and Regulatory Reform Act 2006 so as to refer to the Annex of Directive 2002/95/EC as amended “from time to time”.

7.4 The Directive primarily affects the manufacturers of EEE, and component and material suppliers, but it also has an impact upon those who import these goods into the European Union; those who export to other Member States; and those who rebrand other manufacturers’ equipment as their own.

7.5 The RoHS Directive is complementary to the WEEE Directive and applies to the same wide range of products covered by eight of the ten indicative categories of the WEEE Directive, plus electric light bulbs and household luminaires. The two categories not currently included in the RoHS Directive are medical devices and

monitoring and control instruments, but Article 6 of the Directive obliges the Commission to consider bringing these two categories within the scope of the Directive at some future point. This would have an impact on these Regulations.

7.6 BERR, and previously DTI, has been in regular contact with the main affected industries and stakeholders both throughout the negotiating period for the Directive and since the Directive was agreed and published in February 2003. Three public consultations were undertaken in respect of the transposition of both the RoHS and the WEEE Directives since their adoption – in March 2003, in November 2003 and in July 2004. The first two consultations covered general policy options, whilst the final one included separate draft Regulations and draft non-statutory guidance for each Directive. All three consultations also included partial regulatory impact assessments.

7.7 A fourth public consultation, concerning these new Regulations, was published in September 2007 and covered the policy decision to take advantage of the new provisions inserted into the European Communities Act 1972 by the Legislative and Regulatory Reform Act 2006 so as to refer to the Annex of Directive 2002/95/EC as amended “from time to time”. It also covered proposals to amend and clarify the enforcement provisions of the 2006 Regulations in the light of the experience of the UK RoHS Enforcement Authority in the first year of enforcing those Regulations. It also included a new partial impact assessment.

7.8 The vast majority of respondents to all the first three consultation exercises focussed on the WEEE, rather than RoHS Directive. Those respondents that did comment on the RoHS Directive were, in the main, content with the Government’s proposed approach, acknowledging the ‘Single Market’ legal basis to the Directive and the need to ensure that the impact of the legislation was the same in each EU Member State. The fourth consultation exercise attracted only a small number of responses and all were in general support of the Department’s proposals.

7.9 Further information on the policy background to the Regulations is set out in the Impact Assessment.

## **8. Impact**

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is restricted to the annual costs of funding RoHS enforcement in the UK, which is currently around £350k per annum. This amount is currently being reviewed and is likely to rise by an additional amount of somewhere between £50 and £100k per annum, which will, *inter alia*, enable enforcement to be undertaken on a more transparent and even-handed basis as a result of the legislative changes introduced by these Regulations.

## **9. Contact**

Steven Andrews at the Department for Business, Enterprise & Regulatory Reform (e-mail: [steven.andrews@berr.gsi.gov.uk](mailto:steven.andrews@berr.gsi.gov.uk), tel. 020 7215 1670) can answer any queries regarding the instrument.



## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Business, Enterprise and Regulatory Reform</b>	<b>Title:</b> <b>Impact Assessment of Restriction of use of certain Hazardous Substances in Electrical and Electronic Equipment Regulation</b>	
<b>Stage:</b> Final	<b>Version:</b> One	<b>Date:</b> 11 December 2007
<b>Related Publications:</b> UK Regulations on Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment Regulations		

### Available to view or download at:

<http://www.berr.gov.uk>

**Contact for enquiries:** Trevor Reid

**Telephone:** 0207 215 5843

### What is the problem under consideration? Why is government intervention necessary?

There are two main problems under consideration. The first relates to the placing of electrical and electronic equipment (EEE) on the EU market, and the second relates to the appropriate level of environmental protection where EEE is involved. Government intervention is necessary to establish the legal framework to protect and promote the 'Internal Market' in EEE, and it is necessary because the 'full' social costs of EEE exceed the private costs and this can lead to environmental and health protection that is too low from the viewpoint of society as a whole.

### What are the policy objectives and the intended effects?

The policy objective is to amend the existing UK RoHS Regulations so as to provide greater protection of the 'Internal Market' in EEE so enabling UK businesses to compete on a more 'level playing field' in the UK and across Europe. In addition, there is a policy objective of providing the appropriate level of environmental protection, and health and safety protection where EEE is concerned. The intended effects are that producers of EEE only place EEE on the UK and EU market which meets the relevant restrictions of use of certain hazardous substances.

### What policy options have been considered? Please justify any preferred option.

The main policy options considered were to not amend the RoHS Regulations ('business as usual') or to amend the Regulations in the light of experience gained and lessons learned from the first year of enforcement. The choice to amend the Regulations is based on an assessment that the amended Regulations will produce additional benefits, over and above any additional costs, from a more level-playing field for UK businesses producing EEE for the UK and European markets, and from greater environmental and health protection.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed by BERR in 2009 when the European Commission presents proposals to the European Parliament and Council in relation to the review of the RoHS Directive itself.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Malcolm Wicks

.....Date: 10<sup>th</sup> January 2008

## Summary: Analysis & Evidence

**Policy Option:**  
Amendments to  
RoHS Regulations

**Description:** Amendments to Regulations in relation to exemptions and enforcement.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Businesses that are acting in accordance with the RoHS Regulations are not expected to incur any additional costs from the proposed changes to the Regulations.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0m	3	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 0.05-0.1m		<b>Total Cost (PV)</b> £ 0.1-0.3m
Other <b>key non-monetised costs</b> by 'main affected groups' Additional costs will fall on the public sector from an increase in resources for enforcement of the Regulations.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' It is difficult to quantify the benefits, but increases in expected compliance, and increases in environmental protection and protection of health are expected to produce benefits that exceed estimated costs.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0m		
	<b>Average Annual Benefit</b>		
	£ >0.1-0.3m		<b>Total Benefit (PV)</b> £ Not Quantified
Other <b>key non-monetised benefits</b> by 'main affected groups' The amendments to the RoHS Regulations are expected to increase RoHS compliance and this will provide a more level-playing field for UK businesses competing in the UK and European EEE market. Greater compliance will also produce environmental and health benefits to a			

**Key Assumptions/Sensitivities/Risks** It is assumed that the increased powers given to the enforcement body will lead to greater levels of compliance with the RoHS Regulations. It is this greater compliance which will produce the expected additional benefits.

Price Base Year 2007	Time Period Years 3	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b>
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1 February 2008			
Which organisation(s) will enforce the policy?	NWML			
What is the total annual cost of enforcement for these	£ 350,000 current			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£ 0	Decrease	£ 0	<b>Net</b> £ 0



Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Purpose and intended effect

#### Objective

1. The Department for Business, Enterprise and Regulatory Reform (BERR) Statutory Instrument (SI), *The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008*, revokes and replaces the UK's existing Regulations<sup>1</sup> ('the RoHS Regulations') which transpose into UK law, 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* (the 'RoHS' Directive).
2. The new Regulations make two changes to the existing UK RoHS Regulations. The first relates to exemptions from the requirements of the RoHS Directive as reflected in its Annex and following changes to its Annex. The second relates to enforcement of the RoHS Regulations.
3. In terms of exemptions to the RoHS Directive, the original Annex to the Directive has been revised by European Commission Decisions six times. Rather than make new Regulations every time a Decision is made, the new Regulations refer to the Annex and any amendments to the Annex (Regulation 5). Future amendments to the Annex of the RoHS Directive will be reflected in the UK's non-statutory Guidance supporting the Regulations so avoiding the need for new Regulations to be made each time an amendment is made. Any amendments will also be publicised on the websites of BERR and the UK's RoHS enforcement body.
4. In terms of enforcement of the 'RoHS' Directive, the new RoHS Regulations introduce powers to require persons to produce certain documents and information (Regulation 11), provide entry and inspection powers for the enforcement body (Regulation 12), and they introduce an 'Enforcement Notice' (Regulation 14) which is to follow failure to comply with the existing 'Compliance Notice'. The aim of the new Regulations is to enable the enforcement body to enforce the 'RoHS' Directive in the UK more effectively.

#### Background

5. The 'RoHS' Directive is a harmonising measure which has the legal basis of Article 95 of the Treaty establishing the Community. It aims to protect and promote the 'Internal Market' in electrical and electronic equipment (EEE) across Europe, by requiring member States to restrict certain hazardous substances in EEE to the same extent.
6. In unison with this, the 'RoHS' Directive aims to increase environmental protection, and to reduce risks to the health of workers from certain hazardous substances that have been historically used in the production of EEE. These hazardous substances can present a risk to the environment when EEE is discarded as waste (so called 'WEEE'), and a risk to the health of workers at the production stage of EEE and following its discard as WEEE.
7. The 'RoHS' Directive applies to eight of the ten categories of electrical and electronic equipment (EEE) set out in the Waste Electrical and Electronic Equipment Directive (the 'WEEE' Directive).

8. These eight categories of EEE are:

Category 1 - Large household appliances;  
Category 2 - Small household appliances;  
Category 3 - Information technology and telecommunications equipment;  
Category 4 - Consumer equipment;  
Category 5 - Lighting equipment;  
Category 6 - Electrical and electronic tools;  
Category 7 - Toys, leisure and sports equipment;  
Category 10 - Automatic dispensers.

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<sup>1</sup> *The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations, 2006* (SI 2006 No.1463)

9. The 'RoHS' Directive does not apply to two categories of EEE in the 'WEEE' Directive currently, namely Category 8 – Medical devices, and Category 9 – Monitoring and control equipment. However, the 'RoHS' Directive, unlike the WEEE Directive, applies also to electric light bulbs and luminaires in households.

10. The 'RoHS' Directive restricts the use of certain substances in the production of new EEE (i.e. EEE put on the market, for the first time, from 1 July 2006) that is within its scope. These substances are: lead; mercury; cadmium; hexavalent chromium; and two flame retardants – polybrominated biphenyls (PBB), and polybrominated diphenyl ethers (PBDE).

11. These substances have been highlighted as presenting particular risks to the environment and human health and animal health. These are outlined below as:<sup>2</sup>

- Lead. For humans, lead can result in a wide range of biological effects, with the main concern often being negative impacts on the central nervous system. Lead may accumulate in animal bone and cause deformities.
- Mercury. Mercury is toxic and possibly carcinogenic.
- Cadmium. Cadmium tends to bio-accumulate, with the main risk being kidney damage, but cadmium can produce a range of negative impacts on human health and on animal health.
- Hexavalent Chromium. Hexavalent Chromium can have a wide range of adverse effects on human and animal health ranging from skin irritation to cancer.
- PBBs, tetra-BDE, penta-BDE, and octa-BDE are toxic and dangerous to human and animal health.

12. Recognising that it is impossible to remove all traces of a substance, a European Commission Decision<sup>3</sup> amending the RoHS Directive applies maximum concentration values (MCVs) to these substances in homogeneous materials.<sup>4</sup> These MCVs<sup>5</sup> are as follows:

- 0.1 per cent by weight in homogeneous materials for lead, mercury, hexavalent chromium, PBE, and PBDE; and
- 0.01 per cent by weight in homogeneous materials for cadmium.

13. The 'RoHS' Directive, and so the UK's RoHS Regulations, place the obligation on producers<sup>6</sup> to ensure that the EEE they produce and place on the 'Internal Market' (and is within the scope of the legislation), does not exceed the MCVs for the six substances.

14. The 'RoHS' Directive provides a number of exemptions from its requirements. These are for spare parts for the repair of EEE that was first placed on the market prior to 1 July 2006; the re-use of EEE that was first placed on the market prior to 1 July 2006; and to specific applications of lead, mercury, cadmium, and hexavalent chromium.

15. The exemptions for specific applications are listed in the Annex to the 'RoHS' Directive. Since the 'RoHS' Directive entered into force on 13 February 2003, there have been a number of revisions to the list of exemptions for specific applications. The majority of these have been in relation to applications of lead in EEE.

#### *Rationale for Government Intervention*

16. The 'RoHS' Directive, and thus the UK's RoHS Regulations, aims to promote and protect the European 'Internal Market' in EEE. Potential barriers to trade caused by adoption of diverging national laws or administrative measures are often considered in terms of, so-called, 'non-tariff trade barriers'. In attempting to remove such barriers, to obtain the benefits from trade liberalisation,<sup>7</sup> Government plays an important role in establishing the

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<sup>2</sup> For more information see the European Commission's Explanatory Memorandum to the WEEE and RoHS Directives, COM(2000)347 final, and *Heavy Metals in Waste* (Commission DG Environment, 2002).

<sup>3</sup> Of 18 August 2005, 2005/618/EC.

<sup>4</sup> Homogeneous material means a material that cannot be mechanically disjointed into different materials.

<sup>5</sup> Which are based on existing Community chemicals legislation.

<sup>6</sup> Under the RoHS Directive, producers are manufacturers, re-sellers under 'own brand', and professional importers of EEE.

<sup>7</sup> The removal of such 'non-tariff trade barriers' can result in greater competition and increased innovation for the benefit of both business and consumers alike.

legislative framework in which businesses and consumers can conduct their transactions on a 'level playing field' within transparent and predictable rules.

17. The 'RoHS' Directive, and so the UK's RoHS Regulations, also aims to contribute to environmental protection and protection of human health and animal health. In terms of environmental protection, the use of hazardous substances in EEE can cause damage to the environment (for example, in terms of adverse effect on air, water, and soil quality) and damage to health (resulting from exposure). Where this damage is an unintended consequence it is unlikely to be taken into account by producers of EEE in their 'normal' operations. Government may be able to establish the appropriate use of hazardous substances in EEE which more closely reflects the 'full' social costs, over and above the private costs, of the use of certain hazardous substances in EEE.

#### *Consultation*

18. BERR, supported by DEFRA, represents the UK Government at Technical Advisory Committee (TAC) meetings in Europe where proposed amendments to RoHS exemptions, and other issues concerning the 'RoHS' Directive are discussed.

19. A partial IA of this final IA formed part of BERR's recent public consultation on draft new RoHS Regulations in the UK. There were five responses to the consultation, some of which commented on the partial IA, and these responses are reflected in this final IA.

#### **Options**

20. This final IA considers the costs and benefits of the UK's new RoHS Regulations compared to the 'business-as-usual' case of no changes to the UK's previous RoHS Regulations.

#### **Costs and Benefits**

##### *Sectors and groups affected*

21. Given the wide-ranging nature of the RoHS Directive it is difficult to provide exact figures on the number of businesses affected by the Directive, and so affected by the UK's Regulations. The range of business sectors includes: component suppliers; product assemblers; manufacturers (including original equipment manufacturers (OEMs); professional importers; and businesses re-branding equipment as their own.

22. One estimate is that there may be around 7,500 EEE manufacturers in the UK. Standard Industrial Classification (SIC) data suggests there may be in the region of 15,000 businesses which in theory may be directly affected by RoHS. However, of these two estimates, it is in turn estimated that around 50 per cent of these manufacture products outside of the scope of the 'RoHS' Directive, implying that some 3,750 – 7,500 UK businesses are potentially affected by the RoHS Regulations.

#### **Benefits**

##### **Exemptions (Regulation 5)**

23. The Annex to the original RoHS Directive provides for a number of exemptions from the RoHS Directive for certain applications of lead, mercury, cadmium and hexavalent chromium in EEE.

24. These exemptions mean that producers of EEE can still use these substances in the relevant application, above and beyond the maximum concentration values (MCVs) outlined in the 'RoHS' Directive and quantified in the European Commission Decision of 18 August 2005.

25. Since the 'RoHS' Directive came into force on 13 February 2003 there have been six Commission Decisions amending the original Annex to the RoHS Directive.<sup>8</sup> The majority of these Decisions are concerned with applications of lead.

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<sup>8</sup> These Decisions are dated: 13 October 2005; 21 October 2005; 21 April 2006; and 12 October 2006. All of these Decisions are available on the Commission's website at [http://ec.europa.eu/environment/waste/weee/legis\\_en.htm](http://ec.europa.eu/environment/waste/weee/legis_en.htm).

26. UK legislation needs to reflect these Commission Decisions. The UK's original RoHS Regulations of 2005 (SI 2005/2748) were revoked and replaced in 2006 by SI No.1463 (2006) to incorporate the four Commission Decisions between 18 August 2005 and 21 April 2006.

27. Since 21 April 2006 there have been three more Decisions affecting the Annex of the RoHS Directive. Industry continues to seek exemptions from the RoHS Directive for certain applications of lead, mercury, hexavalent chromium, and cadmium because of existing technical and scientific constraints in finding and utilising substitutes.

28. The UK's RoHS Regulations need to reflect Commission Decisions.

29. As part of the Government's 'Better Regulation' agenda, new provisions inserted into the European Communities Act 1972, by the Legislative and Regulatory Reform Act 2006, enable Regulations to be written such that they refer to the annexes of Directives and other provisions of Directives and other Community instruments as revised from "time to time." This avoids the need for new Regulations to be made each time an annex of a Directive changes, and facilitates quicker implementation of European legislation.

30. The new RoHS Regulations (Regulation 5) introduce a reference to the Annex of the RoHS Directive and a reference to any further amendments to this Annex.

31. This means that when the list of exemptions to the 'RoHS' Directive is altered in the future, the UK's existing RoHS Regulations, at the time, will not need to be revoked and replaced by new Regulations. Rather, changes to the Annex of the RoHS Directive will be reflected in the UK's non-statutory Guidance Document which supports the RoHS Regulations, and will be publicised on the websites of BERR and the UK's RoHS enforcement body.

32. This change to the UK's RoHS Regulations should produce the following benefits:

- Cost savings from not having to produce new Regulations every time the Annex to the 'RoHS' Directive is changed. Making new Regulations involves administrative costs in terms of the time taken and materials used to draft and make Regulations. Any cost savings are not expected to be very large, but should be significant enough to justify Regulation 5 of the RoHS Regulations, particularly where, as in this case, amendments are being made to reflect changes to a technical annex of a Directive.
- Reductions in the time-frame between Commission Decisions being published in the *Official Journal* and these Decisions being implemented in the UK. Currently, given the time taken to draft and make amending Regulations there is likely to be a delay of several months between Decisions being published in the *Official Journal* and being implemented in the UK. This delay can lead to confusion and uncertainty for UK producers and for others in the EEE supply chain. Regulation 5 of the RoHS Regulations would enable the UK to implement Commission Decisions much more quickly, and this should bring greater certainty and clarity for UK businesses.

### **Enforcement (Regulations 11 to 15)**

33. Under the UK's RoHS Regulations producers of EEE are required to ensure that new EEE, that is within the scope of the 'RoHS' Directive, they produce and that they place on the European 'Internal Market' does not contain more than the MCVs of the hazardous substances restricted by the 'RoHS' Directive.

34. In addition to this, producers are required to produce technical documentation and other relevant information, following a request from the Secretary of State for BERR, showing that the new EEE they have placed on the market is compliant with the RoHS Regulations. Producers are also required to retain this information for four years.

35. The UK's RoHS Regulations have been enforced, on behalf of the Secretary of State for BERR, by the National Weights and Measures Laboratory (NWML) since 2006.

36. This enforcement regime consisted of the following:

- The enforcement body could serve a compliance notice on a producer where that producer had not submitted to the Secretary of State for BERR, upon request and within 28 days, relevant information showing that the EEE that that producer had put on the market was compliant with the RoHS Regulations. A producer was also required to retain relevant information for a period of four years.
- The enforcement body could serve a compliance notice on a producer where the enforcement body had grounds to suspect that that producer had placed non-compliant goods on the market. A compliance notice required a producer to comply or provide evidence of compliance, and warned that producer of the possibility of prosecution.

- The enforcement body could make test purchases of EEE to determine whether this EEE was compliant with the RoHS Regulations.

37. The supply chain for EEE can be quite complex, as it can, for example, involve separate entities in terms of material and substance suppliers, parts and component suppliers, manufacturers, assemblers, distributors, and retailers.

38. The market for EEE is also international, involving many professional importers, and also involving many businesses that legitimately re-brand equipment manufactured or assembled by a third party, in addition to the vast number of brands and model types produced by the large multinationals, and other original equipment manufacturers (OEMs).

39. The UK's RoHS Regulations introduced in 2005 were implemented to be as 'light touch' as possible whilst achieving the 'Internal Market' and environmental and health benefits of the 'RoHS' Directive.

40. This 'light touch' approach was employed because of the relatively small amounts of cadmium, mercury, hexavalent chromium, and PBDE and PBB that were being used in EEE prior to the 'RoHS' Directive coming into force. In addition to this, producers had been moving away from the use of these hazardous substances themselves for reasons of protection of the health and safety of workers, and for reasons of environmental protection.

41. In addition, and in terms of the use of lead, though relatively large amounts of lead were used in the production of EEE compared to the other substances targeted by the 'RoHS' Directive, Japanese producers of EEE had voluntarily introduced lead-free solder, for environmental reasons, prior to the 'RoHS' Directive coming into force in Europe. This had a 'knock-on' effect to non-Japanese producers of EEE, particularly those using similar components and parts or producing similar equipment, and those selling EEE into Japan.

42. The initial steps taken to enforce the RoHS Regulations focused on education, and raising awareness amongst producers of EEE so as to enable them to comply effectively with the Regulations. It is now felt that enforcement needs to move a step forward and focus more on dealing with non-compliant businesses and products.

#### *Documents and Information*

43. Regulation 11 of the new RoHS Regulations gives the Secretary of State for BERR the power to require a person to provide him with relevant information in respect of producer obligations under the Regulations. Regulation 16(3) of the new Regulations makes it an offence to fail, without reasonable excuse, to comply with Regulation 11, or provide misleading or false information in complying.

44. The previous RoHS Regulations required a producer following a request by the Secretary of State for BERR, to supply him with relevant documentation and information within 28 days of the request.

45. Regulation 11 thus extends the power of the Secretary of State to obtain documentation and information, and applies it wider than just to a producer of EEE, and can, in theory, apply to any person in the EEE supply chain.

#### *Entry and inspection*

46. Regulation 12 of the new RoHS Regulations gives powers to enforcement officers to enter and inspect commercial premises, and take possession of samples, measurements, photographs, information and records, and to retain any of these for as long as they deem necessary. This Regulation will enable the enforcement body to gather more effectively the relevant information it needs to determine non-compliance with the RoHS Regulations.

#### *Enforcement Notice*

47. Regulation 15 of the new Regulations introduces an enforcement notice. This is to be triggered when a producer fails to comply with a compliance notice, or a producer continues to contravene the RoHS Regulations. It is believed that this enforcement notice will enable the enforcement authority to provide a better graduated response to non-compliant behaviour.

#### *Benefits*

48. Estimates from the UK's current RoHS enforcement body are that there may be up to 5-10 per cent of businesses placing EEE on the UK market which are non-RoHS compliant, and that the powers under the new RoHS Regulations could enable them to reduce this figure by up to 50 per cent.

49. Estimates of non-compliance are difficult to determine with accuracy given the wide-ranging nature of the 'RoHS' Directive itself in terms of the type and volume of products it covers, and in terms of the range of businesses involved in bringing EEE to market.

50. The estimates of non-compliance do not necessarily relate to UK manufacturers, and in many cases is more likely to be the consequence of sourcing EEE or materials and components from outside the European Union. The removal of such non-compliant product will enable UK businesses to compete for a share in the subsequently increased compliant market. However, it is difficult to quantify such a benefit because it depends not least on the type and volume of products that are non-compliant and removed, their value, and the extent to which UK businesses obtain an additional share of the compliant market.

51. In as much as removal of non-compliant product from the UK market results in removal from the European market, there could also be benefit to UK businesses from an increase in the size of the compliant market in Europe. But, again these benefits are difficult to quantify. However, given the size of the total EEE market in Europe it is likely that the benefits to UK businesses could exceed the estimated possible increased costs of enforcement under the new RoHS Regulations.

52. In addition, the removal of non-compliant product will yield environmental and health benefits as there will be a reduced risk that certain hazardous substances will end up in the environment, or have an adverse impact on the health of workers when EEE is disposed of in the future. The removal of non-compliant product would also restrict future production and reduce the exposure to certain hazardous substances of workers producing EEE. Given the scope and nature of the RoHS Regulations such benefits are however, difficult to quantify.

## **Costs**

### **Exemptions**

53. The new RoHS Regulations (Regulation 5) introduce a reference to the Annex of the RoHS Directive, and a reference to any further amendments to this Annex.

54. This means that when the list of exemptions to the RoHS Directive is altered in the future, the UK's RoHS Regulations will not need to be revoked and replaced by new Regulations. Rather, changes to the Annex of the RoHS Directive will be reflected in the UK's non-statutory Guidance Document which supports the RoHS Regulations.

55. It could be argued that though Regulation 5 is a de-regulatory measure it could lead to an increase in costs to UK businesses because they would need to access two documents rather than one to establish their position with respect to the 'RoHS' Directive. As it currently stands, businesses need to refer to the Regulations only, to establish exemptions to the Directive. Under Regulation 5 they would need to additionally consult the UK's non-statutory Guidance Notes supporting the RoHS Regulations to establish exemptions.

56. However, it is unlikely that many businesses affected by the 'RoHS' Directive do not consult both the UK's Regulations and non-statutory Guidance Notes to establish their position in relation to the Directive. 'Hit' counts from the internet suggest that up to twice as many people access the RoHS Guidance than the RoHS Regulations. It is thus not clear that in practice the changes to the UK's RoHS Regulations regarding exemptions will result in any significant additional costs to UK businesses. In addition, future changes to the Annex of the 'RoHS' Directive will be publicised on the websites of BERR and the RoHS enforcement body to promote awareness amongst businesses.

### **Enforcement**

57. The new RoHS Regulations give the enforcement authority increased investigative powers, and greater powers to deal with non-compliant activity. For businesses already complying with the RoHS Regulations it is not expected that there will be any significant additional costs.

58. Currently, businesses responding to requests for information from the Secretary of State for BERR are estimated to spend up to one hour on average proving this information. Not all businesses are asked for information. Rather, a sample is asked based on an assessment of risk undertaken by the enforcement body. This procedure is not expected to change in the future.

59. Businesses who at present do not respond to requests for information will receive follow-up requests, and where a non-response still results, this is likely to affect the 'risk profile' of these businesses and their products. This could lead the enforcement body to make test purchases, and their own enquires of the supply chain for certain products.

60. Given that such test purchases and enquiries take place currently they are not expected to result in additional costs to business. Rather, the additional powers of the enforcement body contained in the new Regulations are aimed at ensuring that non-compliant activity with respect to the RoHS Regulations is minimised, by enabling the enforcement body to focus its operations effectively on businesses in relation to their risk profile.

## **Costs to Public Sector**

61. Enabling changes to the Annex of the 'RoHS' Directive to be reflected in the UK's non-Statutory Guidance Notes rather than requiring a new set of Regulations to be made is expected to reduce costs to the public sector of implementing the 'RoHS' Directive in the UK. It is difficult to quantify these cost savings but there will be savings in terms of labour costs and material costs from not needing to produce new Regulations every time the Annex to the 'RoHS' Directive is changed.

62. It is likely that the Secretary of State's budget for enforcement (currently £350,000 per annum) will be increased by an amount of between £50,000 and £100,000 per annum. It is difficult to quantify the exact increase in costs from changes to the existing enforcement regime made by the Regulations, but this increase is expected to cover them.

## **Small Firms Impact Test**

63. The new RoHS Regulations are not expected to have any specific impacts on small firms as compared to large firms. The main obligations in respect of the 'RoHS' Directive remain as they were in the previous RoHS Regulations. Businesses that are complying with the RoHS Regulations are not expected to incur any significant additional costs as a consequence of the new Regulations.

## **Competition assessment**

64. Since 2002 it has been a requirement that RIAs (now IAs) contain an assessment of the potential impacts on competition of the proposal under consideration. The current competition assessment consists of four questions, to aid assessment of the impact of proposed regulation on markets.

65. The first question asks if the proposed regulation limits the number, or range, of suppliers. The new RoHS Regulations do not limit the ability of businesses to place EEE on the market, provided it is RoHS compliant.

66. The second question asks if the proposal indirectly could limit supply by, for example, raising the costs of new compared to existing suppliers, or affecting entry into or exit from the market. The new RoHS Regulations, like the previous Regulations, affect all businesses placing new EEE (within its scope) on the market, and costs will be incurred largely depending on the level of activity undertaken by businesses themselves.

67. The third question asks if the proposal limits the ability of suppliers to compete, for example, by limiting innovation, sales channels, or production processes, and the fourth question asks if the proposal reduces incentives for suppliers to compete. The new RoHS Regulations, like the previous Regulations, do not specify particular technologies, or production methods, nor do they prevent suppliers from competing in the EEE market.

## **Enforcement, sanctions and monitoring**

68. Currently, the National Weights and Measures Laboratory (NWML) enforce the UK's RoHS Regulations on behalf of the Secretary of State for BERR.

69. In terms of sanctions, the previous RoHS Regulations limited the amount of fines associated with procedural offences to a maximum of level 5 on the standard scale. This is currently £5,000. Under the new Regulations the same limit continues to apply in relation to a substantive offence, i.e. placing non-compliant products on the market, unless it is tried on indictment.

70. The effectiveness and operation of the RoHS Regulations are monitored by BERR.

## **Summary of costs and benefits**

71. The new UK RoHS Regulations involve two main changes to the Regulations. The first relates to exemptions from the Regulations, and the second relates to the enforcement of the Regulations themselves. It is not straightforward to estimate the costs and benefits of these changes.

72. In terms of exemptions, enabling the list of exemptions to be reflected in non-statutory Guidance as opposed to requiring new Regulations to be made should result in cost savings in terms of reductions in public sector, private sector, and parliamentary time taken in revising the RoHS Regulations. There should also be benefits in terms of reduced uncertainty and greater clarity from the UK being able to apply Commission Decisions within a shorter timeframe.



73. In terms of enforcement, UK businesses that are complying with the RoHS Regulations currently should not expect to incur any significant additional costs from the new enforcement regime. Estimates are that possibly up to 5-10 per cent of businesses placing products on the UK market may be placing non-compliant RoHS products on the UK market. It is also estimated that the additional powers of the enforcement body could reduce such non-compliance by up to 50 per cent. This would bring benefits to UK compliant businesses in terms of enabling them to compete on a more level playing field in the UK.

74. In as much as businesses are placing non-compliant EEE on the European market as well as on the UK market, the new RoHS Regulations should enable UK businesses to compete on a more level-playing field across the 'Internal Market'. To some extent this will depend on the interaction between enforcement bodies across Europe. The UK's RoHS enforcement body is an active member of the internal network of member State RoHS enforcement bodies.

75. There are also potential benefits in terms of increased protection to workers and the environment from certain hazardous substances being removed from the market and from not being disposed of incorrectly. All of these benefits are difficult to quantify. However, the size and nature of the EEE market in the UK and in the EU means that additional benefits are expected to exceed additional cost estimates from the new RoHS enforcement regime.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes



## SPECIFIC IMPACT TESTS

### Legal Aid

It is not clear to what extent those who would be subject to the new RoHS Regulations are eligible for legal aid, but as the SI is not expected to have any material effect on the criminal or civil liability of those who are subject to the proposed Regulations, they should not have any additional impact on legal aid in the UK.

### Sustainable Development

The SI is expected to have a positive impact on sustainable development in terms of, for example, impacts on air and/or water quality, and impacts on waste management, where the Regulations lead to greater levels of compliance in relation to the restriction of use of the hazardous substances covered by the Regulations.

### Carbon Impact Assessment

The SI is not expected to have any significant carbon impact. The main aims of the SI are to promote the European Internal Market and to provide environmental protection and protection of health when EEE is produced, and following its discard as waste..

### Other Environment

The SI has as one of its main aims the protection of the environment and health where EEE is produced and following its discard as waste. These benefits are discussed in the main text of the Impact Assessment.

### Race Equality Assessment

The SI does not have race equality as one of its aims specifically.

### Disability Equality

The SI does not have disability equality as one of its aims specifically.

### Gender Impact Assessment

The SI is not aimed at overcoming gender inequalities or eliminating barriers to inequality specifically.

### Human Rights

Most of the provisions of the SI do not engage any "Convention rights" within the meaning of the Human Rights Act 1998. Where the provisions of the SI could lead to the determination of a person's civil rights or of any criminal charge, it is considered that the relevant procedures comply with the requirements of Article 6 of the European Convention of Human Rights. Any impact which the provisions of the SI may have on the rights set out in Article 8 of, or Article 1 of, the First protocol to the Convention is considered to be consistent with the terms of those Convention rights.

## Rural Proofing

The SI is not expected to have significant impacts on rural areas or circumstances specifically.

## TRANSPOSITION NOTE

### ***Directive 2002/95/EC of the European Parliament and Council on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (“the RoHS Directive”)***

These Regulations revoke and replace the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 (S.I. 2006/1463), which transposed the RoHS Directive 2002/95/EC (O.J. No. L37, 13.2.03, pages 19 to 23) as amended by Commission Decision 2005/618/EC (O.J. No. L214, 19.8.05, page 65). The new Regulations also transpose amending Decisions 2005/717/EC (O.J. No. L271, 15.10.05, pages 48 to 50), 2005/747/EC (O.J. No. L280, 25.10.05, pages 18 and 19), 2006/310/EC (O.J. No. L115, 28.4.06, pages 38 and 39), 2006/690/EC (O.J. No. L283, 14.10.06, page 47), 2006/691/EC (O.J. No. L283, 14.10.06, pages 48 and 49) and 2006/692/EC (O.J. No. L283, 14.10.06, pages 50 and 51) concerning the list of exempt applications in the Annex to the original Directive.

The Secretary of State is responsible for taking measures to implement the RoHS Directive in relation to the making of these Regulations and any appointment relating to a person to act as an enforcement Authority responsible for enforcing these Regulations.

<b>Articles of the Directive relating to these Regulations</b>	<b>Objectives</b>	<b>Implementation</b>
Article 1	Outlines the purpose of the RoHS Directive	Regulation 1
Article 2	Defines the general scope of the RoHS Directive	The provisions outlining the scope of the Directive are implemented by regulations 4, 6 and 24(2) of, and the Schedule to, these Regulations.
Article 3	Definitions	The definitions have been generally copied out in regulation 3.
Article 4	Restricts the use of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers in electrical and electronic equipment put on the market from 1st July 2006.	The prohibition is set out in regulation 7 of these Regulations, whilst regulation 24 provides for the continuity of the obligation first introduced by the 2006 Regulations. Provisions for demonstrating compliance are set out in regulation 8.
Commission Decision 2005/618/EC amending the RoHS Directive pursuant to Article 5(1)(a)	To amend the RoHS Directive to establish maximum concentration values for each of the six hazardous substances mentioned in Article 4 in electrical and electronic equipment.	The relevant values are set out in regulation 7.
Articles 5 to 7	Administrative provisions relating to amendment and review of the Directive.	Not relevant to be transposed.
Article 8	To place an obligation on Member States to determine penalties applicable to the breach of the national	There is provision for offences and penalties in regulations 16 and 17.

	provisions that implements the requirements of the Directive.	
The Annex to the Directive and Commission Decisions 2005/717/EC, 2005/747/EC, 2006/310/EC, 2006/690/EC, 2006/691/EC and 2006/692/EC amending the Directive pursuant to Article 5(1)(b)	Specifies the specific applications of lead, mercury, cadmium, hexavalent chromium and polybrominated diphenyl ethers that are exempted from the requirements of the Directive: these are to be added to the Annex to the Directive	These are transposed through regulation 5 of these Regulations, taking advantage of the new provisions inserted into the European Communities Act 1972 by the Legislative and Regulatory Reform Act 2006, referring directly to the Annex to the Directive as amended from time to time.

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