

EXPLANATORY MEMORANDUM TO
THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT AND
RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN
ELECTRICAL AND ELECTRONIC EQUIPMENT (AMENDMENT)
REGULATIONS 2014

2014 No. 1771

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. Purpose of the Instrument

2.1 These Regulations:

- i) replace all references in the WEEE Regulations to the Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2006 (S.R. (NI) 2006 No. 509) (“the 2006 Regulations”) with references to the Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2014 (S.R. (NI) 2014 No. 202) (“the 2014 Regulations”) which replace the 2006 regulations
- ii) amend The Waste Electrical and Electronic Equipment Regulations 2013 (SI 2013/3113) (“the WEEE Regulations”) which transpose the main provisions of Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) which recasts Directive 2002/96/EC (“the WEEE Directive”);
- iii) amend The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (SI 2012/3032) (“the RoHS Regulations”) which transpose the main provisions of Directive 2011/65/EU on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (“the RoHS Directive”)

2.2 Regulation 2:

- (a) replaces references to the 2006 regulations with references to the 2014 regulations; (See paragraph 3.1)
- (b) corrects a number of minor drafting errors in the WEEE Regulations which have been brought to the attention of this Department following publication, and;
- (c) corrects a drafting error regulation 91 (Penalties) which was brought to the attention of the Department by the JCSI. (See paragraph 3.5 and 3.6)

2.3 Regulation 3 substitutes the word “will” for the word “must” in provisions which impose an obligation, so that only the word ‘must’ is used consistently where the regulations impose an obligation. (See paragraph 3.2 and 3.3)

2.5 Regulation 4 transposes a corrigendum to Article 9(b) of the RoHS Directive to correct a typographical error.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

The Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2014

3.1 Regulation 1(5) of the WEEE Regulations provides that regulations 59 and 65 do not apply to Northern Ireland. These two regulations do not apply in Northern Ireland because they provide for the imposition of administration charges and the levels at which the charges are to be set in Northern Ireland are set out in the 2006 regulations. The 2006 regulations have now been revoked and replaced with the 2014 regulations. The effect of this amendment, found in regulation 2(2) of this instrument, is to replace references to the 2006 regulations with a reference to the 2014 regulations, wherever the 2006 regulations are referred to in the WEEE Regulations.

Correction of errors for which the WEEE Regulations were reported by the JCSI

3.2 The WEEE Regulations (The Waste Electrical and Electronic Equipment Regulations 2013, SI 2013/3113) were reported by the JCSI in their 20th report of 2013-2014. The WEEE Regulations were reported for failure to comply with proper drafting practice in that the regulations used both the terms 'will' and 'must' to impose obligations which not only resulted in the inconsistent use of these terms in the regulations themselves but also, meant that the regulations were inconsistent with the Committee's observations about the use of the word 'will' made in its First Special Report of 2013-14.

3.3 In order to address this point, the Department has reviewed the WEEE Regulations and identified each time the word 'will' has been used to impose an obligation. Regulation 3 and Schedules 1 and 2 of this instrument substitute each use of the word 'will' (where it is used to impose an obligation) with the word 'must'. As a result of these amendments the term 'must' is used consistently throughout the WEEE Regulations and the regulations reflect the observations of the Committee in their First Special Report of 2013-14.

3.4 The JCSI's request for a Memorandum dated 22nd January 2014 is attached to this Explanatory Memorandum as Annex A.

3.5 The WEEE Regulations were also reported for defective drafting in that:

(a) regulation 91 (Penalties) did not make any reference to penalties in relation to an offence committed under regulations 90(10) or 90 (11), although these regulations create offences and;

(b) regulation 91(1) erroneously provided for penalties for an either way offence in relation to the vicarious liability offences created by regulations 90 (12), (13) and (15), when the underlying primary offence was punishable only on summary conviction.

3.6 This instrument substitutes regulation 91 of the WEEE Regulations with a new regulation 91 which creates penalties in relation to the offences created under regulation 90 (10), (11), (12), (13) and (15) all of which are punishable on summary conviction to a fine.

Free issue

3.7 Following the guidance in *Statutory Instrument Practice* the Department has consulted the SI registrar as to whether this instrument should be provided free of charge. The SI registrar has suggested that given the number of the changes made by this instrument, the free issue of this instrument is necessary to off-set any disadvantage caused to stakeholders who are using or who have already purchased the WEEE Regulations.

The 21 day rule

3.8 This instrument does not breach the 21 day rule.

4. Legislative Context

4.1 The WEEE 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, p38) into UK law. This instrument, which amends the WEEE Regulations, makes some administrative corrections to those regulations and reflects the observations of the Joint Committee on Statutory Instruments in relation to SI 2013/3113 and minor administrative corrections.

4.2 The main provisions of the RoHS Directive are transposed into national law by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 SI 2012/3032. This instrument transposes a Corrigendum to Article 9(b) of the RoHS Directive correcting a typographical error in the text of that Directive.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

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 policy background to the WEEE Directive is set out the Explanatory Memorandum that accompanied the WEEE Regulations, which is attached to this Memorandum as Annex B. There are no new policy issues arising from this amending Regulation.

7.2 The policy background to the RoHS Directive is set out the Explanatory Memorandum that accompanied the RoHS Regulations, which is attached to this Memorandum as Annex C. The change to the obligation in Article 9(b) by the Corrigendum, is unlikely to have significant impact given most stakeholders are aware of the typographic error in the Directive and are likely to have followed a common sense approach. This change will be clarified in the guidance. The Corrigendum has been publically available since it was published on 14 February 2014.

8. Consultation outcome

8.1 A formal consultation has not been undertaken in relation to this instrument as the amendments made are either administrative in nature or, seek to correct defective drafting in the WEEE Regulations and the RoHS Directive. It is unlikely there will be an impact on stakeholders as a result of these amendments.

9. Guidance

9.1 No 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>

9.2 Paragraph 6.1 of the existing guidance on the RoHS Regulations will need to be amended to remove the words: “*a register of non-conforming EEE and product recalls, carried out a conformity assessment procedure*” which will be replaced with “*check that the manufacturer has indicated their name, registered trade name or registered trade mark and the address at which they can be contacted on the EEE or, where that is not possible, on its packaging or in a document accompanying the EEE.*”. This change will be made as soon as is practicable. The existing guidance can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236285/bis-13-1142-restriction-of-hazardous-substances-regulations-guidance-2.pdf

10. Impact

10.1 The Department has not prepared an impact assessment in relation to this instrument because no additional impacts (to those considered in the Impact Assessments which accompanied the WEEE Regulations) are envisaged as a result of these amendments.

10.2 Two impact assessments were prepared in relation to the WEEE regulations. One assessment looked at the impacts of the different options for reform of the UK WEEE system and the second assessment, prepared after consultation, looked at the impact of the preferred option. Two impact assessments were prepared in relation to the 2013 WEEE Regulations. These assessments 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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249743/bis-13-1181-impact-assessment-waste-electrical-and-electronic-equipment-weee-system.pdf

10.3 The impact assessment that was prepared in relation to the RoHS regulations can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255814/bis-12-1277-final-impact-recast-restriction-of-hazardous-substances-directive.pdf

11. Regulating Small Business

There are unlikely to be impacts on small businesses arising from this Regulation.

12. Monitoring And Review

The 2013 WEEE Regulations will be reviewed on 1st January 2019, five years after they come into force on 1st January 2014. Should it be decided that the legislation is no longer fit for purpose following this review, the legislation will be amended accordingly.

13. Contact

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