

**EXPLANATORY MEMORANDUM TO**  
**THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN**  
**ELECTRICAL AND ELECTRONIC EQUIPMENT (AMENDMENT)**  
**REGULATIONS 2019**

**2019 No. 492**

**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 This instrument implements Directive 2017/2102/EU of the European Parliament and of the Council of 15th November 2017 (OJ No. L305, 21.11.2017, p.8) (“the amending Directive”), which amends Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) (OJ No. L174, 01.07.2011, p.88) (“the 2011 Directive”). The 2011 Directive was implemented in the United Kingdom by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (S.I. 2012/3032), as amended (“the 2012 Regulations”). The 2011 Directive imposes harmonised restrictions on the use of certain listed hazardous substances in 11 categories of electrical and electronic equipment (“EEE”) which are: Large household appliances, Small household appliances, IT and telecommunications equipment, Consumer equipment Lighting equipment, Electrical and electronic tools, Toys, leisure and sports equipment, Medical devices, Monitoring and control instruments including industrial monitoring and control instruments, Automatic dispensers and other EEE not covered by any of these categories. It also requires the use of EU declarations of conformity and CE marking, and provides for market surveillance. The 2011 Directive seeks to reduce the risks posed by hazardous substances to health and the environment. These Regulations amend the 2012 Regulations which can be accessed here: <http://www.legislation.gov.uk/ukxi/2012/3032/contents/made>

2.2 This instrument amends the following provisions of the 2012 Regulations:

- (a) The restriction of the second-hand sale of electrical equipment from July 2019. Such an outcome would be in conflict with the waste hierarchy, which puts reuse and refurbishment above recycling;
- (b) The inability to repair or upgrade equipment that falls within the scope of the 2011 Directive after July 2019, with new cables or spare parts. This would be undesirable from both an environmental and an economic perspective;
- (c) An inadvertent ban on new pipe organs being placed on the EU market, as they would not be RoHS compliant due to the amount of lead required to produce the pipes;
- (d) The different treatment of cord connected non-road mobile machinery, such as professional cleaning machines (which would be caught by the 2011 Directive), in comparison with otherwise identical machinery powered by a battery or an on board power supply (which would be exempt).

### **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 is the UK.

4.2 The territorial application of this instrument is the UK.

### **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 Regulation 3 of these Regulations updates the definition of the 2011 Directive in regulation 2 of the 2012 Regulations (the interpretation provision) by substituting a reference to the most recent amending Directive, which is Commission Delegated Directive (EU) 2019/178 (OJ L 33, 5.2.2019, p. 32–34). Regulation 3 also adds a definition of Directive 2002/95/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ No L 37, 13.2.2003, p. 19) in regulation 2 of the 2012 Regulations.

6.2 Regulation 6 of these Regulations amends Parts 2 and 3 of Schedule 1 to the 2012 Regulations (EEE to which the Regulations do not apply). Regulation 6(2) amends the definition of non-road mobile machinery and adds pipe organs to Part 2 of Schedule 1 of the 2012 Regulations.

6.3 Regulation 6(3) amends Part 3 of Schedule 1 to the 2012 Regulations (categories of EEE with special rules of application). Regulation 6(3)(a) amends paragraph 22 so as to extend the exclusion in relation to the second-hand sale of electrical equipment. Regulation 6(3)(b) amends paragraph 23 of Schedule 1 so as to extend the exclusion in relation to cables and spare parts. Regulation 6(3)(c) amends paragraph 24 of Schedule 1 so as to extend the exclusion in relation to reused spare parts.

### **7. Policy background**

#### *What is being done and why?*

7.1 The 2011 Directive lays down rules on the restriction of the use of certain hazardous substances in electrical and electronic equipment. The provisions of the Directive apply to EEE placed on the EU market regardless of whether they are produced in the EU or in third countries and then imported into the EU market. The production of EEE is a globalised activity which takes place in many countries across the world.

Thus, the 2011 Directive affects mainly industrial manufacturers, importers and distributors of EEE, and, to a lesser extent, EEE customers.

- 7.2 The 2011 Directive is necessary to prevent barriers to trade and distortion of competition in the Union, which could have been generated by disparities between the laws or administrative measures if these were adopted individually by the Member States and to contribute to the protection of human health and the environmentally sound recovery and disposal of waste EEE.
- 7.3 RoHS 2 sets out rules on the restriction of six hazardous substances (lead, mercury, cadmium, hexavalent chromium & 2 flame retardants - PBB, & PBDE) (ten from July 2019) in the manufacture of certain categories of EEE placed on the EU market. The Directive aims to prevent these substances from entering the production process, thereby keeping them out of the waste stream after the equipment is disposed of at end of life. It also ensures the free movement of goods and equipment across the EU by applying the same restrictions to producers placing product on the market across all EU Member States.

***Issues introduced by the recast.***

- 7.4 The 2011 Directive is a recast of the earlier RoHS Directive 2002/95/EC (OJ No L37, 13.02.2003, p. 19 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0095&from=EN> (as amended). It introduced new definitions and expanded the scope to cover medical devices and monitoring and control instruments. These provisions were already impact assessed with the Commission's proposal in 2008. However, 2011 Directive also introduced further changes: the 'open scope' by, firstly, introducing a new category 11 "Other EEE not covered by any of the other categories", so that the Directive became applicable to all EEE and, secondly, a broader interpretation of EEE as a result of a new definition of the dependency on electricity. These open scope provisions were introduced during the codecision procedure of the recast and they were not specifically impact assessed.
- 7.5 The 2011 Directive, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0065&from=EN> Article 2(4) provides a 10 entry list of specific equipment which is excluded from the new scope; this list defines the only EEE currently not under the scope of the new Directive.
- 7.6 Moreover, to ease the phasing in of the additional EEE that had been introduced through the open scope, the 2011 Directive provides for a transitional arrangement until 22 July 2019 for electrical and electronic equipment that was outside the scope of the 2002 Directive and that is now in scope of the 2011 Directive. The phase in transition allows that new in scope EEE can still be placed and circulated on the EU market until 22 July 2019, even if they contain restricted substances. However, undesired implications of this provision hampering secondary market operations have been discovered after the publication of the 2011 Directive. As pointed out in the strategy on the circular economy recently proposed by the Commission, in most cases the extension of the EEE lifetime via repair, resale and refurbishment is both economically and ecologically desirable and a positive contribution to resource efficiency.

## **8. European Union (Withdrawal) Act 2018/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 2018.

## **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 06 November to 4 December 2018 and can be found here: [https://consult.defra.gov.uk/waste-and-recycling/consultation-on-amendments-torohs-regulations/supporting\\_documents/ROHS%20Consultation%20Document%20.pdf](https://consult.defra.gov.uk/waste-and-recycling/consultation-on-amendments-torohs-regulations/supporting_documents/ROHS%20Consultation%20Document%20.pdf)

10.2 The summary of consultation responses and the UK government's response to proposed amendments is published here: <https://www.gov.uk/government/consultations/amending-the-use-of-hazardous-substances-in-electrical-and-electronic-equipment-regulations/outcome/summary-of-responses-and-government-response>

10.3 This instrument will amend the 2012 RoHS Regulations and transpose the amending Directive into UK Law.

## **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/weeregulations-2013-government-guidance-notes>

## **12. Impact**

12.1 There is no impact on charities or voluntary bodies.

12.2 There is no impact on the public sector. The amendments to the RoHS Directive are deregulatory in nature and, therefore, add no additional financial costs to businesses or public sector. If we don't transpose, it is estimated that the cost to business will be over £30m per year and around £335m over a ten year period.

12.3 An Impact Assessment has not been prepared for this instrument because it is a deregulatory measure; a Regulatory Triage Assessment has been prepared and published together with the Government's response on the legislation.gov.uk website. These amendments will be implemented by Defra and enforced by the Office for Product Safety & Standards in BEIS.

## **13. Monitoring & review**

13.1 The 2012 RoHS Regulations came into force from January 2013 and were reviewed for the 1<sup>st</sup> time after five years. A report was published in May 2018, can be accessed here; [http://www.legislation.gov.uk/ukxi/2012/3032/pdfs/ukxi0d\\_20123032\\_en.pdf](http://www.legislation.gov.uk/ukxi/2012/3032/pdfs/ukxi0d_20123032_en.pdf) Reviews are to be carried out after every five years.

## **14. Contact**

- 14.1 Jameson Mashakada at the Department for Environment, Food and Rural Affairs, Ground Floor, Seacole Building, 2 Marsham Street, London, SW1P 4DF, Telephone: 020 7895 5687 and email: [Jameson.Mashakada@defra.gov.uk](mailto:Jameson.Mashakada@defra.gov.uk) can answer any queries regarding the instrument.
- 14.2 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.
- 14.3 Dr Thérèse Coffey MP, Parliamentary Under-Secretary of State for Environment and Rural Life Opportunities at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.