
STATUTORY INSTRUMENTS

2020 No. 1647

The Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020

PART 2

Retention of legislative functions: restriction of hazardous substances in electrical and electronic equipment

Interpretation

2. In this Part and in Schedule 1—

“the 2012 Regulations” means the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012⁽¹⁾;

“EEE” has the meaning given in regulation 4 of the 2012 Regulations, and a reference to a numbered category of EEE is a reference to the category of EEE so numbered in Schedule 1 to the 2012 Regulations;

“exemption” means an exemption, for a specified application of a specified material or component of EEE, from the restriction in regulation 3(1) of the 2012 Regulations on the use of certain hazardous substances in EEE;

“expiry date”, in relation to an exemption in Table 1 in Schedule A2 to the 2012 Regulations⁽²⁾, means the date specified in the sixth column of that table as the date on which, subject to regulation 5(8), the exemption expires;

“GB REACH” means Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)⁽³⁾;

“homogeneous material” has the meaning given in regulation 3(3) of the 2012 Regulations;

“restricted substance” means a substance listed in Schedule A1 to the 2012 Regulations⁽⁴⁾;

“the list of restricted substances” means the list of substances set out in Schedule A1 to the 2012 Regulations;

“waste” means any substance or object which the holder discards or intends or is required to discard.

Power to amend list of restricted substances and maximum concentration values

3.—(1) The Secretary of State may, by regulations, make provision for or in connection with—

(1) [S.I. 2012/3032](#), amended by [S.I. 2014/1771](#), [2018/942](#) and [2019/492](#), and prospectively amended from IP completion day by [S.I. 2019/188](#). [S.I. 2019/188](#) is amended by [S.I. 2020/1540](#) to limit the extent of its amendments to [S.I. 2012/3032](#) to England and Wales and Scotland.

(2) Schedule A2 is inserted into the 2012 Regulations by regulation 12(8) of, and Schedule 2 to, these Regulations.

(3) EUR 2006/1907.

(4) Schedule A1 is inserted into the 2012 Regulations by regulation 12(8) of, and Schedule 2 to, these Regulations.

- (a) amending the list of restricted substances;
 - (b) prescribing maximum concentration values by weight of restricted substances in homogeneous materials which may be contained in EEE placed on the market.
- (2) Regulations under paragraph (1) may only be made—
- (a) for the purpose of contributing to achievement of the objective of the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE, and taking account of the precautionary principle; and
 - (b) following a review of the list of substances.
- (3) When carrying out a review of the list of substances or making regulations under paragraph (1), the Secretary of State must—
- (a) take into account other relevant legislation relating to chemicals, including among other things Annexes 14 and 17 to GB REACH, and use publicly available knowledge obtained from the application of such legislation;
 - (b) take into account whether a substance, including substances of very small size or with a very small internal or surface structure, or a group of similar substances—
 - (i) could have a negative impact during EEE waste management operations, including on the possibilities for preparing for the reuse of waste EEE or for recycling of materials from waste EEE;
 - (ii) could give rise, given its uses, to uncontrolled or diffuse release into the environment of the substance, or could give rise to hazardous residues, or transformation or degradation of products through the preparation for reuse, recycling or other treatment of materials from waste EEE under current operational conditions;
 - (iii) could lead to unacceptable exposure of workers involved in the waste EEE collection or treatment processes;
 - (iv) could be replaced by substitutes or alternative technologies which have less negative impacts.

Power to prescribe detailed rules for complying with maximum concentration values

4. The Secretary of State may, by regulations, make provision for or in connection with prescribing detailed rules for complying with maximum concentration values.

Power to grant, extend or revoke exemptions

5.—(1) The Secretary of State may, by regulations, amend Schedule A2 to the 2012 Regulations to make provision for or in connection with granting, renewing or revoking an exemption.

- (2) Regulations under paragraph (1) may only be made if they are for the purposes of—
- (a) adapting Schedule A2 to take into account scientific or technical progress; and
 - (b) contributing to achievement of the objective of the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE.
- (3) The Secretary of State must, when making regulations under paragraph (1)—
- (a) when determining whether to grant or renew an exemption, take into account the availability of substitute materials or components and the socioeconomic impact of substitution;
 - (b) when determining the duration of an exemption, take into account any potential adverse impacts on innovation;

- (c) where relevant, take into account the overall environmental, social and economic impacts of an exemption over the whole duration of the exemption.
- (4) The regulations may not make any provision which the Secretary of State considers would weaken the environmental or health protection afforded by GB REACH.
- (5) The regulations may not grant or renew an exemption unless the Secretary of State considers that—
 - (a) the elimination or substitution of the material or component, via design changes or use of materials or components which do not include any restricted substances, is scientifically or technically impracticable;
 - (b) the reliability of substitute materials or components is not ensured; or
 - (c) the total negative environmental, health and consumer safety impacts caused by substitution of another material or component is likely to outweigh the total environmental, health and consumer safety benefits of the substitution.
- (6) Subject to paragraph (9), regulations which grant or renew an exemption must specify its expiry date.
- (7) The expiry date must be not more than—
 - (a) 5 years from the date on which the exemption or renewal comes into force, for an exemption relating to EEE in category 1 to 7, 10 or 11;
 - (b) 7 years from the date on which the exemption or renewal comes into force, for an exemption relating to EEE in category 8 or 9.
- (8) The expiry date for an exemption is subject to—
 - (a) any regulations which may be made by the Secretary of State to revoke the exemption from an earlier date, or to renew the exemption; and
 - (b) the exemption continuing into force after its expiry date under regulation 6(4) or 7(4), or the expiry date not applying by virtue of regulation 10(3), where the circumstances specified in those paragraphs apply.
- (9) Regulations need not specify an expiry date for an exemption if the exemption is for spare parts for EEE manufactured before a date specified in the regulations.
- (10) The Secretary of State must make regulations to revoke an exemption if the Secretary of State considers that—
 - (a) the exemption weakens the environmental or health protection afforded by GB REACH; or
 - (b) the relevant condition in paragraph (5) is no longer fulfilled in relation to the exemption.

Applications for granting, renewing or revoking an exemption

- 6.—**(1) Subject to paragraph (5), a person specified in paragraph 1 of Schedule 1 may make an application to the Secretary of State for the granting, renewal or revocation of an exemption.
- (2) An application—
 - (a) must be made in such form and manner as the Secretary of State may specify;
 - (b) must include the information set out in paragraph 2 of Schedule 1; and
 - (c) if the application is for the renewal of an exemption, must be made no later than 18 months before the exemption expires.
 - (3) Where the Secretary of State receives an application in accordance with paragraphs (1) and (2), the Secretary of State must—
 - (a) within one month, provide to the applicant—

- (i) an acknowledgement of receipt of the application; and
 - (ii) an estimate of the time within which the Secretary of State will determine the application and, if applicable, the time within which the Secretary of State will make regulations to implement the determination;
 - (b) publish a summary of the application;
 - (c) consider, in particular, the matters referred to in paragraphs (2) to (5) of regulation 5;
 - (d) consult such persons as the Secretary of State considers appropriate about the application; and
 - (e) publish a summary of the responses to the consultation.
- (4) If an application is made under paragraph (1) for the renewal of an exemption in Table 1 of Schedule A2 to the 2012 Regulation, the expiry date for the exemption does not apply, and instead—
- (a) the exemption continues in force until the Secretary of State determines the application; and
 - (b) thereafter regulation 7(3) or (4) applies.
- (5) No application may be made for the renewal of an exemption if—
- (a) the expiry date of the exemption is before 1st July 2022; or
 - (b) regulation 10(2) applies.

Determinations

7.—(1) When the Secretary of State determines whether to grant, renew or revoke an exemption, the Secretary of State must publish a summary of the determination and, if applicable, the date on which the exemption is to cease to apply.

(2) If the determination is to grant or renew an exemption, or to revoke an exemption before its expiry date, the Secretary of State must make regulations under regulation 5 to give effect to the determination.

(3) If the Secretary of State decides to renew an exemption, the exemption remains in force until the Secretary of State makes regulations to give effect to the determination.

(4) If the Secretary of State decides—

- (a) not to renew an exemption; or
- (b) to revoke an exemption before its expiry date,

the exemption remains in force until such date as the Secretary of State determines, which must be not less than 12 months and not more than 18 months after the date on which the determination is made.

Consultation

8.—(1) Before making any regulations under this Part, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(2) The Secretary of State must publish a summary of the responses to a consultation under paragraph (1).

(3) A consultation on regulations under regulation 3(1) must contain at least the following information—

- (a) precise and clear wording of any proposed restriction, or amendment of a restriction;
- (b) references and scientific evidence for the restriction, or amendment of a restriction;

- (c) information on the use of the substance, or the group of similar substances, in EEE;
 - (d) information on detrimental effects and exposure, in particular during waste EEE management operations;
 - (e) information on possible substitutes and other alternatives, and on their availability and reliability;
 - (f) justification for the proposed provision being the most appropriate measure;
 - (g) a socioeconomic assessment of the effect of the proposed provision.
- (4) Paragraph (1) does not apply—
- (a) to regulations under regulation 3(1) which are implementing a review of the list of restricted substances, if the Secretary of State has already consulted as part of that review, provided that such consultation satisfies the requirements in paragraph (3);
 - (b) to regulations under regulation 5 if—
 - (i) the Secretary of State has already consulted in accordance with regulation 6(3)(d) or 10(9) before deciding to make the regulations; or
 - (ii) regulation 9(3)(b) or 10(8)(b) applies.

Transitional provision: new exemptions

- 9.—(1) Paragraph (3) applies where—
- (a) the Secretary of State proposes, either on an application under regulation 6 or on the Secretary of State’s own initiative, to make regulations under regulation 5(1) granting an exemption (“the proposed exemption”); and
 - (b) the conditions in paragraph (2) are satisfied in relation to the proposed exemption.
- (2) The conditions are that—
- (a) before IP completion day, an application has been made to the European Commission for an exemption to be granted under Article 5 of [Directive 2011/65/EC](#);
 - (b) on or after IP completion day, the European Commission publishes a decision to grant that exemption (“the EU exemption”); and
 - (c) the proposed exemption has substantially the same effect as the EU exemption.
- (3) Where this paragraph applies—
- (a) the Secretary of State may treat the requirements in paragraphs (2) to (5) of regulation 5 as satisfied, without considering or determining any of those matters; and
 - (b) the Secretary of State is not required to consult before determining the application (if any) or making the regulations.

Transitional provision: renewal of exemptions

- 10.—(1) In this regulation—
- (a) a “relevant exemption” means an exemption in Table 1 in Schedule A2 to the 2012 Regulations (“the table”) in respect of which either—
 - (i) in the entry in the table, in the column headed “expiry date or status”, it states “transitional case”(5); or

(5) In respect of all the entries in the table for which the entry in column 5 states “transitional case”, an application was made to the European Commission for renewal of the corresponding EU exemption on or before 17th April 2020, and had not been determined by the European Commission at that date.

- (ii) paragraph (i) does not apply but, before IP completion day, an application has been made to the European Commission for renewal of the corresponding EU exemption;
 - (b) “the corresponding EU exemption”, in relation to an exemption in the table, means the exemption in Annex 3 or 4 to [Directive 2011/65/EC](#) with the number specified in the fourth column of the entry in the table for that exemption.
- (2) No application may be made to the Secretary of State for the renewal of a relevant exemption.
- (3) If an expiry date is specified in the entry in the table for a relevant exemption, that expiry date does not apply.
- (4) A relevant exemption remains in force until the Secretary of State makes a determination under paragraph (5) or (6), and thereafter regulation 7(3) or (4) applies.
- (5) The Secretary of State must determine whether or not to renew a relevant exemption if the European Commission has published a decision whether to renew the corresponding EU exemption.
- (6) Where, in relation to a relevant exemption, the European Commission has not published a decision whether to renew the corresponding EU exemption, the Secretary of State may, at any time, determine on the Secretary of State’s own initiative whether to renew the relevant exemption.
- (7) When making a determination under paragraph (5) or (6), the Secretary of State must take into account—
- (a) any publicly available information about the application for renewal of the corresponding EU exemption; and
 - (b) if the European Commission has published its decision on that application, that decision.
- (8) Where the Secretary of State proposes to make a determination under paragraph (5) which has substantially the same effect as the European Commission’s decision in relation to the corresponding EU exemption—
- (a) the Secretary of State may treat the requirements in paragraphs (2) to (5) of regulation 5 as satisfied, without considering or determining any of those matters; and
 - (b) the Secretary of State is not required to consult before making the determination, or (if the determination is to renew the exemption) before making any regulations to give effect to the determination.
- (9) Except where paragraph (8) applies, before making a determination under paragraph (5) or (6) the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Regulations: general

- 11.**—(1) Regulations by the Secretary of State under this Part are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Regulations under this Part may—
- (a) include consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments);
 - (b) make different provision for different purposes.