EXPLANATORY MEMORANDUM TO

THE RESTRICTION OF HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT (EXEMPTIONS) (FEES) REGULATIONS 2022

2022 No. XXXX

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes provision for the payment of fees for applications made under regulation 6 of the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (S.I 2020/1647) ("the 2020 Regulations"). Applications are for the grant, renewal, or revocation of an exemption from the restriction in regulation 3(1) of the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (S.I 2012/3032) ("the RoHS Regulations").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State Trudy Harrison has made the following statement regarding Human Rights:

"In my view the provisions of The Restriction of Hazardous Substances in Electrical and Electronic Equipment (Exemptions) (Fees) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument makes provision for the charging of fees in connection with the exercise of a function conferred on the Secretary of State by the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (S.I 2020/1647) ("the 2020 Regulations"), which are made under section 8 (1) of the European Union (Withdrawal) Act 2018. The function conferred on the Secretary of State is to determine applications made under regulation 6 of the 2020 Regulations for the grant, renewal or revocation of an exemption from the

restriction in regulation 3(1) of the RoHS Regulations, a function previously exercised by the European Commission under Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS Directive") in relation to England, Wales and Scotland. The European Commission continues to exercise this function in relation to Northern Ireland under the Northern Ireland Protocol.

6.2 Treasury consent is required and has been given in relation to this instrument.

7. Policy background

What is being done and why?

7.1 The RoHS Regulations restrict the use of certain substances that were once commonly used in the manufacture of electrical and electronic equipment, but which can cause harm to the environment and human health when the equipment becomes waste and released into the environment.

7.2 Industry can apply for exemptions to the substance restrictions for specific products. Applications are granted if specific criteria are met following a detailed technical evaluation. This process was carried out by the European Commission but following the UK's exit from the EU, the power to grant, renew or revoke exemptions, in relation to GB, was transferred to the Secretary of State by the 2020 Regulations.

7.3 As a result of this transfer of functions, there are new costs to the public purse. There is no cost to Member States or an applicant for the European Commission to appraise exemption applications made under the RoHS Directive. There are, therefore, no current means to charge applicants for the cost of processing and evaluating GB applications for exemptions. As part of the William Priest savings and efficiencies review carried out during 2021, Defra ministers agreed to work towards making the process of applying for exemptions to the RoHS Regulations self-financing by the end of the Spending Review period.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 When the UK was a member of the EU, applications for exemptions to the RoHS Directive and consequentially to the RoHS Regulations were submitted to and processed by the European Commission. On leaving the EU, this function was, in relation to GB, transferred to the Secretary of State bringing with it new costs to the public purse.

Why is it being changed

7.5 The costs of processing and determining applications for exemptions is currently being met by taxpayers. This instrument introduces a fee of an amount calculated to cover the costs of assessing and processing such applications. Transferring the costs of assessing and processing applications for exemptions from the taxpayer to applicants (industry) on a cost recovery basis is in keeping with the principles of Managing Public Money. Defra ministers had agreed to work towards making the process of applying for exemptions to the RoHS Regulations self-financing by the end of the current spending review period.

What will it now do?

7.6 This instrument will introduce an application fee payable when the applicant submits their application for an exemption from April 2023. It also makes provision for the fee to be set or determined in a charging scheme. Any such fee will replace the fee set out in this instrument. This instrument also makes provision for refunds. These are payable to the applicant where criteria specified in this instrument are met. The refund is only applicable to the fee set out in this Instrument. Separate provision can be made in a charging scheme for any refund

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under paragraph 1 of Schedule 4 to the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 A six-week public consultation closed on 26 August. Fifty-four responses were received from producers and their trade bodies. Of those, 53 disagreed with the consultation proposals citing the following points: the UK should simply follow EU exemption decisions to avoid duplication of effort, unnecessary costs to supply UK and avoid divergence; the introduction of an application fee will result in businesses withdrawing (sometimes essential) product from UK rather than applying for exemptions; even if applications are submitted by trade bodies (as is often the case) with costs shared amongst their members, non-member companies could use the exemption and avoid those costs, business may choose to supply non-compliant product instead of applying for an exemption.

10.2 The Government Response confirms the policy position set out in the consultation and makes clear that government must consider exemption applications in the context of environmental, socio and economic impacts in a UK rather than an EU context, that the fee is set strictly on a cost recovery basis and that it will be reviewed regularly; that if the cost of processing an application falls below the amount charged, that an appropriate refund would be made; that there is already considerable cost to industry in preparing exemption applications and a track record of collaboration across supply chains which we would expect to continue under a charging model. In response to the risk of essential equipment being withdrawn from the UK market, the Government Response confirms the Secretary of State has powers to grant exemptions without the need for applications from industry and which could be used in extraordinary circumstances where, for example, essential equipment for the NHS was likely to be impacted due to suppliers choosing not to re-new their exemption.

11. Guidance

11.1 Guidance is being developed. It is anticipated that this guidance will be ready to be published before the introduction of the application fee on 6th April 2023

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the measures fall outside the Better Regulation Framework.

12.4 The instrument is solely concerned with charging fees and associated costs related only to those incurred by a public body (i.e., Defra) or those acting on behalf of a public body. The measure also falls below the +/- £5m threshold for which an impact assessment is required.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to maintain the existing approval criteria for exemption applications in which an approval is granted for the product rather than to the individual organisation that applied for the exemption. Applications will likely continue to be submitted on behalf of a sector from which the whole supply chain will benefit including SMEs. As indicated above, the measures set out in this instrument fall outside the scope of the Better Regulation Framework.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Liz Moorman at the Department for Environment, Food and Rural Affairs email: liz.moorman@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Trudy Harrison at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations

1.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum

2. Legislative sub-delegation

2.1 The Parliamentary Under Secretary of State, Trudy Harrison has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view it is appropriate to create a relevant sub-delegated power in The Restriction of Hazardous Substances in Electrical and Electronic Equipment (Exemptions) (Fees)."

2.3 This is appropriate because the sub-delegated power is necessary to respond expediently to changes in Defra costs, structures and market conditions such that the application fee charged is based strictly on a cost recovery model at all times whilst ensuring a high-level of parliamentary and departmental scrutiny.