EXPLANATORY MEMORANDUM TO

THE RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN ELECTRICAL AND ELECTRONIC EQUIPMENT (AMENDMENT) REGULATIONS 2023

2023 No. 658

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends Schedule A2 to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (S.I 2012/2032) ('the RoHS Regulations') as they apply in England, Wales and Scotland. The RoHS Regulations ensure the electrical and electronic equipment ("EEE") placed on the market does not contain certain hazardous substances or does not contain those substances in concentrations exceeding specific maxima. Schedule A2 lists exemptions to those restrictions.

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 is England, Wales, and Scotland.

4.2 The territorial application of this instrument is England, Wales, and Scotland.

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 This instrument is made in exercise of the powers conferred on the Secretary of State in relation to England and Wales and Scotland, by regulation 5 of the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 ("the 2020 Regulations").

6.2 Regulation 5 of the 2020 Regulations allows the Secretary of State to grant, extend or revoke exemptions listed in Schedule A2 to the RoHS Regulations.

6.3 The amendments, which relate to the renewal or revocation of the exemptions listed at 1 – 9 of Table 1 in Schedule A2, for mercury to be used in various types of lighting, trigger transitional provisions set out in Regulation 10 of the 2020 Regulations. This is because the determinations in respect of the exemptions have substantially the same

effect as the decisions the European Commission has published to renew or revoke the corresponding EU exemptions. (See EU Delegated Directives 2022/274 -287).

6.4 The Secretary of State has therefore treated the requirements in regulation 5(2) to (5) of the 2020 Regulations as having been satisfied and has not consulted before making the relevant determinations in respect of these exemptions.

7. Policy background

What is being done and why?

7.1 The RoHS Regulations restrict the use of 10 hazardous substances in electrical and electronic equipment (EEE) with a view to contributing to the protection of human health and the environment, including the sound recovery and disposal of waste.

7.2 This instrument uses powers transferred from the European Commission under the RoHS Directive to the Secretary of State in relation to England and Wales and Scotland to amend the list of exemptions in Schedule A2 to the RoHS Regulations.

7.3 Specifically, this instrument will either renew or revoke exemptions 1 – 9 in Table 1 of Schedule A2, which are concerned with the use of mercury in various types of lighting. Some exemptions are being renewed because there are no reliable, scientifically, or technically practicable substitutes to mercury that would enable the relevant equipment to work properly. Other exemptions are being revoked as there are reliable mercury-free substitutes for use in the equipment and the substitution is scientifically and technically practicable.

7.4 Under regulation 7(4) of the 2020 Regulations, where the Secretary of State has decided not to renew an exemption or to revoke an exemption before its expiry date, the exemption remains in force until a date the Secretary of State sets, which must be less than 12 months and not more than 18 months after the determination was made. The expiry date of the exemptions being revoked in these regulations is 1st February 2024.

Explanations

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

7.5 Entries 1-9 of Table 1 in Schedule A2 of the RoHS Regulations sets out exemptions from the restrictions on the use of mercury in various types of lighting, which would pose a threat to both human and environmental health.

7.6 *Why is it being changed?*

7.7 The legislation is being amended to renew certain exemptions, where there are no reliable, scientifically or technically practicable substitutes to mercury that would enable the relevant equipment to work properly. The legislation is being amended to revoke certain exemptions, which are no longer necessary as there are reliable mercury-free substitutes for use in the equipment and the substitution is scientifically and technically practicable.

7.8 These amendments reflect the determinations made by the Secretary of State in respect of these exemptions. These have substantially the same effect as the decisions the European Commission has published to renew or revoke the corresponding EU exemptions. (See EU Delegated Directives 2022/274 -287).

What will it now do?

7.9 This instrument either renews or revokes the exemptions in entries 1 – 9 of Table 1 in Schedule A2 of the RoHS Regulations. For the exemptions being renewed, this instrument will allow above the permitted levels of mercury laid down in the RoHS Regulations to be used in certain types of lighting and that lighting can continue to be placed on the market. For the exemptions being revoked, the relevant lighting equipment containing above the permitted levels of mercury can no longer be placed on the market after the expiry date.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 It is not considered that enough amendments have been made that consolidation is required at this point in time.

10. Consultation outcome

10.1 As regulation 10 (8) (b) of the 2020 Regulations applies, the Secretary of State was not required to consult before making the determinations to renew or revoke the exemptions.

11. Guidance

11.1 A summary of the Secretary of State's determinations, including expiry dates, has been published on gov.uk RoHS exemption applications: Secretary of State determinations - GOV.UK (www.gov.uk)

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 An impact assessment has not been produced for this instrument as no additional impact on the private, voluntary or public sector is foreseen further to the corresponding exemptions under EU law. The exemption impacts, including socio-economic, have previously been scrutinised by the EU and this instrument adopts the same measures. The Secretary of State was not required to consider the economic impact of the exemptions as, under regulation 10(8)(b) of the 2020 Regulations, the Secretary of State was able to treat the requirements in paragraphs (2) to (5) of regulations 5 as satisfied.

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small business.

14. Monitoring & review

14.1 The compliance monitoring of this legislation is undertaken by the Office of Product Safety and Standards (OPSS)

14.2 A statutory review clause is included in the RoHS Regulations which states that the Secretary of State must from time to time to carry out a review of these Regulations. The review must set out the objectives intended to be achieved by these Regulations and assess to what extent they are achieved. The reviews must take place every five years.

15. Contact

15.1 Paul Hallett at Defra, email: paul.hallett@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste, at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.