

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**UK ROHS REGULATIONS  
SI 2006/1463**

Government response to consultation on  
proposed amendments to the UK RoHS  
Regulations SI 2006/1463.

URN 08/589

## **RoHS CONSULTATION RESPONSE**

Summary of Responses on the Proposed changes to the UK RoHS Regulations,  
(SI 2006/1463)

February 2008

### **Background**

The Government published a consultation document seeking the views on the proposed replacement of The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (or RoHS) Regulations, (SI 2006/1463), with a new set of RoHS Regulations. The consultation period ran from 6<sup>th</sup> September 2007 to 29<sup>th</sup> November 2007. The new regulations (The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37) were laid before Parliament on 11 January 2008 and came into force on 1 February 2008.

### **Consultation Process**

The consultation document sought the views of the producers of electrical and electronic equipment (as defined in Regulation 3 of the Regulations) and others on proposed amendments in relation both to exempt applications and enforcement.

The consultation document was made available through the BERR website - <http://www.berr.gov.uk/consultations/page41209.html>

A total of five written responses to the consultation document were received. BERR would like to thank those who contributed their views. All responses, views expressed and questions raised during this period were carefully analysed and considered against the requirements and aims of the proposed new Regulations and the UK legislative framework.

A list of respondents can be found in the Annex to this document.

### **Method of analysis**

This report provides a summary of the responses to the three consultation questions, along with an assessment of the other issues that were raised under the “additional comments” section.

A commentary is provided for each question and where direct quotes from responses have been included in this summary; these are shown in *italic* script.

## **QUESTION 1**

**Do you agree with the approach of not having a list of exempt applications in the new Regulations, referring instead to the Annex of the Directive as amended from time to time? If you do not, please say why, providing supporting evidence.**

Question 1 attracted four responses.

All responses received were positive of the Government's suggested approach.

*"Intellect supports the UK's proposed approach of referring directly to the Annex in the RoHS Directive instead of listing the exemptions in the proposed UK Regulations."*

*"BSI PS agrees to refer to the changeable Annex of the RoHS Directive rather than to continually re-list the exemptions in republished Regulations. This will save time, effort, money and confusion as the time that lags to do so will vary greatly and promote an unstable approach by some producers"*

AMDEA supported *"the principle of not amending the regulations each time new exemptions are issued"*, however they felt it was impractical for companies to keep watching the Europa web site to see if the law in the UK has changed. AMDEA suggested that the revised Regulation should contain a time limit between the publication of the revised Directive and publication of the aforementioned annex or schedule. A maximum period of 30 days was a further recommendation.

### **Government Response**

The Government has taken the approach outlined in the consultation document and removed Schedule 2 of the 2006 Regulations. The BERR Guidance Notes on the new Regulations (dated February 2008) contain an up to date and complete list of the extant exempt applications of the restricted substances and these Guidance Notes will be republished as, and when, any new exemptions are published in the EC's Official Journal. The guidance is referred to, (with its website address), in the Explanatory Note at the end of the Regulations.

The Government is satisfied that the approach it has taken combines the benefits of (a) ensuring that changes to the Annex to the Directive take effect in UK law immediately; and (b) providing the necessary information about exemptions in a form which most producers will find just as convenient to access as the Regulations. In this respect it may be noted that if the only change being made to the Regulations was the addition or removal of exemptions (as was not the case on this occasion, since changes were also being made to the enforcement provisions), it is likely that this would be done by amending Regulations, rather than a new full set of replacement Regulations, so that producers might find themselves having to refer to a number of different statutory instruments, rather than a single set of Regulations and the associated Guidance Notes.

## QUESTION 2

**Do you agree with the proposed changes to specific enforcement provisions of the RoHS Regulations? If you think that any of the proposed new enforcement provisions are not necessary, please indicate which provisions these are and provide evidence for your view.**

Question 2 attracted four responses.

Overall the responses were positive:

*“BSI PS agrees with the proposed changes specific to enforcement of the RoHS Regulations and believes that this approach will demonstrate the resolve and ability of RoHS enforcement in (the) UK.”*

However a few issues were highlighted: -

i) Regulation 11

Both AMDEA and Intellect expressed concern that the specified time period of 28 days for the submission of technical documents had been removed. AMDEA suggested the retention of the 28 day period for provision of information. Intellect proposed that the words *“within a reasonable time”* were added at the end of Regulation 11.

ii) Regulation 12(2)(e)

Intellect suggested that the Regulation be amended to make it clear that the powers under Regulation 12(2)(b) – (g) only apply where the Secretary of State has exercised his power of entry under 12(2)(a). Intellect felt this would prevent the *“overlap”* between Regulation 11 and 12.

Intellect also suggested that Regulation 12(2)(e) be made expressly subject to Regulation 24(1) in the same way as under Regulation 11. This could be done by adding *“subject to Regulation 24 (1)”* at the start of Regulation 12(2)(e).

iii) Regulation 14(3)(a)

Boots wished to ensure that *“the right to withdrawal from the market should only be exercised as a very last resort in the most serious cases”* instead they proposed *“heavy financial penalties for the producers responsible.”* Their concern stemmed from the fact that any withdrawn product would have to be scrapped and then disposed of under the WEEE Regulations in accordance with Annex II to the WEEE Directive. As the product would generally be replaced by a newly manufactured product this would increase the quantity of WEEE *“with a net negative impact in terms of energy and material resources.”*

## **Government Response**

A 28-day limit has been inserted in the new Regulation 8 as the time limit for producers to respond to the Secretary of State for the submission of technical documentation or other relevant information. This has brought the new Regulations in line with the requirements under the old Regulation 8. On the issue of a specific time period being included within the new Regulation 11, a 14-day time limit has now been specified for the production of documents and information: the thinking behind setting a shorter time limit under Regulation 11 (by comparison with the 28 days under Regulation 8(c)) is that the Regulation 11 power is more likely to be used when the enforcement authority has some definite reason to suspect that the Regulations have been infringed.

The proposed new Regulation 12 has been redrafted as new Regulations 12 and 13, taking into account the comments of consultees. The apparent inconsistency between the proposed Regulations 11 and 12 as regards cross-references to Regulation 24(1) (now Regulation 25(1)) has been resolved by removing the cross-reference in Regulation 11. Regulation 25(1) remains applicable in both cases.

The Government has decided to proceed with the wording originally proposed for the new Regulation 14(3)(a), (now Regulation 15(3)(a)), on enforcement notices as there may be cases in which allowing equipment that is not compliant with the Directive's requirements to remain on the market could risk putting the UK in breach of Article 4.1 of the Directive. In any event, the issuing of an enforcement notice is only one among a number of options for the enforcement authority, and if a producer genuinely considers that the obligations imposed under an enforcement notice are unduly onerous, it may challenge it on proportionality grounds.

### **QUESTION 3**

**Do you think that the (partial) Impact Assessment has fully identified the costs and benefits arising from the proposed amendments to the UK RoHS? If not please say why, providing supporting evidence.**

Question 3 attracted two responses.

BSI PS agreed *“that the Impact Assessment has fully identified the costs and benefits arising from the proposed amendments to the UK RoHS Regulations.”*

AMDEA, however, were concerned that tighter regulation in the UK (when compared to other EU countries) could put UK manufacturers at a competitive disadvantage. It found it difficult to understand the point made in paragraph 68 of the Impact Assessment, which explained how an improved enforcement regime will benefit UK compliant businesses by enabling them to compete on a more level playing field across the European market.

#### **Government Response**

The enforcement of RoHS in the UK applies equally to all new electrical and electronic equipment (EEE) that is placed on the UK market, not just to EEE produced by UK manufacturers.

Paragraph 68 of the partial IA has been redrafted and split into three paragraphs (73 to 75) in the final Impact Assessment, which now qualifies the expectation of a more level playing field by highlighting the point that this will be – to some extent – dependent on co-operation between the Member State enforcement bodies. BERR will continue to play an active role in the informal network of member State RoHS enforcement bodies to promote effective enforcement of the RoHS Directive across the EU.

## **ADDITIONAL COMMENTS**

Both AMDEA and BSI PS submitted additional comments. In the main, these comments suggested slight changes to the wording of the Regulations in the interests of greater simplicity or clarity, eg: -

AMDEA - *“In Regulation 21 (3) It is suggested that “secretary” be replaced by “company secretary” in two places since “company secretary” is a position akin to a company director whereas secretary is not.”*

BSI PS - *“Regulation 3. In these regulations; interprets that: “compliance notice has the meaning given in regulation 13 (2). It would be more meaningful and remain unmistakable if it read; “compliance notice means a notice that comprises the information detailed in regulation 13 (2)”.*

AMDEA also highlighted some of the similarities between the definitions of “producer” in the proposed new Regulation 3 to that under the GPSD (General Product Safety Directive). AMDEA also drew attention to some of the similarities between the RoHS directive and the proposed reforms to the New Approach regime and urged BERR to take into account the “varying degree of control over on-going production and therefore on-going compliance” which producers have. They felt there was a need for these differing abilities to be reflected in Regulation 8 as presently that Regulation treats all producers as being equal.

BSI PS had other comments relating to the definition of “electrical and electronic equipment”, “enforcement notice”, “hazardous substance”, the breadth of the substances covered by the exemptions in the proposed Regulation 5, the ways in which reference is made to Commission Decision 2005/618 concerning the permitted maximum concentration values and, finally, that regulation 12 (2) does not afford sufficient health and safety protection to enforcement staff so requested an addition to it.

### **Government Response**

The Department is extremely grateful for the thought which has gone into making these additional points, all of which have been carefully considered. In a number of cases, they have led, directly or indirectly, to the making of changes to the text of the Regulations: see for example regulations 5 and 7 (in relation to hazardous substances and minimum concentration values), regulation 12(3)(d) (in relation to health and safety matters) and regulation 22(3) (in relation to company secretaries). In other cases, the Department has decided to leave the text unchanged, either because it seemed preferable to retain wording as close as possible to that of the Directive; or because, in its view, the suggestions made were pure drafting points that could be argued either way; or – in the case of comments about the proposed New Approach Regulation and Decision – because they raised questions for the future which in the Department’s view could not be satisfactorily addressed while the details of the draft Regulation and Decision were still subject to considerable debate in the Council and the European Parliament. .

## **ANNEX - LIST OF RESPONDENTS**

AMDEA – The Association of Manufacturers of Domestic Appliances

BSI Product Services

Boots UK Ltd.

Intellect

Power-One Inc.