Department for Business Innovation & Skills

GOVERNMENT RESPONSE TO CONSULTATION

Implementation of the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive 2011/65/EU

NOVEMBER 2012

Contents

Executive Summary

A summary of the responses and Government response to the April 2012 RoHS recast transposition consultation. The consultation package included proposed draft Regulations, draft guidance and a Consultation Stage Impact Assessment. The consultation was held over 12 weeks from April to July 2012, with comments received from 20 stakeholders.

The consultation responses (and confirmation of the interpretation of Article 2.2 from the European Commission's consultants) have led to amending the impact assessment to take account of new assumptions. A number of comments were made on the Regulations, and where appropriate adjustments have been made. The guidance notes raised a number of comments. Some have been adopted, but many have been overtaken by the publication of the European Commission's FAQ document.

Introduction

Background

The RoHS Directive primarily aims to ensure that EU Member States apply common restrictions on the levels of six hazardous substances that may be present in a wide range of electrical and electronic equipment, as well as minimising the end of life environmental impact of that equipment. It is a single European market measure and implementation is made by one law covering the whole of the UK.

The original Directive published in 2002 was implemented through *The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006*, (SI 2006 No. 1463) which came into force on 1 July 2006. It was subsequently replaced by SI 2008 No. 37 following revision.

The new RoHS Directive 2011/65/EU was published on 1 July 2011. It has a different scope and obligations on those placing products on the market. Following the BIS consultation, the European Commission issued an FAQ document with more detailed guidance.

Consultation process

BIS ran an online public consultation during the period 12 April to 6 July 2012. Interested parties likely to be directly affected by the final Regulations were invited to comment on the proposals. These included businesses, individuals and a range of representative bodies. The consultation paper and supporting documents were made available through the BIS website http://www.bis.gov.uk

The consultation sought views on the implementation policy, draft regulations, consultation impact assessment and draft UK guidance notes. It should be noted that not all respondents provided comments to all the questions. At the launch 640 emails were sent to the BIS distribution list for RoHS. The launch was picked up and rebroadcast on numerous websites and micro-blogging sites both in the UK and overseas. At the end of the consultation period BIS had received 20 responses from stakeholders representing companies to large trade associations.

Statistical analysis of responses

The number of overall responses (20) was small for a consultation of this type, but equally reflects the stage of the process. With negotiations complete and the Directive agreed, comments were only addressing the UK transposition, UK guidance and UK impact assessment. No respondents offered any additional data for the impact assessment.

Not all respondents answered all the questions and some provided only generic comments. With such low numbers it isn't possible to make meaningful numerical analysis of the responses to each question.

Summary of responses

Question 1 Do you agree with the interpretation of Article 2.2?

Most responses were either fully supportive or broadly in agreement with the interpretation of Article 2.2. This included 6 of the major trade associations. However, where responses were not supportive of the interpretation, or were supportive but with reservations, the main area of concern revolved around the interpretation of placing on the market to include used items and how this will affect the refurbished/second-hand market. BIS already confirmed in the consultation that it intended to address this by amending the impact assessment following the consultation.

In addition, BIS is engaging the European Commission on its plans relating to this provision and the possibility of amending the Directive on this point to remove the second hand issue. This would not only benefit equipment in 2019, but also issues around certainty for business, lead times and balance sheets leading up to 2019 in equipment values and depreciation.

2. Do you agree the Regulations contain only what is necessary to meet the requirements of the Directive?

There was a broad consensus that the Regulations reflected the Directive's obligations but some stakeholders expressed a preference for wording and layout closer to that of the Directive.

3. Requirements will come into place on the Directive implementation date (2 January 2013) as no transition period is provided for. How should the transition to conformity and marking requirements be managed?

Several respondents called for soft touch enforcement. However the UK is obligated to transpose by the deadline and provide for an enforcement regime. The European Commission FAQ provide some clarity in this area. There appears to be flexibility to allow the DoC to be marked in respect of RoHS compliance in advance of the 2 January 2013 start date taking into account that most products will already be CE marked in respect of other Directives.

4. Do you have any comments on the draft Regulations interpretation of the obligations for the supply chain for CE marking or alternative proposals?

The comments on this point were limited. However there was a call for more guidance on when it would be appropriate for distributers to inform market surveillance authorities of non compliant products.

5. Do you agree with the proposed enforcement regime's powers of entry and offences for non-compliance?

Most responses to this question were in agreement with the proposed regime. However there was also a call for EU level guidance (The Blue Guide") to be updated to help ensure a level playing field throughout Europe in the area of enforcement.

6. Do you agree with the assumptions made in the Impact Assessment?

Six responses expressed concern at the assumptions made in the Impact Assessment. This represents five of the trade bodies who responded. One Trade body was in agreement with the assumptions.

The most concern was expressed in the area of costs of the newly introduced conformity assessment procedures. It was felt by some that the cost of additional documentation and retention of technical files etc would be higher than assumed in the IA. Some also noted that the draft IA did not reflect the costs associated with the Article 2.2 issue.

7. Do you agree with the costs and benefits in the Impact Assessment? If not, please provide evidence of different figures.

No evidence of different figures was provided in any of the responses.

8. Are there any examples of products you think may be ambiguous in meeting the exemptions?

Five respondents made specific comments including on large scale fixed installations. One thought that the status of some industrial/professional products remains unclear.

It is expected the Commission FAQ now answers some of these questions. Fundamentally there were no comments on the Regulations.

9. Some products which were included in the original scope will now fall out of scope. Can you provide examples of products you believe might be affected?

No specific examples were given in response to this question. One organisation suggested that the changes to the Large-Scale Industrial Tools exclusion may take some items out of scope, but no specific examples were given.

10. Are there significant new products coming into category 11 you think we may not have captured in the impact assessment? This can be new items not in the other categories, or items falling in the scope of EEE from the new definitions.

Comments were made in relation to the changing definitions in the Directive which would change the way some products were considered. A few products were identified by respondents. Some have already been considered by the Commission research into their impact assessment. The UK IA will be updated accordingly.

Questions 11-14 on guidance

Most respondents were concerned with the guidance and ensuring this was clear and useable for their needs. A number of suggestions have been made in response to this question. Three organisations agreed that guidance provided sufficient information. Four organisations thought that sufficient information was not provided.

Many of these points related to European level obligations on which the European Commission would need to provide advice. Some of these are addressed by the Commission FAQ which has been subsequently published following the BIS consultation. Others will need to be considered by the Commission in updating the Commission's Blue Guide.

Government's response

The government sought views on 14 questions (Annex A) which opened up the possibility to comment and provide additional data in all areas.

Overall there were very few comments specifically relating to the draft Regulations. There was a consensus to try and keep the Regulations more closely aligned to the Directive. Where this has been legally possible, the Regulations have been amended to do so. However for clarity, BIS has proposed keeping the definitions used in the Directive to be held in one section where these are commonly used and terms used once in one specific section are given in that section of the Regulations. Where drafting points were raised these have been considered and where possible taken on board.

Powers of entry were reviewed as part of the process of making the new Regulations in line with a Whitehall wide review. Clearance has been granted by Home Office Ministers for the powers in the proposed RoHS Directive. There is no change from the proposed powers in the consultation Regulations.

Proposed offences were also reviewed as part of a Whitehall wide review. These have been approved by Ministry of Justice Ministers. There is no change to the consultation version.

In response to the challenges to the impact assessment, BIS economists have amended the IA to address comments and questions arising from the response to the consultation IA published July 2011. BIS has worked with industry on categories 8 and 9 specifically to glean data on the application of Article 2.2.

No stakeholders were able to offer additional data for the impact assessment. This is surprising given the comments surrounding Article 2.2, but may simply reflect the case the situation is unusual and very difficult to quantify. Additional information has been proactively sought from Trade Associations engaged directly in category 8 and 9 equipment and a revised Final Stage Impact Assessment available (Annex C).

A number of helpful comments were received on the draft guidance. This will be updated and published later in the autumn and will also take account of the FAQ now published by the European Commission to ensure the BIS guidance does not repeat issues already covered in that guidance. In that respect the revised BIS guidance is likely to be UK centric, covering the issues of UK enforcement and advice.

Following the UK consultation process the Commission consultants have reported on preliminary work to consider the broader scope for the Commission's Impact Assessment and the impact of Article 2.2.

Next steps

The revised draft Regulations will be considered through the regulatory scrutiny processes of Whitehall and the Parliament. Should these processes be cleared successfully, it is expected the Regulations will be laid before Parliament in late November 2012 and enter

into force, in line with the Coalition Government policy, on 2 January 2013 (the transposition deadline for the Directive).

Annex A: List of questions in the consultation document

Number	Question
1	Do you agree with the interpretation of Article 2.2?
2	Do you agree the Regulations contain only what is necessary to meet the requirements of the Directive?
3	Requirements will come into place on the Directive implementation date (2 January 2013) as no transition period is provided for. How should the transition to conformity and marking requirements be managed?
4	Do you have any comments on the draft Regulations interpretation of the obligations for the supply chain for CE marking or alternative proposals?
5	Do you agree with the proposed enforcement regime's powers of entry and offences for non-compliance?
6	Do you agree with the assumptions made in the Impact Assessment?
7	Do you agree with the costs and benefits in the Impact Assessment? If not, please provide evidence of different figures.
8	Are there any examples of products you think may be ambiguous in meeting the exemptions?
9	Some products which were included in the original scope will now fall out of scope. Can you provide examples of products you believe might be affected?
10	Are there significant new products coming into category 11 you think we may not have captured in the impact assessment? This can be new items not in the other categories, or items falling in the scope of EEE from the new definitions.
11	Does the guidance provide sufficient information on the intention and application of the Directive and its proposed implementation?
12	Are there specific additions or questions you have which might need to be added to the guidance?
13	If you do not agree with the answers provided in the draft guidance, do you have evidence to suggest where a different approach might be justified?
14	Are there any other comments that might help make the guidance clearer?

Annex B: List of respondents

1. EchoStar Europe

2. Conformance Ltd

3. Association of British Healthcare Industries Ltd

4. British Battery Industry Federation

5. The Government Chemist

6. British Ceramic Confederation

7. Global Technology Distribution Council

8. Valpak

9. KLA-Tencor

10. Boots UK Ltd

11. The Association of Manufacturers of Domestic Appliances (AMDEA)

12. ADS Hazardous Materials Group

13. Japan Business Council in Europe

14. Weee Link

15. TechAmerica Europe

16. Intellect Technology Association

17. GAMBICA

18. BEAMA

19. Caterpillar

20. Lighting Industry Association Ltd

Annex C: Updated Impact Assessment (Final Stage)

The Final IA can be downloaded from:
http://www.bis.gov.uk/assets/biscore/business-sectors/docs/f/12-1277-final-impact-recast-restriction-of-hazardous-substances-directive

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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