

Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012

Department for Environment, Food and Rural Affairs

RPC rating: fit for purpose

Description of proposal

The post-implementation review (PIR) covers regulations on the Restriction of the use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS). This is an EU directive which is intended to harmonise standards, ensure the free movement of goods across the Single Market, and ensure environmental protection. The regulations apply the same restrictions to producers regardless of the point of manufacture. The requirement to harmonise standards has meant that Member States had little flexibility in the transposition of the regulations.

The regulations became effective in the UK on 2 January 2013. The first objective of the UK regulations is to stimulate exports and inward investment by promoting open and fair global markets. The regulations became a CE marking directive in order to demonstrate compliance. The second objective is to protect and enhance the natural environment by reducing quantities of six hazardous substances used in electrical and electronic equipment (EEE). The six hazardous substances are lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs) and polybrominated diphenyl ethers (PBDEs).

Impacts of proposal

The PIR uses three sources of evidence to inform its assessment. The first is a survey of companies impacted by the regulations. The second is an impact assessment by the European Commission on the effects of the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations Directive 2011/65/EU (RoHS 2) before its introduction in July 2019. The third is data gained from enforcement projects samples of EEE carried out by the Department for Business, Energy and Industrial Strategy. The enforcement projects identified if a company was compliant with the regulations and, if they were non-compliant, on what grounds they were non-compliant.

The Department concludes that the UK regulations have met their objectives. By requiring the manufacturers of EEE to meet and maintain the harmonised standards, fairness of trade and competitiveness have been increased across the EU. The six

hazardous substances used in the production of EEE have been reduced and prevented from entering the waste stream.

Unintended consequences

The Department explains that the impact assessment carried out by the European Commission identified that the regulations will:

- severely restrict the sale of second-hand-equipment;
- restrict the supply of spare parts;
- inadvertently ban the sale of pipe organs in the EU; and
- create an inconsistent treatment of non-road mobile machinery.

These unintended consequences have been addressed by an amending EU directive. The Department expects the correction of these unintended consequences to result in lower costs for business while maintaining the environmental gains achieved through the reduction of the six hazardous substances in EEE. The Department proposes to amend the UK RoHS regulations by March 2019, in advance of EU exit, in order for the UK to benefit from the deregulatory measures of this amendment. As the UK RoHS regulations will be amended before the July 2019 introduction of RoHS 2, UK businesses will never have been affected by any of these unintended consequences.

Quality of submission

The Department has provided sufficient analysis to support the amendment of the regulations. The PIR makes use of evidence submitted by business stakeholders, the European Commission, and one other government department. The evidence which the PIR refers to for reducing the burden on business is there, albeit brief. The PIR sets out clearly the assumptions used in the regulatory impact assessment but it does not assess how far these were accurate. The PIR provides a good rationale for amending the regulations in advance of EU exit, and it is clear about the timeline of changes.

There are, however, a few areas where the PIR could be improved. The RPC recognises that the Department has, arguably, carried out a consultation that is proportionate given the time and resources available. The following areas for improvement should be viewed as an opportunity to learn, and improve future assessments:

- The PIR would benefit from providing estimates of the cost of the measure to business. The RPC recognises that the PIR has stated that this would be challenging, however a more in depth consultation with stakeholders may have produced more reliable estimates. The PIR could have used standard techniques, such as presenting a range, to make any uncertainty explicit.
- The PIR states that all of the EU Member States have transposed RoHS 2 into their domestic legislation. However, it does not say how the UK's implementation of the directive compares with other EU Member States in terms of costs to business.
- The PIR posits that the survey responses from business stakeholders suggest that the regulations are working. By the Department's own admission this survey was a form of light touch stakeholder engagement. The engagement with stakeholders therefore appears to rely too heavily on the internal knowledge of the Department and the Environment Agency. This could have been strengthened significantly by seeking more responses or evidence from stakeholders not already known to the Department.
- The PIR is not entirely clear on whether the views of small and micro businesses were attained; as such we cannot know from the PIR whether impacts have been different for small and micro businesses, as opposed to medium and large businesses. In addition, it is not clear what a 'top six' company is, and it is therefore difficult to gauge how representative the samples are.

Departmental recommendation	Amend
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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Regulatory Policy Committee