



Department
for Environment
Food & Rural Affairs

Charging fees for applications for exemptions to the Restriction of Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regime

Summary of responses and government response

Date: October 2022

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Introduction

The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (RoHS Regulations) restricts 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.

Industry can apply for exemptions for the supply of products using one or more of the restricted substances above the threshold limits set down in the RoHS Regulations where specified criteria are met. Applications for exemptions are made to the Secretary of State under regulation 6 of the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020 (2020 Regulations). Any exemption that is granted can be used across industry, not just the business that applied for the exemption. Exemptions are granted where it is determined that the necessary criteria have been met following a detailed evaluation conducted in accordance with regulation 5 of the 2020 Regulations.

The RoHS Regulations closely follow restrictions placed on the use of hazardous substances in EEE in the EU RoHS Directive (2011/65/EU). Applications for exemptions in the EU are determined by the European Commission. Decisions are published and adopted by means of a delegated act. Following the United Kingdom's withdrawal from the EU, the function of granting, renewing and revoking exemptions were, in relation to Great Britain transferred to the Secretary of State by the 2020 Regulations using powers in section 8 of the European Union (Withdrawal) Act 2018

This transferred function and its associated costs provides an opportunity to consider the introduction of a fee for exemption applications on a cost recovery basis in line with the principles of managing public money.

The purpose of the consultation was to seek views on the proposal to introduce a fee for processing applications for exemptions to the substance restrictions in the RoHS Regulations.

The consultation opened on 15 July 2022 and closed on 26 August 2022

A total of 54 responses were received from:

- Manufacturers of electrical and electronic equipment
- Trade associations representing manufacturers of electrical and electronic equipment

We are grateful to all respondents for taking the time to respond to the consultation.

Analysis of consultation responses by question

- 1. Do you agree or disagree that the government should introduce a fee, charged on a cost recovery basis, for processing applications for an exemption to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations?**

Summary of responses

Fifty-three respondents disagreed with the proposal that the government should introduce a fee for processing applications for exemption to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Regulations.

Twenty-three respondents were concerned that the introduction of a fee may act to limit supply of equipment being sold in Great Britain noting that, while compliance with the EU RoHS Directive gives producers access to the whole EU-27 market, plus Northern Ireland and the three other countries in the European Economic Area, compliance with the British RoHS Regulations provides access only to the markets in England, Scotland and Wales. Of these, four respondents noted that limiting supply of equipment to Great Britain would be a particular concern for specialised items that are produced in low volumes, including some critical types of equipment such as medical devices. It was argued that the proposed application fee may result in certain medical technologies, currently placed on the market using an exemption, no longer be supplied to Great Britain.

Fifteen respondents raised a concern that introducing the application fee could lead to a gradual divergence from EU law, as some manufacturers will choose to not apply for an exemption in Great Britain due to the proposed application fee. It was felt that there should be a harmonised framework for RoHS between Great Britain and the EU, whereby there is a commonality in exemption decisions and any barriers to achieving this, such as the imposition of an application fee should be avoided.

Eleven respondents felt that the introduction of such a fee would potentially put British manufacturers and those placing products on the British market at a competitive disadvantage with manufacturers based elsewhere who do not need to pay for exemption applications. This was noted as a particular concern with regards to SMEs. It was also noted that these higher costs for businesses may also ultimately be absorbed into the price of the product and therefore be passed onto the consumer.

Ten respondents stated that the costs for applying for new exemptions might not be distributed fairly across the industry as some manufacturers will stand to benefit from exemptions for which they did not pay the application fee, while other SMEs which lack the resources and technical expertise may be further put off from applying for an exemption.

Finally, four respondents noted the introduction of the fee may lead to non-compliance with the regulations, whereby some importers, manufacturers and distributors could take a decision to place non-compliant products onto the British market, instead of paying the application fee for an exemption.

One respondent answered that they 'did not know'.

Government response

The government has carefully considered the concerns raised by respondents but nevertheless intends to pursue the policy set out in the consultation and introduce an application fee with effect from 6 April 2023. Such an approach is entirely consistent with [managing public money](#) principles. There are many other examples of fees payable for technical appraisals on a cost recovery basis, for example by the Environment Agency and the National Institute for Health and Care Excellence.

It is important that in considering exemption applications against the criteria laid down in legislation, that the government does so from a British perspective, for example in terms of the availability of possible alternative technologies and wider health, environmental and socioeconomic impacts. Nevertheless, the government has noted the points raised in responses to the consultation around the duplication of effort and associated costs for businesses that are seeking to apply for identical exemptions in both Britain and other territories that have similar RoHS legislation. The government will therefore consider whether it would be appropriate to recognise exemption decisions taken in other territories. The government will consult with industry again before making any such decision.

The substance restrictions and criteria for successful exemption applications apply to all businesses seeking to place equipment on the British market. It therefore follows that applications are likely from both British and overseas organisations - either trade bodies or perhaps individual businesses. Historically, most applications come from industry organisations acting on behalf of a specific industry and we anticipate that to continue to be the case. The government therefore does not see a competitive disadvantage arising between British and overseas businesses who may seek an exemption for certain products. There is already considerable cooperation between parties across industry in submitting applications and we would envisage that will continue.

Finally on the question of non-compliance with the ROHS Regulations, the Office of Product Safety and Standards (OPSS) is appointed by the Secretary of State to carry out their duties in relation to market surveillance, compliance monitoring and enforcement. The priority is to remove non-compliant products from the market through targeted purchase and testing programmes. This will continue using a risk-based, intelligence-led approach.

- 2. Do you agree or disagree that the proposed fee of £39, 721 appears to be reflective of the costs likely to arise in appraising and processing applications?**

Summary of responses

Twenty-six respondents disagreed that the proposed fee of £39,721 appears to be reflective of the costs likely to arise in appraising and processing applications.

Thirteen respondents felt that the cost of processing applications would be unnecessary in cases where Great Britain decides to reflect an EU RoHS exemption decision, as in these cases there would not be any additional evaluation costs borne by the British evaluation body. As many of these exemptions will have likely already undergone review by the EU Commission, requiring separate applications across Great Britain and the EU would be a duplicative process. Respondents suggested this could be streamlined by accepting exemption packs in Great Britain which have already been approved in the EU.

Furthermore, four respondents argued that the proposed application fee was too high and that there was no supporting evidence or transparency around how this cost was calculated or to justify this fee. It was also noted by one respondent that a flat fee may not be appropriate as the efforts required to review an application would vary significantly on a case-by-case basis. Two respondents also noted the fee would have a particularly adverse effect on smaller businesses.

Thirty-three respondents stated that as they were not familiar with the process for dealing with the exemption application, it would be too difficult to assess whether the fee was appropriate or proportionate to the work involved in assessing the applications.

Twenty-eight respondents responded 'do not know' to this question. All respondents who answered 'do not know' stated that they were too unfamiliar with the process for dealing with applications to judge whether the proposed cost is reflective.

Government response

The £39,721 fee is calculated on a cost recovery basis in line with managing public money principles. A breakdown of costs was provided in the consultation document. The majority of those costs arise from the appointment of external, specialist, technical expertise necessary to undertake the technical appraisal of applications. That appointment was undertaken through an open competition and in line with the government procurement rules to ensure value for money. That contract will be re-tendered regularly and fees updated to reflect any changes in the cost of appraisals that may arise.

Applicants will only pay for the work carried on their applications. In other words, if applications are processed more cheaply or quickly than expected the applicant will receive a partial refund.

Finally, the primary objective of the RoHS Regulations is to eliminate substances that are harmful to animal, human health and the environment. Exemptions are not granted where there are less hazardous alternative substances available. Technological developments have resulted in a decline in the number of live exemptions over time and we expect that trend to continue with a consequential reduction in costs incurred by industry in submitting exemption applications.

- 3. Do you agree or disagree that, should an application be withdrawn, the fee should be refunded on a pro-rata basis, to reflect costs incurred until that point?**

Summary of responses

Twelve respondents agreed that should an application be withdrawn, the fee should be refunded on a pro-rata basis, to reflect costs incurred until that point. It was argued that refunds should not leave applicants out of pocket and Defra should set out more clearly the process for refunds, payments and how it determines costs.

Seven respondents disagreed with this stating that offering only a partial refund would be unfair, particularly if the application criteria was not sufficiently clear and applicants had to incur costs providing additional information, further along the process. It was therefore expressed by respondents that the application criteria would need to be made very clear in order to avoid this happening.

Thirty-five respondents answered that they did not know, with a majority of this category stating that it is unclear how transparent the 'pro-rata' calculations would be and what the key milestones would be throughout an application.

Government response

The government intends to refund fees on a pro-rata basis if an application is withdrawn. Existing guidance on applying for exemptions which is published on gov.uk will be reviewed and updated to provide as much clarity as possible on the eligibility criteria for exemptions, the information that must be provided to support applications, arrangements for payment of the application fee and circumstances where all or part of that fee will be refunded. It is however the case that the existing criteria under which applications are granted are the same as that which has been in existence since the existing Regulations entered force in 2013. Most applicants will already be very familiar with those criteria.

- 4. Do you agree or disagree that, in circumstances where we are able to process an application more quickly or cheaply than expected, that we should refund the difference back to the applicant?**

Summary of responses

Sixteen respondents agreed that in circumstances where Defra is able to process an application more quickly or cheaply than expected, that some refund would be appropriate.

Two respondents disagreed with this and stated the costs should be met by the taxpayer.

Thirty-five respondents answered that they did not know. The majority of those did so because they could not support the proposal to introduce an application fee and that they wanted more clarity as to the how the cost was calculated.

One respondent did not answer.

Government response

In circumstances where the application has been processed more cheaply or quickly than the Government anticipated, the difference will be refunded to the applicant. We will publish guidance, prior to the fee being introduced, which will fully explain how refunds will be calculated.

- 5. Do you agree or disagree that a commencement date of 6 April 2023 for the charging is sufficient time for business to adjust to the introduction of an application fee?**

Summary of responses

Forty-eight respondents disagreed that the proposed commencement date of 6 April 2023 would be sufficient time for business to adjust to the introduction of an application fee. Respondents noted that these costs would not have been anticipated by businesses and therefore not factored into their financial planning. It was also noted that Defra should be mindful of other costs businesses are expecting in 2023, because of other regulatory changes being introduced at that time.

One respondent agreed that the proposed commencement date of 6 April 2023 would be sufficient time for business to adjust to the introduction of an application fee.

Five respondents did not know whether the proposed commencement date of 6 April 2023 would be sufficient time for business to adjust to the introduction of an application fee.

Government response

The government notes that many respondents do not feel that the introduction date of 6th April does not give industry sufficient time to adjust. However, our analysis of existing exemptions for which a renewal would be subject to a fee indicate that only one renewal would be due in 2023 with others due in the period 2024-2027. Since leaving the EU, the government has only received one application for a new exemption indicating the number of new exemptions is likely to be low. The government therefore proposes to introduce the fee with effect from 6 April 2023.

- 6. Do you agree or disagree with our assessment of the impact that the application fee will have on business?**

Summary of responses

Fifty-three respondents disagreed with the assessment of the impact that the application fee will have on business. It was felt that that the forecast annual cost to business of less than £5 million may not fully reflect the number of applications for exemptions likely to arise annually.

It was noted that there is a risk that some parts of the industry may have to absorb major costs which would not be spread out evenly across the sector. It was noted that a small number of firms or trade associations may bear most of the cost for applying for exemptions which ultimately other parts of the sector will benefit from, leading to an unlevel playing field.

Respondents also highlighted a concern that small businesses would be adversely affected by the charge, particularly if they are not applying for an exemption via a trade association and must bear the entirety of the cost themselves. They might also not have the technical expertise or resources to submit an application to the required standard.

One respondent agreed with the assessment of the impact of the application fee on business, arguing that it would not have a great impact on larger businesses and trade associations with a large membership.

Government response

The government acknowledges that the introduction of the fee will be an additional burden to businesses and is mindful of new burdens on SMEs.

However, there are 23 “live” exemptions for which the application fee would be payable next time an exemption was renewed. The vast majority of the applications for those exemptions were made by international trade bodies and according to our analysis none of those applications were made by SMEs.

There are a number of other exemption applications currently being considered by the European Commission that were submitted when the United Kingdom was still bound by EU rules. These applications will not be subject to an application fee. This is because under the “transitional” provisions set out in the Hazardous Substances and Packaging (Legislative Functions and Amendment) (EU Exit) Regulations 2020, there is no requirement for a separate application to be made to Defra and consequently no application fee payable. The Secretary of State will instead make a determination of those cases as to whether to grant the exemption having considered the European Commission decision within a British context.

Please provide any further comments on the proposal to introduce a fee for processing applications for exemptions to the RoHS Regulations.

Summary of responses

It was generally commented that the United Kingdom should not seek to unnecessarily create additional bureaucracy and administrative costs when the work to assess

applications for exemptions had been carried out in other markets with RoHS-type legislation.

Government response

As previously stated, it is important that the government considers application for exemptions from a British context, noting in particular the availability of alternative technologies and environmental and socio-economic impacts.

Annex A: organisations that responded to the consultation.

Briggs & Stratton

Vestel

Siemens Healthcare Diagnostics Manufacturing Ltd

HORIBA UK Ltd

Recolight

Roche Diagnostics International Ltd

Werfen Ltd

Numatic International Ltd

Macdermid Enthone

BEAMA Limited

BIVDA

Japan Electronics and Information Technology Industries Association (JEITA)

NIPPON ELECTRIC CONTROL EQUIPMENT INDUSTRIES ASSOCIATION (NECA)

FCNT LIMITED

Murata Manufacturing Co., Ltd.

Japan Inspection Instruments Manufacturers' Association

The Japan Federation of Medical Devices Associations (JFMDA)

Worcester Bosch

Japan Analytical Instruments Manufacturers' Association (JAIMA)

EUROMOT - European Association of Internal Combustion Engine and Alternative Powertrain Manufacturers

Japan Measuring Instruments Federation

UK Steel

RINA Tech UK Ltd

GAMBICA

Endress + Hauser Ltd

Japan Electric Measuring Instruments Manufacturers' Association (JEMIMA)
Portable Electric Tool Manufacturers Association
Japan Electronics and Information Technology Industries Association (JEITA)
Murata Manufacturing Co., Ltd.
Panasonic Co., Ltd
Semiconductor Industry Association in Japan (JSIA)
Agilent Technologies
Semiconductor Equipment Association of Japan (SEAJ)
MedTech Europe
Lighting Industry Association (The LIA)
Japan Business Organization in Europe (JBCE)
Industry Umbrella Project on RoHS
Seiko Epson Corporation
The Japan Electrical Manufacturers' Association
Epson Europe B.V.
Energy and Utilities Alliance
ICOM (Industrial and Commercial Heating Equipment Association)
MEHNA (Manufacturers of Equipment for Heat Networks Association)
Environment Management Office, Production Planning Div., Toshiba Corporation
ZVEI e. V. - Electro and Digital Industry Association, Germany
The Society of Motor Manufacturers and Traders
Test and Measurement Coalition
AMDEA
The Joint Trade Association (JTA)
Construction Equipment Association
Sekisui Diagnostics (UK) Ltd
Tech UK
Liberty Steel UK