

BIS | Department for Business
Innovation & Skills

**RESTRICTION OF HAZARDOUS
SUBSTANCES (ROHS)
REGULATIONS 2012**

**Government Guidance
Notes for RoHS 2**

OCTOBER 2012

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1. Introduction

About This Guidance

1.1 This guidance applies from 2 January 2013. For product first placed on the market under the 2008 RoHS Regulations implementing the first RoHS Directive (2002/95/EC), please also refer to the earlier guidance BIS guidance notes URN11/526¹.

1.2 This guide is addressed to all businesses and individuals placing electrical and electronic equipment on the UK market.

1.3 It clearly explains the requirements of the UK Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Regulations 2012.

1.4 This guidance is aimed at the UK market to provide specific advice over and above EU level guidance², which will need to be read in conjunction with this document.

1.5 This guidance cannot cover every situation and, of course, it may be necessary to carefully consider the relevant legislation to see how it applies in your circumstances. However, if you do follow the guidance it will help you to understand how to comply with the law.

1.6 This guidance has been designed to comply with the “Code of Practice on Guidance on Regulation 2009”. This was published in October 2009 and a copy can be downloaded from the BIS website at www.bis.gov.uk.

1.7 This is the November 2012 edition. The guidance is updated on a regular basis as necessary.

¹ <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/r/11-526-rohs-regulations-government-guidance-notes>

² http://ec.europa.eu/environment/waste/rohs_eee/events_rohs3_en.htm

2. RoHS – The Law in Brief

Summary

2.1 The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012³, (“the RoHS Regulations 2012”) will implement the provisions of the European Parliament and Council Directive on the Restrictions of the use of certain Hazardous Substances in electrical and electronic equipment 2011/65/EU⁴ (“RoHS 2”).

2.2 The original RoHS Regulations⁵ have restricted the placing on the UK market of new Electrical and Electronic Equipment (EEE) containing more than the permitted levels of lead, cadmium, mercury, hexavalent chromium and both polybrominated biphenyl (PBB) and polybrominated diphenyl ether (PBDE) flame retardants in certain products since 1 July 2006. There are a number of exempted applications for these substances and a number of products which will have limits imposed in the future.

2.3 Since 1 July 2006, manufacturers have needed to ensure that their products - and the components and subassemblies of such products - comply with the requirements of the original RoHS Regulations in order to be put on the single market. The Regulations have also had an impact on those who import EEE into the European Union on a professional basis, those who export to other Member States and those who rebrand other manufacturers’ EEE as their own.

2.4 The RoHS Regulations 2012 do not affect the application of existing legal requirements for EEE, including those regarding safety, the protection of health, existing transport requirements or provisions on hazardous waste. In other words, existing legislation on EEE and hazardous substances must also be complied with.

Entry into force

2.5 The RoHS Regulations are expected to come into force on **2 January 2013**, and replace the original Regulations that came into force on 1 February 2008.

³ Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. Due for publication December 2012.

⁴ Directive 2011/65/EU of 1 July 2011, (OJ No. L174/88).

⁵ The RoHS Regulations 2006, (SI 2006 No. 1463); revoked and replaced by the RoHS Regulations 2008 (SI 2008 No. 37), as amended by the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2009 (SI 2009 No. 581).

Requirements

2.6 The RoHS Regulations 2012 impose obligations on economic operators throughout the supply chain (as defined in the Regulations) in relation to the placing and making available of EEE on the market.

2.7 The key restriction is that economic operators may not place, or make available, EEE containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) and polybrominated diphenyl ethers (PBDE), in amounts exceeding the established maximum concentration values, on the market. There are also requirements for finished EEE to be CE marked.

2.8 The Regulations will outline what EEE are in scope, exclusions (EEE to which these regulations do not apply) and makes reference to the specific exemptions to the restricted substances. With the exception of some categories (where certain parts of the regulation apply on special dates), EEE that was outside the scope of the 2008 Regulations does not need to comply with the new Regulations until 22 July 2019.

2.9 Economic operators must be able to demonstrate compliance by submitting an EU Declaration of Conformity and technical documentation or other information to the market surveillance authority on request and must retain such documentation for a period of **ten** years after the EEE is placed on the market.

Enforcement

2.10 Responsibility for the enforcement of the RoHS Regulations lies with the Secretary of State for Business, Innovation & Skills, who has appointed the National Measurement Office (NMO), an executive agency of the Department, to act on his behalf.

3. Scope of the Regulations

3.1 The RoHS Regulations apply to all EEE put on the market in the UK which falls into the broad categories listed. The RoHS Regulations define “EEE” and although this point is covered later in this guidance it should be noted that the definition has changed. In addition, the RoHS Regulations apply both to electric light bulbs and to household luminaires.

3.2 The broad categories bring products into scope of the RoHS Regulations at different times over a 6.5 year period starting from 2 January 2013. Details are provided below.

- Existing categories 1-7 and 10 remain in scope, but are subject to new exclusions listed separately (p5).

- Categories 8+9 Medical devices, monitoring and control instruments enter into scope on the following timetable:
 - o From 22 July 2014: Medical devices and monitoring and control instruments;
 - o From 22 July 2016: In vitro diagnostic medical devices;
 - o From 22 July 2017: Industrial monitoring and control instruments.

- A new category 11, other electrical and electronic equipment not covered by any of the categories above, comes into scope from 23 July 2019, as do two wheeled electric vehicles which are not type approved and any products in categories 1-7 or 10 not covered by the 2002 RoHS Directive, which was most recently transposed into UK law by the 2008 Regulations.

Assessing products to see if they are included in the scope

3.3 For many products, the decision on whether they are included within the scope of these Regulations should be reasonably straightforward. However there are a number of products (particularly in specialised or industrial sectors), where there may be significant areas of doubt and uncertainty.

3.4 The FAQ developed by the Commission for the previous Directive does **not** apply to the new RoHS Directive as they are considered to have different policy intentions. The Commission have consulted on a new FAQ document for RoHS 2 which is available on the Commission website⁶.

Exclusions

3.5 The RoHS Regulations do not apply to:

- Equipment which is necessary for the protection of the essential interest of the security of member states, including arms, munitions and war material intended for specifically military purposes;
- Equipment designed to be sent into space;
- Equipment which is specifically designed to be installed as part of another type of equipment to which the RoHS Regulations do not apply,

⁶ http://ec.europa.eu/environment/waste/rohs_eee/events_rohs3_en.htm

which can fulfil its function only if it is part of that equipment, and which can be replaced only by the same specifically designed equipment;

- Large-scale stationary industrial tools;
- Large-scale fixed installations;
- means of transport for persons or goods, excluding electric two-wheeled vehicles which are not type-approved;
- Non-road mobile machinery made available exclusively for professional use;
- Active implantable medical devices;
- Photovoltaic panels intended to be used in a system that is designed, assembled and installed by professionals for permanent use at a defined location to produce energy from solar light for public, commercial, industrial and residential applications;
- Equipment specifically designed solely for the purposes of research and development only made available on a business-to-business basis.

Exemptions

3.6 A list of specific exemptions agreed for items in any category is provided in Annex III of the RoHS Directive. Additional exemptions for categories 8 and 9 are contained in a separate list in Annex IV of the RoHS Directive. The duration for the validity of these is considered in the Commission's FAQ document.

Spare parts

3.7 Furthermore:

- Until 1 July 2016, Reuse of spare parts recovered from EEE placed on the market before 1 July 2006 in a business to business closed loop are not subject to the substance restrictions;
- Please note the Regulations do not provide for exemptions for spare parts for products in category 11 as this is not provided for in the Directive (Article 4.4).

Possible future exemptions

3.8 The European Commission expects to receive many requests from industry for exemptions of additional specific applications of the hazardous substances. These requests will extend the list in the Annex to the RoHS

Directive, once they have been agreed and adopted as Commission Decisions. Details on applying for exemptions are contained within the RoHS Directive in Article 5 and Annex V.

3.9 The RoHS Regulations incorporate both those exemptions which have already been adopted and any further exemptions which may be agreed⁷ while they remain in force, as the Regulations use provisions so as to refer to the exempt applications listed in the RoHS Directive Annex “as amended from time to time”. This removes the need for further amendments to the RoHS Regulations every time that new exemptions are agreed.

Definitions

3.10 The definitions of “**electrical and electronic equipment**”, “**place on the market**” and “**make available on the market**” can be found within the RoHS Regulations. It is worth noting these Regulations contain many more definitions than the previous ones, covering in addition e.g. “**homogeneous material**”, “**conformity assessment**”.

Maximum concentration values

3.11 For the purposes of the RoHS Regulations, a maximum concentration value of up to 0.1% by weight in homogeneous materials for lead, mercury, hexavalent chromium, PBB and PBDE and of up to 0.01% by weight in homogenous materials for cadmium will be permitted in EEE.

4. Compliance

4.1 The RoHS Regulations use self-declaration as the basis of the compliance regime. The UK market surveillance authority also undertakes market surveillance activities to detect non-compliant products and conducts tests for this purpose. The new RoHS Regulations also have important procedural obligations which must be complied with.

4.2 The RoHS Regulations now impose obligations on economic operators at different stages in the supply chain (manufacturers, importers, distributors) in relation to the placing and making available on the market of EEE. If you fulfil more than one of these functions, you will pick up the obligations of that part of the supply chain too.

4.3 The Regulations contain common definitions. This reflects the changes that were made at EU level to align the new RoHS Directive with Decision No 768/2008/EC on a common framework for the marketing of

⁷ Adopted and published as Commission Decisions in the EC Official Journal.

products, which was adopted in July 2008 as part of (what has become known as) the “Goods Package” with a view to introducing greater legislative consistency among EC harmonising measures, and in particular among the increasing number of members of the “New Approach” family of legislation setting harmonised requirements for a range of products.

4.4 RoHS allows for the use of harmonised standards as a route to supporting compliance. Where a standard exists and has been cited in the OJEC as a harmonised standard for the purposes of RoHS2 then meeting that standard will give a presumption of conformity for those requirements covered by that standard.

5. Manufacturers’ Obligations

5.1 The RoHS Regulations require manufacturers to self-declare the conformity of their products with the requirements of the RoHS Regulations. Manufacturers are required to complete an internal production control procedure in accordance with Module A of Annex II to Decision 768/2008/EC of the European Parliament and of the Council on a common framework for the marketing of products and repealing Council Decision 93/465/EEC⁸. Manufacturers must also draw up technical documentation.

5.2 Once the conformity assessment is complete, manufacturers must prepare an “EU Declaration of Conformity” and affix the “CE marking”. The RoHS Directive’s Annex VI sets out the requirements for the declaration of conformity. In the absence of evidence to the contrary, it is assumed that EEE bearing the CE mark is compliant with the RoHS Regulations. The term “not possible” in Regulations (18(2)(b) and 24(2)) regarding affixing the CE marking has been copied out from the Directive. An informed judgement should be made on what is not possible in justifying the use of this provision to the enforcement authority.

5.3 The technical documentation, and the EU Declaration of Conformity, must be kept for a period of ten years after placing the product on the market.

5.4 Manufacturers also have other new obligations under the RoHS Regulations. These include:

- i. marking EEE with information identifying the EEE and the manufacturer;
- ii. putting procedures in place to ensure EEE manufactured by means of series production will remain compliant;

⁸ OJ L218, 13.8.2008 p.82

- iii. keeping a register, and advising distributors, of non-compliant EEE which they have placed on the market, and any EEE which has been recalled;
- iv. taking appropriate corrective measures if the manufacturer becomes aware that EEE placed on the market is non-compliant, and advising market surveillance authorities of that non-compliance, and the corrective measures taken;
- v. co-operating with the market surveillance authority, including providing it with the information necessary to demonstrate compliance. This information must be provided in English in the United Kingdom. Other EEA states can require it in a language understood by their authority;
- vi. Identifying to market surveillance authorities who has supplied the manufacturer with EEE and to whom they have supplied EEE.

6. Importers' Obligations

6.1 Importers have an obligation to ensure that EEE they place on the market comply with the content restrictions. They must ensure that the manufacturer has a register of non-conforming EEE and product recalls, carried out a conformity assessment procedure, drawn up technical documentation, affixed the CE mark, and marked the EEE with the required information. Importers should also check that any documentation required is present, and mark the EEE with the importer's name, tradename or trademark, and a contact address. If EEE which they intended to place on the market is non-compliant, importers should inform the manufacturer, and the market surveillance authority, of the non-compliance.

6.2 Importers have the following additional obligations under the RoHS Regulations:

- i. keeping a register, and advising distributors, of non-compliant EEE which they have placed on the market, and any EEE which has been recalled;
- ii. taking appropriate corrective measures if the importer becomes aware that EEE placed on the market is non-compliant, and advising market surveillance authorities of that non-compliance, and the corrective measures taken;
- iii. co-operating with the market surveillance authority, including providing it with the information necessary (in English) to demonstrate compliance;

- iv. Identifying to market surveillance authorities who has supplied the importer with EEE and to whom they have supplied EEE.

6.3 If an importer places EEE on the market under its own name or trademark, it is required to comply with the duties imposed on manufacturers, instead of the duties imposed on importers.

7. Distributors' Obligations

7.1 Distributors' obligations arise when they make EEE available on the market. Distributors must not make EEE available if they have reason to believe it does not comply with the substance restrictions contained in regulation 3 of the RoHS Regulations. They should also inform the importer (or manufacturer if no importer exists), and the market surveillance authority.

7.2 Additional obligations for distributors under the ROHS Regulations include:

- i. taking appropriate corrective measures if the distributor becomes aware that EEE placed on the market is non-compliant, and advising market surveillance authorities of that non-compliance, and the corrective measures taken;
- ii. co-operating with the market surveillance authority, including providing it with the information necessary to demonstrate compliance;
- iii. Identifying to market surveillance authorities who has supplied the distributor with EEE and to whom they have supplied EEE.

8. Enforcement

8.1 It is the duty of the National Measurement Office, acting on behalf of the Secretary of State for Business, Innovation & Skills, to enforce these Regulations.

8.2 Various powers of enforcement are available, including:

- Making test purchases;
- Exercising powers of entry to business premises (this excludes premises that are used wholly or mainly as a private dwelling);

- Obtaining warrants;
- Requiring the production of compliance documentation and other information which may provide evidence as to whether or not the Regulations have been complied with in a particular case or class of cases;
- Inspecting processes, documents, goods, EEE etc;
- Seizing and detaining EEE, documents, information etc and performing analytical tests, or retaining it for use as evidence in proceedings;
- Issuing a compliance or enforcement notice requiring certain action to be taken, or requiring non-compliant goods to be withdrawn from the market or prohibiting or restricting the placing of non-compliant goods on the market;
- Issuing a recall notice requiring the economic operator to use reasonable endeavours to organise the return of the EEE;
- The market surveillance authority can take an action that could have been required under a compliance, enforcement or recall notice in certain circumstances.

Offences and penalties

8.3 The RoHS Regulations carry the following offences:

- i. Contravening or failing to comply with the prohibition on placing non-compliant EEE on the market found in regulations 10, 23 and 29, or with an enforcement or recall notice, could result in those held responsible facing a fine up to the statutory maximum (currently £5,000) on summary conviction or an unlimited fine on conviction on indictment.
- ii. The following offences could lead to a fine up to level five on the standard scale (currently £5,000) on summary conviction:
 - a. failing to take corrective measures and notify the authorities in cases of non-compliant EEE, in accordance with regulations 20, 26 and 30;
 - b. failing to keep technical documentation or an EU declaration of conformity in breach of regulations 15 and 27;
 - c. failing to keep a register of non-compliant and recalled EEE in breach of regulations 19 and 25;

- d. failing to co-operate with the authorities in breach of regulations 21, 27(5) or 31;
 - e. contravening or failing to comply with the requirements of regulation 33 regarding identification of economic operators to the market surveillance authority.
 - f. contravening or failing to comply with the requirements of regulation 34 regarding protection of CE marking.
- iii. Procedural offences (obstruction of an enforcement officer, providing false or misleading information to the enforcement authority) are also punishable on summary conviction by a fine up to level five on the standard scale.

8.4 As an alternative, or in addition, to any of the above penalties, the court may, in certain circumstances, make an order requiring a person convicted of the offences referred to in paragraph 36 (i) and (ii) above to remedy the matters which have given rise to the commission of the offence. In addition, the court may order a person convicted of the offences referred to in paragraph 36 (i) above to reimburse the enforcement authority's costs of investigating the offence.

8.5 The defence of 'due diligence' is available where a person can show he took all reasonable steps and exercised all due diligence to avoid committing an offence. This may include reference to an act or default of, or reliance on information given by, a third party, in which case it must be accompanied by such information identifying the third party as is in the possession of the defendant.

8.6 The RoHS Regulations also provide for the 'liability of persons other than the principle offender', including a provision that where a company or other body corporate commits an offence, those concerned in its management and responsible (consciously or by negligence) for the commission of the offence, may also be prosecuted.

9. Contact points

Department for Business, Innovation & Skills

Environmental Regulation Unit

Green Economy Team

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Tel: +44 (0) 20 7215 5000

Email: env.regs@bis.gsi.gov.uk

Website: <http://www.bis.gov.uk/policies/business-sectors/environmental-and-product-regulations/environmental-regulations/restriction-of-hazardous-substances-in-electrical-and-electronic-equipment-directive>⁹

The National Measurement Office - RoHS Enforcement Team

RoHS Enforcement Team

NMO

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Teddington

TW11 0JZ

Tel: +44 (0) 20 8943 7227

Email: rohs@nmo.gov.uk

Website: www.rohs.gov.uk

European Commission FAQ

The European Commission has issued an FAQ document for RoHS 2.

Email: ENV-ROHS@ec.europa.eu

Website:

http://ec.europa.eu/environment/waste/rohs_eee/events_rohs3_en.htm

⁹ <http://www.gov.uk> from December 2012

Annex A – Categories of electrical and electronic equipment covered by the RoHS Regulations.

Existing categories continuing to be within scope:

1. Large household appliances
2. Small household appliances
3. IT and telecommunications equipment
4. Consumer equipment
5. Lighting equipment, (including electric light bulbs and household luminaires)
6. Electrical and electronic tools (with the exception of large-scale stationary industrial tools)
7. Toys, leisure and sports equipment
10. Automatic dispensers

New categories being added to the scope:

8+9 Medical devices, monitoring and control instruments

From 22 July 2014: Medical devices and monitoring and control instruments

From 22 July 2016: In vitro medical devices

From 22 July 2017: Industrial monitoring and control instruments.

11. Any other EEE

From 23 July 2019: other electrical and electronic equipment not covered by any of the categories above,

Other additions:

Two wheeled electric vehicles which are not type approved and any products in categories 1-7 or 10 not covered by the original Directive come into scope from 23 July 2019.

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