

WEEE/RoHS DIRECTIVES IMPLEMENTATION

PART III - THE RoHS DIRECTIVE

INTRODUCTION

1. This part of the consultation paper presents the Government's proposals for the implementation of Directive 2002/95/EC on the Restriction of certain Hazardous Substances in electrical and electronic equipment, (the RoHS Directive).
2. There are seven key issues connected to the implementation of the RoHS Directive and these are explained in the following text. For each key issue, a box presents the Government's proposals for handling it and poses specific questions to which responses are invited.
3. For each key issue, there is also an explanation of Government thinking behind its proposals. This will enable readers to refer to the earlier discussion paper and see how the issue has been handled after consideration of the first round of responses.
4. Finally there is a short section summarising the response to the other issues that were raised about the implementation of the RoHS Directive in the Government's Discussion Paper of 28 March 2003.

HOW TO RESPOND TO THIS CONSULTATION

5. Part I of the consultation paper includes the details for how to reply to this consultation.

PROPOSALS FOR IMPLEMENTATION OF THE RoHS DIRECTIVE ISSUE BY ISSUE

Issue 1 – General Scope

6. Article 2 of the RoHS Directive indicates that it applies to electrical and electronic equipment falling into eight of the ten broad product categories listed in Annex 1A of the WEEE Directive, plus electric light bulbs and household luminaires. An indicative list of the types of products that should fall within these broad categories is contained within Annex 1B of the WEEE Directive. The two broad categories that are currently excluded from the RoHS Directive are category 8 (medical devices) and category 9 (monitoring and control instruments), although there is provision for the Commission to include these in due course (in Article 6).

The Government proposes:

- **to follow the general approach in relation to the definition of scope that is outlined under Article 2 of the WEEE Directive in Part II of this Consultation Document;**
- **to implement the RoHS Directive by reference to the product groups listed in categories 1, 2, 3, 4, 5, 6, 7 and 10 of Annex 1A of the WEEE Directive and, additionally to include electric light bulbs and household luminaires; and**
- **to construe the scope of the RoHS Directive by reference to the WEEE Directive and to apply the exemption provided in Article 2.3 of the WEEE Directive to exclude any electrical and electronic equipment that is intended specifically for military or security purposes from the scope of the RoHS Directive.**

Article 2.3 of the WEEE Directive states that equipment connected with national security or military purposes is excluded from the scope of the Directive. The RoHS Directive does not provide for a similar exemption, but the Government considers that the RoHS Directive is broadly reflected in the WEEE Directive and so the exemption will apply equally to products covered by this Directive.

The Government's view is that this exemption covers products designed and marketed specifically for national security and military purposes (e.g. a missile guidance system); but not products in the eight categories which can be used in connection with either military or civilian applications, like personal

computers.

Question 1

Several questions about the scope of the WEEE Directive are raised in Part II of this Consultation Paper. You should answer these questions if you are concerned about the scope of either or both Directives.

7. A general, but important, point to note at the outset is that what falls within the scope of the WEEE Directive is a matter of interpretation of the Directive and only the European Court of Justice could give an authoritative ruling. In the absence of a definitive legal ruling, Member States have to interpret the scope of provisions in order to implement the Directive. They could decide to adopt a case-by-case approach to questions of scope with reference to the Directive. The Government is concerned that this approach could leave it unclear whether the Directive applies to a particular product unless the position is questioned.
8. Therefore the Government is promoting discussions amongst Member States aimed at agreeing on some generic criteria to help stakeholders and national enforcement authorities consider whether the Directive applies to a particular product. The purpose would be to ensure a harmonised approach across the EC. Member States have agreed in principle that there should be such criteria. Much effort is currently going into trying to define what these criteria might be and how they should be used. It is hoped that Member States may reach an agreement shortly.
9. Responses to the Government's earlier Discussion Document showed clearly that uncertainty about the scope of the WEEE and RoHS Directives is an issue of major concern. The document's questions on scope and definitions attracted most answers. There was broad support for the approach of providing non-statutory guidance on scope to complement the implementing legislation.
10. The Government agrees that it is important to provide guidance to manufacturers and others on the scope of the Directives. The RoHS Directive is a Single Market measure, which broadly reflects the scope of the WEEE Directive. Decisions on which particular products are subject to the WEEE Directive will determine whether these need to meet the requirements of the RoHS Directive so that they may be marketed within the European Community. The Government has consistently emphasised this point to other EU Member States.

Issue 2 – Definition of “Put on the Market”

11. Article 4 of the RoHS Directive states that “*Member States shall ensure that, from 1 July 2006, new electrical and electronic equipment put on the market does not contain*” any of the restricted substances. Considerable concern has been expressed about the term “put on the market” and a number of alternative interpretations have been put forward.

The Government proposes to:

- **transpose the term “put on the market” in the implementing Regulations taking into account the context in which it appears in Article 4 of the Directive; and**
- **make reference to the interpretation offered by the European Commission in its *Guide to the implementation of Directives based on the New Approach and the Global Approach* in the guidance that will be issued to assist companies to comply with the requirements of the Directive. That interpretation is that “placing on the market is the initial action of making a product available for the first time on the Community market, with a view to distribution or use in the Community.”**

Question 2

Do you agree with the Government’s intended approach in relation to the term “put on the market”?

12. The *Guide to the implementation of Directives based on the New Approach and the Global Approach* (known as the Blue Book and published by the European Commission three years ago – ISBN 92-828-7500-8) states that ‘placing on the market’ is the initial action of making a product available for the first time on the Community market, with a view to distribution or use in the Community. ‘Making available’ can be either for payment or free of charge.
13. The Commission itself has also said recently that the term ‘put on the market’ as used in the RoHS Directive should be interpreted in accordance with the similar term used in the Directives based on the new approach.
14. The Government would welcome your views on the implications of its intended approach and interpretation for the implementation of the RoHS Directive.

Issue 3 – Spare Parts

15. Article 2.3 of the text states that the RoHS Directive does **not** apply to spare parts that are used for the repair or re-use of equipment put on the market before 1 July 2006. There has been confusion both about the meaning and scope of this derogation.

The Government proposes:

- **to construe the derogation as applying to spare parts used for the repair or reuse of electrical and electronic equipment ‘put on the market’ before 1 July 2006 (within the definition of ‘put on the market’ outlined in Issue 2 above); and**
- **to allow the manufacture, import, distribution and sale of spare parts containing the restricted substances – for the repair and reuse of such equipment – until this is derogation is no longer necessary.**

Question 3

Do you agree with the Government’s intended approach in relation to Article 2.3?

16. In the first round of consultation, the Government proposed that the spare parts exemption should apply only to equipment that has been sold to the end-user on or before 30 June 2006. Most respondents to the earlier Discussion Paper either agreed with the Government’s proposal or thought that the exemption should be linked to the definition of placed on the market, with a small majority favouring the former option.
17. The Government’s view is that the interpretation of Article 2.3 should be consistent with the agreed definition for ‘put on the market’ in Article 4.
18. However, the scope of this exemption is not clear. There are two possible ways to construe Article 2.3. First, it could be interpreted to mean that the exemption is restricted to only cover spare parts that have been put on the market before 1 July 2006, (that is spare parts made available for distribution or use by that date). Secondly, it could be interpreted to mean spare parts for electronic and electrical equipment that has itself been put on the market before 1 July 2006, with no set time limit.
19. The first interpretation would mean that both equipment and spare parts placed on the market before that date would not have to comply with the requirements of Article 4. This is consistent with usual transitional provisions, the purpose of which is to enable manufacturers

to use up their stock of products manufactured in accordance with national legislation and to change their processes to adapt to the new requirements imposed by the Directive.

20. The second interpretation is that the manufacture of spare parts are exempt from the requirements of the Directive indefinitely, so long as they are being produced for equipment already on the market before 1 July 2006. The text of recital 12 of the Directive could be seen to support this by indicating that the spare parts exemption is necessary because product reuse is beneficial (when appropriate) since it often uses a great deal less energy to reuse a product than to recycle it. In the absence of an exemption for spare parts, it would be difficult for member States to meet their obligation under the WEEE Directive to encourage re-use of whole products and a great deal of equipment could be prematurely scrapped for the want of spare parts. Eventually, of course, the manufacture of these spare parts would cease to be required or the demand would be so low as to make their manufacture not economically viable.
21. At this stage, the Government proposes to transpose the exemption along the lines of the second interpretation, unless there is clear evidence and support from other Member States that they intend to transpose this exemption some other way. This is in line with the Government's policy of encouraging reuse where viable and with the requirement in the WEEE Directive to encourage reuse.

Issue 4 – Maximum Concentration Values

22. Article 5 of the RoHS Directive is concerned with the potential amendment of the text in the light of scientific and technical progress through the establishment of a Committee (known as the Technical Adaptation Committee or TAC) set up under Article 7. Article 5.1 charges this Committee with the establishment of maximum concentration values for each of the substances restricted by the RoHS Directive.

The Government proposes:

- **to attempt to secure agreement by the TAC of a limit of 0.1% by weight and per homogeneous material for lead, hexavalent chromium, mercury, PBBs and PBDEs and 0.01% by weight and per homogeneous material for cadmium; but**
- **to comply with any other wording agreed by the TAC in view of the Single Market (Article 95) legal basis of the RoHS Directive.**

Question 4

Do you agree with the Government's intended approach in relation to the establishment of maximum concentration values for the substances restricted by the RoHS Directive?

23. A joint Technical Adaptation Committee (TAC) for both the WEEE and RoHS Directive was established at the beginning of this year and has already met several times in Brussels to discuss key ongoing transposition issues. One of the crucial issues discussed in connection with the implementation of the RoHS Directive has been to attempt to set maximum concentration values (MCVs) for each of the six substances mentioned in Article 4.
24. In the first round of consultation, the Government reported that the European Commission had proposed that the MCVs for the RoHS Directive should be the same as the heavy metal limits found in the End of Life Vehicles (ELV) Directive, namely 0.1% by weight and per homogeneous material for lead, hexavalent chromium and mercury and 0.01% for cadmium. The Commission had also proposed that the same 0.1% limit should also apply to the two brominated flame retardants, (PBBs and PBDEs).
25. The proposed limits have received the general support of Member States at the TAC. These limits also received the support of the majority of respondents to the Government's first round of consultation.
26. Final agreement has not been reached, however, on the final wording of the MCVs and a number of alternatives have been proposed by TAC members, (these include by weight and per homogeneous material, by weight and per applied material, by weight and per specific material and by weight per component). The Government is minded to support the proposal that the final wording should be 0.1% by weight and per homogeneous material for lead, hexavalent chromium, mercury, PBBs and PBDEs and 0.01% by weight and per homogeneous material for cadmium. This provides consistency with the heavy metal limits specified within the ELV Directive.
27. It is hoped that final agreement on the wording of the MCVs can be reached within the TAC in the very near future. As soon as this happens the Government will place an announcement on the DTI website and will inform all respondents to this Consultation Paper.

Issue 5 – Exemptions to the RoHS Directive

28. The Annex to the RoHS Directive contains a list of hazardous substances applications that are exempt from its requirements. Paragraph 10 of the Annex contains four applications the status of

which the Commission is committed to reviewing as a matter of priority within the framework of the TAC established by Article 7.

The Government proposes:

- **to monitor the work being undertaken by technical consultants employed by the Commission to evaluate the specific applications of Deca BDE, mercury, lead and light bulbs in paragraph 10 of the Annex to the RoHS Directive and the new exemptions proposed by TAC members; and**
- **to reflect the output of this work in the drafting of its proposed implementing Regulations.**

Question 5

Do you agree with the Government's intended approach in relation to the specified exempted applications for the RoHS Directive?

29. The Annex to the RoHS Directive contains a number of specific applications of lead, mercury, cadmium and hexavalent chromium that are exempt from its requirements. The last paragraph of this Annex (paragraph 10) contains four applications that are currently exempt or included within the scope of the Directive. The Commission has been placed under an obligation to review these applications as a matter of priority.

30. The applications specified in paragraph 10 of the Annex to the RoHS Directive are: -

- Deca BDE
- Mercury in straight fluorescent lamps for special purposes
- Lead in solders for servers, storage and storage array systems, network infrastructure equipment for switching, signalling, transmission as well as network management for telecommunications (with a view to setting a specific time limit for this exemption), and
- Light bulbs.

31. During the meetings of the TAC held earlier this year and in correspondence with the Commission, a number of applications for exemptions have been tabled by Member States. The Commission has decided to fund a short consultancy contract to assess the technical viability and validity of both the paragraph 10 cases and the proposals for possible new exemptions.

32. Unfortunately the final report from the technical consultants will not be available until sometime in the first half of next year. In these

circumstances the Government proposes to reflect the outcome of that work in the drafting of the UK implementing Regulations for the RoHS Directive. The Government hopes to publish these Regulations (in draft for consultation with stakeholders) in the second quarter of 2004.

Issue 6 – Compliance

33. Once the RoHS Directive has been transposed across the EU, producers will be obliged to demonstrate compliance with its requirements. Formal testing procedures or testing standards will need to be established for each of the banned substances as part of a compliance regime, but the demonstration of compliance might – in many cases - also be achieved through other means.

The Government proposes:

- **to pursue the establishment of a EU-wide way forward on compliance with the requirements of RoHS Directive (including standards for suitable test methods) and will take this issue forward with other Member States through the structure of the Technical Adaptation Committee.**

Question 6

Do you agree with the Government's view on this way forward?

34. The issue of compliance and compliance testing was raised in the first Discussion Paper. A total of 12 respondents suggested scientific methods for testing the presence of the restricted substances in final products and components.

35. These destructive test methods can be summarised as: -

- The use of Atomic Absorption Spectrophotometer (AAS), Inductively Coupled Plasma Spectrometry (ICP-AES) for the detection of cadmium, lead and mercury
- The use of Ultra Violet/Visible Spectrophotometer for the detection of hexavalent chromium
- The use of Energy-Dispersive X-ray Fluorescence Spectrophotometry (EDAX), High Performance Liquid Chromatography (HPLC) or Ion chromatographic methods for the detection of bromine in flame retardants; and for all of the substances when used in conjunction with GC-MS or FTIR (Fourier Transform Infrared Spectrophotometer)
- The use of Gas Chromatography/Mass Spectroscopy (GC-MS) for the detection of brominated flame retardants.

36. Methods for sample preparation were also provided and included the various methods defined by the US Environmental Protection Agency.
37. A number of other ways forward might also be considered in the development of an overall compliance regime for the RoHS Directive, including self-declaration by manufacturers (similar to the way that compliance with the EC's New Approach Directives is demonstrated) and agreed standards on reporting formats (making use of supply chain information).
38. In view of the Single Market implications of the RoHS Directive, the Government proposes to attempt to gain the support for the establishment of a European-wide way forward on the development of a compliance scheme, which it will pursue with other Member States through the structure of the TAC. Our discussions will need to balance the need for environmental protection with the need for a structure that is cost-effective, robust and has the support of the manufacturing sectors and distributors that it will regulate.

Issue 7 – Enforcement

39. Article 9 requires Member States to bring administrative provisions necessary to comply with the RoHS Directive before 13 August 2004.

The Government proposes:

- **to place the duty to enforce the RoHS Regulations on the Secretary of State for Trade and Industry;**
- **that in carrying out that duty the Secretary of State will act through a Government Agency or third party; and**
- **to cover this issue in the guidance that will be published in draft alongside the draft Regulations next year.**

Question 7

Do you agree with the proposed enforcement regime?

40. In paragraph 20 of the first Discussion Paper, the DTI suggested that Local Authority Trading Standards Departments (TSDs) were likely to be the UK enforcement agency for the purposes of the RoHS Directive. This suggestion resulted in very little response. In subsequent discussions with LACORS (the representative body for TSDs) however, it has been decided that this initial suggestion might not be appropriate, particularly in view of TSDs more general responsibilities for consumer safety and fair trading issues.

41. Alternative enforcement methods and enforcement bodies are being investigated and assessed and it is proposed to publish the results of these within the draft guidance that will be issued to assist companies to comply with the requirements of the WEEE and RoHS Directives in the spring of next year.
42. Failure to comply with the requirements of the UK's RoHS Regulations will result in the removal of manufacturers' products from the market place. In addition, those held responsible face, on summary conviction, a term of imprisonment not exceeding three months and/or a fine of up to £5,000. Where any offence is tried on indictment, the maximum penalties are a term of imprisonment of up to two years and an unlimited fine.

Brief summary of the response to the other issues raised in the Discussion Paper

43. A number of other issues were raised in the Government's Discussion Paper of 28 March 2003, namely: -
 - Definition of 'Electrical and Electronic Equipment': - Most respondents to this question generally expressed the view that it would be necessary to have a definition that was consistent both across the Single Market and with the definition contained within the WEEE Directive.
 - Definition of 'Producer' in Respect of EEE Procurement by Telephone, Fax or the Internet: - Eight possible 'producers' were identified by respondents with the 'importer' being the favoured 'producer' in respect of the RoHS requirements. Many of the other players identified may, in practice, be considered the 'importer' as well.
 - Clarity and practicality of the exemptions to the RoHS Directive: - Over half the respondents to this question did not think that the extent of the exemptions was clear but this issue will be addressed by the proposed technical study mentioned in Issue 5 above.
 - Definitions for 'Materials' and 'Components' in the Proposed Wording for the Maximum Concentration Values: - The most popular response for the definition for a 'material' was 'homogeneous material' to provide consistency with the wording of the ELV Directive. As a result the Government has decided to support this definition in respect of Issue 4 above.
 - The most popular definition for a component was 'a component can be defined as any mechanical part or any electrical device which cannot be separated without destroying its function'.

- Delay about a Decision on the Possible Exemption of Deca BDE: - Most agreed that any decision about Deca BDE should be delayed until the results of the risk reduction strategy had been completed.

General question

The Government also invites comments on the indicative costs in the partial regulatory impact assessments on the RoHS Directive which accompany this consultation. They are available on the DTI's web site at <http://www.dti.gov.uk/sustainability/wEEE/index.htm>. If you do not agree with the costs estimates, please provide as much detail to back up your own estimates as possible.