

UPDATE ON WEEE

What is WEEE?

Waste electric and electronic equipment ("WEEE") is the fastest growing waste stream at around 8% per year with Europe producing around 6 million tonnes annually. Rapid changes in technology and fashion mean short lives for equipment such as mobile phones, PC's and DVD's, which tend to be thrown away when a new model comes out. These practices are fuelling this rapid growth in waste.

Most WEEE products contain hazardous components for example, fire retardants in the plastic around PC's, lead in cathode ray tubes and cadmium in circuit boards. The majority of these substances currently end up in landfill sites around Europe or are exported to developing countries to be disposed of. In February 2003 the European Commission published the WEEE Directive with the aim of recovery and reuse of WEEE. The Directive covers a wide range of WEEE set out in ten main categories, including:

- Large household appliances – freezers, dishwashers, electric radiators
- Small household appliances – vacuum cleaners, toasters, scales, coffee machines
- IT – PC's (including mouse, screen and keyboard), printers, payphones
- Consumer equipment – radios, TV's, amps
- Lighting equipment – luminaries, fluorescent lamps, sodium lamps
- Tools – drills, saws, sewing machine, welders, lawnmowers
- Medical – radiotherapy equipment, dialysis, nuclear medicine
- Monitoring – smoke detectors, thermostats, heating regulators
- Automatic dispensers – for money, solid products, drinks

This list is not exhaustive. There are limited exclusions which primarily cover equipment for national security and large industrial plant.

Who is responsible for WEEE?

The Directive incorporates the underlying principle of "producer responsibility", requiring those

who create electronic equipment to deal with the environmental and financial consequences. Therefore the primary legal liability for recovery and reuse falls on the "Producer" of the electrical and electronic equipment ("EEE").

The Producer is defined in the Directive as anyone who, irrespective of the selling technique used:

- Manufactures and sells EEE under their own brand;
- Resells under their own brand EEE produced by other suppliers; or
- Imports or exports EEE on a professional basis to a Member State.

However, for the aim of the Directive to be achieved, everyone from householders to businesses will have to take responsibility for the throw-away society that has now developed.

Producer's Obligations

Producers will be required to register details of their company and provide data on the type and amount of EEE placed on the market in 2004 (and then continually register in January of each year from 2007 and provide EEE data). Each Producer will be allocated WEEE from private households deposited at collection facilities. The amount allocated to each Producer will be a proportion of the total collected and based on the amount of EEE they have placed on the market. For this proportion of WEEE, a Producer must then:

- provide finance for collection, treatment, recovery and environmentally sound disposal of this WEEE (although for EEE supplied up to 13 August 2005, Producers are only responsible for financing the removal of equipment on a like for like basis so, for example, if a consumer purchases a new PC or laptop from a Producer, the Producer need only provide finance for the removal of their old PC);
- provide for treatment using best available treatment recovery/recycling techniques (and in compliance with relevant permitting requirements);
- provide for recovery; and
- actually recover, recycle and reuse the specified percentages set out in the Regulations for each type of EEE.

Alternatively, Producers can join a compliance scheme which, for a fee, will discharge the duties on their behalf. All Producers must submit a certificate to show compliance with recovery obligations and targets.

There is also a further option open to Producers. They may notify the regulator that they wish to make their own arrangements specifically for the products that they have placed onto the market, rather than be allocated a proportion of WEEE from private households. This is subject to the regulator's approval that such arrangements are

sufficient to meet that Producer's responsibility under the Regulations.

All EEE placed on the market must be marked with a symbol illustrating a crossed-out wheellie bin. The product must also be marked so the Producer's identity is clear for example, by a trade mark, brand name or company registration number.

Allocation of WEEE

There has been and continues to be much debate as to how WEEE will in reality be allocated to each Producer. Early on in the consultation process a number of large producers advocated the concept of a National Clearing House ("NCH"), which was set to take on this administrative task. However, in its press release on 30 March 2005, the DTI announced this concept had been put on hold. The government now expects the Environment Agency to register Producers and the DTI to allocate WEEE to Producers/compliance schemes for pick up from designated collection facilities.

Who else will be involved?

Distributors and retailers
Distributors (defined in the draft Regulations as anyone providing EEE on a commercial basis to the party who is going to use it) and retailers selling EEE will have to offer like-for-like take-back or register with a compliance scheme. Retailers and distributors who go down the take-back route must then pass the collected items to a designated collection facility for recycling/disposal.

Business Users

There are separate provisions for WEEE from business users. For example, a company may replace its EEE products that were placed on the market before 13 August 2005 with new equivalents or products with the same function. In that case, the costs of financing collection, treatment, recovery and disposal must be met by the Producer of the new products on a like for like basis. However, if the WEEE is not being replaced, then the company would have to meet those costs itself and provide information to the regulator to show this obligation has been met.

In respect of new products sold to business users after 13 August 2005, there is free rein for businesses and Producers to negotiate separate commercial agreements as to how to allocate responsibility when these products become WEEE.

Local Authorities

The Directive requires Member States to put in place measures to ensure as much WEEE as possible is separately collected so as to reduce the amount being disposed of as unsorted municipal waste. This will inevitably involve local authority civic amenity sites however, there is no legal obligation imposed on local authorities to provide for separate WEEE collection. As over half the civic amenity sites currently collect WEEE, the government expects that a large number will register with the NCH as designated collection facilities. However, many issues will undoubtedly be raised for these sites including space, financing, security and health and safety.

Environment Agency's Role

The Environment Agency is likely to be the primary regulator with responsibility for permitting treatment facilities and providing guidance on the scope of the legislation. Additionally, it may regulate the export of equipment, components and materials that are waste. Verification of recovery and recycling rates may also be covered by the Agency and it will certainly be responsible for enforcement, in relation to the operation of treatment facilities and producers that fail to register or give false data.

Criminal Liability

As with most environmental breaches, failure to comply with the requirements of the regime will amount to a criminal offence. Offences for the producer responsibility aspects of the regime are likely to be similar to those under the Packaging Regulations and for treatment sites, existing waste management provisions are to be relied upon. The draft regulations currently show the maximum penalties per offence as £5,000 in the Magistrates Court and an unlimited fine in the Crown Court.

Hazardous substances

The EU considers the goal of reducing hazardous WEEE in landfills will only be achieved through a more environmentally aware approach to all aspects of the EEE product cycle, not just waste. Therefore a second directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (also known as RoHS) has been published to complement the aims of the WEEE Directive.

It will have a major impact on the design of equipment as the directive prohibits new EEE from containing lead, mercury, cadmium, hexavalent chromium, poly-brominated biphenyls or polybrominated diphenyl ethers except in certain applications, and then only up to the acceptable limits quoted. Exemptions are stated in the Annex to the Directive but are limited.

Timing

The WEEE Directive requires Producers to start meeting their obligations from 13 August 2005. However, this assumes Member States would have implemented the Directive by the required date of 13 August 2004. In many countries this was not the case and indeed, the UK has not done so as yet. On 30 March 2005, the DTI indicated that the UK's Regulations would be in force in the "summer 2005" along with non-statutory guidance. Producer responsibility obligations and take-back obligations on retailers/distributors will then be implemented from January 2006. Further consultation on the actual permitting of WEEE treatment facilities is expected soon.

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Department REGULATORY AND ENVIRONMENTAL

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