



## **WEEE CONSULTATION**

Part I: Draft implementation of Directives  
2002/96/EC and 2003/108/EC on Waste  
Electrical and Electronic Equipment

July 2006

URN 06/1329



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We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

## **Aim of the consultation**

This consultation invites your views on the Government's proposals for the draft legislation to implement Directives 2002/96/EC and 2003/108/EC on Waste Electrical and Electronic Equipment (the WEEE Directive) and on the draft non-statutory guidance.

Following earlier consultations in 2003 and 2004, in December 2005 the Government undertook a review of the implementation of the Directive. The conclusions of the review were published in March 2006. The proposals set out in this document take account of informal discussions held with the stakeholder community including producers, retailers, the reprocessing and recycling industries, charities, refurbishment industries and local authorities.

**Issued** 25 July 2006

**Respond by** 17 October 2006

**Enquiries to** Debra Huntington  
Sustainable Development & Regulation Directorate  
Department of Trade and Industry  
Bay 399  
151 Buckingham Palace Road  
London  
SW1W 9SS

[weee@dti.gsi.gov.uk](mailto:weee@dti.gsi.gov.uk)

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Part II – The WEEE Directive – draft non-statutory guidance  
(URN 06/1330)

Part III - The WEEE Directive – partial regulatory impact assessment  
(URN 06/1331)

## Foreword by the Minister



The Government is committed to sustainable development and has set the goal of reducing the impact of electrical and electronic waste on our environment. By ensuring that WEEE is treated, recycled and disposed of to high environmental standards, we protect the environment and human health from the risk of hazardous contamination.

The Restriction of Hazardous Substances (RoHS) legislation already places restrictions on the concentration of certain substances in new products placed on the market.

The Waste Electrical and Electronic Equipment Directive (WEEE), which is the subject of this consultation, aims to encourage reuse, recycling and recovery of waste to minimise the impact of electrical and electronic goods on the environment. How such waste will be collected, treated, recycled and recovered in the UK is dealt with by the Regulations.

The Directive will encourage the return of used equipment since private householders are able to return equipment for reuse or recycling without charge.

We have consulted extensively with representatives of producers, distributors, local government, the waste management industry and charities in preparing the proposals in this document.

It is crucial that we have a wide-ranging and informed consultation if the implementation of the WEEE Directive in the UK is to be successful and efficient.

I very much hope that all those with an interest in these important issues will contribute their views.

Malcolm Wicks  
July 2006

## Executive Summary

1. This consultation, which opened on 25 July 2006, invites your views on the Government's proposals for the draft legislation to implement Directives 2002/96/EC and 2003/108/EC on Waste Electrical and Electronic Equipment (the WEEE Directive) and on the draft non-statutory guidance which accompanies this.
2. This consultation is being undertaken by the UK Government, together with the Devolved Administrations – the Scottish Executive, the Welsh Assembly Government and the Northern Ireland Administration<sup>1</sup>. The WEEE Directive is an environmental Directive, which covers some devolved matters, and it is for the Devolved Administrations to decide on their implementation method.
3. This consultation presents proposals developed jointly by the UK Government and the Devolved Administrations and takes account of discussions with stakeholders. The draft implementing Regulations presented in this consultation are drafted as UK Regulations, as that is likely to be the most effective means to implement the single UK model on which the Government is consulting.
4. Your views are invited in response to this consultation paper by 17 October 2006.
5. The key proposals are:
  - A national Distributor Takeback Scheme which will establish a network of Designated Collection Facilities (DCFs);
  - Obligatory registration for producers through approved compliance schemes;
  - A Code of Practice covering the collection of WEEE from DCFs;
  - Approved Treatment Facilities (ATFs), which will process WEEE and provide evidence to producers on the amount of WEEE received for treatment;
  - Accredited reprocessing facilities which will provide evidence of reprocessing to producers;
  - An end-of-year settlement to ensure producers are able to meet their obligations via an "Exchange" system;
  - A voluntary approach for producers to show the cost of handling historical WEEE.
6. This consultation is the final phase of the Government's consultation process for implementing the WEEE Directive.
  - a) In spring 2003, the Government invited comments on a discussion paper which set out options for implementation;

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<sup>1</sup> Throughout the papers for this consultation, "Devolved Administrations" refers to the Scottish Executive, Welsh Assembly Government and the Northern Ireland Administration. Where the consultation deals with devolved matters under the WEEE Directive, "the Government" means the UK Government and the Devolved Administrations.

- b) In winter 2003-2004, the Government canvassed views on a package of policy proposals for implementation of the RoHS and WEEE Directives; and
  - c) In late 2005, the Government undertook a review of implementation. The conclusions of this review were published in March 2006.
  - d) The current proposals are a result of the review team's subsequent dialogue with the stakeholder community including producers, retailers, the reprocessing and recycling industries, refurbishment industries, local authorities, charities and representatives of the SME community.
7. The previous consultation papers, together with summaries of their outcomes are downloadable from the DTI website:  
<http://www.dti.gov.uk/innovation/sustainability/weee/page30269.html>.
8. The Government has considered the responses to earlier consultations including the recent informal consultation with stakeholders. This has strongly influenced policy development, the guidance notes and the partial regulatory impact assessment which are part of this consultation.

### How to respond

9. Your views are invited in response to this consultation paper by 17 October 2006. We would prefer responses by email, but you may also respond by letter or fax to the following:

<b>For England</b>	<b>For Wales</b>
Debra Huntington Sustainable Development & Regulation Directorate Department of Trade and Industry Bay 399 151 Buckingham Palace Road London SW1W 9SS	Gary Whitbread Enterprise Innovation and Networks Welsh Assembly Government Crown Buildings Cathays Park Cardiff CF10 3NQ
<a href="mailto:weee@dti.gsi.gov.uk">weee@dti.gsi.gov.uk</a>	<a href="mailto:gary.whitbread@wales.gsi.gov.uk">gary.whitbread@wales.gsi.gov.uk</a>
Tel: 0207 215 1475 Fax: 0207 215 5835	Tel: 029 2082 3914 Fax: 029 2082 5137

<b>For Scotland</b>	<b>For Northern Ireland</b>
<p>Adam Sinclair Waste and Pollution Reduction Division The Scottish Executive Mailpoint 11 Victoria Quay Edinburgh EH6 6QQ</p> <p>waste.team@scotland.gsi.gov.uk</p> <p>Tel: 0131 244 4968 Fax: 0131 244 0245</p>	<p>Janice Harvey Environmental Policy Division Department of the Environment 20-24 Donegal Street Belfast BT1 2GP</p> <p>Janice.Harvey@doeni.gov.uk</p> <p>Tel: 028 9054 4505 Fax: 028 9054 4520</p>

10. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

11. A list of those organisations and individuals who participated in the informal consultation can be found in ANNEX C - Organisations Consulted.

### **Additional copies**

12. You may make copies of this document without seeking permission.

13. The documents for this consultation (listed on page 2 of this paper) are downloadable from the DTI website:

<http://www.dti.gov.uk/consultations/>

### **Confidentiality & Data Protection**

14. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

15. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of

your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

16. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
17. DTI will copy all responses it receives to the Devolved Administrations, Defra and other Whitehall Departments as appropriate.
18. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Mary Smeeth, Consultation Co-ordinator  
Department of Trade and Industry  
Better Regulation Team  
1 Victoria Street  
London  
SW1H 0ET

E-mail: Mary.Smeeth@dti.gsi.gov.uk  
Tel: 020 7215 2146  
Fax: 020 7215 2826

A copy of the Code of Practice is in ANNEX D - The Consultation Code of Practice.

### **Timetable**

19. The Government expects to transpose the Directive into UK law in December 2006, after having taken full account of responses to this consultation on its draft legislation. The draft WEEE guidance indicates the timescale for implementation.

## Consultation Questions

- Q1.** Do the proposals in this document and the accompanying Guidance correctly implement Directives 2002/96/EC and 2003/108/EC?
- Q2.** If you are a small business, what burdens are associated with the introduction of the Regulations and how could these be mitigated?
- Q3.** In the Regulatory Impact Assessment, do you agree with the costs and benefits of handling WEEE in accordance with the Directive? If not, please provide your estimate of these costs and provide evidence in support of your figures.
- Q4.** What do you think of the approval criteria for producer compliance schemes? Are there any criteria that appear superfluous or are there any important criteria that have not been taken into account?
- Q5.** What would be a reasonable permissible limit for over- or under-collection by a compliance scheme? How could this limit be defined?
- Q6.** What is a practical limit for payments by the Exchange to schemes which have over-collected? Please explain what the effects of changing this limit would be.
- Q7.** What improvements could be made to the arrangements for evidence and trading, which are consistent with the reporting requirements of the Directive and which show that the producers' obligations have been fulfilled?
- Q8.** Do you agree that the mandatory presentation of the costs of handling historic WEEE would exceed the requirements and increase the costs of implementing the Directive? How could such a fee be set at an appropriate level (adjusted over time), without arbitrarily distinguishing the costs of handling historic WEEE from other costs faced by producers?
- Q9.** What do you think of the arrangements for business to business producers? Are there any difficulties/particularities about business to business WEEE that have not been taken into account?
- Q10.** The annual subsistence charge payable to the agencies includes the cost of monitoring activities against free-riders. Do you agree that part of that fee should cover monitoring activities? Are there other ways in which the cost of monitoring activities might be recovered from members of a compliance scheme?

## The WEEE Directive – draft implementation proposals

### Background

20. The WEEE Directive is European environmental legislation. It is one of a small number of European Directives which implement the principle of “extended producer responsibility”. Under this principle producers are required to take responsibility for the environmental impact of their products, especially when they become waste. The WEEE Directive applies this in relation to electrical and electronic equipment (EEE).
21. The broad aim of the WEEE Directive is to address the environmental impacts of WEEE and to encourage its separate collection and subsequent treatment, reuse, recovery, recycling and environmentally sound disposal.
22. The Directive seeks to improve the environmental performance of all operators involved in the lifecycle of EEE especially those dealing with WEEE. Accordingly it sets certain requirements relating to the separate collection of WEEE, standards of its treatment at permitted facilities, and sets targets for its recycling and recovery.
23. Under the Directive:
- distributors<sup>2</sup> have an obligation to give consumers<sup>3</sup> the opportunity to return WEEE free of charge when they purchase new equipment of a similar kind;
  - producers are responsible for funding the collection, treatment, recovery and recycling of a share of household WEEE delivered to authorized treatment facilities in line with their market share (i.e. the amount of EEE they place on the UK market in any compliance period).

### Principles

24. The Government supports the principles underlying extended producer responsibility. It has concluded that UK implementation of the WEEE Directive should have the following features:
- An option of a Distributor Takeback Scheme (DTS) for retailers, which will establish networks of Designated Collection Facilities (DCFs);
  - Obligatory registration for producers, through an approved producer compliance scheme;

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<sup>2</sup> A distributor means any person who provides electrical or electronic equipment on a commercial basis to the party who is going to use it.

<sup>3</sup> throughout this document 'consumer' denotes a non-business end-user of EEE

- Requirements on compliance schemes to discharge producer responsibility obligations;
- A system for calculating producers' obligations under the Directive based on market share;
- A statutory code of practice covering the collection of WEEE from DCFs;
- Authorised Treatment Facilities which will process WEEE and provide evidence to producers on the amount of WEEE received for treatment;
- Accredited reprocessing facilities which provide evidence of reprocessing to producers;
- An end-of-year settlement period to ensure producers are able to meet their obligations via an "Exchange" system;
- A voluntary approach for producers to show the cost of handling historical WEEE.

### **Benefits to Stakeholders**

25. The proposed approach allows stakeholders to internalize costs and realize efficiencies by controlling the collection, treatment and reprocessing of WEEE in the following ways:

- Producer Compliance Schemes (PCS) will manage the collection, treatment and reprocessing of deposited WEEE in partnership with DCFs, and will arrange to meet recovery and recycling targets for their members;
- Local Authorities can ensure the collection of WEEE from their sites knowing that, if sites are not cleared by producer compliance schemes, they will be able to recover their costs through the "Exchange" system;
- SMEs will be able to join a compliance scheme through the fair fee structure, which reflects the market share or size of each company;
- Distributors and producers will be free to agree, through their supply chain negotiations, how the cost of handling historical WEEE may be displayed and the most appropriate method (e.g. on packaging, or in-store displays);

The remainder of this document describes how the regulations will require producers and distributors to discharge their obligations.

- Q1.** Do the proposals in this document and the accompanying Guidance correctly implement Directives 2002/96/EC and 2003/108/EC?
- Q2.** If you are a small business, what burdens are associated with the introduction of the Regulations and how could these be mitigated?
- Q3.** In the Regulatory Impact Assessment, do you agree with the costs and benefits of handling WEEE in accordance with the Directive? If not, please provide your estimate of these costs and provide evidence in support of your figures.

## **Distributors<sup>2</sup>**

26. A “distributor” includes retailers/distance sellers and manufacturers making direct sales to consumers.
27. Under the Directive distributors are obliged to offer facilities free of charge for consumers to return old or discarded EEE.
28. Under the UK regulations distributors will be able to discharge their obligation by:
- providing in-store take-back to a consumer who is purchasing a similar item or an item for similar use, or
  - membership of a distributor takeback scheme which provides a local facility for the consumer to discard WEEE, or
  - in the case of distance sellers, a free collection on delivery service or membership of a distributor takeback scheme which operates in the consumer's locality.
29. We propose that the Regulations provide the Secretary of State with powers to appoint a national distributor takeback scheme for three compliance periods. An open competition is being held to select the national scheme. The rules of the competition indicate the criteria for selection of a national scheme. The Department will take into account representations made about the applications and consultations with the devolved administrations, and will if appropriate impose conditions on the body appointed. This process should ensure that the scheme operates in the interests of all potential members.
30. If in time, there is a demand to create additional distributor takeback schemes, the Department will consider the case for making further appointments.
31. If a distributor is also a producer under the definition of the Directive, then the DTS will not discharge their producer obligations. These obligations will be met through a producer compliance scheme. Equally, for such distributors, membership of a producer compliance scheme will not satisfy their obligations to provide facilities for WEEE to

be returned so DTS membership or in-store take-back facilities must be arranged.

### **Re-use of WEEE**

32. The Directive states that, where appropriate, priority should be given to the reuse of WEEE as whole appliances. The Regulations therefore require compliance schemes, as a condition of approval, to demonstrate how they will give priority to the reuse of whole appliances.
33. Voluntary sector groups already play a valuable role in promoting the re-use of WEEE through refurbishment and reuse, and this will continue when the Regulations come into force. Some of these groups have already adapted their operations in anticipation of the Directive's requirements. WEEE which is reused will be separately identified in a DCF's report to the relevant compliance scheme.
34. The work of these groups has both environmental and socio-economic benefits. They can contribute to the delivery of both producer and local authority objectives. It is in the interests of producers and authorities to work with them in advance of full implementation of the Directive, so that their subsequent contribution can be maximised.

### **Producer registration**

35. Under the Directive all producers placing EEE onto the UK market during a compliance period must be registered. In the UK, registration will be with the appropriate environment agency<sup>4</sup> through an approved producer compliance scheme. The environment agencies will set and levy appropriate annual charges (para 90). The appropriate agency will normally be determined by the principal place of business of the compliance scheme.
36. Producers will be required to display their unique WEEE registration number on transaction documents.
37. A producer compliance scheme will have responsibility for registering each of its members during a compliance period. Although members may not change schemes during a compliance period, annual registration will allow members to change schemes before a new compliance period begins.
38. Registered producers may join one compliance scheme for household EEE, and another for non-household EEE. Corporations registering more than one producer must ensure that all their EEE is covered.

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<sup>4</sup> Environment Agency for England and Wales, SEPA for Scotland and Environment and Heritage Service in Northern Ireland

39. The agencies<sup>4</sup> will publish a publicly-accessible register of all producers which will include as a minimum, the registration number, address, compliance scheme membership, brands and group of categories of EEE the producer places on the UK market.
40. New entrants to the market must join a compliance scheme within 28 days of entering the market. New producers will have obligations from the point they enter the market.

### **Producer compliance schemes**

41. Producer compliance schemes will be approved by one of the environment agencies. Approval of a scheme will last for three consecutive compliance periods (see 44). Approval criteria for producer compliance schemes are set out in ANNEX A - Criteria for Producer Compliance Schemes.
42. Producer compliance schemes may have their approval withdrawn if they fail to meet the obligations set out in ANNEX A.
43. Producer compliance schemes will discharge their obligations under the WEEE Directive. Each scheme will be required to:
- register all its members with the appropriate environmental agency;
  - provide the required data to the appropriate agency;
  - arrange the collection transportation, treatment and reprocessing of WEEE arising at DCF sites;
  - submit evidence on behalf of its members to the environment agencies and;
  - arrange a settlement at the end of each compliance period where under- or over-collection has occurred.
44. Each producer compliance scheme will be required to produce a report by the end of 2007 on how its members would implement Article 8(2) on individual producer responsibility. This may involve financial guarantees by producers to limit the possibility of “orphan WEEE” in future years. This consultation seeks views on ways to clearly define the obligations on producers.

### **Calculating producer obligations**

45. The “compliance period” during which producers’ obligations will be calculated will be the calendar year (1 January to 31 December), except for the first year.
46. The Directive divides WEEE into 10 categories, each of which will have different waste management requirements and associated costs.
47. Where it is not practical to sort household WEEE into these categories, the Government proposes that five groups of categories be used as outlined in the Code of Practice. These are:

- Large household appliances not containing refrigerants;
- Cooling appliances containing refrigerants;
- Equipment containing CRTs;
- Gas discharge lamps;
- All other WEEE.

48. Recording and reporting procedures for WEEE will be greatly simplified by the adoption of protocols. Protocols are nationally agreed criteria used for measuring the WEEE proportion of mixed loads. Protocols will be used to determine the amounts of material sent for recycling in order to reduce the need for excessive measurement and reporting. Protocols will be a cost-effective way of demonstrating that the UK has achieved the targets in the WEEE Directive.

49. The exact quantity of WEEE within a compliance period will not be known until the period is over. Paragraphs 50 to 53 describe the information which will allow producer compliance schemes to monitor their likely obligations.

50. At the start of the first compliance period each producer compliance scheme will be required to supply the appropriate environment agency<sup>5</sup> with details of its membership, and the amount of EEE by category<sup>6</sup> which its members placed on the market in the preceding year.

51. At the start of the first compliance period, the environment agencies will provide indicative figures for the EEE market share of each scheme's members in a previous trading period.

52. During a compliance period, a producer compliance scheme will be required to advise the appropriate environment agency of any changes in membership and pay additional subsistence charges, in addition to the quarterly reporting of the quantities of WEEE collected, reused, treated, recycled and recovered (including any collected WEEE which may be exported for treatment or recycling).

53. At the end of each compliance period a producer compliance scheme will be legally responsible for the share of WEEE attributable to its members including meeting the recovery and recycling targets. Each scheme will need to agree with its members how the cost of dealing with WEEE will be divided between members.

54. After a compliance period the environment agencies will calculate producer compliance scheme obligations based on the actual amounts of EEE placed on the market and the amounts of WEEE arising. Schemes will then be notified of their final obligations and will be required to show their obligations have been discharged.

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<sup>5</sup> Environment Agency for England and Wales, SEPA for Scotland and Environment and Heritage Service in Northern Ireland

<sup>6</sup> for each of the 10 categories in the Directive

**Q4.** What do you think of the approval criteria for producer compliance schemes? Are there any criteria that appear superfluous or are there any important criteria that have not been taken into account?

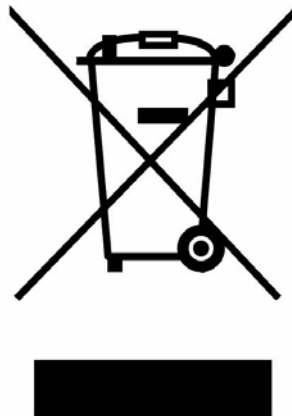
### Product information

55. In order to facilitate the reuse and treatment of WEEE, producers must provide information about the materials and hazardous substances contained in their products to the waste management industry. This can be in the form of manuals or by means of electronic media. This information is to be made available within one year of the product being put on the market.

### Product marking

56. A product which comes under the Directive must be marked with the "crossed-out wheeled bin" symbol, to facilitate its separate collection. Exceptionally, because of the size or the function of the product, the symbol may be printed on the packaging, on the instructions for use and on the warranty of the equipment.

57. The producer of an electrical or electronic appliance put on the market after 1 July 2007 must be clearly identifiable by a mark on the appliance. The appliance shall be marked to specify that it has been put on the market after 13 August 2005 as indicated by the crossed-out wheeled-bin symbol<sup>7</sup>.



<sup>7</sup> The black rectangle indicates that the date of manufacture is after 13 August 2005; alternatively the date of manufacture can be shown in a form defined in BSI standard BS EN 50419:2005.

## **Evidence**

58. Producer compliance schemes are responsible for negotiating the collection of sufficient WEEE to meet their anticipated obligations with registered Designated Collection Facilities (DCFs). A number of prospective compliance schemes are promoting a transparent mechanism, open to all schemes, to allocate the collection of WEEE from DCFs between schemes. The allocation function will be at arm's length from all schemes. A condition of approval of producer compliance schemes is that they are required to cooperate with each other.
59. Producers and producer compliance schemes must submit Declarations of Compliance and supporting evidence at the end of each compliance period to show they have collected, treated and reprocessed sufficient WEEE to satisfy their obligations, including the recovery and recycling targets.
60. Each Declaration must be supported by paired evidence notes. One evidence note will be completed by the first ATF to take delivery of a consignment of WEEE, which must show the tonnage of WEEE they have received by category. A second evidence note from an accredited reprocessor will provide evidence that a specified tonnage of WEEE has been received for reprocessing.

## **Exchange of evidence**

61. It is unlikely that each compliance scheme will collect the exact amount of WEEE required to discharge their obligations. To handle over- or under-collection, and meet their targets, compliance schemes may trade evidence directly between registered schemes or producers.
62. The Secretary of State will appoint an appropriate organization to administer an Exchange which will establish a system which allows schemes to buy evidence or sell surplus evidence. The Exchange will provide a means of balancing against obligations for each WEEE category.
63. The Exchange will provide a safety net for stakeholders who must meet legally binding recovery and recycling targets:
- a. Producer Compliance Schemes which have collected more than their notified obligations will be able to sell the surplus evidence at cost (subject to para 65);
  - b. Designated Collection Facilities, such as Local Authority sites, with which Producer Compliance Schemes have not contracted for collection from their sites will receive reimbursement for their costs incurred in handling WEEE. Such DCFs would need to show that they had offered their

WEEE to Producer Compliance Schemes before the Exchange would purchase evidence from them. If the allocation arrangement described at paragraph 58 gains acceptance, this should greatly reduce the need for DCFs to use the Exchange.

- c. Producer Compliance Schemes which have been unable to collect sufficient WEEE to meet their notified obligations will be able to buy evidence they need at a fair price. This will be determined as the average price paid by the exchange under a and b above.

64. As a condition of approval, Compliance Schemes must aim to collect WEEE broadly in accordance with their members' indicative obligation as set by the environment agencies. Limits on the permissible over- or under-collection of WEEE will be set. In addition, the Exchange's payments to any scheme in respect of surplus WEEE is limited to a percentage of the estimate of total WEEE arising in that compliance period. Any additional surplus would be presented to the Exchange but will not attract further payment.

65. The Exchange will purchase "evidence" at cost – this includes the cost of collection, transportation, treatment and recycling of the WEEE. The Exchange will sell the evidence at cost plus an appropriate administration charge.

66. The Exchange will operate on a cost recovery basis only.

- Q5.** What would be a reasonable permissible limit for over- or under-collection by a compliance scheme? How could this limit be defined?
- Q6.** What is a practical limit for payments by the Exchange to schemes which have over-collected? Please explain what the effects of changing this limit would be.
- Q7.** What improvements could be made to the arrangements for evidence and trading, which are consistent with the reporting requirements of the Directive and which show that the producers' obligations have been fulfilled?

### **Practical arrangements for collection of WEEE**

67. Distributors<sup>2</sup> and the Distributor Takeback Scheme (DTS) will be required by the Regulations to make WEEE available for collection by producer compliance schemes. Producer compliance schemes will need to negotiate with the operator of the site (for example the local authority or the distributor) to collect WEEE returned for treatment and recycling. The collection arrangements will be governed by the Code

of Practice<sup>8</sup> developed with stakeholders. Part of the approval process for compliance schemes, and also DCFs, will be an agreement to adopt and follow the Code of Practice.

68. An adequate DCF network should cover as a minimum a similar geographical pattern to the existing local authority civic amenity (CA) site infrastructure. This will provide adequate public access for those wishing to discard household WEEE.
69. "Third party" operated DCF sites should supplement the above. Such sites could be retailer platforms, B2B producer sites, sites operated by the refurbish and reuse sector or additional sites established by groups of distributors – for example covering out-of-town shopping centres. Such sites would need to meet the standards for a DCF and will be listed on a publicly-accessible register detailing geographical location and facilities offered (i.e. categories of WEEE collected and if open to the public).
70. The development of DCF sites should not be seen as the solution to resolving issues around the current infrastructure of CA sites. For example if a CA site does not already exist in a particular area, requirements will not be placed on Waste Disposal Agencies (WDAs) to develop new facilities.

### **Authorised Treatment Facilities (ATFs)**

71. ATFs will require waste management licenses, which meet the WEEE Directive requirements, from the appropriate environment agency. In England and Wales, Defra and the National Assembly have developed the regulations that will deliver this (by amending the Waste Management Licensing Regulations 1994). Defra's amendment to the Regulations<sup>9</sup> will be placed before Parliament at the same time as the WEEE Regulations.

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<sup>8</sup> ANNEX B – WEEE Code of Practice

<sup>9</sup> <http://www.defra.gov.uk/environment/waste/topics/electrical/index.htm>

## **Additional cost to producers for the recycling of historical WEEE**

72. Recital 20 of the Directive states:

The responsibility for the financing of the management of historical waste should be shared by all existing producers in collective financing schemes to which all producers, existing on the market when the costs occur, contribute proportionately. Collective financing schemes should not have the effect of excluding niche and low-volume producers, importers and new entrants. For a transitional period, producers should be allowed to show purchasers, on a voluntary basis at the time of sale of new products, the costs of collecting, treating and disposing in an environmentally sound way of historical waste. Producers making use of this provision should ensure that the costs mentioned do not exceed the actual costs incurred.

73. Article 8, paragraph 3 of the Directive provides that:

Member States shall ensure that for a transitional period of eight years (10 years for category 1 of Annex IA) after entry into force of this Directive, producers are allowed to show purchasers, at the time of sale of new products, the costs of collection, treatment and disposal in an environmentally sound way. The costs mentioned shall not exceed the actual costs incurred.

This means that producers are allowed to show consumers at the point of sale of a new product, costs that they have incurred in relation to recycling historic WEEE. This is not to be an additional charge beyond the purchase price; the notice is to inform consumers that producers are now paying for the disposal of existing WEEE.

74. If a cost is shown, it must not exceed the costs incurred in collecting, treating and recycling a similar WEEE product.

**Q8.** Do you agree that the mandatory presentation of the costs of handling historic WEEE would exceed the requirements and increase the costs of implementing the Directive? How could such a fee be set at an appropriate level (adjusted over time), without arbitrarily distinguishing the costs of handling historic WEEE from other costs faced by producers?

### **Non-household Producer Obligations (Business to Business)**

75. The Directive aims to ensure that non-household WEEE is treated, recovered and recycled to the same standards and recovery targets as household WEEE. The regulations aim to promote the use of existing mechanisms for dealing with WEEE.

76. Member states are required to report to the Commission on the amount of non-household WEEE which has been collected, treated and reprocessed. Producer compliance schemes will be required to report annually to the appropriate authorities the amount of household and non-household WEEE they have delivered to an ATF or reuse facility.

#### Division of responsibility for non-household WEEE

77. Producers will be responsible for handling WEEE arising from:

- non-household EEE placed on the market after the 13 August 2005; and
- non-household EEE placed in the market before 13 August 2005, which is being replaced on a like for like basis or with an item of similar use.

78. Responsibility for handling all other EEE placed on the market before 13 August 2005 will fall to the non-household end-user (see 82). Responsibility for leased non-household equipment lies with the owner.

#### Duties of Producers

79. Producer Schemes will be required to supply the appropriate environment agency with details of the level of non-household EEE placed on the market, the quantities of WEEE arising (i.e. collected and recycled) and the quantities of WEEE/EEE refurbished and sold on.

80. Producers may discharge their non-household obligations themselves or through a third party, but overall liability remains with the producer. Data and compliance must be reported to the Agencies through a producer compliance scheme.

81. Where a producer supplies both household and non-household EEE they can register with more than one compliance scheme provided that the reporting lines are clearly recognisable and separately-distinguished for reporting purposes.

#### Responsibility of end-users

82. Where a non-household end-user, for example a business, has responsibility for the treatment and recycling of WEEE (in the circumstances described in paragraph 80), Defra is planning to consult on amendments to the duty of care regime shortly and this issue will be highlighted. Further information on duty of care can be accessed via: <http://www.defra.gov.uk/environment/waste/management/doc/>

The relevant NI legislation is The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002. More information can be viewed at: [http://www.ehsni.gov.uk/environment/wasteManage/regulations\\_dutyofcare.shtml](http://www.ehsni.gov.uk/environment/wasteManage/regulations_dutyofcare.shtml)

**Q9.** What do you think of the arrangements for business to business producers? Are there any difficulties/particularities about business to business WEEE that have not been taken into account?

### **Role of the Environment Agencies**

83. The draft WEEE Regulations indicate where fees are payable to cover the costs of the environmental agencies.
84. The level and structure of the fees will be reviewed after the first full year of operation. This review will take account of the uncertainty over the number of producers and producer compliance schemes to be registered.
85. The level and structure of the fees reflect cost modelling undertaken by the Environment Agency (England and Wales) in conjunction with the other two Agencies. All three Agencies propose to set their fees at the same levels initially.
86. The accompanying partial regulatory impact assessment provides information on the cost modelling underpinning the proposed fees.
87. The Agencies' cost modelling makes some assumptions about the levels of the Agencies' activity in relation to registration and monitoring. The modelling estimates that full-year costs to the Agencies for implementing the WEEE Regulations will be £5.13 million.
88. The Agencies' cost estimates take account of the direct effort of registering producers and their compliance schemes and checking producer's market data; with a proposal to target investigations on a number of potential free-riders equivalent to 15% of the number of registered producers; as well as monitoring all schemes' reporting of compliance with their obligations.
89. A separate fee will be levied on reproprocessors and exporters to accredit them to handle WEEE and produce evidence of recovery. The Government's intention is to develop an integrated accreditation regime in future whose scope will include for example, the recovery of WEEE, packaging and batteries. This has the potential to reduce the Agencies' costs of accrediting and monitoring reproprocessors or exporters for more than one waste category; this will be reflected in future fees.
90. The Agencies' costs have been allocated against the producers and their compliance schemes as set out below. Since the agencies must recover the full cost of their activities, registration costs are the same for all producers, irrespective of size. This is because the cost of registering company information is independent of company size.

**Charge 1 – Compliance Schemes (annual subsistence)**

Total Charge and sub-components	Total costs to Agencies	Percentage of costs	Charge per producer
<b>Producer registration, data handling and compliance</b>	£2,540,119	63%	£442
<b>Monitoring of producer non-registration</b>	£1,525,131	37%	£265
<b>Total charge*</b>	£4,065,250	100%	£707

**Charge 2 – Compliance scheme approval**

Total Charge	Total costs to Agencies	Charge per compliance scheme
<b>Compliance scheme application *</b>	£365,224	£12,174

**Charge 3 – Reprocessor accreditation fees**

Fees	Total cost to Agencies	Charge per reprocessor
Reprocessor accreditation – above de minimis (>400 tonnes pa)	£647,500	£2,590
Reprocessor accreditation – below de minimis (400 tonnes or less pa)	£50,000	£500

**Q10.** The annual subsistence charge payable to the agencies includes the cost of monitoring activities against free-riders. Do you agree that part of that fee should cover monitoring activities? Are there other ways in which the cost of monitoring activities might be recovered from members of a compliance scheme?

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\* **Note** These are the charges which it is proposed to incorporate in the Regulations

## **ANNEX A - Criteria for Producer Compliance Schemes**

### **Approval of Compliance Schemes**

To be approved as a Producer Compliance Scheme, under UK WEEE Regulations, prospective scheme operators must demonstrate the following:

1. A UK legal presence;
2. Viability to operate for complete compliance periods (approval of schemes will cover three compliance periods)
3. The capacity and intent to maintain list of producer members;
  - a) Name of producer,
  - b) Official address/contact details,
  - c) Unique registration numbers (issued by the appropriate agency on registration),
  - d) Products by trade name.
4. The capacity to handle (including collection and transportation to approved treatment facilities and funding of treatment and reprocessing of WEEE) of its members notified obligations (in relations to the UK WEEE regulations) in appropriate and timely manner;
5. The capacity to keep, update and supply records to the appropriate agency relating to:
  - a) The anticipated level of EEE to be put onto the market during the registered compliance period by members,
  - b) The amount of WEEE collected, treated and funded on behalf of members,
  - c) Declarations of compliance and supporting evidence of treatment and reprocessing in line with members' notified obligations,
  - d) Any other data or information that the appropriate agency considers necessary for discharging any of its duties under the UK WEEE Regulations.
6. The capacity to publish and maintain an operational plan (as described in the application process)
7. The capacity to publish and maintain a constitution of the scheme including membership policy and membership fee structures.
8. A willingness to work with and co-operate with other compliance schemes in relations to developing workable relationships with WDAs and DCF operators.

9. A willingness to adopt and follow the “Code of Practice” which sets the minimum standards for relationships with DCF operators.

### **Functions of a Compliance Scheme**

To maintain approval as a compliance scheme under the UK WEEE regulations for the three year period, the following functions must be carried out to the timescales specified by the regulations:

- Signed-up membership in accordance with the scheme constitution and operational plan,
- Must register members on annual basis,
- Accept and adopt the Code of Practice as minimum standards,
- Collect, transport and finance the treatment and reprocessing of WEEE, arising at DCF sites, in line with their members notified obligations,
- Must maintain a non-discriminatory membership policy and fee structure (as outlined in the scheme constitution),
- Must submit quarterly figures on the amount of WEEE collected from DCFs to the appropriate agency,
- Must submit annual data on members’ market share of EEE,
- Must notify the appropriate agency of any material change to the information supplied at the time of application for registration within 28 days of any such change,
- Must notify the appropriate agency of any material change to the information supplied at the time of application for registration concerning membership of the scheme,
- Provide any data or information that the appropriate agency considers necessary for discharging any of its duties under the UK WEEE Regulations.

### **Content of a Producer Compliance Scheme Operational Plan**

The complete Operational Plan must accompany the application for scheme approval.

1. It is accepted that some compliance schemes may not have full membership list at the time of application. A full list of members should be notified to the appropriate agency when the scheme registers producers.
2. The Operational Plan for a compliance scheme should include:
  - a) What arrangements the scheme has in place to deal with household WEEE arising (if applicable) and the anticipated relationship with:
    - i) Local Authority DCFs
    - ii) 3<sup>rd</sup> party DCFs
    - iii) DCFs operated by their members

- b) What arrangements the scheme is setting in place for dealing with non-household WEEE arising (if applicable) (this can include simply managing the Declaration of Compliance and Evidence notes if members have their own arrangements in place).
- c) How the scheme intends to discharge the notified financial obligations of its members during each relevant compliance period (i.e. in relation to private household WEEE).

For example, what arrangements will be in place with WDAs, third party operated DCFs, ATFs and accredited reproprocessors for the collection, treatment and recycling of WEEE for the purpose of helping discharge the obligations of its members?

- d) How the compliance scheme intends to work with other compliance schemes in relations to relationships with WDAs and collection arrangements from DCFs.
- e) How the scheme will discharge other obligations of members under the regulation e.g. B2B, record keeping, compliance reporting.
- f) How the scheme will satisfy the conditions of registration of the scheme.
- g) How the scheme will prioritise, where appropriate, the reuse of whole appliances in a manner consistent with the objectives of the Directive and the relationships it is developing with the reuse and refurbishment industry – including making use of the existing voluntary and community sector infrastructure.
- h) That the scheme is likely to subsist for a period of at least 3 years.
- i) How the scheme will adopt and put into practice the Code of Practice.
- j) Collection contingency plans which meet their obligations.
- k) How the scheme will comply with quarterly WEEE collection data reporting requirement.
- l) How the scheme will comply with the annual EEE market share data reporting requirement.

## **The PCS Constitution**

A complete Constitution must accompany the application for approval to the appropriate agency. All parts should be relatively insensitive to finalised levels of membership unless paragraph i) above changes.

A PCS Constitution shall include:

The rules for members, which require members to:

- Remain members of a scheme for the whole (or remainder in the case of new entrant to the market) of a compliance period
- Provide the operator of the scheme with the information needed to:
  - Making an application for registration of the producer
  - Meet the scheme's obligation to provide market share information to the appropriate agency
  - Meet the schemes reporting obligations on behalf of members
- Provide the operator of the scheme with a signed statement that the information supplied by the producer is accurate to the best of the member's knowledge and belief. Such a statement must be signed by a director of a company or a partner of a partnership
- Details of procedures and how the compliance scheme will enforce obligations on producer members
- Arrangements to ensure producers are aware of significant information relating the operation of the scheme
- Non-discriminatory/fair fee structure which reflect the make-up of its membership including the needs of SME members
- A non-discriminatory code of operation which is fair and equal to all scheme members
- Membership policy
- Minimum or maximum size of membership
- Whether or not capable of signing up members with dual private household/B2B obligations [under the regulations]
- Details of any specialisation – by market sector, trading group or region

## **ANNEX B – WEEE Code of Practice**

This section is still in draft form and is subject to agreement.

### **Code of Practice for collection of Waste Electrical and Electronic Equipment from Designated Collection Facilities**

Version 9 - June 2006

#### **1. Status, purpose and scope**

- 1.1. This Code deals with the relations between local authorities or independent persons running Designated Collection Facilities for household WEEE under the Regulations, and producers arranging clearance of those DCFs.
- 1.2. The Code sets out guidance and principles which should form a basis and starting point for local contracts or service agreements between producers and local authorities or independent persons running DCFs. It may be used to aid interpretation of such contracts or service agreements. Such local contracts or service agreements may supplement the provisions of the Code as required.
- 1.3. The Code does not modify or interpret any requirement of legislation.
- 1.4. Local authorities have sole responsibility for the provision and running of sites they provide which are DCFs, including site layout and facilities, subject to these sites meeting the requirements for DCFs.
- 1.5. The Code does not cover:
  - (a) relations between local authorities and distributors under the Distributor Takeback Scheme;
  - (b) provision for upgrading CA sites;
  - (c) the process by which sites become Designated Collection Facilities;
  - (d) clearance of non-household WEEE<sup>10</sup>;
  - (e) clearance of WEEE from DCFs run by producers.

#### **2. Terms used in the Code**

- 2.1. The following terms have the same meaning as in the WEEE Directive or Regulations implementing the WEEE Directive<sup>11</sup>:

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<sup>10</sup> It is recognised that non-household WEEE which is deposited as commercial waste may also be collected from bulking-up points and waste-transfer stations which are DCFs. The costs of collection and treatment of these items may be re-charged to Local Authorities who may in turn recover these costs from those depositing such items.

<sup>11</sup> Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), including any subsequent amendments.

“Electrical and electronic equipment” or “EEE”  
“Waste electrical and electronic equipment” or “WEEE”  
“Re-use”  
“Recycling”  
“Recovery”  
“Disposal”  
“Treatment”  
“Distributor”  
“WEEE from private households”

2.2. Other terms have the following meanings:

- “Civic amenity site” or “CA site” means a place provided by a local authority under relevant legislation at which persons resident in its area may deposit their own household waste free of charge;
- “Clearance” means the removal of separately-collected household WEEE from a DCF for the purposes of treatment, recovery and environmentally sound disposal;
- “Designated collection facility” or “DCF” means a site which has been designated under the Regulations as one receiving household WEEE of which producers are required to finance the collection, treatment, recovery and environmentally sound disposal in accordance with Article 8.1 of the Directive;
- “Directive” means the WEEE Directive;
- “Force majeure” means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, change of law or governmental order, rule, regulation or direction, fire, flood or storm;
- “Independent” in relation to a person running a DCF means a person who is not a producer or local authority<sup>12</sup>;
- “Local authority” means the local government body responsible for waste collection and/or disposal for a given area, and which itself provides or has provided under contract Civic Amenity Sites and Waste Transfer Stations;
- “Party” in relation to any contract, agreement or other arrangement covered by this Code, means on the one hand the local authority or independent person running a DCF, and on the other the producer arranging clearance of that DCF;
- “Producer” or “Producers” means one or more producer as defined in Article 3(i) of the Directive, and includes producer compliance schemes currently approved or authorised under the Regulations;
- “Regulations” means the Regulations implementing the Directive.

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<sup>12</sup>[ Not part of the Code: subject to decisions on how WEEE collected by retailers will be dealt with.]

### **3. Arrangements for clearance of DCFs**

- 3.1. A producer arranging clearance of a DCF may appoint one or more collectors to clear WEEE on their behalf.
- 3.2. DCFs should meet the conditions in Annex 1<sup>13</sup>.
- 3.3. No charge may be made by either party to the other under these arrangements.

### **4. Access to DCFs**

- 4.1. Collectors of WEEE should be given access to DCFs as required, on the same basis as collectors of other waste streams from the site.
- 4.2. Collectors' vehicles should be fit for purpose and suitable for access to the site without damaging it or posing a risk to staff or the public.

### **5. Separately collected WEEE**

- 5.1. To obtain free collection WEEE should be so far as is reasonably practicable:
  - (a) WEEE from private households as defined in Article 3(k) of the Directive<sup>14</sup>;
  - (b) separate from and unmixed with other waste;
  - (c) complete (that is, should not have been after its arrival at the DCF stripped of essential or valuable components); and
  - (d) all of the household WEEE separately collected at the DCF, other than any which has been removed for re-use.

Those running DCFs and producers should take reasonable steps within their areas of responsibility to ensure this. Levels of contamination by hazardous or non-hazardous materials exceeding those in Annex 2 Part I should be considered unacceptable, and agreements should include procedures to be followed in the event of these being exceeded either in single consignments or persistently. By way of example, or in the absence of other agreement, these should follow the model in Annex 2 Part II.

- 5.2. Priority should be given to re-use of whole appliances, and this should be facilitated where possible so as to maximise levels of re-use. Re-use may be arranged either by local authorities or independent persons running DCFs, or by producers, with the agreement of the other party. The party that arranges re-use should:

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<sup>13</sup> [Not part of the Code: assuming Annex 1 appears in the Code as well as, or instead of, in terms and conditions for DCFs/retail compliance schemes.]

<sup>14</sup> "WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households."

- (a) make all organisations undertaking re-use aware of their responsibility to ensure that re-used EEE meets relevant safety and technical standards;
- (b) give preference to re-use by the local voluntary or community sector;
- (c) ensure that those organisations observe the provisions of this Code and any contract with the local authority or independent person running the DCF;
- (d) prevent abuse of the re-use system such as by the stripping of valuable components and the return of residual material as WEEE or as household waste;
- (e) inform the other party of the quantities of WEEE sent for re-use.

## **6. Staffing and facilities**

- 6.1. Local authorities and their site operators and independent persons running DCFs are responsible for provision of management and staff and all appropriate facilities needed to receive WEEE at DCFs, including signage, but not containers and handling equipment to take WEEE from the site. Signage should wherever possible and subject to local policies be in a common format conforming to agreed standards.
- 6.2. Producers are responsible for the provision of containers and vehicles to hold and carry WEEE, and of drivers and crew.
- 6.3. Containers and vehicles to receive, store and transport WEEE should:
- (a) be of a size and type suitable for the site, taking into account the space made available, access and local environment and the nature, quantity and level of segregation of the WEEE deposited;
  - (b) take and store WEEE in such a way as to be accessible to, and not endanger the health and safety of, members of the public;
  - (c) so far as is possible, prevent damage to items of WEEE so as to maximise potential for reuse.
- 6.4. Changes by either party affecting the way WEEE can be collected at or from the site, particularly those covered in Annex 1 paragraph 2 should be notified to the other in good time to minimise disruption or additional expense.

## **7. Scheduling of collection**

- 7.1. WEEE should be cleared from DCFs on a regular basis. Times and frequency of collection from DCFs should be agreed between the local authority or independent person running the DCF and the producer, and should be arranged so as to minimise the number of collections while ensuring that capacity to take WEEE [as defined in Annex 3] is always available at the site.
- 7.2. Collection may be scheduled or on an as-necessary basis, with collection set up by calls from site staff to the producer. Where schedules are arranged, agreed procedures should be in place to deal with containers

requiring collection when none is scheduled, or when containers are not filled when collection is due.

7.3. Provisions should be made as necessary to maintain the capacity during peak time usage, and on public and local holidays.

7.4. Different streams may be collected by different collectors, provided the site operator has been notified and the arrangements are agreed as above.

## **8. Health and safety**

8.1. Local authorities and site operators and independent persons running DCFs are responsible for health and safety at DCFs. Local authorities and independent persons running DCFs, and producers and their agents, should inform each other of their health and safety requirements, and should meet these and HSE Guidance for CA sites and general Health and Safety at Work legislation. They should at all times have regard to the health and safety of all those accessing sites, whether their or others' staff or members of the public.

8.2. Producers are responsible for health and safety in respect of WEEE once it has left the DCF.

## **9. Environmental standards and liability**

Local authorities and site operators and independent persons running DCFs are responsible for environmental standards at DCFs. Local authorities and independent persons running DCFs, and producers and their agents, should meet the requirements of all relevant environmental and other legislation, authorisations, and standards.

## **10. Insurance**

Local authorities, site operators, independent persons running DCFs, and producers and their agents should carry insurance to meet liabilities which may arise in the course of the normal servicing of the DCF, so far as these are insurable.

## **11. Reporting**

11.1. Producers are responsible for reporting to the Agencies and Departments under the Regulations on the quantity and types of household WEEE collected from DCFs.

11.2. To enable local authorities to fulfil their statutory duties relating to waste and recycling, producers should provide them with the following information for DCFs provided by or for those local authorities:

- (a) total weight of WEEE collected at each DCF;

- (b) the "audit" trail, through to final recycling, for example through the provision of a list of facilities to be used by the producer for the recycling of WEEE;
- (c) the proportions recycled and reused by weight and WEEE stream for each DCF.

This information should be provided on a monthly basis within one calendar month following the month of calculation. Where possible it should be provided in a standard electronic format. Other information needed by local authorities to meet local requirements or policies may be agreed locally.

## **12. Failure to clear WEEE**

- 12.1. In the event of WEEE not being cleared from a DCF as scheduled or requested under 7, the matter may be taken up by site staff with a designated senior representative of the producer.
- 12.2. WEEE should be cleared by the producer within 24 hours or 12 site opening hours, whichever is the earlier, of this procedure being invoked, and regardless of any other dispute resolution procedure which may have been set in motion. If this does not occur, the local authority or site operator or other person running a DCF may then arrange clearance and seek compensation under the procedures laid down in accordance with paragraph 14.
- 12.3. Whether the material is, or is entirely, WEEE or not, or its having been contaminated, should not be grounds for failure to clear it. Instead, material in areas or containers designated for WEEE should be cleared, and any questions relating to the content dealt with under the dispute resolution and compensation provisions covered by paragraphs 13 and 14.
- 12.4. Where failure to clear WEEE is or is claimed to be due to some action or failure on the part of the local authority or site operator or independent person running the DCF, the producer may take up the matter with a designated senior representative of the site operator, local authority, or person running the DCF.

## **13. Resolution of disputes**

- 13.1. Without prejudice to 12, local authorities or independent persons running DCFs and producers should use all reasonable endeavours to resolve any dispute relating to any of the matters covered by this Code or any contract or agreement between them within 5 working days of its arising.
- 13.2. There should be a dispute resolution procedure for dealing with disputes that cannot be resolved within 5 days. This should include a form of alternative dispute resolution, such as the model in Annex 4.

13.3. Procedures should also be put in place to deal with cases where the dispute is not an isolated or occasional one but results from a persistent problem affecting the arrangements for the collection of WEEE from a site (such as the regular presence of significant amounts of non-WEEE material in WEEE containers or failure to put different types of WEEE into the relevant containers). In the absence of such a procedure, the matter should in the first instance be the subject of negotiations to find a solution between the parties concerned. In the event of these negotiations failing to resolve the problem it may be referred by either party to the dispute resolution procedure referred to in paragraph 13.2.

#### **14. Compensation**

Compensation may be payable under a contract or agreement for losses incurred due to any party's failure to perform actions required of them, but this should not substitute for making all reasonable endeavours to rectify any problems or disputes.

#### **15. Force majeure**

If any person is prevented from meeting any of the terms of this Code or any contract or agreement between them because of force majeure, they should not be held liable for this failure, provided they notify other affected parties and use all reasonable endeavours to mitigate the effect of the force majeure. Any contract or agreement should include a similar force majeure clause.

#### **16. Changes in circumstances**

In the event that the obligations of anyone covered by this Code change, either through changes to WEEE or other legislation or the requirements of the Departments or Agencies, this Code shall be interpreted accordingly, disregarded, or revised as necessary.

#### **17. Review**

This Code may be reviewed at the request of any of the parties to it, and in any event before the end of the first year of operation of the collection system.

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### **Annex 1 - Designated Collection Facilities**

A DCF<sup>15</sup> should:

1. Meet relevant licensing/exemption requirements under waste legislation;

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<sup>15</sup> This applies to sites only insofar as they collect WEEE. Where treatment is carried out on site there will be additional requirements which go beyond the scope of this Code.

2. Enable household WEEE to be collected from the DCF by the following 5 streams

- A – Large household appliances (Category 1) other than cooling appliances
- B – Cooling appliances in category 1
- C – TVs and monitors
- D – Gas discharge lamps
- E – All other WEEE

This means being able to accommodate if required containers, of a size and type appropriate to the site, for C-E, and hard standing or containers for A and B.

Where this is not possible because of the size, policy requirements, layout or accessibility of the site, EITHER fewer streams may be collected, provided that:

- those streams which are collected should be segregated from each other on site;
- sites able to receive the other streams from the public are within a reasonable distance in the Local Authority area and accessible to all on an equal basis;

OR streams may be mixed, so long as C and D remain separate from other streams and each other, and B can be readily identified for uplifting separately.

3. If intended to take household WEEE direct from members of the public:
  - be accessible to members of the public with household WEEE;
  - have signs to direct members of the public depositing household WEEE to the relevant container or area;
  - accommodate a minimum volume capacity of 3m<sup>3</sup> for D and 1m<sup>3</sup> for E;
4. Be run using best endeavours to prevent the mixing of WEEE with other waste or its contamination by other hazardous material, so as to make it unsafe or disproportionately difficult to treat or to exceed the levels in Annex 2 or otherwise agreed with the producer collecting from that site;
5. Under its operating and collection contracts allow producers to arrange collection of household WEEE from the site and treatment.

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## **Annex 2 – contamination with non-WEEE hazardous and non-hazardous material**

### **Part I Unacceptable levels of contamination**

1. For the purposes of paragraph 5.1, the following should be considered as unacceptable levels of contamination of WEEE:
  - (a) The presence in a container provided to take WEEE of:
    - (i) 15% or more by weight of material other than that for which the container is designated, whether or not WEEE

- (ii) Any of the following prohibited items regardless of weight:
  - a. Food waste
  - b. Hazardous waste of a type other than that for which the container is designated
  - c. Liquid wastes other than water
- (b) The presence in, on or with any items of WEEE not containerised, such that they are either not evident when the item is collected or cannot readily be separated from the item for collection, of the material listed in (a)(i) and (ii).

**Part II Model procedures to be followed where levels of contamination are unacceptable.**

1. Where a single consignment (that is, any amount or type of WEEE collected in one operation) contains unacceptable levels of contamination, compensation may be payable by the person running the DCF from which the consignment came not exceeding the cost of removing and disposing of the contamination.
2. Where consignments of WEEE persistently contain unacceptable levels of contamination (that is, where it occurs in 3 or more successive consignments, or in 5 or more consignments collected within a period of 4 weeks), the producer may take the matter up with a designated senior representative of the person running the DCF with a view to agreeing measures to reduce contamination to acceptable levels. Such changes may include, for example:
  - (a) improved signage
  - (b) improved supervision
  - (c) changed layout
  - (d) changes to the types of containers
  - (e) training or incentivisation of site staff
  - (f) public education and awareness
3. Where the discussions under paragraph 2 fail to lead to agreement on the measures to be taken within 1 calendar month of their being initiated, and if there then continue to be unacceptable levels of contamination, either party may invoke the arbitration procedure in Annex 4.

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**Annex 3 – capacity to receive WEEE**

[To be drafted]

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**Annex 4 – Model alternative dispute resolution procedure**

1. **Settlement of disputes - arbitration**

Where the dispute resolution procedure in the contract or agreement between a local authority or independent person running a DCF and a producer fails to lead to agreement within one Calendar Month of the dispute arising, either may refer the dispute to the arbitration of a person to be agreed upon by the parties.

## **2. Appointment of arbitrator**

- (a) If the parties fail to agree an arbitrator within one Calendar Month of either party informing the other that they wish to refer the dispute to an arbitrator, the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Chartered Institution of Wastes Management.
- (b) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one Calendar Month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Chartered Institution of Wastes Management to appoint another arbitrator to fill the vacancy.
- (c) In any case where the President for the time being of the Chartered Institution of Wastes Management is not able to exercise the functions conferred on him by this Clause the said functions may be exercised on his behalf by a Vice President for the time being of the said Institution.

## **3. Arbitration Procedure**

- (a) Any reference to arbitration shall be conducted in accordance with the Institution of Civil Supervising Officers Arbitration Procedure (1983) or any amendment or modification thereof being in force at the time of the appointment of the arbitrator.
- (b) Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of applicable legislation governing arbitration. The award of the arbitrator shall be binding on all parties.

## **ANNEX C - Organisations Consulted**

Arc 21  
AMDEA  
B2B Compliance  
BEAMA  
BMRA  
British Retail Consortium  
Budget Pack  
CBI  
COSLA  
EEF  
Environmental Services Association  
ERP  
EMR  
Exel  
Federation of Small Business  
Furniture Recycling Network  
ICER  
Intellect  
LARAC  
LGA  
Linpac Plastics  
Mercury Recycling  
Mobile Takeback Forum  
NAWDO  
REPIC  
RETRA  
Shore Recycling  
Sims Recycling Solutions  
Small Business Council  
SEAMA  
SESA  
Transform  
VALPAK  
Wincanton  
WLGA

## **ANNEX D - The Consultation Code of Practice**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

### **Comments or complaints**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Mary Smeeth,  
DTI Consultation Coordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone: 020 7215 2146  
E-mail: [Mary.Smeeth@dti.gsi.gov.uk](mailto:Mary.Smeeth@dti.gsi.gov.uk)