



The manufacturers' organisation

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ref:

17th October 2006

DTI CONSULTATION ON THE IMPLEMENTATION OF DIRECTIVES 2002/96/EC & 2003/108/EC on WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

EEF, the manufacturers' organisation, has a membership of 6,000 manufacturing, engineering and technology-based businesses and represents the interests of manufacturing at all levels of government. Comprising 11 regional Associations, the Engineering Construction Industries Association (ECIA) and UK Steel, EEF is one of the UK's leading providers of business services in health, safety and environment, employment relations and employment law, manufacturing performance, education, training and skills.

Executive Summary

1. Visible Fee

There has been a lengthy and at times acrimonious debate concerning proposals which would see a mandatory visible fee being introduced for historic Waste Electrical and Electronic Equipment, (WEEE). We accept that the proposed regulations and supporting guidance do transpose the text of the Directive but importantly not its meaning. It is our contention that providing producers with the facility to show a visible fee for historic WEEE is only an option for producers if they can freely exercise that right. The nature of much of the retail market is such that this facility will not be available to the majority of consumer goods manufacturers. A direct consequence of this we believe will be a significant added cost to UK manufacturers. This will be a distortion of the UK market which can be directly attributed to the transposition of the Directive in this way.

In other areas of law it is commonly accepted that where a right is afforded a party there may be need to provide other structures to enable that right to be exercised. In the case of WEEE this would not be gold-plating rather it would be giving full access to the facilities offered to other EU manufacturers.

2. Missed opportunity

Our members accept the principle of *producer responsibility* which is clearly the underlying foundation of this Directive. However, we do think that there is a significant missed opportunity in improving the broad environmental performance of the UK. Consumers are not being made aware of the true environmental cost of their purchasing decisions. Initially this could have been addressed through mandating a visible fee. We believe that this would have been an important step in educating the public concerning their responsibilities.

3. Definition of re-processors

We are concerned that there is lack of clarity concerning the definition of *re-processors* within the draft regulations. For instance the steel industry and foundries use steel-scrap within their processes. It should be made clear, at least in guidance that these operations are not to be regarded as Authorised Treatment Facilities, (ATF). Conversely the scrap merchants who separate, sort and grade this material would be regarded as ATFs.

Any other interpretation would be a nonsense which would lead to every steel mill and foundry being brought within scope of these requirements.

4. Enforcement & fines

Clearly there must be an enforcement strategy for this type of legislation. We have serious objections to the cost of this being borne by those who do comply. The consultation document in our view misrepresents the costs. The £265 per-producer cost of monitoring should be described as a percentage of the producer registration and handling charge i.e. 60%. These costs should be borne out of Grant-in-Aid (GIA). We would advocate that any fines and costs raised through enforcement of these requirements are returned to the Agencies to off-set their GIA expenditure.

5. Publicity and public awareness

It was unclear from the consultation documents how the DTi propose to publicise the introduction of these requirements. It is important that efforts are made to reach the producer community with special emphasis on the SMEs. It will also be necessary to raise the profile of these requirements amongst consumers to raise their awareness of these provisions to dissuade them from depositing WEEE in their general municipal waste.

Conclusion

The transposition of the WEEE Directive into UK law has been a tortuous process for all concerned. It is vital that all of the required bureaucracy is in place in good time, to ensure that duty holders can fulfil their responsibilities and establish appropriate business processes.

It is important that the officials involved in this process actively examine the way in which this policy has been delivered and learn the lessons from this. Only in this way is there an opportunity for those learning points to be recognised and so add to the corporate learning of DTI working in partnership with DEFRA.

Please feel free to contact me if clarification is required concerning any of the points raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Booton', written in a cursive style.

Gary Booton
Director, HS&E

Implementing the WEEE Directives 2002/96/EC and 2003/108/EC in the United Kingdom

Consultation Response Form

The closing date for this consultation is 17 October 2006.

You may find it helpful to set out your responses to the
Consultation using this Response Form.

ADDRESSES	
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Consultation Response Form

The closing date for this consultation is 17/10/2006

Name **Gary Booton**

Organisation (if applicable) **EEF-the manufacturers' organisation**

Address **Broadway House, Tothill Street, London, SW1H 9NQ**

Return of completed forms:

Return to one of the addresses on the previous page.

Please tick one box from the list below that best describes you.

<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)
<input checked="" type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Large Company
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Other (please describe):

Confidentiality and Data Protection Preferences
(see paragraphs 14 – 18 of Consultation Document)

<input checked="" type="checkbox"/>	Publish response and respondent's details
<input type="checkbox"/>	Preference to publish response only*
<input type="checkbox"/>	Preference to treat all information as confidential*

	*why you regard this information as confidential
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Q1. Do the proposals in this document and the accompanying Guidance correctly implement Directives 2002/96/EC and 2003/108/EC?

Yes No Partially

On a scale of 1 to 5, 5 being the highest, grade your overall approval of the policy proposals.

	5	4	3	2	1
• The policies are clearly presented	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• The essential issues have been identified	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• The Guidance provides relevant advice	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Costs to producers are minimised	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Q1 - Comments:

Whilst the Regulations accurately transpose the stated requirements of the Directive they do not transpose the meaning of the directive. Permitting producers to show a recovery fee does not address the realities of the market. This point is addressed further under Q8.

We have concerns that there is currently too little data available on the potential flows of WEEE in this newly created quasi-market. There are already some well established take-back arrangements, predominantly we understand in the large white goods market. This, whilst being a wholly appropriate closed loop arrangement, has the potential to introduce some distortions into the trading of waste arrangements. There is a possibility that this could negatively impact on other Producer Compliance Schemes.

Others have commented that the record keeping requirements (6 years) do not have their root in this directive. We would support the comments of others who urge consistency between this and other requirements such as RoHS which place a 4 year record keeping responsibility on duty holders.

Enforcement of compliance with these requirements is an important feature to produce a level playing field amongst UK producers. Stakeholders should be made aware of the way in which it is proposed that this aspect will be addressed by the Environment Agencies. Turning now to the funding of these activities; it is wholly inappropriate that the funding of those euphemistically referred to as 'free riders' should be met out of those who are by definition compliant. These operations must be funded through Grant-in-Aid (GIA). This is essentially a revenue protection operation and if Government is truly committed to this strategy it would permit hypothecation of fines and costs associated with the Environment Agencies enforcement activity. GIA must also be used to fund a public awareness campaign - a significant element which is absent from the current proposed implementation strategy

Q2. If you are a small business, what burdens are associated with the introduction of the Regulations and how could these be mitigated?

Q2 - Comments:

EEF represents many SME manufacturers who will be affected by these requirements. The requirements will place significant additional cost burdens on both large and small manufacturers which they are ill placed to bear. This is largely a function of the retail market within the UK which is as we all recognize, dominated by a small number of dominant companies who leverage very low-priced goods through their enormous buying power. This delivers low cost goods to consumers who,

despite the intention of the Directive, will not be paying full environmental cost for the goods they purchase. It is our belief that the Government has missed a significant opportunity here to help consumers realise that it is their choices which impact on the environment.

It is not clear how DTi is planning to raise awareness amongst small producers of their new responsibilities under these requirements. It is vital that there is a clear communications strategy, funded through GIA to publicise this policy to both the SME and the public.

Q3. In the Regulatory Impact Assessment, do you agree with the costs of processing and treating WEEE which are presented? If not, please provide your estimate of these costs and provide evidence in support of your figures.

Agree Disagree n/a

We have no comment on this issue

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?

We have no comment on this issue

Q5. What would be a reasonable permissible limit for over- or under-collection by a compliance scheme? How could this limit be defined?

We are not aware that of data currently being available on this issue. Therefore taking a pragmatic viewpoint it would appear appropriate to set broad margins to begin with and over time refine these as experience is gathered.

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.

We have no comment on this issue

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?

Viewing these arrangements from first principles the two tier ATF model seems to be cumbersome and adds a layer of complexity. There is also a need for further clarification in the area of reprocessing. In our view it would be wholly wrong for the user of steel scrap (i.e. steel producers to be regarded as *reprocessors* within the meaning of these requirements). We seek DTI confirmation on this point. Draft Regulation 2 **Interpretation** refers the reader of the definition for '*recovery*' to '*Annex IIB*' of the Directive. There does not appear to be an Annex IIB. Annex II describes the minimum which has to be removed from WEEE.

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?

Q8 - Comments: The proposed implementation of Article 8(3) of the directive, (through Regulation 35(2)) is in our view wanting. Whilst it may be a literal reflection of the stated

requirements of the Directive it is our contention that it does not convey the meaning. Whilst providing the legal facility for a producer to show the cost of historic WEEE recovery does not address the market reality. This reality is that large retailers are able to dictate to producers what can be included in the final price of a product. The stark reality for many consumer goods producers is that their customers are unlikely, we believe, to allow the visibility anticipated by the Directive. This disadvantages our producers.

The second part of this question is deliberately misleading. There would be nothing arbitrary about following such a route because producers of electrical equipment are being required to retrospectively internalize a cost which was not placed upon them when the goods were originally placed on the market. It is perfectly feasible for producers now to establish the true cost of recovery for these items on a product type basis.

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?

The regulations appear to allow for the possibility of more flexible compliance arrangements with B2B arrangements as was originally provided for in the Directive. It would be helpful if there was more information within the guidance directing B2B producers to their responsibilities and, model contracts/agreements which they may enter into.

We have expressed concern in the past that B2B producers who have been unclear regarding whether their particular product is within scope have met with less than helpful responses from DTI officials. The basis of advice has been get legal advice on the regulations. We call upon DTI and Environment Agencies to be unequivocal in their responses to this sort of enquiry.

Q10. The annual subsistence charges 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?

As we have previously commented it is in our view wholly wrong for producers who comply with this legislation and pay the £265 fee to then have to pay an additional 60% of that original cost to cover the Environment Agencies revenue protection costs. We believe that it is right and proper that the agencies do this work but that it should be funded out of GIA. In the spirit of producer responsibility we propose that fines and costs recovered by these agencies for non-compliance with the requirements of WEEE should be hypothecated for this activity.

Other comments.

Regulation 33 referring to '*health and safety risks*' faithfully transposes the source Directive. This is unfortunate because the Directive itself does not follow the definition of *risk* as used in health and safety environments. Risk is an expression of the chance or possibility of something happening. Hazard on the other-hand relates to the harm which can come to a person if not adequately controlled. It is the failure to adequately control hazards which leads to an unacceptable risk.

If DTi are to expect respondents to answer consultations through electronic media they should ensure that forms are easy to use and robust in their formatting. This consultation fails significantly in the latter.

EEF – the manufacturers' organisation
17th October 2007

