

CONSULTATION PAPER

OF 30 JULY 2004

**BY THE UK GOVERNMENT, SCOTTISH EXECUTIVE, WELSH ASSEMBLY
GOVERNMENT AND NORTHERN IRELAND ADMINISTRATION**

**ON THE IMPLEMENTATION OF DIRECTIVES OF THE EUROPEAN
COUNCIL AND PARLIAMENT**

2002/96/EC OF 27 JANUARY 2003

**WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (THE WEEE
DIRECTIVE)**

&

2002/95/EC OF 27 JANUARY 2003

**RESTRICTION OF THE USE OF CERTAIN HAZARDOUS SUBSTANCES IN
ELECTRICAL AND ELECTRONIC EQUIPMENT (THE ROHS DIRECTIVE)**

**Department of Trade and Industry
Publication number URN04/1335**

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CONSULTATION ON DRAFT IMPLEMENTING LEGISLATION AND GUIDANCE FOR THE WEEE AND RoHS DIRECTIVES

INTRODUCTION

1. This consultation invites your views on the Government's latest thinking and proposals for the draft legislation to implement Directives 2002/96/EC on Waste Electrical and Electronic Equipment (the WEEE Directive) and 2002/95/EC on the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment (the RoHS Directive) and on the draft guidance to accompany this.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 Administration¹. The RoHS Directive deals with reserved matters related to the European Single Market and will be implemented for the United Kingdom by DTI. However, the WEEE Directive is an environmental Directive, which covers some devolved matters, and it is for the Devolved Administrations to decide their implementation method.
3. This consultation presents proposals developed jointly by the UK Government and the Devolved Administrations, and final decisions shall be made by each administration. 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. Further consideration is being given to which references to the “[Secretary of State]” in the draft Regulations would be altered to reflect the roles which should be assigned to Ministers in the Devolved Administrations.
4. Your views are invited in response to this consultation paper by **Friday 29 October 2004**.
5. This consultation is the third and final phase of the Government's consultation process for implementation planning for these two Directives.
 - In spring 2003, the Government invited comments on a discussion paper which set out options for implementation; and
 - In winter 2003-2004, the Government canvassed views on a package of policy proposals for implementation of the two Directives.

¹ 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” can be read to mean the UK Government and the Devolved Administrations.

6. These previous consultation papers, together with summaries of their outcomes are downloadable from the DTI website: www.dti.gov.uk/sustainability/weee/index.htm.
7. The Government has considered the responses to these earlier consultations and drawn on these in development of the draft implementing regulations, guidance and updated partial regulatory impact assessments, which are now presented in this consultation.

THIS CONSULTATION

8. This consultation covers a number of key issues in relation to the implementation of the WEEE and RoHS Directives. These include:

Timetable

9. The Government expects to transpose the Directives into UK law in autumn 2004, after having taken full account of responses to this consultation on its draft legislation. This means that the UK, like a number of other Member States, does not expect to transpose these Directives into national law by the deadline of 13 August 2004. The WEEE Directive's obligations on producers and retailers are required to come into force on 13 August 2005 and the draft WEEE guidance indicates the timescales for preparations for these, including registration of producers and data reporting from producers from the start of 2005 onwards.

WEEE Directive

National Clearing House (NCH)

10. The establishment of a National Clearing House has been proposed by producers and widely endorsed by respondents to the previous consultation. The draft WEEE implementing legislation and guidance set a framework in which an NCH may be operated. An NCH can be seen to reflect the nature of producers' obligations for all separately collected WEEE.
11. The guidance includes a section on the role of the NCH. This will not feature in the final guidance when the Directive is transposed. It is included here now to show how the Government expects the NCH to be established and the Government's thinking on the role of the NCH.
12. The establishment of an NCH poses a major timetable challenge. The Government expects the producer community, which has pressed strongly for an NCH, now to take a leading role in taking this forward. The Government will invite producers to form a small project group to take forward urgently the development of the NCH. The Government will initiate this as soon as possible after publication of this consultation. The group should begin this work in parallel with the consultation. *It will involve and consult other key stakeholder groups.*

Allocation of WEEE

13. The WEEE Regulations set the framework for producers to meet obligations in relation to collection, recovery and recycling/reuse of WEEE. They leave open the mode of allocation of WEEE separately collected from private households to producers.
14. There have been strong calls from producer for the Clearing House to coordinate “physical allocation” of WEEE, i.e. allocating WEEE to producers, in proportion with their market shares, from a network of designated collection facilities around the UK - in preference to other approaches.
15. The guidance paper refers to several options for “physical allocation” of WEEE to producers, which have been under discussion. As part of this consultation, the Government is inviting comments on main options for allocation arrangements. A group of producers, the Strategic Electronic Waste Policy Forum (SEWPF), which is independent of Government, has been considering these issues. The consultation includes a paper, which SEWPF has sent to the Government. It presents SEWPF’s current thinking on allocation. The Government invites comments on this paper from stakeholders.
16. The Government is particularly interested to have the views on allocation arrangements from other producers, including small producers, as well as local authorities and the waste management industry, on the workability, including the implications at local level for collection sites, and the fairness of the options. Please see the questions in the guidance. For ease of reference, these questions are also listed in the Annex at the end of this introduction paper.

Take-back

17. The draft WEEE guidance provides guidance on the take-back obligation on retailers, including the two compliance options open to them of offering in-store take-back or, alternatively, membership of a retailer/distributor compliance scheme. This guidance is issued against the background of continuing discussions between the Government and the British Retail Consortium on proposals for a retailer/distributor compliance scheme. The Government aims to announce the outcome of these as soon as possible.

RoHS Directive

Compliance

18. The consultation includes proposals to enable the producers of electrical and electronic equipment to comply with RoHS through a system based on supplier declarations and producers analysis.

Maximum concentration values

19. The consultation reflects the progress of discussions in the Technical Adaptation Committee of Member State representatives on the establishment of the levels of the restricted substances which will be permitted.

PRACTICAL ARRANGEMENTS FOR THIS CONSULTATION

20. The documents for this consultation (listed on page 2 of this paper) are downloadable from the DTI website:
www.dti.gov.uk/sustainability/weee/index.htm.

21. You can obtain hard copies of the consultation paper or any of the supporting papers by contacting:

Gordon Tarrant
Sustainable Development
Department of Trade and Industry
Bay 430
151 Buckingham Palace Road
London SW1W 9SS

gordon.tarrant@dti.gsi.gov.uk

Tel: 0207 215 5823
Fax: 0207 215 5835

HOW TO RESPOND TO THIS CONSULTATION

22. Your views are invited in response to this consultation paper by **Friday 29 October 2004**. You may respond to the following:

For England	For Wales
<p>Gordon Tarrant Sustainable Development Department of Trade and Industry Bay 430 151 Buckingham Palace Road London SW1W 9SS</p> <p>weee/rohsresponses@dti.gsi.gov.uk</p> <p>Tel: 0207 215 5823 Fax: 0207 215 5835</p>	<p>Owen Venables Welsh Assembly Government Office of the Chief Technology Officer Crown Buildings Cathays Park Cardiff CF10 3NQ</p> <p>owen.venables@wales.gsi.gov.uk</p> <p>Tel: 029 2082 3914 Fax: 029 2082 5137</p>

For Scotland	For Northern Ireland
<p>Gary Gray Environment Protection Unit The Scottish Executive Mailpoint 11 Victoria Quay Edinburgh EH6 6QQ</p> <p>waste.team@scotland.gsi.gov.uk</p> <p>Tel: 0131 244 0363 Fax: 0131 244 0245</p>	<p>Eithne Gribben Environmental Policy Division Department of the Environment for Northern Ireland 20-24 Donegall Street Belfast BT1 2GP</p> <p>Eithne.Gribben@doeni.gov.uk</p> <p>Tel: 028 9054 4586 Fax: 028 9054 4520</p>

23. Would representative bodies responding please indicate briefly the people and organisations they are representing?

24. DTI will copy all responses it receives to the Devolved Administrations, DEFRA and other interested Whitehall Departments. We may decide to disclose or to publish any response unless it is clearly marked "in confidence".

BACKGROUND INFORMATION

25. Further background documents on WEEE and RoHS are downloadable from the DTI website: www.dti.gov.uk/sustainability/weee/index.htm.

26. These include:

- texts of the WEEE and RoHS Directives;
- the Government's two previous consultation papers – published on 28th March 2003 and 25th November 2003 respectively;
- summaries of the responses to the previous Government consultations; and
- a quarterly progress report on other Member States' progress towards implementation of the WEEE Directive (by consultants Perchards).

CONSULTATIONS ON PERMITTING OF AND GUIDANCE FOR WEEE TREATMENT

27. The WEEE Directive includes permitting requirements for treatment of WEEE. In England and Wales these are expected to be transposed

into law by new regulations, which DEFRA will make, which will replace the majority of Part II of the Environmental Protection Act 1990 and the Waste Management Licensing Regulations 1994. These permitting regulations are to be the subject of separate consultation. Information on the permitting review may be found at:
www.defra.gov.uk/environment/waste/legislation/permitreview/

The Northern Ireland Administration has been consulting separately on its proposals for transposition of the permitting and treatment requirements of the WEEE Directive. This consultation paper may be viewed at www.doeni.gov.uk/epd

Separate regulations implementing the treatment requirements of the WEEE Directive will be made in Scotland.

28. The Environment Agency is currently consulting on draft guidance for the treatment and storage of WEEE at treatment facilities. The purpose of the Agency guidance is to set out what constitute the minimum treatment operations at an authorised treatment facility necessary to comply with the requirements of Article 6 of the WEEE Directive. This draft guidance can found at:
www.environment-agency.gov.uk/yourenv/consultations/830820/
29. Producers and producer compliance schemes, in particular, are encouraged to consider the draft treatment guidance, since treatment costs will be one of the key components in their producer responsibility compliance costs under the WEEE Regulations.

ANNEX A – CONSULTATION QUESTIONS

This consultation invites your general views on the Government’s proposed draft implementing regulations and guidance for WEEE and RoHS, as well as the updated partial regulatory impact assessments.

The consultation also invites your responses to a number of specific consultation questions in relation to WEEE implementation; and a question on the updated partial regulatory impact assessments.

The consultation questions can be found, highlighted in red, in the text of the draft WEEE guidance. They are also listed here for ease of reference.

Q1 (Page 13). Do you agree with the proposals for establishment of the National Clearing House, including the suggestions for the specification for its operator?

Q2 (Page 17). Which of the three options proposed for allocation of separately collected WEEE to producers do you prefer? Please explain why.

Q3 (Page 17). What is your assessment of the implications for designated collection facilities of these options? The Government particularly invites views from prospective operators of designated collection points including operators of civic amenity sites and retailer-led sites.

Q4 (Page 17). Which do you think is the allocation approach which best meets the particular requirements of small businesses?

Q5 (Page 17). What level of involvement would it be appropriate for producers, their compliance schemes or their contractors to take in the management of WEEE at designated collection facilities, including civic amenity sites?

Q6 (Page 18). What do you think of the proposed arrangements for direct point-of-sale collection arrangements between producers and retailers and local agreement collection sites, which could run alongside the mainstream NCH allocation of WEEE?

Q7 (Page 19). Do you agree with the proposed “grouping” of WEEE categories for collection at designated collection facilities?

Q8 (Page 21). Do you agree with this approach (to sales data reporting)? If not, can you suggest a way in which all producers can fairly and simply declare their business- to-business sales; and which could be administered cost-effectively?

Q9 (Page 24). Whilst being sensitive to the costs of compliance of the WEEE Directive to UK businesses the Government is minded to ask

producers and their compliance schemes to take into consideration wider environmental and social impacts, including local impacts, when discharging their obligations under the WEEE Directive. Do you agree?

Q10 (Page 27). Do you agree with the proposed approach to enforcement of business-to-business obligations? If you do not, please say why not and explain any alternative approach you would prefer.

Q11 (Page 29). Do you agree that producers, or their compliance schemes, should report compliance data on a quarterly basis to the National Clearing House; with these reports subject to monitoring and enforcement action by the environment Agencies?

Updated partial regulatory impact assessment on WEEE and RoHS implementation proposals

The Government also invites your views on the indicative costs associated with the proposals for implementing Regulations and Guidance in the partial regulatory impact assessments which form part of this consultation. Do you agree with these estimates in respect of (i) WEEE and (ii) RoHS? If you do not agree, please provide as much detail to back your own estimates as possible.

ANNEX B

THE CONSULTATION CRITERIA

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site, address www.cabinet-office.gov.uk/servicefirst/index/consultation.htm.

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 Philip Martin, DTI Consultation Co-ordinator, Room 723, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or philip.martin@dti.gsi.gov.uk