

Assessment of Responses to the Third Consultation Document: WEEE and RoHS Directives

DTI

REPORT

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1 INTRODUCTION

1.1 THE CONSULTATION DOCUMENT

This reports details ERM's findings following the review and assessment of stakeholder consultation responses to the Government Consultation Document on the WEEE and RoHS Directives, dated 30 July 2004. The consultation period ended on 29 October 2004.

The Consultation Document included a total of 12 questions: 11 on the implementation proposals for the WEEE Directive and one relating to the updated partial regulatory impact assessment. Although there were no specific questions relating to the implementation of the RoHS Directive, ERM has assessed issues raised in relation to compliance and enforcement of the RoHS Directive.

1.2 STAKEHOLDER RESPONSES

In total, 225 responses were received. A list of all respondents is provided in *Annex A*.

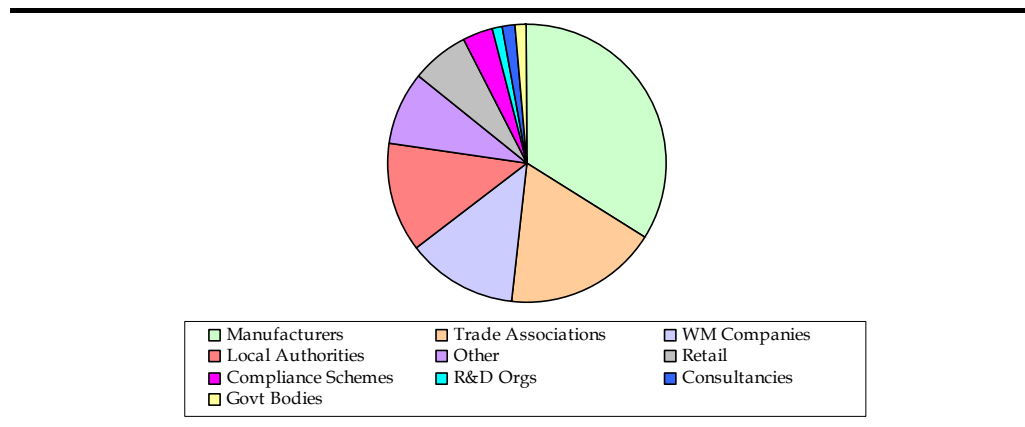
A number of identical responses were submitted by different organisations. There were three groups of identical responses containing 19, 11 and 8 responses.

The breakdown of respondents by sector is provided in *Table 1.1* and *Figure 1.1*.

Table 1.1 Breakdown of Respondents by Sector

Sector	Total Number of Respondents	% Breakdown
Manufacturers	76	34%
Trade Associations	40	18%
Waste management companies (including recyclers/refurbishers)	29	13%
Local Authorities	29	13%
Other	19	8%
Retail	15	7%
Compliance schemes	8	4%
R&D organisations	3	1%
Consultancies	3	1%
Government bodies	3	1%
Total	225	100%

Figure 1.1 Share of All Responses by Sector (225 Responses in Total)



A breakdown of responses by region/country is provided in Table 1.2.

Table 1.2 Breakdown of Responses by Region

Region	Number of Responses	% Breakdown
England	194	86%
Scotland	11	5%
Wales	5	2%
Northern Ireland	7	3%
Other	8	4%
Total	225	100%

1.3 STRUCTURE OF THE REPORT

This report has been structured according to the following main themes:

- Section 2. The Role of the National Clearing House;
- Section 3. Allocation of WEEE by the National Clearing House;
- Section 4. Other Arrangements for the Collection, Treatment and Recovery of WEEE;
- Section 5. Allocation of WEEE by Product Groupings;
- Section 6. Data Reporting on Equipment put on the Market;
- Section 7. Producer Compliance Schemes;
- Section 8. Obligations on the Financing of Business WEEE;
- Section 9. Obligations for Compliance Reporting;
- Section 10. Partial Regulatory Impact Assessments on WEEE and RoHS; and
- Section 11. Comments relating to the RoHS Directive.

Where appropriate, each section contains a general commentary on the overall findings along with a comparison with the conclusions from the second consultation exercise that was conducted in Spring 2004.

All responses to each of the 12 questions have been assessed, as well as a specific analysis of comments relating to the implementation timescale for the

NCH and comments related to RoHS compliance and enforcement. Statistical analysis has been carried out, where appropriate, and this analysis is summarised in the *Figures* in each section.

The responses have been classified according to the nature of their response. It should be noted that not all respondents provided comments to all 12 questions. Therefore, in all cases, categories exist for 'no response' and 'no view'.

- A 'no response' applies when the respondent has not provided comments in respect of the specific question and, as a result, the entry is not included in the statistical analysis.
- A 'no view' applies when a respondent has provided comments to the issue but has not answered the specific question. The number of 'no view' responses is shown in the pie charts but no further breakdown is provided.

All other responses are classified as appropriate and a breakdown by sector is provided in bar chart format. These responses may exceed the number of actual responses received as, in many cases, respondents have suggested a number of possible solutions or support a number of possible options. All percentages have been rounded to the nearest whole number and may result in rounding errors.

It is important to note that all responses carry equal weighting in the statistical analysis. This is regardless of whether the organisation represents a number of other bodies or is a small to medium sized enterprise. The identical responses (see note above) were all counted individually in the statistical analysis.

A commentary is provided for each question and where direct quotes from responses have been included, these are shown in *italic* script.

The National Clearing House (NCH) has been proposed by producers as an administrative body to assist in the registration of producers and the allocation of WEEE to producers. These functions would underpin the delivery of their WEEE obligations under the Regulations. It has also been proposed that the NCH could act as a 'one stop shop' for producers' registration and data reporting in relation to their obligations.

2.1

GENERAL FINDINGS

The overwhelming majority (96% of respondents expressing an opinion) supported the proposals for the National Clearing House. However, some reservations were expressed by nearly all respondents. The main issues raised are summarised below:

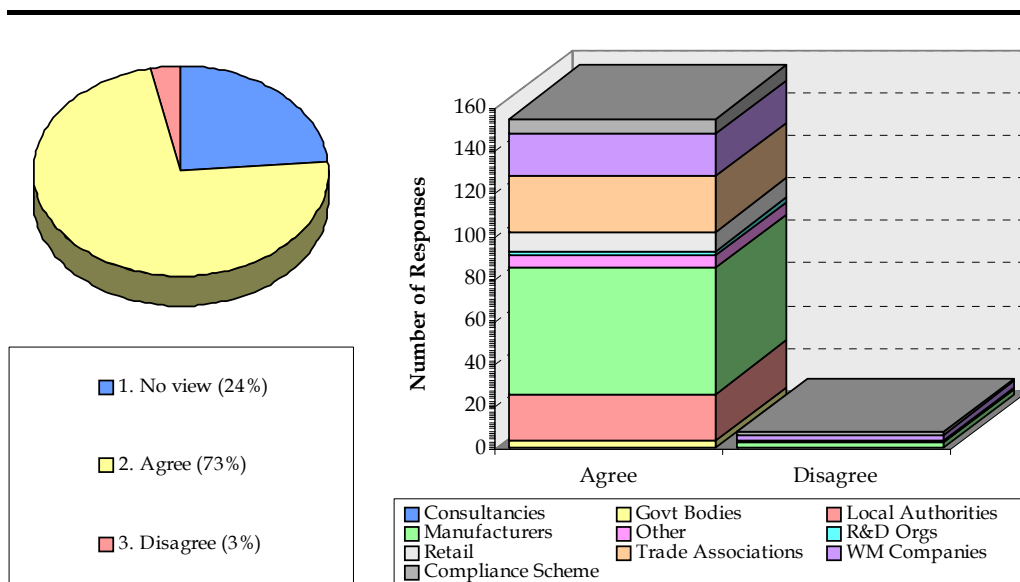
- several respondents stated that there should be only one NCH for the whole of the UK;
- there should be an independent WEEE regulator for the NCH as the proposal for a small advisory panel was considered inadequate;
- costs involved in operating the NCH should be transparent;
- the NCH should not be involved with other areas of WEEE implementation to avoid potential conflicts of interest; and
- mixed views were expressed over the use of tradable permits.

Although not asked directly in any of the consultation questions, the Government was specifically interested in comments relating to the proposed timetable for the NCH implementation. In general, respondents believed that the timescale proposed was challenging at best and impossible at worst. The main concerns included:

- the perceived risk of dealing with complex administrative rules at short notice prior to registration;
- insufficient time to invest in facilities and to ensure compliance with treatment requirements and Best Available Technique;
- inadequate time to develop and test software-controlled systems; and
- there were requests for an incentive plan for early registrants.

WEEE Question 1: Do you agree with the proposals for establishment of the National Clearing House, including the suggestions for the specification for its operator?

Figure 2.1 WEEE Question 1 (211 Responses)



211 of the 225 respondents provided a response to this question with 160 expressing a clear view. Of those that expressed a view, 153 respondents agreed with the proposals for the establishment of the NCH with only 7 respondents disagreeing with the proposals.

Of those respondents that agreed, the main issues raised were:

- around 35% stated that the timescale proposed was challenging at best and impossible at worst;
- around one quarter believed that the producers should not fund enforcement activities, but this should be financed by the enforcement agencies; and
- about 20% pressed that there should be only one NCH for the whole of the UK.

Those who opposed the NCH gave the reasons that it was not relevant for business-to-business WEEE that it adds extra bureaucracy, and raised concerns about its accountability.

Of those that expressed views on the specification of the NCH operator, comments included:

- a request (from 20%) to involve producers and other stakeholders in the decision-making process when awarding the contract to operate the NCH;
- concerns (from around 10%) over ensuring confidentiality of submitted data and some requested written guarantees; and
- several respondents stated that active pursuit of free-riders should occur, funded by fines and prosecutions.

Some further general comments and concerns were raised, including:

- there should be an independent WEEE regulator for the NCH as the proposal for a small advisory panel was considered to be inadequate;
- costs involved in operating the NCH should be transparent;
- the nomination of the designated collection facility (DCF) status should be the responsibility of the NCH rather than the agencies; and
- the NCH should not be involved with other areas of WEEE implementation to avoid potential conflicts of interest.

In terms of response by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- all sectors expressed concern at the proposed timescale for implementation and were in favour of having one NCH for the whole of the UK.
- issues over dealing with B2B WEEE were raised by Trade Associations; and
- OEMs were concerned about producers funding enforcement activities.

There are a number of issues which need to be taken into consideration with regard to the allocation of separately collected WEEE by the NCH. Three broad models were proposed in the consultation, which have been discussed by stakeholders. These models were:

- Option One – By individual container;
- Option Two – By series of container pick-ups; and
- Option Three – By site.

3.1

GENERAL FINDINGS

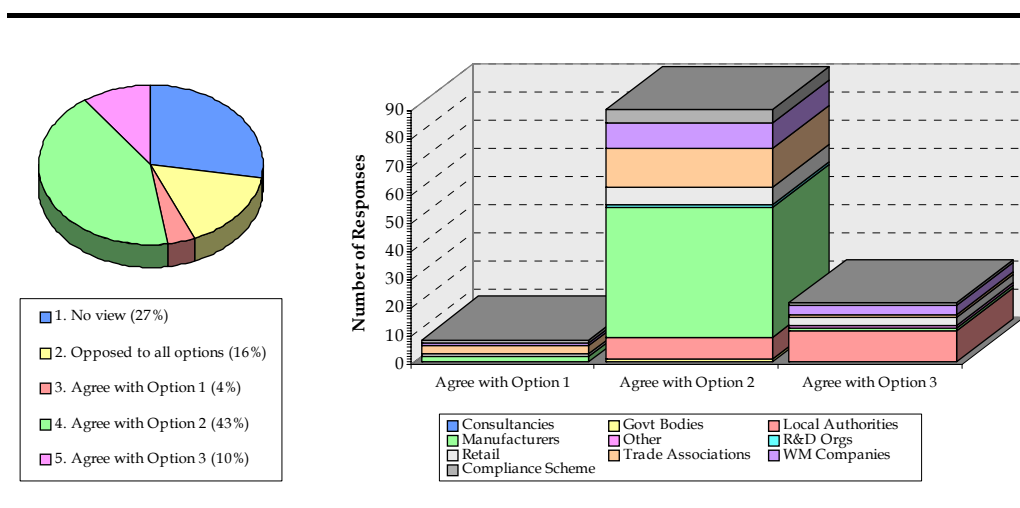
75% of respondents expressing an opinion supported *Option Two* as the best mechanism to manage the allocation of WEEE. Similarly, for small businesses, a significant majority (85% of respondents expressing an opinion) supported *Option Two*. Some concern was expressed over this option not being market driven. However, it was generally perceived to be the most efficient, cost-effective and fair, both in terms of management and potential cost implications.

Some respondents who consider themselves prospective operators of the future designated collection facilities (DCFs) expressed some specific concerns. The main issues related to collections of separately collected WEEE causing potential disruption at CA sites, concerns over lack of space, concerns over who would pay for containers and potential health and safety risks.

In terms of the level of involvement for producers in the management of WEEE at designated collection facilities, about two thirds of the respondents believed that there should be no involvement. It was perceived that the DCF code of practice developed by SEWPF would provide sufficient control and result in low levels of involvement.

WEEE Question 2: Which of the three options for allocation of separately collected WEEE to producers do you prefer? Please explain why.

Figure 3.1 WEEE Question 2 (211 Responses)



211 of the 225 respondents provided an answer to this question. Of those that responded, 27% did not express a view, 57% stated a preference for one specific option and 16% were opposed to all of the allocation options proposed.

In summary, of those that expressed a preference for one or more option:

- 5% showed a preference for Option One;
- 75% preferred Option Two; and
- 15% preferred Option Three.

Option One

Of those that preferred *Option One*, the reasons given supported the arguments presented in the consultation, including:

- *Options Two* and *Three* would not allow the NCH to track obligations in real-time; and
- *Option One* offers a fairer, more equitable allocation to producers.

Of those that did not support *Option One*, the reasons given included:

- this allocation approach is not based on market-driven efficiencies;
- it would be impossible for a scheme to exchange contracts with a collection agent for an unknown quantity of WEEE that may or may not be collected from a specific site;

- the lack of control by DCF operators over the number of contractors removing WEEE; and
- the costs of implementing and managing a common container system.

Option Two

Of those that preferred *Option Two*, the reasons given included:

- there are likely to be fewer contractors visiting the DCFs;
- it allows for easier SME participation as they can budget for the scheduled allocation of WEEE;
- it avoids the cost of a common container pool;
- it reduces transactions between stakeholders, thus providing greater efficiency and cost-effectiveness; and
- it is equally fair/unfair to all stakeholders large or small.

Of those that did not favour *Option Two*, the reasons given were:

- this allocation approach was not seen to be based on market-driven efficiencies;
- that it could be impossible for a scheme to exchange contracts with a collection agent for an unknown quantity of WEEE that may or may not be collected from a specific site; and
- that there would be an issue with achieving equity amongst producers and schemes in allocating batch pick-ups, leading to the need to still have a rota-based system.

Option Three

Of those that preferred *Option Three*, the reasons given were:

- that there could be the same haulier collecting the waste for a year making the process easier to manage and allowing the development of good business relationships; and
- that the fewer number of different contractors visiting the sites would lead to better transport efficiencies and improved health and safety.

Of those that did not favour *Option Three*, the reasons given were:

- that it would be impossible for schemes to compete due to differences in geographical responsibilities;
- that it would be difficult for small producers to meet their obligations independently; and
- that it would be difficult to balance over- and under-collecting by producers and schemes over the course of a year.

Several other specific issues were raised, these included:

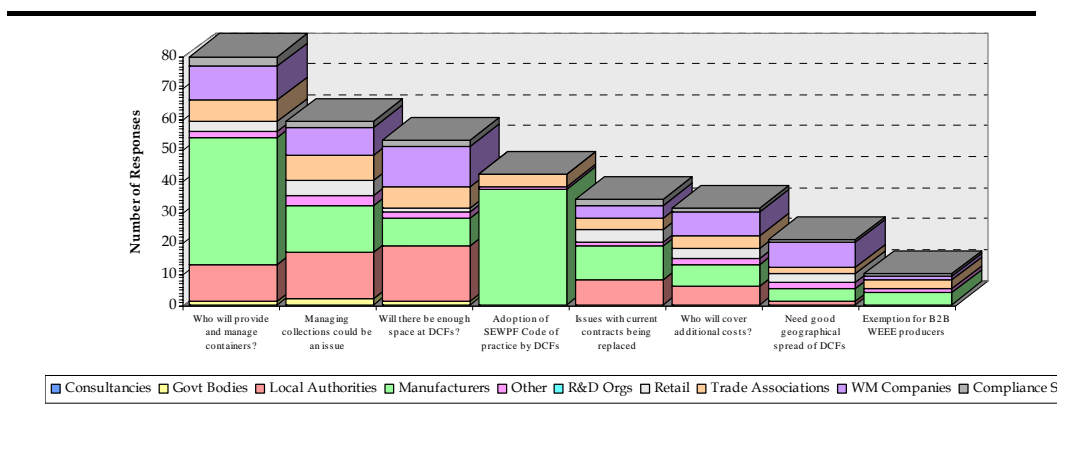
- producers and compliance schemes should be allowed to trade collection responsibilities;
- some collectors may refuse to visit sites where the quality of WEEE is consistently low;
- small businesses should be allowed to fulfil their obligations by paying a nominal fee for the practicalities of their obligations to be transferred to another party, similar to passing an obligation to a compliance scheme but without additional annual fees;
- business-to-business only producers should either have an alternative option to the three proposed or not receive an allocation; and
- there should be a visible fee at point-of-sale to raise funds to cover regional collections co-ordinated by the NCH, similar to the Dutch system.

In terms of response by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- most categories of respondents expressed a majority preference for or acceptance of *Option Two*;
- local authorities showed strong support for *Option Three*; and
- Compliance Schemes respondents were split evenly between *Option Two* and *Option Three*.

WEEE Question 3: What is your assessment of the implications for the designated collection facilities (DCF) of these allocation options? The Government particularly invites views from prospective operators of designated collection points, including operators of civic amenity sites and retailer-led sites.

Figure 3.2 WEEE Question 3 (188 Responses)



188 out of the 225 respondents provided a response to this question, however 60 stakeholders did not express a clear view. 128 stakeholders expressed their views on the implications to DCFs of the allocation options.

Of those that were prospective DCF operators (local authorities and retailers), the main issues raised included:

- 63% expressed concern over the costs and management of containers;
- 46% thought that managing the extra collections could be a problem;
- 41% were concerned over space issues at DCFs;
- 27% expressed concern over replacing current collection contracts;
- 24% expressed concern over potential cost increases in running a DCF, including extra training and health and safety issues; and
- 16% were concerned that the geographical spread of DCFs may be inadequate.

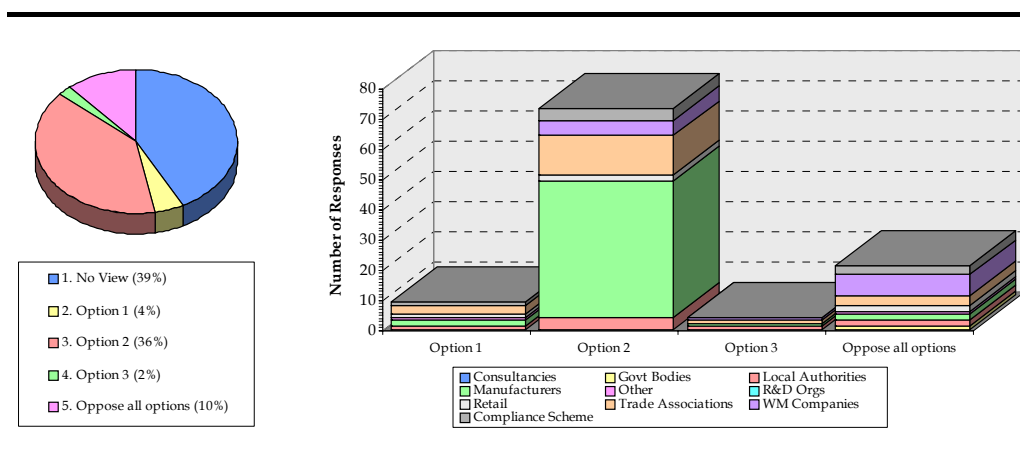
Other respondents (i.e. non-prospective DCF operators) also raised the above issues to varying degrees. However, these respondents also supported the adoption of the Code of Practice proposed by SEWPF in order to qualify for free removal of WEEE.

In terms of response by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- manufacturers raised concerns about ensuring that the DCFs adopt the SEWPF Code of Practice;
- local authorities had further issues over how to manage potential contractual issues; and
- waste companies, retailers and compliance schemes also mentioned the geographical spread of the DCFs being adequate.

WEEE Question 4: Which do you think is the allocation approach which best meets the particular requirements of small businesses?

Figure 3.3 WEEE Question 4 (185 Responses)



185 out of the 225 respondents provided an answer to this question. Of those that responded, 39% did not express an opinion, 10% believed that none of the proposed allocation approaches were suitable to meet the requirements of small businesses and 42% expressed a preference for one particular approach. In summary, of those that showed a preference for one specific approach:

- 10% favoured Option One;
- 85% favoured Option Two; and
- 5% favoured Option Three.

Some general concerns were expressed relating specifically to SMEs, including:

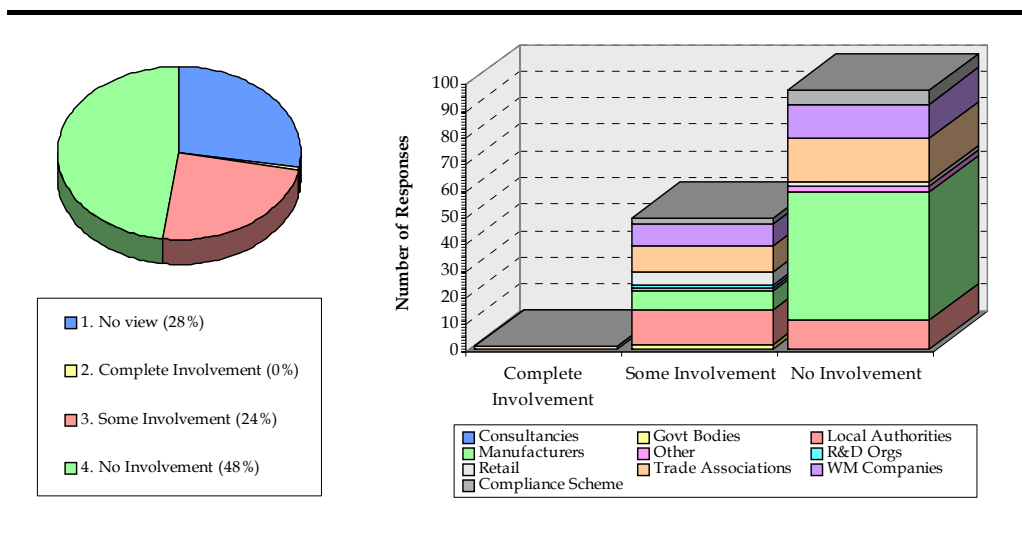
- around 35% of respondents believed that SMEs would most likely join a compliance scheme and therefore 'sign up to' the allocation preference of that scheme;
- around 25% stated that a visible fee would be the most cost-effective way for SMEs to fulfil their obligations;
- around 15% believed that cost issues would pose significant problems for SMEs, including the concern that joining a compliance scheme may be disproportionately high, however a number thought that allowing SMEs to 'piggyback' their obligations onto larger companies or schemes would bring economies of scale and lower costs; and
- around 10% believed there was too much emphasis on the small producers and that the Regulations should be shaped by the opinions of larger producers.

In terms of response by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses; and
- compliance schemes, retailers and waste companies all expressed, to varying degrees, the opinion that none of the proposed Options would be suitable.

WEEE Question 5: 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?

Figure 3.4 WEEE Question 5 (203 Responses)



203 out of the 225 respondents provided an answer to this question. Of those that responded, 28% did not express a view, 24% said there should be some involvement and 48% believed that producers (or their compliance schemes or contractors) should have no involvement in the management of WEEE at designated collection facilities. No respondents believed that the producer should take on complete management of the DCF.

Of those that supported producer involvement, the amount of contact ranged from regular site visits to very low levels (e.g. occasional contact by telephone). It was expressed that if re-use were to be managed successfully, then some involvement by the producer would be necessary.

Some comments were provided in relation to the SEWPF paper and proposals for a code of practice. These included:

- 20% believed that the code of practice developed by SEWPF would be sufficient to control the level of involvement and would result in a low levels of contact; and
- several respondents (approximately 10%) suggested that a similar code of practice for producers was needed, which, similarly, would reduce the need for producer involvement.

In terms of responses by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;

- the majority of respondents from local authorities and retailers stated that there should be some level of involvement; and
- the majority of respondents from trade associations, waste companies, compliance schemes and individual manufacturers believed there should be no involvement.

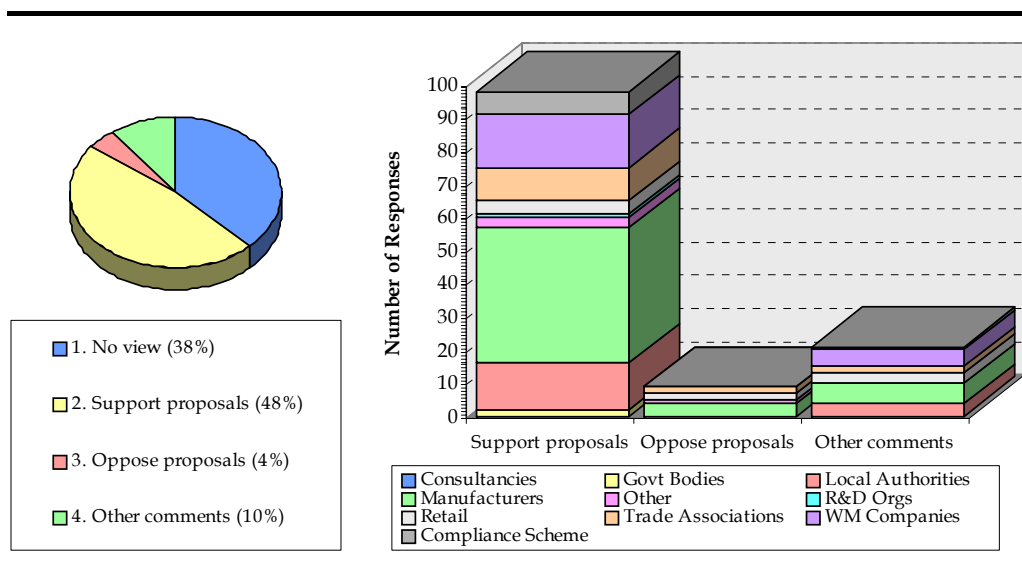
Under any of the allocation methods for WEEE, the Government thinks there may also be a role for particular arrangements, whereby producers may fulfil their obligations by a different route. It would be for producers to decide whether to enter these arrangements, and to ensure fairness. These arrangements would have to meet appropriate minimum standards. The consultation paper proposed two kinds of arrangements in relation to household WEEE:

- Direct point-of-sale collection arrangements: where producers make their own arrangements with retailers; and
- Local Agreement Collection Sites: where a collection site owner wishes to make a long-term arrangement with a community recycler and/or a local recycling company that produces particular environmental and social inclusion benefits.

4.1 SPECIFIC FINDINGS

WEEE Question 6: 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?

Figure 4.1 WEEE Question 6 (124 Responses)



For this question 124 of the 225 respondents provided an answer. Of those that responded, 38% did not express an opinion, 48% supported the proposed arrangements for both the *direct point-of-sale collection* and *local agreement*

collection sites (although several reservations were expressed), 4% opposed the proposals and 10% made other comments.

Of those that expressed a view, the majority (80%) supported the proposed alternative arrangements. It was generally stated that the overall system should be flexible enough to allow current arrangements to continue and that these arrangements should be required to meet the appropriate minimum standards, particularly relating to the reporting of evidence and treatment requirements.

Of those that expressed a view, the following general concerns were expressed:

- further clarification was required regarding *over-collection* relative to the final obligation. Of those expressing an opinion on this issue, the overwhelming majority believed that producers should not be able to trade over-collected WEEE, or that over-collected WEEE should be allocated back through the NCH;
- with regard to the use of a 'ceiling' or limit to the amount of WEEE which could be handled through these routes, the majority favoured the use of a 'ceiling';
- concerns were expressed over issues of geographical inequity and 'cherry picking' between those that adopt the proposed alternative arrangements and those involved solely with the NCH; and
- a number of respondents requested that neither of the proposed collection arrangements should bypass the NCH.

In general, a significant number of identical (or near identical) responses were received by several groups of respondents. Specific comments in relation to *direct point-of-sale collection* included:

- the vast majority of these respondents believed a 'ceiling' collection limit should be used;
- the majority of these respondents stated that trading of over collected WEEE should not be permitted;
- similarly, the majority of respondents stated that 'cherry picking' should not be permitted;
- in general it was expressed that an individual approach to compliance would promote eco-design; and
- a significant number of these respondents proposed that a phased approach should be adopted that allows companies to progressively transfer from a collective system to an individual producer responsibility system. Reference was made to the system in Germany.

There were fewer responses relating to *local agreement collection sites*. The main points that were raised included:

- the request for this collection arrangement not to bypass the NCH. The need maintain consistent minimum standards and centralised data handling was raised;
- concerns were expressed over the source of funding for these activities;
- concern was also expressed over bureaucracy in permitting and registration requirements for smaller operators; and
- a request was made for sufficient flexibility to allow current local arrangements to continue operating.

In terms of response by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses; and
- those that opposed alternative arrangements included manufacturers, retailers and trade associations.

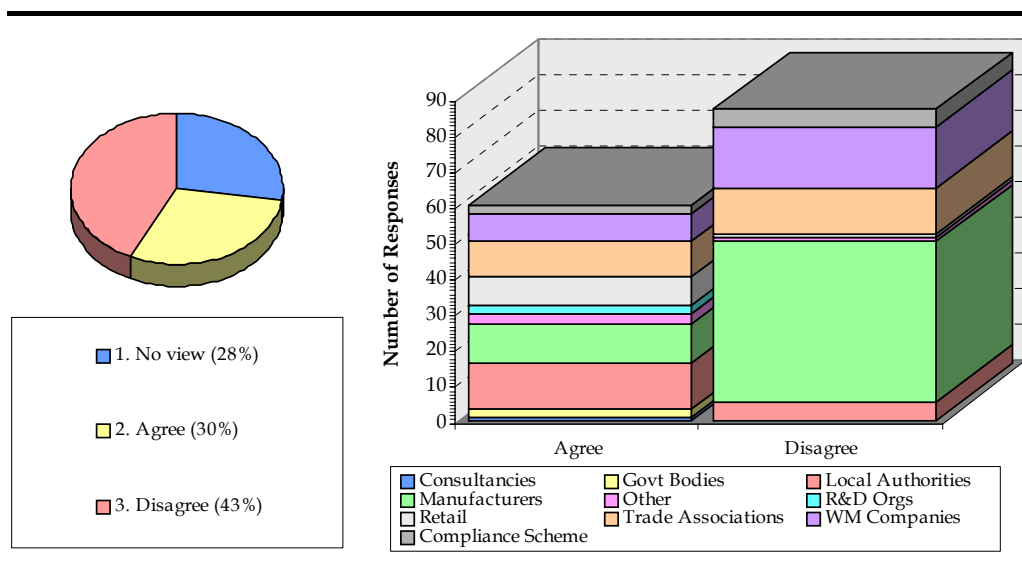
The Government proposes that, for the purposes of collection, the NCH should allocate WEEE by a small number of 'groupings' of WEEE. The proposed groupings are:

- WEEE categories 1 and 10 - large domestic appliances (this includes refrigerators and freezers);
- WEEE categories 3 and 4 - IT/telecoms, consumer equipment;
- WEEE categories 2, 6, 7 and 9 - small household appliances, electrical and electronic tools, toys, leisure and sports equipment, and monitoring and control equipment; and
- WEEE categories 5 - lighting equipment.

5.1 SPECIFIC FINDINGS

WEEE Question 7: Do you agree with the proposed 'grouping' of WEEE categories for collection at designated collection facilities?

Figure 5.1 WEEE Question 7 (196 Responses)



196 of the 225 respondents provided an answer to this question. Of those that responded, 28% did not express an opinion, 43% disagreed with the proposed category groupings and 30% agreed with the proposals.

Of those respondents that expressed a view, almost all agreed that grouping of the WEEE categories would be beneficial. Of the 43% that disagreed with the proposed category groupings, around 80% stated that category groupings should be based on the downstream requirements of the recycling technology, rather than based on the Directive recycling/recovery targets, as proposed.

Some respondents selected specific product groups that would require separate treatment. These were predominantly, fridges & freezers and CRTs with some also calling for the separation of lighting products. Some called for the further sub-division (e.g two sub-groups for lighting).

Other issues raised were:

- several respondents believed that arisings of category 9 WEEE (monitoring and control instruments) in the household waste stream would be negligible and should therefore be excluded from the groupings; and
- a number of respondents raised concerns over space constraints at CA sites.

In terms of response by category:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- more manufacturers, waste companies and compliance scheme operators disagreed, rather than agreed, with the government proposal; and
- retailers and local authorities tended to support more readily the proposal.

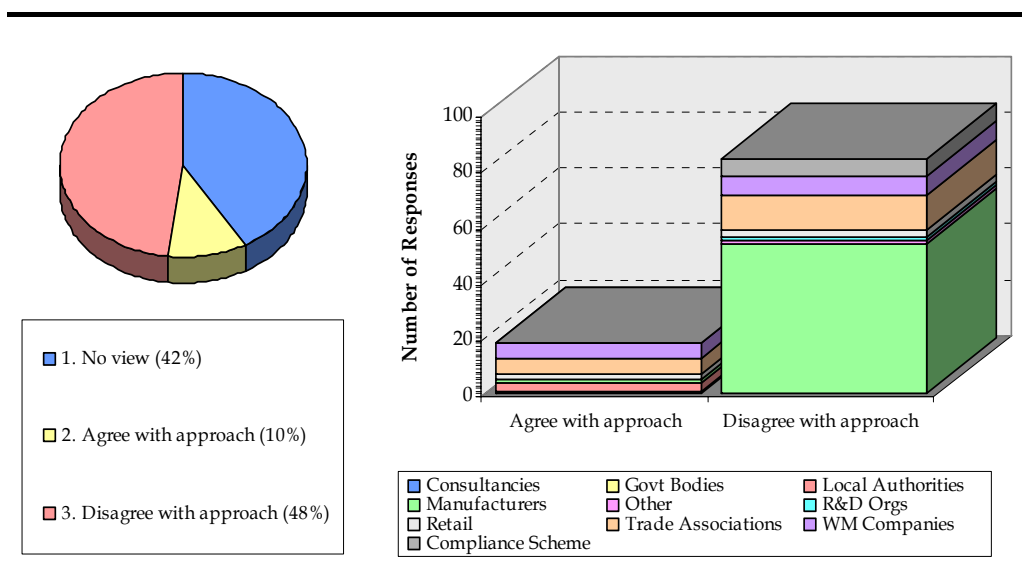
The Government proposes that all sales (both to business users and householders) should be reported to the NCH and be used for calculating market shares.

6.1

SPECIFIC FINDINGS

WEEE Question 8: 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 administrated cost-effectively?

Figure 6.1 WEEE Question 8 (175 Responses)



175 of the 225 respondents provided an answer to this question. Of those that responded, 42% did not express an opinion, 48% disagreed with the proposals for sales data reporting and 10% agreed with the approach.

Of those that disagreed, following main issues were raised:

- it was seen as unfair that business-to-business WEEE be included in the calculation if it cannot be deposited at a DCF or be subject to obligation by the NCH;
- if a business product does find its way into the domestic waste stream, it should be included in the market share data submitted to the NCH;
- sectors affected by migratory issues should define business-to-business product attributes in conjunction with the NCH; and

- credit should be given to producers already active in take-back and recovery/recycling schemes by discounting from their market share.

Of those that disagreed, 70% proposed alternatives to the method of sales data reporting. These generally supported a system where the producer can exclude business-to-business WEEE from market share calculations on the provision of evidence or a self declaration statement. Other approaches that were suggested included:

- an approach whereby producers can exclude business-to-business WEEE from market share calculations based on 'reasonable estimates' that this WEEE does end up in the domestic sector. This approach was seen to be similar to the Packaging Regulations system and was advocated by 10% of those who disagreed with the Government's proposed approach; and
- a few respondents proposed that the VAT system could be used to identify business-to-business sales.

In addition, around 10% of respondents commented on the format of sales data provision, and how this was to be used to calculate market share. The issues raised were:

- it was not clear how quantity and weight figures were going to be combined to assess market share; and
- approximately half of those with concerns preferred total weight of products to be used as the basis of the share calculation. However, a similar number of respondents opposed this view, stating that weight alone would be misleading and disproportionate (eg for products containing large quantities of metal or concrete compared to low weight products).

In terms of response by sector:

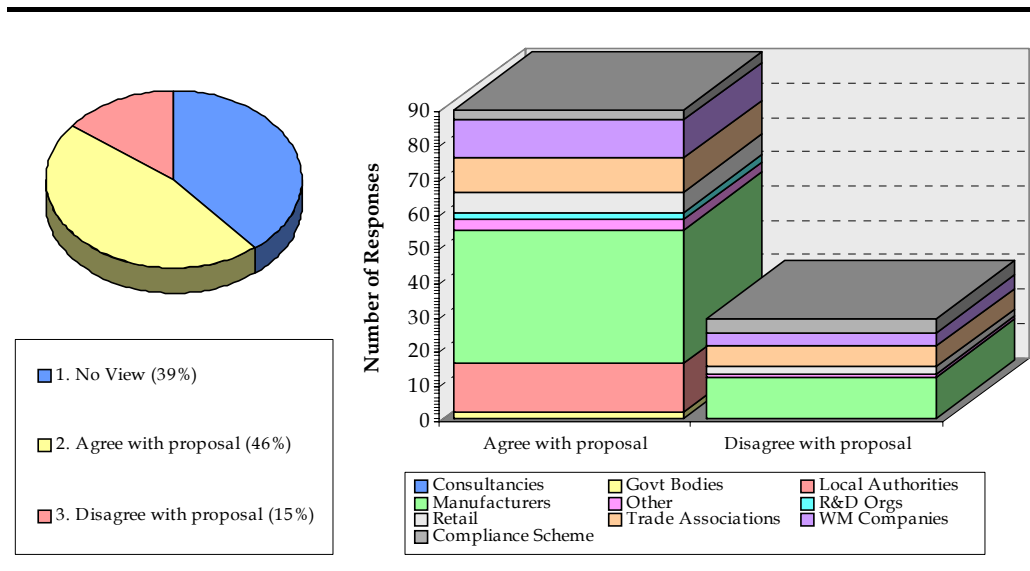
- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- the vast majority of manufacturers and compliance schemes disagreed with the proposals;
- more than half of the manufacturers supported an alternative model;
- the majority of the compliance schemes favoured an approach similar to the Packaging Regulations system; and
- there was a relatively low response rate from all other sectors.

The Government proposes that producers and compliance schemes should take wider environmental and social impacts into account when discharging their obligations.

7.1 SPECIFIC FINDINGS

Question 9: 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?

Figure 7.1 WEEE Question 9 (196 Responses)



196 of the 225 respondents provided an answer to this question. Of those that responded, 39% did not express an opinion, 46% either agreed with the proposal, or agreed in principle, and 15% disagreed.

Of those that provided a response, the main issues were:

- the cost implications of the proposal. 20% were concerned about additional costs implications, although, more than three-quarters of these were still in support of the approach; and
- 25% of those responding regarded transport as the key potential environmental impact resulting from WEEE Directive implementation and proposed efforts to minimise vehicle journeys and support the proximity principle;

- 20% proposed that action should be taken to support re-use and refurbishment schemes; and
- 10% requested further clarity regarding the envisaged requirements.

Of those that disagreed:

- the majority (70%) stated that the UK regulations should not go beyond the requirements of the WEEE Directive; and
- around 30% agreed to the principle behind the proposal, but believed that support should be on a voluntary basis only.

In terms of response by category:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- the majority of manufacturers, government organisations, local authorities and waste management companies agreed with the proposal; and
- the vast majority of the issues raised in relation to this question were from manufacturers and manufacturing trade associations.

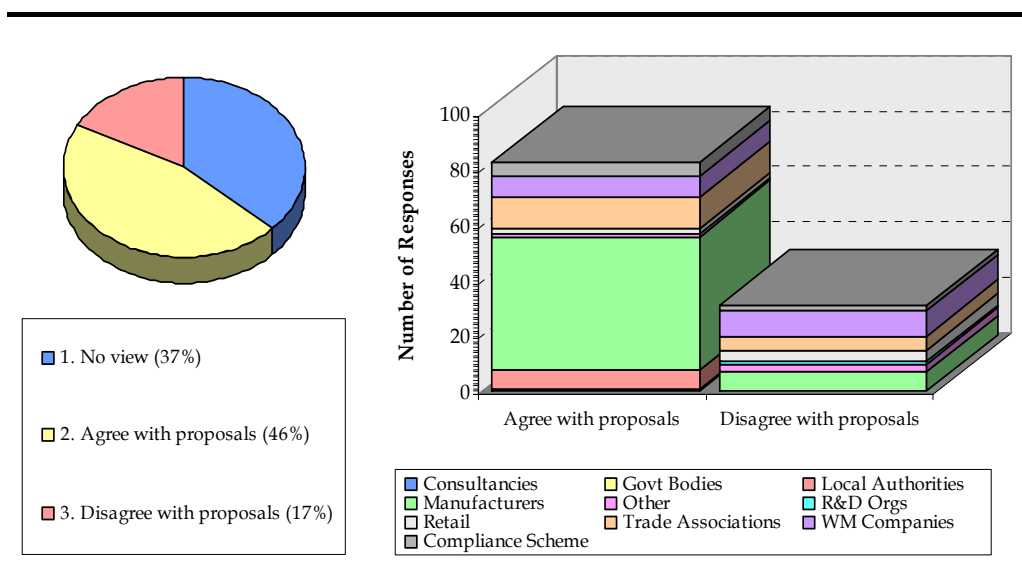
The Government proposes a system whereby producers supplying new equipment to a business user to replace original equipment purchased before 13 August 2005 are financially responsible for the costs of treatment, recovery and disposal of the replaced equipment. If the business user is not making a like-for-like replacement purchase then the user is financially responsible.

For products sold after 13 August 2005, producers are financially responsible for the treatment, disposal and recovery of any WEEE. However, producers and users can freely negotiate responsibility between themselves.

8.1 SPECIFIC FINDINGS

WEEE Question 10: 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.

Figure 8.1 WEEE Question 10 (181 Responses)



181 of the 225 respondents provided an answer to this question. Of those that responded, 37% did not express an opinion, 46% agreed with the proposals for the enforcement of business-to-business obligations and 17% disagreed.

Of those that expressed an opinion, the majority (around 70%) supported the proposed approach to enforcement of business obligations. However, some general concerns were raised:

- regarding the enforcement of end-user obligations. It was suggested that end-users, in particular small businesses, could fall through the

enforcement net; default on their obligations; be unaware of their obligations; or resort to fly-tipping. These views were mainly held by trade associations and waste management companies;

- regarding how obligations will be managed throughout the supply chain, specifically relating to movement of funds along the supply chain; and
- the proposals were considered too vague and lacked clarity.

Several alternative approaches were suggested by those that disagreed with the proposals, including:

- a system where the responsibility for historical WEEE should fall on either the producer or end-user, not a combination;
- a system where, after collection and treatment, the authorised treatment facility (ATF) is required to notify the NCH of correct disposal;
- a system where the business end-user pre-notifies the NCH of their intention to dispose of WEEE. A waste transfer note would be generated and the ATF would report disposal to the NCH; and
- use of product labels or bar-codes to help track products and demonstrate compliance with WEEE obligations.

The specific points where additional clarity was requested included:

- the definition of 'producer' and 'distributor' and the associated problems in identifying what is business-to-business in certain sectors;
- the definition of 'like for like' and 'equivalent function';
- the need to clarify how business end-users should report to the NCH and environmental Agencies;
- a need to identify who would arbitrate should a dispute arise; and
- concerns were re-iterated that this approach for handling business-to-business WEEE negates the need for producers to supply business-to-business market share information to the NCH (see *Question 8*).

In terms of response by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- the majority of manufacturers, trade associations and compliance schemes agreed with the proposals; and
- the majority of local authorities had no view on the approach, however, all of those that did express an opinion agreed with the proposals.

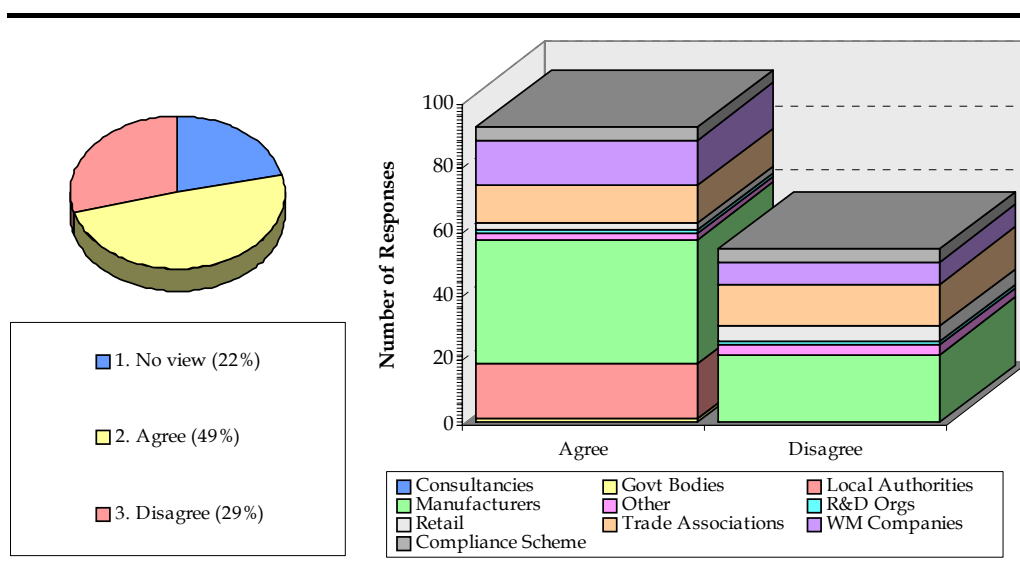
The Government proposes that producers, or their compliance schemes, should report evidence of their compliance with obligations at the end of each quarter to the NCH. The NCH will then use this data to update their allocation.

9.1

SPECIFIC FINDINGS

Question 11: 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?

Figure 9.1 WEEE Question 11 (179 Responses)



179 of the 225 respondents provided an answer to this question. Of those that responded, 22% did not express a view, 49% agreed with the proposed quarterly reporting of compliance data and 29% disagreed with the proposal.

Of those that expressed a view, either in favour or not of the proposal:

- 30% expressed the need for a clear and simple reporting approach in order to keep compliance costs down; and
- around 25% referred to best available technology (BAT) and said that the targets for small domestic appliance treatment could not be met with existing technology.

A number of respondents suggested that quarterly (or more frequent) reporting was necessary in order to build up a national picture and adjust

allocations of responsibility accurately – to avoid under- or over-allocation. It was suggested that after an initial period, annual (or quarterly) reporting would then be sufficient.

Of those that disagreed, the most frequently expressed concern was regarding unnecessary and burdensome administrative costs. The alternative reporting periods proposed by those that disagreed, included:

- 75% favoured annual reporting;
- 10% favoured reporting on a six-monthly basis;
- 10% favoured reporting on a one-monthly basis; and
- the remainder expressed mixed views.

Some respondents suggested that reporting should go further than the proposed requirements, and include reporting of collection data to the NCH (in comparison to compliance data) after each pick up from a DCF.

In general, of those that expressed a view, it was agreed that the reporting should be subject to monitoring and enforcement action by the environment agencies.

In terms of responses by sector:

- a significant number of manufacturers and several trade associations submitted identical (or near identical) responses;
- the vast majority of local authorities and the majority of manufacturers and waste management companies supported the government proposal;
- trade associations and compliance scheme operators tended to show mixed views;
- local authorities expressed that quarterly reporting was in line with other reporting requirements (such as WasteDataFlow); and
- the Agencies referred to the need for clarity over the boundaries of specific monitoring and enforcement activities and were concerned with the level of funding and resources available to achieve these duties.

The Government carried out a partial regulatory impact assessment (RIA) for each of the WEEE and RoHS Directives and included these in its consultation. The updated RIAs bring together and build on two previously published RIAs. Each discusses the potential costs and benefits to UK businesses, charities and the voluntary sector.

10.1 GENERAL FINDINGS

There were very few responses relating to the updated regulatory impact assessments. Less than 30 respondents commented on either of the updated RIAs. Comments received tended to be specific to the individual respondent and there was no consensus on specific issues or concerns.

10.2 SPECIFIC FINDINGS

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 WEEE? If you do not agree, please provide as much detail to back your own estimates as possible.

Only 17 of the 225 respondents provided comments on the updated WEEE partial RIA. Of these, the issue of primary concern was that respondents were not able to determine the likely costs of compliance for their business based on the data presented in the RIA.

Other comments were specific to the costs that were considered to be absent, or related to certain paragraphs of the RIA. These included:

- cost data relating to enforcement staff;
- the staff costs required to understand the WEEE regulations in different member states;
- the costs of new product development and product obsolescence;
- the cost of replacement capital equipment;
- costs associated with the installation of new treatment plants, or the upgrading of existing plants;
- potential costs of fines due to non-compliance; and
- potential cost impacts on local authorities that do not have a CA site.

Specific comments relating to certain paragraphs of the WEEE RIA included:

- paragraph 21: local authorities should be included in those affected in the business sector;

- paragraph 59: it was suggested that treatment and dismantling costs could be much higher than the £250-300/tonne for certain complex products. A cost of £800/tonne was proposed;
- paragraph 33: request for clarification as to whether costs incurred by local authorities for bulky waste collection will be avoided when producers take on responsibility for WEEE collection; and
- paragraphs 107 to 100: the assumption regarding the cost benefit of metal recovery in the future was questioned, given historical fluctuations in metal market prices.

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 RoHS? If you do not agree, please provide as much detail to back your own estimates as possible.

Only 12 of the 225 respondents provided comments on the updated RoHS partial RIA. In general, comments were specific to the costs that were considered to be absent, or to certain paragraphs of the RIA. The main cost data that were considered to be absent included:

- additional administration and staff costs;
- the additional costs required to process components which do not comply with the Directive;
- the capital costs of new equipment (eg lead free soldering equipment);
- the costs of specifying such equipment; and
- the disposal costs of replaced equipment.

Specific comments relating to certain paragraphs of the RoHS RIA included:

- paragraph 28: it was requested that text relating to CrVI and CrIII should be reworded to avoid potential misinterpretation; and
- paragraph 12: comments were expressed that there are no known studies to substantiate the statement that the legislation will 'contribute to reducing blood lead level in the UK'.

11.1 GENERAL FINDINGS

80 of the 225 respondents provided comments relating to the implementation of the RoHS Directive.

The main general issues of concern raised by stakeholders were as follows:

- *Scope of the RoHS Directive*
Although it is recognised that the RoHS Directive takes its scope from the WEEE Directive, some stakeholders felt that it was absolutely essential that the inclusion/exclusion of products within the categories should be unified across the EU, as it should be to fulfil the Article 95 legal base. Many stakeholders also believe that without a common interpretation of scope across all Member States, ensuring compliance with legal requirements will be both confusing and difficult.

Although the concept of a decision tree in *Annex B* was welcomed, some felt it needed further development. They felt that more information, including definitive lists of products, would provide much needed clarification.

Some respondents specifically argued against the possible future inclusion of categories 8 and 9 within the scope of the RoHS Directive.

- *Compliance and Enforcement*
Views summarised in 11.2 below.
- *Maximum Concentration Values (MCVs)*
Very few stakeholders commented on the wording of the definition of homogenous material or the use of the individual terms within this definition. Stakeholders generally appeared to support the fact that they had now been established (subject to formal ratification of the levels by the EC Environment Council) and some welcomed the fact the MCVs were the same as those in the ELV Directive.

However, a significant number of stakeholders raised concerns about the implications that this definition has for testing different materials – coatings, plastics, wirings etc.

- *Put on the Market*
Some stakeholders raised concerns regarding the definition of ‘put on the market’, the differing interpretation between the WEEE and RoHS Directives and the point at which a product is said to be put on the market.

- *Exemptions*
A number of stakeholders specifically raised questions regarding exemptions – both existing exemptions and those on which the TAC had not yet taken a final view. Sometimes their comments related to more general issues of ‘scope’, in other cases specific exemption issues were raised.

A small number of stakeholders referred to some of the recently-tabled requests for further exemptions for specific lead applications and others to the review of the status of light bulbs within the scope of the RoHS Directive.

Further comments were raised in relation to the exemption of spare parts (which was generally supported) and the definition of a ‘spare part’ or ‘component’.

- *EEE that is part of another type of equipment*
Several stakeholders requested clarification on the RoHS status of EEE that forms part of another type of equipment that does not fall within the scope of the Directive.

11.2

SPECIFIC FINDINGS ON COMPLIANCE AND ENFORCEMENT

The Government was specifically interested in consultation comments relating to issues of RoHS Compliance and Enforcement.

Producers must demonstrate compliance with the Regulations by providing the enforcement authority (on request) with satisfactory evidence of such compliance in the form of relevant technical documentation or information. Subject to forthcoming discussions with other Member States, the UK proposes to adopt self-declaration as the basis of the compliance regime. Within this approach, the enforcement authority would carry out market surveillance to detect non-compliant products and may conduct tests for that purpose.

There would be no prescribed method to demonstrate compliance but producers would be urged to consider the following suggestions:

- Supplier declarations; and
- Producer analysis.

Enforcement of the RoHS Regulations will be a responsibility placed upon the Secretary of State for Trade and Industry, but the Secretary of State may delegate that responsibility to a third party. Various powers of enforcement would be available, including:

- Making test purchases;
- Requesting compliance documentation, inspecting processes and performing analytical tests; and

- Issuing of a compliance notice requiring certain action to be taken.

Of the 80 respondents who provided comments relating to RoHS issues, 17 respondents provided specific comments in relation to compliance and enforcement issues.

Compliance

Although very few responses were received, in general, there was support for *supplier declarations* as the method to demonstrate compliance. However, greater overall clarification was requested relating to this process, including:

- requests for a definition of a 'supplier declaration';
- greater clarity regarding what form this compliance route should take; and
- requests for an indication of the allowable time period to supply enforcement authorities with documentation (a period of 30 days was proposed).

On the whole, the issue of *producer analysis* received mixed views, equally in support of and opposition to this part of the compliance approach. It was seen to be too costly and not clearly defined in terms of the analytical techniques that should be used. Overall clarification was requested relating to:

- the definition of a 'suitable analytical technique' and testing procedures;
- more details in relation to when producer analysis would be necessary; and
- the level of accuracy and overall requirements expected by the enforcement authority for producer analysis.

Concern was also expressed regarding whether the 'criteria for analysis' mentioned in the consultation (ie criteria based on sales quantity, risk, supplier relationships and potential environmental impact) would be duly considered in any potential enforcement action against non-compliant EEE.

Although the *flow chart* presented in *Annex D* of the consultation was generally welcomed, some specific comments were made, including:

- request for further clarification regarding which components or materials would be regarded as 'high risk' and on what basis 'high risk' should be determined; and
- concern was expressed relating to harmonisation with other Member States, which may not interpret the *flow chart* in the same way as the UK.

Enforcement

In terms of *enforcement*, very few respondents expressed a view. Of those that did, general comments included:

- it was suggested that measurement errors and tolerances would make the analytical techniques impractical or overly costly;
- clarification was requested in relation to the arbitration procedure and potential disputes concerning interpretation; and
- it was also suggested that the enforcement authority might need to have powers to obtain EEE without needing to purchase the equipment, as some items would be very costly.

General concerns were expressed over harmonisation of enforcement across all Member States, including:

- consistency of interpretation relating to the products outside the scope of the Directive; and
- consistency of analytical test requirements and the uniformity of evidence required by each Member State to demonstrate compliance.

Annex A

List of Respondents

Name	Name
ABHI	Countryside
Alba Plc	CREATE UK
Albemarle Corporation	Creek Audio Ltd
Altas (Scotland) Ltd	Danka UK Plc
Amazon	DDaTR
AMDEA	De'Longhi Ltd
arc21	Denon UK Limited
Argos Retail Group	Dixons Group plc (confidential)
Association of Train Operating Companies	Dolby (confidential)
AudioVend	Dyson
Automatic Vending Association	e2v technologies (uk) ltd
AVAYA	E4 Environment Ltd
AVID HIFI	East Ayresshire Council
B&Q	Eastman Kodak
B&W Loudspeakers	EEF
B2B Compliance	Electronics Scotland
BAE Systems	Elekta Limited
Baker & McKenzie	ENVIRON
Ballymoney Borough Council	Environment Agency
Barcrest Group	Environmental Services Association
BEAMA	ERA Technology
Bell-fruit Games	European Metal Recycling Ltd
Biffa Waste Services	European Recycling Platform
Big Green Book Ltd	Eurotherm
Blue Chip Technology	Evans Logistics
BMRA	Eversheds LLP
Boots the Chemist	Exposure Electronics Ltd
Bose Limited	Federation of Small Businesses
BOSS Federation	FETA
Boxclever Technology	Finance & Leasing Association
Brita Water Filter Systems Ltd	Focus Wickes
British Water	Fujitsu General (UK) Ltd
BSH Home Appliances Ltd	Furniture Re-use Network
BT	Gambica
Budget Pack	Gillette
C & L Finescale	Glasgow City Council
C K Stephens & Co	Glen Dimplex Group
Caerphilly County Borough Council	GP Acoustics UK Ltd
Calvert Office Equipment	Gwent County B C
Cambridgeshire CC	Harmonic Inc
Canon	Health Estates
Castle	Hertfordshire County Council
Castlereagh Borough Council	Higher Education Procurement
CBI	Honeywell
CCL North Ltd	Hoover Candy Group 2004
Chartered Institute of Waste Management	HP UK
Cheshire County Council	ICER
Chord Company	IMR Test Lab
Cleanaway	Intellect
Comet Group	Intertek Labtest
Compliance Link	Japan Machinery Center for Trade and Investment (JMC)
ComplyPak	JBCE
COMPUTACENTER (UK) LTD	JEITA
Control Techniques Drives Ltd.	Karcher (UK) Ltd
Co-operative Group	Kenwood
Corporation of London	Kirklees Council
Corus Colors	LARAC
COSLA	Lenbrook UK Ltd (NAD Electronics)
Council for Nature Conservation & the	

Name
Lighting Industry Federation Ltd
Linn Products
Lisburn City Council
Littlewoods Home Shopping Limited
London Borough of Hammersmith & Fulham
London Borough of Sutton
London Remade
M Baker Recycling Ltd
Marconi Corporation plc
Materials Recovery
McDATA Corp
Medway Council
Meridian
Merloni Elettrodomestici UK Ltd
Mettoni Ltd
Meyer Prestige
Mission/BFA
Mitsubishi Electric Europe BV
Mobile Takeback Forum
MOD (confidential)
Monitor Audio
MOTA
Motorola UK Ltd
Naim Audio
NHS Estates
NHS Purchasing and Supply Agency
Nokia UK Ltd (confidential)
Norfolk County Council
Northmace Hendon Limited (confidential)
Nottingham County Council
Nottingham Trent University
NRG Group
NTL
Numatic International Ltd
O'heocha Design
Onyx Environmental Group
Orange, O2, T-Mobile and Vodafone
Overton Recycling
Pace Micro Technology plc
Panasonic UK Ltd
Personal Safety Manufacturers Assoc (PSMA)
Pfizer Ltd (confidential)
PH Consult
Philips Electronics UK Limited
Photo Imaging Council
PLASA Ltd.
PR Media Consulting
Premier Farnell Plc
Primarc UV Ltd
Railway Industry Association
Raymarine Ltd
RDC
Recycling Concepts Ltd
Renew Trust
REPIC Ltd
Retailers Working Group
Revolver Audio

Name
Ricoh UK Ltd
Rid UK Ltd
RM Sommer Consulting Ltd
RNID
Robert Bosch Ltd
Rolls-Royce
S Norton & Co Ltd
SBGI
SEAMA
SELECT
SEPA
Sharp Electronics UK
Sheffield CC
Shields Environmental
Shore Recycling Ltd
SIMS Recycling Solutions
SKC Ltd
Smart Group
Smiths
SML Recycling
Society of British Aerospace Companies Ltd
Society of Motor Manufacturers & Traders
Soldertec-tin Techology (confidential)
Sony UK
South Bedfordshire District Council
Southern Waste Management Partnership
Southwest Trains
SSD Drives Ltd
Stockton-on-Tees, Hartlepool, Middlesborough, Redcar & Cleveland Borough Councils
Strateco
Surface Engineering Association
Sustainalite Ltd
Swansea Council
TAG
Teradyne
Tesco Stores Limited
The British Retail Consortium
The British Soft Drinks Association Ltd
The Lighting Association
TMT Associates Ltd
Toshiba Information Systems (UK) Ltd.
Toy and Hobby Association
Transform
Valpak Ltd
Verplas Ltd
Wakefield MDC
Wastelink Group
West Lothian
West Sussex CC
Wilshire County Council
WISER Recycling Ltd
Xerox