

PART II - WEEE DIRECTIVE IMPLEMENTATION

INTRODUCTION

1. This consultation paper presents the Government's proposals for implementation of Directives 2002/96/EC on Waste Electrical and Electronic Equipment and 2002/95/EC (the WEEE Directive) and on the Restriction of certain Hazardous Substances (the RoHS Directive).
2. This is Part II of the consultation document, which sets out the Government's proposals for implementation of each Article of the WEEE Directive.
3. A box presents the Government's proposals for each Article and specific questions are raised to which responses are invited.
4. There is also a brief explanation of Government thinking behind its implementation proposals for each Article. This will enable readers to refer to the Government's earlier Discussion Document, which set out a range of options for implementation, and to see how these have now been narrowed down. The earlier Discussion Document may be viewed at: www.dti.gov.uk/sustainability/weee/index.htm

HOW TO RESPOND TO THIS CONSULTATION

5. Part I of the consultation paper provides the details for how to reply.

PROPOSALS FOR IMPLEMENTATION OF THE WEEE DIRECTIVE ARTICLE BY ARTICLE

Article 1 – Objectives

6. This Article sets out the environmental objectives of the Directive, to prevent waste electrical and electronic equipment, to encourage its recovery, reuse and recycling and to improve the environmental performance of all operators involved in the lifecycle of electrical and electronic equipment.

The Government proposes to:

- **achieve the environmental objectives of the WEEE Directive in its UK implementation in a cost-effective manner, providing flexibility and choices for manufacturers and distributors to meet their obligations cost-efficiently; and**
- **implement the WEEE Directive in a manner which encourages a and facilitates the separate collection of waste electrical and electronic equipment, whilst providing choices for all those involved, including flexibility for the manufacturers and retailers to meet their obligations.**

Question 1

The Government is considering, in particular, how best to encourage reuse of EEE in line with the objective of the Directive. Do you have specific suggestions for how to do this?

What do you think of the following ideas:

- **to develop an indicator on reuse for inclusion in the Best Value Performance Indicators for local authorities, which are shortly to be reviewed;**
- **to incentivise producers to give preference to reuse options. How do you think this should be done? Or**
- **to require producer responsibility compliance schemes, as a condition of their registration, to show how they will encourage reuse ?**

7. The Government's proposals for the implementation of the WEEE Directive sit within the context of its overall policy approach to waste. The recent Better Regulation Task Force report "Environmental Regulation: Getting the Message Across" recommended that the Government should set out its implementation objectives more clearly

in the context of its wider policy on waste. The Government response to the Taskforce's report can be seen at www.dti.gov.uk/sustainability/weee/index.htm

8. The Government is giving particular consideration to how to promote the reuse of electrical and electronic equipment, in pursuit of the objectives of the Directive. The Directive sets no target for reuse of whole appliances. However, the Government is concerned, in view of the environmental benefits of reuse, to find ways to maintain and increase existing incentives for it. In addition, producers should be aware that future revisions to the Directive are likely to include reuse targets. The systems set in place now will need to be able to accommodate this. The Government is mindful that charities and Social Economy organisations are significantly involved in reuse and refurbishment of EEE at present, which brings social as well as environmental benefits and would like to see the sector expand.

Article 2 – Scope

9. Article 2 indicates that the Directive applies to electrical and electronic equipment falling into ten broad product categories listed in its Annex 1A, which are then elaborated further in its Annex 1B.

The Government proposes to:

- **implement the WEEE Directive in accordance with the product categories listed in its Annexes 1A and 1B;**
- **develop non-statutory guidance on the scope of the Directive for businesses and others to accompany the implementing legislation. It will publish this alongside the draft implementing legislation in late Spring 2004;**
- **develop generic criteria which will be used to assist with establishing the status of “grey area” products, i.e. those products where it is unclear whether they fall within the scope of the WEEE Directive. To ensure a harmonised approach throughout the EC these general criteria will be developed through discussions and agreement with other EU Member States; and**
- **continue, in the meantime, to provide updates on the EU discussions of the scope of the WEEE Directive on DTI's website: www.dti.gov.uk/sustainability/weee/index.htm**

Question 2

Do you agree with a “decision tree” approach to help interpret whether products, in “grey areas” should be inside or outside the scope using certain criteria?

- **Generic criteria will hopefully be finalised during the course of this consultation. The Government proposes to publish the criteria on the DTI website along with worked examples.**

Question 3

What else should the Government do to help to clarify scope given that the legal definitions in the Directive cannot be changed in the time available?

10. A general, but important point to note is that the scope of the WEEE Directive is a matter of interpretation of the Directive and only the European Court of Justice could give an authoritative ruling. In the absence of a definitive legal ruling, Member States have to interpret the scope of provisions in order to implement the Directive. They could decide to adopt a case-by-case approach to questions of scope with reference to the Directive. The Government is concerned that this approach could leave it unclear whether the Directive applies to a particular product unless the position is questioned.
11. Therefore the Government is promoting discussions amongst Member States aimed at agreeing on some generic criteria to help stakeholders and national enforcement authorities consider whether the Directive applies to a particular product. The purpose would be to ensure a harmonised approach across the EC. Member States have agreed in principle that there should be such criteria. Much effort is currently going into trying to define what these criteria might be and how they should be used. It is hoped that Member States may reach an agreement shortly.
12. Responses to the Government’s earlier discussion paper showed clearly that uncertainty about the scope of the WEEE Directive is an issue of major concern. The paper’s questions on scope and definitions attracted most answers. There was broad support for the approach of providing non-statutory guidance on scope to complement the implementing legislation.
13. The Government recognises that it is crucial to provide guidance to manufacturers and others on the scope of the WEEE Directive. There are implications for the RoHS Directive, which broadly reflects the scope of the WEEE Directive and is a Single Market measure. Manufacturers need to know whether their products are covered and must meet the technical requirements of RoHS in order to secure free movement of these within the EC.

14. There has been also been discussion by Member States of what is needed to interpret more clearly the several exemptions in the Directive, for example for “large scale industrial tools” (Annex 1B) and “military equipment” (Article 2,3). There has been discussion of whether, in the case of “large scale industrial tools”, account should be taken of whether these are installed or built-in; and in the case of “military equipment”, of whether the interpretation should be that products designed and marketed specifically for military and civil security applications would be exempted; but not products used in both military and civilian applications.
15. Once agreement has been reached at EU level, the DTI intends to indicate some examples of products either included in or excluded from the scope of the WEEE Directive to provide guidance to manufacturers at that stage.

Article 3 – definitions

16. Article 3 sets out a number of the basic definitions, which are then applied throughout the WEEE Directive. These include electrical and electronic equipment, waste electrical and electronic equipment, producer, and various waste management terms, including recovery, recycling and reuse.

The Government is considering how to construe and apply the Directive’s definitions in advance of preparing its implementing legislation. It is looking at whether some terms need to be explained further in the accompanying non-statutory guidance.

The WEEE Directive uses the term “put on the market” several times, but does not define it. The Government acknowledges that there has been significant concern from stakeholders about this term and a number of alternative interpretations have been put forward.

The Government proposes to:

- **transpose the term “put on the market” taking into account the context in which it appears in the WEEE Directive; and in a manner which is consistent with the approach taken to transposition of the RoHS Directive;**
- **make reference to the interpretation offered by the European Commission in its “Guide to the implementation of Directives based on the New Approach and the Global Approach” in its guidance which will be issued to help businesses comply with the requirements of the Directive. That interpretation is that “placing on the market is the initial action of making a product available for the first time on the Community market, with a**

view to distribution”.

Question 4

Do you agree with the Government’s proposed approach, to interpreting the term “placed on the market”?

17. Many respondents to the Government’s earlier Discussion Document raised concerns around the definition of “producer”, which is crucial to the allocation of producer responsibility obligations. Many asked whom the producer would be in the case of imported goods, in particular from outside the EU. The Government is proposing to require producers (manufacturers, importers) to register as a condition of placing electrical and electronic equipment onto the UK market (see section on Article 12 below) and it is looking at how, in practical terms, to ensure that distance sellers of goods from outside the EU by telephone fax or internet register. For inter-EU trade it may be possible to pass on obligations through agreements between Member State governments. As a first step towards this, the Government proposes to require businesses exporting to other member States to register and report tonnages traded by category.
18. The Government is considering how best to interpret the definition of “put on the market” and is minded to take the approach indicated above. The Commission has already proposed this for RoHS.

Article 4 – Product Design

19. Article 4 requires Member States to encourage the “eco-design” of electrical and electronic equipment in order to make it easier to recover, reuse and recycle WEEE, its components and materials. Member States are also required to take appropriate measures so that producers do not prevent the reuse of products by using particular design features or manufacturing processes, unless these present overriding advantages.

The Government proposes to

- **encourage manufacturers to consider how to promote better design of electrical and electronic equipment to facilitate reuse, recovery and recycling. This will build on the Envirowise better design initiative.**
- **ask manufacturers to come forward with initiatives for this. Approaches might include voluntary agreements; or the adaptation or development of product standards.**
- **The Government considers the use of non-legislative measures to be the most appropriate way to implement these provisions of the WEEE Directive.**
- **The Government does not see a strong case for generic legislation on innovation and design for reuse and recycling, for the purposes of implementing the WEEE Directive. It will keep its approach to these issues under review in the light of the development of the EU Integrated Product Policy framework (IPP) and the Energy Using Products Directive (EUP) which are expected to shape policy in this sphere.**
- **The Government proposes to convene a business forum to consider eco-design in preparation for IPP and EUP and with a view to disseminating best practice.**

Question 5

Do you agree that a business forum would be useful? What form might it take?

20. Responses to the earlier discussion document showed a preference amongst stakeholders for a “light touch” approach to implementation of Article 4’s eco-design provisions. However, a significant minority of respondents favoured a legislative approach or some kind of firm policing of any industry agreements or standards, in particular to ensure that reuse is not prevented by product design.
21. The Government is minded to encourage a voluntary approach based on sectoral agreements to promote better design. This approach to innovation and design for reuse and recycling sits with the emphasis of the WEEE Directive on the principle of Producer Responsibility which should motivate producers to design their products to minimise the costs of treating them when they become WEEE.
22. The Government also wants to pursue a policy course which can, in due course, take account of the development of the Integrated Product Policy framework and the Energy Using Products Directive, which are expected to shape EU policy on product innovation and design in

future. The Government is mindful of the potential pitfalls and costs for business of attempting to legislate now in this area, at a time when EU legislation or other initiatives are under discussion.

23. As a first step to taking forward these proposals, Envirowise will publish a new detailed guide to better design for reuse and recycling in January 2004.

Article 5 – Separate Collection

24. Article 5 addresses the collection of WEEE. It requires Member States to have in place by 13 August 2005 systems for separate collection of WEEE from private households and from business users. It requires Member States to ensure that “distributors”, taken to include retailers, offer the facility to customers to take back waste equipment when replacing it on a like-for-like basis or to make sure that the final holder can return the equipment by another system that is no more difficult and free of charge. Member States are also to ensure that WEEE collected separately is transported to authorised treatment facilities, and that recycling and reuse of whole appliances and its components should be optimised and prioritised. Member States have to deliver a target of separate collection of WEEE from households of at least 4kg per head of population each year from 31 December 2006.

The Government proposes:

Collection

- **To promote and facilitate the separate collection of WEEE.**
- **There should be no new unfinanced burdens on local authorities.**
- **Local authorities will be encouraged to upgrade civic amenity sites to start separately collecting WEEE or augment existing facilities.**
- **Funding for this will be available from a capped fund. It is suggested that this might be provided by allocating at least £5m per annum from the proposed £10m per annum retailer compliance scheme in lieu of in-store take-back (see proposals below).**
- **Such funding would initially be set for the period 2004-2010, to be reviewed in 2008.**
- **Local authorities would bid for these funds, which would be managed by the retailer compliance scheme, on the basis of**

broad criteria set by Government. Capital and running costs will be considered.

- **Local authorities will not have any requirement placed upon them to offer mandatory kerbside collection or to sort the waste stream to removed co-disposed WEEE.**
- **Local authorities will have access to the proposed “clearing house” service, to be operated by producers, which would collect WEEE from them, on demand, free of charge.**
- **Where local authorities collect WEEE separately at civic amenity sites, and do not make use of the free clearing house service, they will be expected to pass this on to registered/authorised persons or authorised treatment facilities in line with existing duty of care under the existing waste management regulatory regime. This may or may not involve revenue generation.**
- **Where goods are passed to legal persons other than the clearing house data on weight per product category will need to be collected.**

Retailers

- **Retailers selling EEE would have a take-back obligation which they could meet either by offering in-store take-back of equipment, when selling like-for-like products; or join a retail sector compliance scheme (see proposals below) with collective collection responsibilities, which would accept all WEEE, not just on a like-for-like basis.**
- **The retail sector is invited to present to the Government a detailed proposal for a retailer compliance organisation with total capped funding of £10m per annum in the initial period 2005-10, subject to interim review in 2008, when the Directive is reviewed at European level. This must (a) provide a commitment to the Government to fund the upgrading of civic amenity sites at a level of at least £5 million per annum in the period 2005-10; and (b) it should meet the following Government criteria for a compliance scheme:**
 - i) **the scheme should provide an adequate WEEE collection network for the whole UK;**
 - ii) **the network should have collection facilities in all the major retail parks. The Government expects that it should be possible to accommodate these relatively small facilities close by or perhaps in a retail unit on the site with minimum disruption. The Government will also expect**

that operators of these facilities should take appropriate steps, perhaps including supervision by staff and/or liaison with local authorities, to ensure that they do not become general waste sites, e.g. for waste other than WEEE. The Government expects that these facilities should be readily accessible by public transport.

- iii) if such a facility cannot be established in the shopping centre, the compliance scheme may provide the alternative of a “bring” event several times a year either there or at another location; or sponsor a kerbside collection arrangement by arrangement with the local authorities concerned;
 - iv) the compliance scheme and retailers operating individually should provide information to consumers on their local options for returning WEEE;
 - v) the scheme proposed should be in line with competition law; and
 - vi) the scheme should take account of the circumstances of small retailers, particularly those like corner shops and local newsagents, who do not specialise in electrical and electronic goods. The Government is concerned not to penalise small retailers with unreasonable and inequitable burdens, and understands that there will come a point for small retailers whose core business is not selling EEE at which the administrative cost to the compliance scheme will outweigh reasonable fees.
- In the absence of an acceptable proposal for a retailer compliance organisation, in-store take-back would apply, as the Directive requires, when selling like-for-like products. The Government would, in these circumstances, devise alternative arrangements for funding of the civic amenity site upgrades.
 - The Government will expect the retail sector to develop plans for a compliance organisation in consultation with the competition authorities to ensure compliance with competition law, and with local authorities, in relation to collection arrangements, including retail take-back facilities.
 - The Government will explore with the retail sector whether there needs to be any legal underpinning for a take-back compliance scheme and the required funding commitment.
 - On the understanding that private householders do not discard EEE as waste until it is transferred to a retailer’s in-store take-back scheme, the operation of such schemes by

retailers would not require a waste management licence (permit) issued by or a licence exemption registered with, the Environment Agency.

- **Businesses which collect WEEE from private householders (e.g. on delivery of EEE) and transport it will, as now, need to be registered with the Environment Agency as waste carriers.**

Question 6

Do you agree with the government's proposed criteria for approval of a retail sector take-back compliance organisation?

Question 7

Is the level of the capped (£10 million) fund about right? Please explain any alternative figures ?

Producers' role

- **Producers should only have responsibility for financing collection of WEEE from civic amenity sites and other designated collection sites such as the sites proposed by retailer take-back compliance organisations as their collection networks, which will be subject to approval by the Environment Agencies.**
- **The Government will explore further with business the proposal of a “clearing house”, funded by producers, to coordinate UK-wide WEEE collection/transportation for treatment.**
- **The “clearing house” might operate, conceivably as a telephone call centre, to coordinate collection of WEEE from civic amenity and designated collection sites for allocation to treatment sites. It would act on behalf of producers, and would be funded by them on a not-for-profit basis, possibly through a registration fee, under a mandate from the Government.**
- **The “clearing house” would allocate each collection to an individual producer (or more likely groups of producers working together) who would have an obligation to collect within a set time frame (perhaps 48 hours). It has been proposed that this allocation could be based on an algorithm operated by the clearing house. Alternatively the clearing house could operate a complete UK collection service itself funded as part of the producers' registration fee.**
- **It is expected that the actual collection and carriage of WEEE would be sub-contracted, and that, in practice, the clearing**

house would coordinate nationally what would then be local collection and transportation for treatment of WEEE. It is to be established whether a small number of regional bulking up sites for collected WEEE might be needed around the country.

- It is suggested that the clearing house could establish producers' shares of the UK EEE market, based on authorised data collection from them, and calculate their WEEE obligations (by tonnage) on a monthly basis.
- After the loads of separately collected WEEE are allocated to producers or producer compliance organisations, it would be for them to contract separately with authorised treatment facilities for treatment, and with the recycling industry for recycling, of WEEE on a competitive market basis.
- It would then be for producers or their compliance organisations to contract with treatment facilities on a free market basis and to arrange reporting of data to the clearing house to confirm tonnages recovered and recycled against their obligations.
- The Government is inclined to favour the “clearing house” over alternative approaches to organising collection for treatment. It considers that central coordination of WEEE collection and allocation for treatment, operating together with a competitive approach to WEEE treatment, may be a preferable way to establish a workable system for the UK.
- Subject to further views on these issues from this consultation, the Government is minded to explore with business how best to establish a “clearing house”.
- The Government expects that a “clearing house” should meet the following criteria:
 - (i) the “clearing house” should arrange collection from all civic amenity sites and other designated central collection sites nationwide within 48 hours of notification for a minimum tonnage (to be decided). It is anticipated that financial penalties could be placed on producers if this service fell below an expected standard;
 - (ii) business supporters of the “clearing house” should demonstrate to the Government that the proposals for it to establish producers' shares of the UK EEE market, based on authorised data collection from them, and to calculate their WEEE obligations (by tonnage) month by month are (a) workable and (b) reflect necessary proprieties in the handling of commercial data.

(iii) the “clearing house” should be designed to conform with competition law. It should operate in a non-discriminatory way; and have safeguards to avoid any possibility of collusion between it and individual producers or collective producer responsibility compliance schemes, including in the allocation of WEEE; and

(iv) the proponents of the clearing house should consider whether to offer proposals for it to hold the national register of producers (see section on Article 12 below).

- The Government will consider, in consultation with the proponents of the “clearing house”, what, if any, form of Government mandate or underpinning legislation would be appropriate for it to operate.
- The Environment Agencies will retain the enforcement role.
- The Government has considered alternative approaches to the “clearing house” model for organising collection of WEEE for treatment. These have included : a structure like the Dutch NVMP scheme and tradable notes. These are discussed in the partial RIA.

Question 8

The Government has considered the option of more than one retail compliance organisation, but this might be complex and less straightforward, including for local authorities. Do you agree, or would it be possible to have limited number of such schemes within the proposed framework?

Question 9

The Government is minded to explore with business how best to establish a “clearing house”. Do you agree this should be a preferred implementation option? Should the Government consider the other alternatives further?

Question 10

Should the clearing house manage the collection service or simply pass on responsibilities to specific producers or their agents? If the latter, can this be achieved in a fair and equitable manner?

Question 11

Is guaranteed collection within 48 hours sufficient? It is assumed that many local authorities using the service would, in any case, be able to predict the need for regular collections at set intervals and reach agreement on regular pick ups with the

clearing house. Do you agree?

Question 12

Do you believe that the clearing house should have responsibility for holding all data and reporting this to the enforcement authority?

Question 13

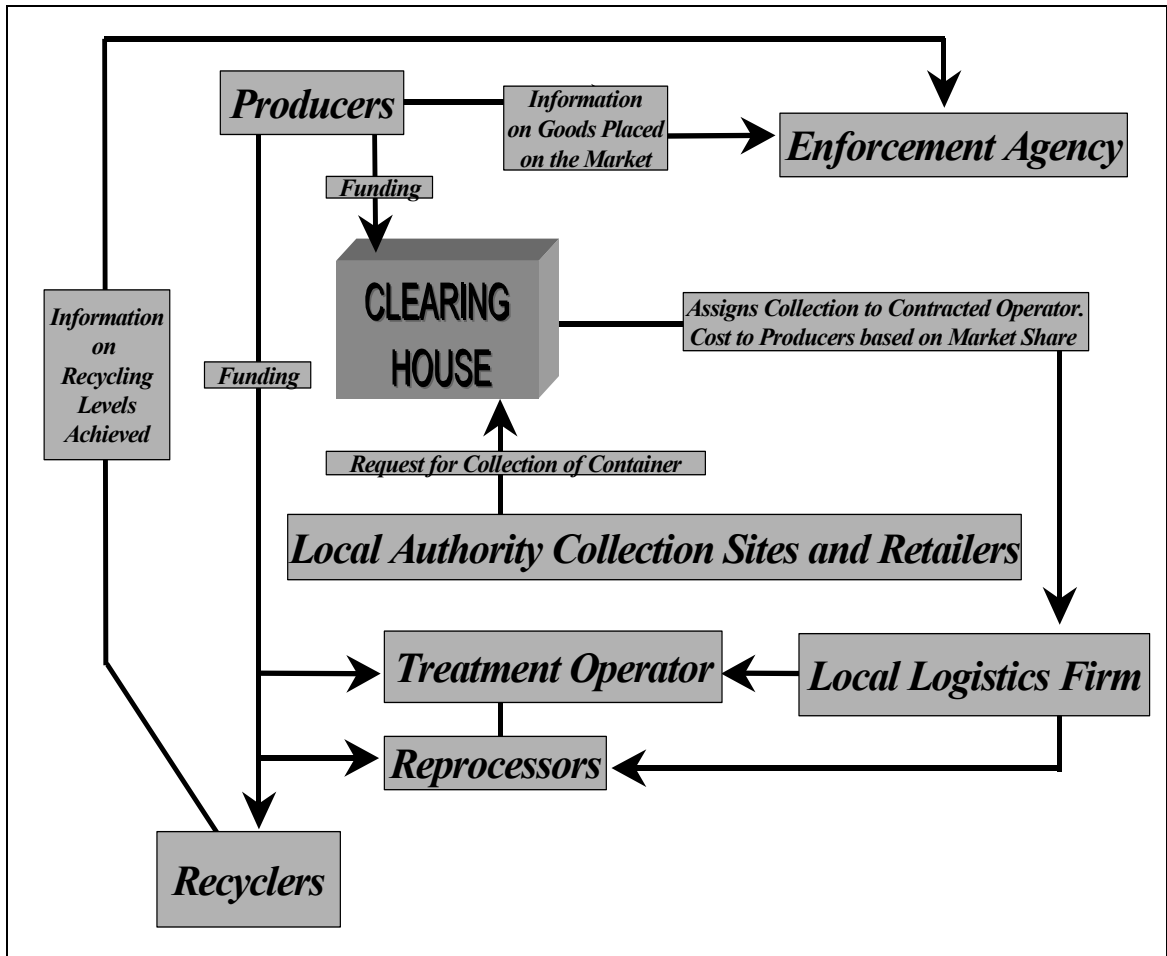
What measures would provide producers with the appropriate assurances in relation to confidentiality?

Collection targets

- **The Government proposes that the collection of the data, to demonstrate the UK's achievement of the 4 kg collection target, should occur primarily at authorised treatment facilities, as all WEEE separately collected will go on for treatment.**
- **While it is for producers to decide their preferred approach to ensuring that separately collected WEEE is counted by category (in order to verify achievement of the recovery/recycling targets), the Government would be content to see a protocols-based approach to calculate the categories from WEEE separately collected.**
- **A protocol could be used to set down an agreement on the proportion of the average amount of separately collected WEEE which falls into each of the groups of categories of WEEE – please see the section on Article 7 below. This figure (minus the amount of WEEE sent for reuse) would be the denominator (“WEEE sent for treatment”) for calculating the achievement of recovery/recycling targets.**

25. Key proposals here cover the coordination of WEEE collection and take-back. The Government proposes to strengthen the collection infrastructure, by encouraging its upgrading and augmentation.
26. The Government acknowledges that there is growing support amongst manufacturers of electrical and electronic equipment for a central “clearing house” to coordinate collection for treatment, with the aim of minimising their producer responsibility costs. The Government recognises the case for this kind of nationwide coordination. It seems to make practical sense. It could co-exist alongside competition in treatment/recycling. However there will need to be efficiency criteria for its operation and its design will have to avoid scope for any collusion between producers, or between the clearing house and certain treatment facilities. The Government proposes to discuss this approach further with its proponents in business.

Diagram: a model for how the clearing house might work ?



27. The Government has been considering alternative approaches to the “clearing house”. Chief amongst these is the idea of having a scheme based on tradable WEEE recycling notes, which producers could buy from recyclers in order to meet targets. It would require the setting of producers’ recycling targets on the basis of a calculation mapping market shares against the amount of WEEE separately collected. The Government is sensitive to the arguments that this alternative approach would bring the economic efficiencies of a market-based mechanism.

28. The Government negotiated flexibility in the Directive’s provisions on take-back and is seeking to implement these in a fashion which gives retailers a choice between in-store take back, as set out in Article 5, and the alternative of joining a compliance organisation delivering take-back services to consumers nationwide. It has encouraged discussions between retailers and local authorities on how they might work together to build the local WEEE collection infrastructure. The Government has concluded that it is now appropriate to ask the retail sector to bring forward detailed proposals for a compliance organisation, which meets certain specified criteria and delivers funding for local civic amenity upgrades.

29. In this context, the Government has taken account of recent work to assess the potential costs of upgrades to the civic amenity site collection infrastructure. As part of this, it has commissioned a study from consultants Network Recycling. The main findings of this study were:

- Over half of civic amenity sites currently collect WEEE to some extent (other than refrigeration).
- There is considerable capacity to expand the collection of WEEE *on the basis of available site space alone*.
- The baseline initial costs of such upgrades are in the region of £6-12 million, depending on which option is chosen.
- The ongoing staffing and training costs are in the region of £4-9 million per annum.
- The full text of this report is available on the DTI website at:

www.dti.gov.uk/sustainability/weee/index.htm

Article 6 – Treatment

30. Article 6 requires Member States to ensure that producers or third parties acting on their behalf set up systems to provide for the treatment of WEEE using the best available treatment, recovery and recycling techniques. As a minimum, the treatment operations have to meet certain technical requirements set out in Annex II of the Directive, including the removal of all fluids and specified selective treatment. Member States must ensure that authorised treatment facilities have a permit under Articles 9 and 10 of the Waste Framework Directive (75/442/EEC). An exemption from a permit may be allowed under Article 11(1)(b) subject to inspection requirements. Member States should also encourage WEEE treatment operators to introduce certified environmental management systems.

The Government proposes:

- **To place an obligation in the Regulations on producers of electrical and electronic equipment to fund treatment and recycling of household WEEE – please see proposals in sections on Articles 8 and 9 below).**
- **That the WEEE permitting requirements will be implemented through a new waste permitting regime**

- **That guidance on the best available treatment, recovery and recycling techniques and on the provisions of Annex II will be published and consulted upon in Spring 2004.**

Question 14

The Directive does not appear to go as far as requiring that certain components are removed prior to shredding but does require separate removal. In treating WEEE, which components should be removed prior to shredding and under what circumstances? What would be the environmental and cost benefits?

31. The Government is currently reviewing the existing waste permitting regime. It intends to introduce a new one, which will include the transposition of the supplementary permitting requirements of the WEEE Directive for treatment operations. This is in line with the preference of many respondents to the Government's earlier Discussion Document.
32. However a different approach will be taken in Northern Ireland, where it is envisaged that the Directive's requirements will be implemented through the Waste Management Licensing.
33. The Government intends that the new waste permitting regime should regulate activities in proportion to the risks and uncertainties they pose. It will aim to provide for an operator to undertake one or more various treatment activities under one permit in future.
34. The Government intends to publish its main proposals for the new waste permitting system for formal consultation in early 2004. At present, the review is being taken forward in a series of informal consultations on certain aspects. This section concentrates on transposition of the WEEE Directive's permitting requirements, but further information on the waste permitting review is available on DEFRA's website at: www.defra.gov.uk/environment/waste/legislation/permitreview/index
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Treatment of WEEE

36. The Government accepts there is a need for guidance on the treatment of WEEE, so it is clear what actions are required under the Directive. It will publish guidance for consultation in conjunction with the permitting review draft regulations in Spring 2004
37. Treatment of WEEE must use best available treatment, recovery and recycling techniques. The Government is considering how best to do this, taking the arrangements already established for the implementation of Integrated Pollution Prevention and Control (IPPC) as a possible model. IPPC applies to a wide range of industrial activities, and requires each to have a permit containing pollutant emission limits and other operating conditions based on the application of best available techniques (BAT). BAT have to be determined for each industrial sector by the regulators (in England and Wales (principally the Environment Agency), in consultation with experts drawn from the industry in question and from other organisations with appropriate experience. Guidance being drawn up at European level is increasingly influencing the regulators' determination of BAT for IPPC. A similar process could be established for best available treatment, recovery and recycling techniques. This process could identify best available treatment, recovery and recycling technique features which should be common across a range of WEEE activities, thus making possible the development of standard rules to aid WEEE permitting. It should be noted that, correctly applied and thus taking account of costs and advantages of candidate techniques, the BAT concept results in a proportionate regulatory outcome.
38. Many respondents to the last WEEE/RoHS Discussion Document thought it would be necessary to remove some of the WEEE components listed in Annex II prior to shredding. The Government agrees that, in order to ensure that selective treatment is applied, as the Directive requires, such that environmentally sound re-use and recycling are not hindered, there is likely to be a requirement to remove some of the components as set out in Annex II prior to shredding. The Government is undertaking further work on this within the development of guidance. Sustainable re-use and recycling, economic implications and viable markets for components and materials will be considered when producing guidance.
39. It is currently envisaged that the planned guidance will not set out minimum *quality* standards for the treatment for collected WEEE which would have to be subsequently informed to the Commission (in line with Article 6(1)). However the aim will be to produce clear guidance and to ensure that treatment facilities are clear about their obligations.

Treatment Infrastructure

40. Any establishment carrying out treatment operations must store and treat WEEE in compliance with technical requirements set out in Annex III.

Special rules for exempt treatment facilities

41. Any facility treating WEEE that may be subject to an exemption from a permit will be subject to inspections before an exemption can be registered and an annual inspection thereafter. These inspections would need to verify that the general rules which would apply to an exemption can be respected or, for subsequent years, have been respected.

Article 7 - Recovery

42. Article 7 requires Member States to ensure producers or third parties acting on their behalf set up systems to provide for the recovery of separately collected WEEE; to ensure producers meet recovery targets by 31 December 2006; and to ensure that producers or third parties on their behalf keep records on the mass of WEEE, their components, materials or substances, when entering and leaving a treatment facility and/or when entering recovery/recycling facility.

- **The Government proposes, in relation to WEEE sent for treatment:**
- **To place recovery and recycling/reuse (of components, materials, substances) targets on the producers (or groups of producers) responsible for placing on the market:**

**WEEE in categories 1 and 10 of Annex 1A;
WEEE in categories 3 and 4 of Annex 1A;
WEEE in categories 2,5,6,7 and 9 of Annex 1A
gas discharge lamps**
- **and who are registered with the central registry (see proposals for Article 12 below).**
- **The group of producers responsible for each group of categories in (1) above will be required, by 31 December 2006, to jointly meet targets as set out below, taking account of [the provisions of Articles 8 and 9 on financing:**

(a) at least 80% recovery and at least 75% component, material and substance recycling or reuse, by an average

weight per appliance;

(b) at least 75% recovery and at least 65% component, material and substance recycling or reuse, by an average weight per appliance;

(c) at least 70% recovery and at least 50% component, material and substance recycling and reuse, by an average weight per appliance;

(d) at least 80% component, material and substance recycling and reuse by weight of the lamps.

- **Each producer that is not a member of a producer responsibility compliance scheme must report to the central registry authority as to what proportion of the obligation of its group it is taking and how it proposes to comply.**
- **In order to demonstrate that targets have been met, producers shall ensure that – recycling is counted at the point of entry to a reprocessor (i.e. an operation carrying out recycling or incineration with energy recovery)**

Question 15

Do you agree that the Government should place recovery and recycling targets on groups of producers?

43. The Government is not minded to place individual recovery and recycling targets on each producer in view of the complexity of this approach in a Directive of such wide scope. Rather, the Government proposes that the targets be placed collectively on each group of producers as suggested above, because these groups of categories share the same recovery and recycling targets. If, however, some producers choose to discharge their obligations individually, they will have to agree with the rest of the relevant group what the individual recovery/recycling targets should be that they have to meet.

44. As noted in the section on Article 5, the recycling/recovery targets will have to be achieved based on the weight of WEEE separately collected minus the weight of WEEE sent for reuse. The section on Article 12 proposes that producers will be required to register with a central authority as a condition of placing electrical and electronic products on the market. The Government proposes to use this registration data also to apportion the recovery/recycling targets to producers, or groups of producers.

45. As discussed in the section on Article 8 below, producers will be able to discharge their obligations either individually, or collectively. If a producer decides to take the individual route, they will have to prove

that they have met their individual share of the recovery target. If a producer joins a producer responsibility compliance scheme, the scheme will take on the responsibility of meeting the collective targets for all its members, and be liable if this does not happen.

46. The recent European Court of Justice (ECJ)¹ judgment in the Mayer Parry II case made clear that recycling only takes place when waste material undergoes reprocessing in a production process in order to produce new material or to make a new product. In order to measure achievement of the recovery and recycling targets, industry will need to demonstrate the amount of WEEE entering a facility which carries out recycling or recovery.
47. The calculation of the achievement of recovery and recycling targets is made more complex by having different targets for different groups of categories in the WEEE Directive; and because at the point of entry into a reprocessor, WEEE is no longer recognisable as such. The Discussion Document suggested the use of protocols at entry to a recycling/recovery facility to measure the UK's achievement of targets. This was seen as potentially the least burdensome way of measuring achievement of targets. This approach can save time and resources by reaching agreement that, on average, in every load of a particular grade of scrap metal, for example, sent from shredder to a metal recycler, 10% is deemed to be WEEE metal. This information, coupled with the information derived at the treatment facility on the amount of separately collected WEEE in each group of categories, will allow measurement of the level of recycling (or recovery) being achieved. It is likely that there will be exports of scrap metal, and perhaps other materials too, for recycling overseas. This is acceptable, provided that exports abide by existing legislation such as the Transfrontier Shipment Regulations, but there will also have to be a method developed of measuring material sent for export, and this will have to be in line with article 6(5) second paragraph.
48. An 'mass balance' approach has been proposed. This approach means measuring how much WEEE arises, how much is separately collected, how much enters treatment facilities, how much enters reprocessors (recycler/recovery facility) and how much is sent for disposal. A mass balance approach provides a range of data and as such may be helpful. This approach may also be particularly appropriate where WEEE is separately handled throughout the chain, which may be the case, for example, for gas discharge lamps. It remains to be seen, however, how this approach, on its own, will succeed in determining the amount of, for example, WEEE metal that enters a metal recycler (such as Corus) or WEEE plastic that enters a plastics recycler.
49. The Government believes that it is for industry to determine which method of measurement they wish to use, provided that the method

¹ European Court of Justice Case C-444/00 (Mayer Parry Recycling Ltd)

used can demonstrate the amount of WEEE material/substance/components entering reprocessors for recycling or for energy recovery. It will not be sufficient to assume that, because material went to a treatment facility/shredder, it necessarily went on thereafter to a reprocessor.

Article 8 - Financing in respect of WEEE from private households

50. Article 8 says Member states have to ensure that, by 13 August 2005 producers fund collection, treatment and recovery of separately collected WEEE from private households. For products placed on the market after 13 August 2005 producers must finance operations related to WEEE from their own products. They must provide financial guarantees to cover the management of “new” WEEE from these products; and they can arrange to meet their obligations either individually or via a collective scheme. For products put on the market before 13 August 2005, producers are to finance operations related to “historic” WEEE proportionately, according to their market share. Member States have the option of providing for producers to show consumers at the point of sale, for a transitional period of 8-10 years, costs attributable to handling of “historic” WEEE (a “visible fee”).

The Government proposes to:

- **Place an obligation on producers of electrical and electronic equipment in the implementing legislation to fund treatment and recycling of household WEEE deposited at collection points, which they may discharge either individually in relation to their own products (for goods placed on the market after 13 August 2005) or via membership of a producer responsibility compliance organisation.**
- **Producers choosing to meet their obligation individually (“own marque” compliance) will be expected to report independent audit of the WEEE whose collection treatment and recovery they are funding. This would be used to offset their estimated obligation.**
- **Producer responsibility compliance organisations will have to take on legal responsibilities to discharge their members’ obligations.**

Visible fee

- **The Government has not yet reached a conclusion on whether to require or facilitate a visible fee. Strong views have been expressed for and against it. The Government is concerned that its decisions on this issue should be based on the best possible evidence. It will consider further representations. It**

is especially keen to see more details on estimated costs and administrative implications and any specific proposals on operational aspects.

Question 16

Do you wish to make further representations on this issue?

Financial guarantees

- Article 8.2 says that “Member States shall ensure that each producer provides a guarantee when placing a product on the market showing that the management of all WEEE shall be financedthe guarantee may take the form of participation by the producer in appropriate schemes for the financing of the management of WEEE, a recycling insurance or a blocked bank account. The Government is considering how to implement this provision in a way which provides businesses with flexibility as to how they provide the required guarantees.

Question 17

What do you think of the following possible approaches for financial guarantees?

- A bond open to a company participating in a compliance scheme, with an annual premium payable, to finance “new” WEEE costs in the event of the company becoming insolvent. The future WEEE liability would belong to the bond issuer in the event of the company becoming insolvent. Such a bond scheme might be run by a bank, with its release subject to the approval of the Environment Agencies. The annual premium for the bond would be accounted for as incurred on an accruals basis.
- A recycling insurance. The Government understands that several insurers are considering developing this kind of product. This insurance might or might not involve the liability for WEEE funding remaining with the producer. If the liability remains with the producer, it is expected that a provision in the producer’s accounts would be required, but not if the liability lay with the insurer. Wherever the obligation lay, the insurance premium would be accounted for on an accruals basis.
- A blocked bank account legally in the name of the producer, but set aside for future WEEE costs, is likely to be treated as cash in hand with a corresponding provision in the company’s accounts; or there is the possibility of a collective scheme into which a producer may contribute, but the funds would not legally be an asset of the company and therefore could not be recognised in the producer’s balance sheet.

51. The Government is inclined to keep open the option of a visible fee at this stage and to seek further representations and evidence from those who are for and against this approach to financing WEEE costs.
52. Business has shown itself sharply divided on this issue. Many producers support the idea, whilst most retailers oppose it. The Government is interested in seeing fuller evidence and estimates from both sides of the argument, before reaching a final decision. The Government will consider further the arguments for and against a mandatory visible fee charged at the point of sale or the right to a ring fenced fee through the supply chain to cover the costs to producers associated with handling historic WEEE products previously placed on the market.
53. An assessment for the Government of other Member States' WEEE schemes, sheds light on how similar fee arrangements are working in other European countries. A summary of this report to the DTI from AEA Technology Limited is available on the DTI website at: www.dti.gov.uk/sustainability/weee/index.htm
54. The Government is inviting views on possible ways to meet the Article 8 requiring financial guarantees from producers. It is concerned to implement in a proportionate, non-prescriptive way. The ideas for possible approaches shown above reflect consideration given to this issue by accountants KPMG during preparation of professional advice to DTI on accounting implications of the WEEE Directive. A summary of this advice is also available on the DTI website. The Government would welcome views from producers, their auditors and others on the workability of the possible approaches set out here.

Article 9 - Financing in respect of WEEE from users other than private households

55. Article 9 provides Member States are to ensure that producers finance handling of "new" WEEE from products placed on the market after 13 August 2005 from non-household users. Producers are also responsible for historic non-household WEEE from their products put on the market before 13 August 2005. Member States have the option of allocating this responsibility for non-household WEEE to its users, either completely or in part.
56. However an amending Directive, expected to be agreed in autumn 2003, would limit producers' liability to historic non-household WEEE when replaced on a "like for like" basis. The costs would only arise if/when the equipment was replaced and would fall on the producer of the new product. However Member States will still have the option of allocating this responsibility for non-household WEEE to users, either completely or in part. For other non-household WEEE, where the

waste product is not replaced with a new one, Member states may make users partially or wholly responsible for financing.

The Government proposes to:

- **Place an obligation in the Regulations on producers of electrical and electronic equipment to fund treatment and recycling of non-household WEEE, which they may discharge either individually in relation to their own products or via membership of a producer responsibility compliance organisation.**
- **But the Government expects, in the light of the amending EU Directive, currently under negotiation, to limit this obligation; and to require business end users to pay for the treatment of their WEEE where it is not taken back and replaced like for like. We will reflect the amending Directive, once agreed, in national implementation.**
- **The Government is not minded to require financial guarantees for business to business sales. In the event of the producer leaving the market, the final responsibility will be placed on the last owner as at present.**

57. The proposed Directive amending Article 9 of the WEEE Directive will restrict the retroactive liability on producers to fund all their “historic” WEEE from business users. It is proposed that instead producers will only have to fund recovery on take-back and replacement with a like product.

58. The DTI has commissioned professional advice to DTI from accountants KPMG on the accounting implications of the WEEE Directive, principally Article 8 and Article 9, both before and after expected amendment. A summary of this work is also available on the DTI website. The Government is open to the views of producers, their auditors and others on these issues.

Article 10 – Information for Users

59. Article 10 says Member States should ensure that users of electrical and electronic equipment are given sufficient information about collection schemes for WEEE; and that, in this context, they should ensure that producers mark equipment put onto the market after 13 August 2005 with a crossed out wheellie bin symbol shown at Annex IV of the Directive.

The Government proposes:

- **All retailers should, as part of their legal take-back obligation, either, as appropriate, provide customers with information on their own in-store take-back arrangements, or, if a member of a retailer take-back compliance scheme, signpost customers to information on their collection network, in particular their nearest local facilities for returning WEEE.**
- **All producers should be obligated to ensure that their products put on the market after 13 August 2005 are marked with the wheelie bin symbol in Annex IV of the Directive in line with the terms of Article 10.3; and to make available information, for example in leaflets or on their websites, on the scope for recycling of their products**

60. The Government proposes a non-statutory approach to the “information” provision here, requiring retailers to be ready to respond to requests from the public about product recycling. It will be particularly important to ensure that retailer take-back compliance organisations provide local information on collection arrangements, so customers know what the facilities are in their neighbourhood.

Article 11 – Information for treatment facilities

61. Article 11 says Member States should take steps to ensure that producers provide reuse and treatment information on their products and that they mark their products put onto the market after 13 August 2005 to identify the producer and indicate that they were put onto the market after that date.

The Government proposes:

- **All producers should have an obligation to respond to reasonable requests from recyclers, reuse and refurbishment organisations and others for information about the design, composition and ease of dismantling of their products.**
- **The Government will place an obligation on producers to mark their electrical and electronic products to identify themselves in line with Article 11 and taking account of the expected development of a European standard by CENELEC.**

62. The marking requirements of Article 11 are the subject of a standards making mandate from the European Commission to CENELEC. The Commission has asked for a standard to be developed, if possible, by the end of 2004. UK manufacturers are making input to preparation of the European marking standards for WEEE under the auspices of the British Standards Institute (Panel LO/7/1, waste from electric and electronic equipment). DTI is providing a link between this process and planning for UK implementation of the Directive.
63. The Government intends to require producer marking on the basis of the European standard once this is clear. It does not propose burdening/confusing manufacturers with any specific interim marking in advance of introducing the European standard, if this is delayed.

Article 12 – Information and Reporting

64. Article 12 says Member States must establish and maintain a register of producers of electrical and electronic equipment and ensure they report data on products they put onto the market; and that Member States make arrangements to collect and report data on quantities of waste equipment collected and recovered to the Commission.

The Government proposes:

- **Establishment of a UK-wide register of producers before placing electrical or electronic products on the UK market.**
- **Producers will be required to register as a condition of placing electrical or electronic products on the UK market.**
- **The Government is minded to require annual registration by producers; but to require initial registration between 13 August 2004 and 30 June 2005. It would consider offering a discounted registration fee for those businesses doing so promptly - perhaps before 31 March 2005.**
- **Registration should ideally be via completion of an electronic questionnaire; but the facility for registration in writing should also be available.**
- **Producers subsequently placing products on the UK market for the first time should register before placing their goods onto the market.. Producers subsequently leaving the market should notify this.**
- **The register would comprise three sections, covering England and Wales, Scotland and Northern Ireland, and producers would be registered in one of these according to the locations**

of their registered company offices. The Environment Agencies would have oversight and approval of their respective territorial sections of the register.

- The Government is inclined to invite proposals for a business body to administer the registry, with appropriate underpinning, acting on behalf of the Environment Agencies. It may be appropriate for the “clearing house” to take on this role.
- Producers would be required, as a condition of registration, for the period 1 January-31 December 2005, and at subsequent annual registrations, to submit data (to be defined by the Government), which would enable their market share to be calculated. This would initially provide the basis for calculating individual producers’ financing responsibilities for “historic” WEEE treatment.
- The Government is considering what data should be required from producers as a condition of registration.
- The Government proposes to calculate producers’ market shares on the basis of sales revenue.
- The Environment Agencies would, regardless of the operational arrangements for the registry, have responsibility for enforcing registration in their respective geographical areas.
- Distance sellers (e.g. internet sellers) should be required to register. Specific suggestions are invited on how to treat non-UK registered businesses.

Question 18

The Government is considering how to ensure non-UK or EU-based distance sellers register. Do you have specific suggestion for how to do this?

Question 19

Is the proposed registration period about right?

Question 20

Do you agree that the market share of sales should be based on revenue, as opposed to weight or numbers? Please explain your rationale in the broader context of ease of data collection and benefit to the UK as a whole.

65. The Government invites proposals for business, perhaps the clearing house, to operate the registry function on behalf of the Environment Agencies- which would retain an enforcement role.
66. The Government is under no illusions that there may initially be widespread non-registration. The onus may, in practice, be on businesses to report unregistered competitors to the Agencies for enforcement action. The Government expects that it may be necessary for it to publicise - “name and shame” - some initial prosecutions for failure to register in order to encourage others to register. The suggestion has been made that, as in Germany, an obligation might be placed on retailers to pick up the WEEE treatment costs for unregistered producers whose products they sell. The Government thinks this may be unnecessary, in view of retailers’ other obligations under the WEEE Directive. The treatment of non-registering businesses, in particular, non-UK businesses selling into our market, was a clear stakeholder concern from the previous consultation. The Government is inviting specific suggestions on how to tackle non-registering non-UK sellers. Agreements between EU Member State Governments might be possible to facilitate fair and equitable treatment for businesses registered within the EU.
67. The Government is considering what data might be sought from producers, as a condition of registration, to enable a calculation of market share for allocation of producer responsibility costs for WEEE treatment. The Government aims to focus further discussion of this issue by proposing that market share could be derived from sales revenue.

ANNEX 1 CONSULTATION QUESTIONS

The Government invites your comments on any of the proposals put forward for the implementation of the WEEE Directive and on the general approach.

The Government also invites your views on the indicative costs for these implementation proposals in the partial regulatory impact assessments, which accompany this consultation. These are available on the DTI's web site at www.dti.gov.uk/sustainability/weee/index.htm. If you do not agree with the estimates, please provide as much detail to back up your own estimates as possible.

The specific questions on the implementation proposals set out in Part II are listed here for ease of reference.

Article 1 – Objectives

Question 1, page 2

The Government is considering how best to encourage reuse of EEE in line with the objective of the Directive. Do you have specific suggestions for how to do this? What do you think of the following ideas:

- to develop an indicator on reuse for inclusion in the Best Value Performance Indicators for local authorities;
- to incentivise producers to give preference to reuse options. How do you think this should be done? or
- to require producer responsibility compliance schemes, as a condition of their registration, to show how they will encourage reuse.

Article 2 – scope

Question 2, page 3

Do you agree with a “decision tree” approach in guidance to help interpret whether “grey area” products should be inside or outside the scope using certain criteria?

Question 3, page 4

What else should the Government do to help to clarify scope given that the legal definitions in the Directive cannot be changed in the time available?

Article 3 - Definitions

Question 4, page 5

Do you agree with the Government's proposed approach: to transpose the term “put on the market”, taking into account the

context in which it appears in the WEEE Directive; and to refer in non-statutory guidance to the interpretation offered by the European Commission in its “Guide to the Implementation of Directives based on the New approach and the Global Approach”?

Article 4 – Product Design

Question 5

Do you agree that a business forum would be useful? What form might it take?

Article 5 – Collection

Question 6, page 10

Do you agree with the Government’s proposed criteria for approval of a retail sector take-back compliance organisation (the alternative to having to offer in-store take-back)?

Question 7, page 10

Is the level of the capped retailer fund about right? Please explain any alternative figures?

Question 8, page 12

The Government has considered the option of more than one retail compliance organisation, but this might be complex and less straightforward, including for local authorities. Do you agree or would it be possible to have a limited number of schemes within the proposed framework?

Question 9, page 12

The Government is minded to explore with business how best to establish a “clearing house”. Do you agree this should be a preferred implementation option? Should the Government consider other alternatives further?

Question 10, page 13

Should the clearing house manage the collection service or simply pass on responsibilities to specific producers or their agents? If the latter can this be achieved in a fair and equitable manner?

Question 11, page 13

Is guaranteed collection within 48 hours sufficient? It is assumed that many local authorities using the service would, in any case, be able to reach agreement on regular pick ups with the clearing house. Do you agree?

Question 12, page 13

Do you believe that the clearing house should have responsibility for holding all data and reporting this to the Enforcement authority?

Question 13, page 13

What measures would provide producers with the appropriate assurances in relation to confidentiality?

Article 6 - Treatment

Question 14, page 15

The Directive does not appear to go as far as requiring that certain components are removed prior to shredding but does require separate removal. In treating WEEE, which components should be removed prior to shredding and under what circumstances? What would be the environmental and cost benefits?

Article 7 – Recovery

Question 15, page 18

Do you agree that the Government should place recovery and recycling targets on groups of producers (grouped according to Article 7 product category targets) ?

Article 8 – Financing in respect of WEEE from private households

Question 16, page 21

The Government will consider further representations on the proposition of a mandatory visible fee. It is especially keen to see more details on estimated costs and administrative implications and any specific proposals on operational aspects. There is no assumption that all products or categories need to be treated identically.

Question 17, page 21

Article 8.2 says that “Member States shall ensure that each producer provides a guarantee when placing a product on the market showing that the management of all WEEE shall be financedthe guarantee may take the form of participation by the producer in appropriate schemes for the financing of the management of WEEE, a recycling insurance or a blocked bank account.” The Government is considering how to implement this provision in a way which provides businesses with flexibility as to how they provide the required guarantees.

What do you think of the following possible approaches for financial guarantees?

- **A bond open to a company participating in a compliance scheme, with an annual premium payable, to finance “new” WEEE costs in the event of the company becoming insolvent.**
- **A recycling insurance. This might or might not involve the obligation for WEEE funding remaining with the producer.**

- **A blocked bank account in the name of the producer, but set aside for future WEEE costs; or a collective scheme into which a producer might contribute.**

Article 12 – Information and reporting

Question 18, page 26

The Government is considering how to ensure non-UK or EU-based distance sellers register. Do you have specific suggestion for how to do this?

Question 19, page 28

Is the proposed registration period about right?

Question 20, page 28

Do you agree that the market share of sales should be based on revenue, as opposed to weight or numbers? Please explain your rationale in the broader context of ease of data collection and benefit to the UK as a whole.