

EXPLANATORY MEMORANDUM TO
THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WASTE
MANAGEMENT LICENSING) (ENGLAND AND WALES) REGULATIONS 2006

2006 No. 3315

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations transpose the treatment and permitting requirements of Directive 2002/96/EC on waste electrical and electronic equipment (the WEEE Directive). They also make provision for exemptions from waste management licensing for WEEE recovery operations, and in particular, exemptions for repair and refurbishment for re-use of WEEE; the storage of WEEE prior to treatment; and the crushing of waste gas discharge lamps for the purpose of volume reduction prior to collection.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68) and sections 33(3), 34(5), and 35(6) of the Environmental Protection Act 1990 (1990 c.43), having had regard in particular in exercising their powers under section 33(3) of that Act to the matters specified in section 33(4) of that Act.

4.2 The Regulations transpose, in relation to England and Wales, the treatment and permitting requirements of the WEEE Directive, and in particular Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive. They do this by amending the Waste Management Licensing Regulations 1994 (S.I. 1994/1056). The bulk of the Directive, which relates to producer responsibility, is being transposed in regulations made by the Department of Trade & Industry.

4.3 A Transposition Note has been prepared for this instrument and is attached to this memorandum at Annex 1.

4.4 The WEEE Directive was originally the subject of Explanatory Memorandum 10802/00 (Part I) submitted on 2 October 2000. The House of Commons European Scrutiny Committee considered the proposal to be politically important, and for debate, which was held on 28 March 2001 (Report 1, Item 21540, Session 00-01). The House of Lords Select Committee on the European Communities referred the proposal to Sub-Committee D where it was cleared (Progress of Scrutiny, 11 May 2001, Session 00/01).

4.5 A further Explanatory Memorandum was submitted on 7 December 2000 as an Official Text Not Yet Received document. The House of Commons European Scrutiny Committee decided that it should be debated in European Standing Committee “C” on 28 March 2001 (1st Report, Session 2000-2001). The Committee cleared the proposal from Parliamentary Scrutiny following the debate. The House of Lords Select Committee on the EU referred the proposal to Sub-Committee D where it was cleared (Progress of Scrutiny, 11 May 2001, Session 00-01).

4.6 A further Explanatory Memorandum 8983/03 was submitted on 1 September 2003 related to a “Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/96/EC on Waste Electrical and Electronic Equipment”. The House of Commons European Scrutiny Committee considered it politically important and cleared it (Report 32, Item 24759, Session 02-03) and the Lords Select Committee on the EU cleared it in Sub-Committee D on 8 October 2003 (Progress of Scrutiny, 27/10/03, Session 02/03).

4.7 A further Explanatory Memorandum was submitted on 15 April 2004 on a “Proposal for a European Council Decision granting Cyprus, Malta and Poland certain temporary derogations from Directive 2002/96/EC on Waste Electrical and Electronic Equipment”. The House of Commons European Scrutiny Committee considered it not legally or politically important and cleared it (Report 17, Session 03 / 04) and the House of Lords Select Committee on the EU did not report on it (Progress of Scrutiny 7/5/04, Session 03 / 04).

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of the WEEE Directive is the prevention of waste electrical and electronic equipment (WEEE) and, in addition, the reuse, recycling and other forms of recovery of such wastes so as to reduce the disposal of waste. It also seeks to improve the environmental performance of all operators involved in the life cycle of electrical and electronic equipment, e.g. producers, distributors and consumers, and in particular those operators directly involved in the treatment of waste electrical and electronic equipment.

7.2 These Regulations will ensure that those treating WEEE operate under a waste management licence which contains the necessary conditions to comply with the requirements of the WEEE Directive. In particular, operators are required to remove all fluids and apply specific treatments, in order to avoid the dispersion of pollutants into the recycled material or the waste stream and to ensure the protection of the environment. Best available treatment, recovery and recycling techniques are also required to ensure protection of human health and the environment. The Regulations also provide for appropriate exemptions from waste management licensing for WEEE recovery and storage operations.

7.3 The Regulations were subject to full public consultation in May 2005. Comments were received from 49 respondents. A summary of these comments and the Government's response is response has been published on the Defra website at the following web address: <http://www.defra.gov.uk/corporate/consult/default.asp>.

7.4 Guidance has been published on Best Available Treatment, Recovery and Recycling Techniques (BATRT) and the treatment of WEEE. The BATRT guidance was consulted on at the same time as the regulations and the Environment Agency consulted on the treatment guidance in late 2004. The combined guidance has also been released in draft for comment. The guidance is available at the following web address: <http://www.defra.gov.uk/environment/waste/topics/electrical/pdf/weee-batrrt-guidance.pdf>

8. Impact

8.1 A Regulatory Impact Assessment for this instrument is attached to this memorandum at Annex 2.

8.2 There is no impact on the public sector.

9. Contact

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TRANSPOSITION NOTE

Treatment and permitting requirements of Article 6 of Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment

The Waste Electrical and Electronic Equipment Directive (WEEE Directive) aims to minimise the impact of electrical and electronic equipment on the environment by reducing the quantity of waste from electrical and electronic equipment and increasing re-use and recycling. It seeks to achieve this by providing for Member States to take measures to achieve a high level of separate collection of WEEE, laying down minimum standards for treatment and setting targets for recovery, reuse and recycling. The Directive will be transposed by the Waste Electrical and Electronic Equipment Regulations 2006 (the principal WEEE regulations). However, Article 6 of the Directive relates to the treatment of WEEE and is being partially transposed by the Waste Electrical and Electronic Equipment (Waste Management Licensing) (England and Wales) Regulations 2006 (the WEEE permitting regulations).

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

This Transposition Note relates to these regulations and indicates where transposition will be carried out by the principal WEEE regulations, which will be accompanied by a separate Transposition Note.

Article	Purpose	Implementation	Responsibility
Article 6(1)	To require producers to set up systems for the treatment of WEEE using best available treatment, recovery and recycling techniques (BATTRT).	The principal WEEE regulations will place the necessary obligation on the producers.	DTI
Article 6(2)	To require those treating WEEE to have a permit under Articles 9 and 10 of Directive 2006/12/EC	The Environmental Protection Act 1990 already requires those treating WEEE to have such a	Defra The Environment Agency is the

	<p>of the European Parliament and of the Council of 5 April 2006 on waste (the WFD). To allow derogation from the permit requirement for recovery operations concerning WEEE if an inspection is carried out by the competent authorities before registration to ensure compliance with Article 4 of the WFD and to verify certain matters.</p>	<p>permit. Regulation 3 of the WEEE permitting regulations amends the Waste Management Licensing Regulations 1994 (WMLR 1994) to provide for one exemption for the recovery of WEEE (repair and re-furbishment of WEEE for re-use) in new paragraph 49 of Schedule 3 to the WMLR 1994 and to provide for the necessary inspections.</p>	<p>competent authority for the licensing of waste recovery and disposal operations and the registration of exemptions therefrom (which includes the treatment of WEEE) under the WMLR 1994.</p>
<p>Article 6(1) (and Annex II) Article 6(3) (and Annex III) Article 6(4)</p>	<p>To require the treatment of WEEE using BATRR and including as a minimum the removal of all fluids and a selective treatment in accordance with Annex II to the Directive (Article 6(1)). To require those treating WEEE to store and treat WEEE in compliance with the technical requirements set out at Annex III (Article 6(3)). To require that the permit or the registration for exemption referred to in Article 6(2) includes all conditions necessary for compliance with the requirements of Article 6(1) and (3) and for the achievement of the recovery targets set out in</p>	<p>Regulation 3 of the WEEE permitting regulations amends the WMLR 1994 to require the Environment Agency to ensure that any site licence granted or varied after the WEEE permitting regulations come into force and which authorises an establishment or undertaking carrying out treatment operations to store or treat WEEE contains such conditions as it considers necessary to give effect to Articles 6(1), (3) and (4) and Annexes II and III. Regulation 3 also amends the WMLR 1994 to provide for one exemption for the treatment of WEEE (repair and re-furbishment of WEEE for re-use)</p>	<p>Defra is responsible for the WMLR 1994.</p> <p>The Environment Agency is the competent authority for the licensing of waste recovery and disposal operations and the registration of exemptions therefrom (which includes the treatment of WEEE) under the WMLR.</p>

	Article 7 (Article 6(4)).	<p>in new paragraph 49 of Schedule 3 to the WMLR 1994, which contains conditions to give effect to Articles 6(1) and (3) and Annex III.</p> <p>No permitting conditions or registration requirements have been identified as necessary in respect of Article 7.</p>	
Article 6(5)	To require that where WEEE treatment is undertaken outside the respective Member State or the Community shipment is in compliance with Council Regulation (EEC) No 259/93 on the supervision and control of waste within, into and out of the European Community.	Regulation 259/93 is implemented by the Transfrontier Shipment of Waste Regulations 1994.	Defra is responsible for the Transfrontier Shipment of Waste Regulations 1994.
Article 6(6)	To encourage establishments and undertakings which carry out WEEE treatment operations to introduced certified environmental management systems (EMS).	Being implemented through administrative means.	Defra, DTI and the Environment Agency

**FINAL REGULATORY IMPACT
ASSESSMENT (RIA)**

**THE WASTE ELECTRICAL AND
ELECTRONIC EQUIPMENT (WASTE
MANAGEMENT LICENSING) ENGLAND
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THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WASTE MANAGEMENT LICENSING) ENGLAND AND WALES) REGULATIONS 2006

1.0 Purpose and intended effect of the measure

1.1 This RIA, which deals with amendments to the Waste Management Licensing Regulations 1994 to implement Article 6 of the WEEE Directive, focuses on:

- examining the options for implementing the permitting requirements of the WEEE Directive; and
- the benefits of providing exemptions from Waste Management Licensing other than treatment to reduce the regulatory burden and encourage the recovery and re-use of WEEE.

1.2 The WEEE Directive is being introduced to tackle the need to reduce waste from Electrical and Electronic Equipment (EEE). It is estimated by the European Commission that WEEE is growing faster than other forms of municipal waste WEEE can contain hazardous substances which, after disposal, can have a negative impact on both human health and the environment.

1.3 The WEEE Directive aims to prevent WEEE and encourage reuse, recycling and recovery, to reduce the amount of this type of waste being disposed of, usually in landfill. The Directive also seeks to improve the environmental performance of those involved in the life cycle of EEE and particularly those involved with WEEE.

1.4 The permitting requirements of the WEEE Directive are contained in Article 6. The content of hazardous components in electrical and electronic equipment is a major concern in the waste management and recycling phases of WEEE. The Directive requires that any establishment or undertaking treating WEEE (defined as various recovery and disposal operations after being handed over to a facility for that purpose) needs to obtain a permit from a competent authority (the Environment Agency in England and Wales), in compliance with the Waste Framework Directive (75/442/EC). The word “treatment” in this RIA will refer to treatment for the purpose of the WEEE Directive. The Directive requires that treatment of WEEE must include certain selective treatments and that treatment facilities must meet certain technical requirements. These have been identified as the most effective means of protecting the environment and the selective treatments will avoid dispersion of pollutants into the recycled material or the waste stream. This in turn should facilitate the reuse and recovery of waste.

1.5 There is also an option under Article 6 of the WEEE Directive for Member States to allow facilities treating WEEE to register an exemption under Article 11 of the Waste Framework Directive if a prior inspection is carried out by the competent authority and there is a subsequent annual inspection where the results are communicated to the European Commission. It is proposed to use this option for facilities that repair and refurbish of WEEE.

2.0 The background

2.1 The WEEE Directive provides that producers of Electrical and Electronic Equipment (EEE) should provide for the financing of the collection, treatment, recovery and environmentally sound disposal of WEEE from private households deposited at central collection facilities. WEEE from non-household sources is to be dealt with by producers or last holders depending on the circumstances under which the EEE is being discarded. In implementing the Directive, the UK Government must ensure that a system is in place so that final holders of household WEEE can take back or return their WEEE free of charge where this WEEE is uncontaminated and has essential components present. This separately collected WEEE must be subsequently treated and recovered in accordance with the Directive and the rates of recovery specified have been achieved.

2.2 Article 6 of the WEEE Directive states that Member States must ensure that any establishment or undertaking carrying out treatment operations on WEEE obtains a permit from the competent authority. In the UK, this permit is a waste management licence under the Environment Protection Act 1990 and the Waste Management Licensing Regulations 1994. A number of sites that deal with WEEE will already have waste management licenses.

2.3 DTI lead overall on the implementation of the WEEE Directive. Defra lead on the permitting requirements of Article 6 of the Directive and the Waste Framework Directive (75/442/EEC) which is supplemented by the WEEE Directive as regards waste recovery and disposal operations. Options for the implementation of the Directive as a whole have been outlined in discussion papers and formal consultations issued by the UK Government, the Scottish Executive, the National Assembly of Wales and the Northern Ireland administration, most recently on 25 July 2006 (at <http://www.dti.gov.uk/innovation/sustainability/weee/page30269.html>). DTI's partial RIAs (in July 2006 as well as those issued in March 2003, November 2003 and July 2004), discussed the potential costs and benefits of complying with the specific articles of the Directive other than Article 6 permitting requirements. Those RIAs considered the impact different collection and treatment routes for WEEE would have on the benefit/cost figures. It also discussed the potential costs and benefits from the treatment requirements for WEEE outlined in the WEEE Directive. In particular they highlighted the increase in treatment costs for WEEE when compared with the present route whereby a significant percentage is sent to landfill.

2.4 DTI have announced that the WEEE regulations should enter into force on 1 January 2007 with full producer responsibility beginning on 1 July 2007. Defra is now therefore able to make the WEEE Permitting Regulations. This delay has been done in order to avoid a situation where WEEE would have to be treated to the requirements of the Directive, but producer financing for this is not in place.

2.5 The Environment Agency has consulted upon draft guidance to meet the Annex II treatment requirements. Further information can be found at <http://www.environment-agency.gov.uk/yourenv/consultations/830820/?version=1&lang=e>

2.6 The permitting requirements of the Directive were originally to be delivered under the Defra waste permitting review as referred to in DTI's consultation of 30 July

2004. However, this was halted in August 2004 due to a number of difficulties progressing the review. Work has continued in Defra's Environmental Permitting Programme to create a streamlined environmental permitting and compliance system for operations subject to waste and PPC permits. Defra has now consulted on regulations to introduce such a system (which will also implement the WEEE Directive).

2.7 However, as regulations are needed now, the WEEE permitting requirements of Article 6 of the WEEE Directive will be delivered by means of an amendment to the Waste Management Licensing Regulations 1994.

2.8 This final RIA will investigate the costs and benefits of the WEEE Directive implementation via this means. It will therefore specifically focus on the permitting aspects of the WEEE Directive and the proposed exemptions.

2.9 This final RIA also takes account of the views expressed in response to a full public consultation carried out between 19 May and 19 August 2005. It has been amended to reflect the views and the costings received on the Government's preferred approach. This RIA will in due course support a Statutory Instrument.

3.0 Basis of risk assessment common to all options for WEEE permitting in section 4.0

3.1 Risks arise from WEEE as follows:

- Unlicensed or uncontrolled recovery and disposal of WEEE.
- Where hazardous and untreated prior to disposal or recovery, it impacts on the environment and on human health.
- The treatment of WEEE has the potential to lead to environmental damage.
- Its current means of disposal is by disposal at landfills. This leads to a potential loss of resources, which might have been otherwise recycled.

These risks are addressed by the waste management licensing system; the treatment requirements to be introduced under the WEEE Directive; and the increase in recovery under the Directive.

3.2 A number of components of and materials in WEEE are hazardous and will remain so when removed or dismantled.

3.3 There are potentially 450 sites that may be affected by permitting of WEEE treatment. These can be separated into sites that are currently licensed for WEEE treatment (100) and metal recycling sites (350). The effect of the WEEE Directive will be that all sites currently treating WEEE will have to hold a permit modified to ensure the Directive's requirements are met or to have registered an exemption. They will be required to operate to specific minimum technical standards which may be stricter than those required under existing legislation mainly in respect of the drainage and separate storage of liquid, and the nature of the surface on which the activities are carried out and the equipment used. In addition, the Directive requires the removal of specific components. The risk to the environment if these standards were not implemented and sites were not licensed would lie in the potential for pollution of groundwater, the contamination of land and dispersion of pollutants to the air.

4.0 Issues and options

4.1 It is the Government's policy to fulfil its legal obligations to transpose and implement EU directives. Therefore there is no option other than to amend waste management licensing to comply with the Directive requirements. For the purpose of this RIA, the following costs and benefits are assessed against the base of current practice continuing, but "do nothing" with regard to applying the Directive requirements cannot be regarded as a practical option. The following diagram sets out the implications for two typical businesses and how they are addressed in this RIA.

4.2 In order to quantify benefits and costs relating to the changes in the permitting of recovery and disposal of WEEE, the following separate issues and options under each issue are assessed:

Issue 1) Licensing (discussed at sections 5 and 6)

Option a) Do nothing. WEEE would continue to be regulated under the current waste management licensing regulations.

Option b) Amend the Waste Management Licensing Regulations 1994 to implement the WEEE Directive requirements in respect of treatment of WEEE.

Following consultation, Option b) above was chosen. Option a) could not realistically be adopted as a choice due to the reasons outlined in 4.1 above. There was broad support for adoption of the WEEE Directive as part of the sustainable development agenda, and a general view that the implementation of the WEEE Directive presented new opportunities for the industry. Most consultees supported the amendments made to the licensing regulations

Issue 2) Exemptions from licensing (discussed at sections 7 and 8).

All WEEE recovery and disposal operations are subject to a permit (a waste management licence) under Articles 9 and 10 of the Waste Framework Directive. However, EU Member States have discretion under Article 11 of the Directive to provide exemptions from these permit requirements. This applies whichever option is followed under issue 1 above.

Option a) Do nothing – WEEE would continue to be regulated under current exemptions from waste management licensing. Current exemptions only make limited provision for the storage of WEEE (although not explicitly). There are no exemptions for operations which would fall to be dealt with as treatment under the Directive and therefore sites that carry out such operations would require a waste management licence.

Option b) Provide exemptions with enhanced general rules for treatment of WEEE which are proportionate to the risks posed by the activities and meet the requirements of the WEEE Directive and the Hazardous Waste Directive. Two such exemptions had been identified, one for refurbishment for re-use of WEEE and another for storage of WEEE prior to treatment. Following

consultation, a third for the crushing of waste gas discharge lamps for the purpose of volume reduction prior to collection, was added.

Following consultation, Option b) was chosen and the further exemption for lamp crushing drawn up.

There was general welcome for the proposed exemptions. Vending machine industry representatives were particularly in favour of the storage exemption as it would result in a more energy and cost efficient service for the reclaiming of end of life machines. The main concern that consultees raised about the exemptions was that they were too restrictive, and we have increased the storage and treatment limits and extended the scope of the exemptions in the light of this feedback.

A minority of stakeholders had concerns that the storage and repair refurbishment exemptions would be open to abuse from rogue companies who would have the opportunity to store free of any requirements and from rogue operators who are in fact breaking down units for export respectively. This problem is being addressed by setting down clear general rules under which the exemptions must operate.

Consultees were asked about an exemption for lamp crushing. While there was support in principle and also from operators who currently provide crushing equipment or a mobile crushing service, serious concerns were expressed at the risks arising from the release of hazardous substances to the environment, in particular mercury. The exemption now proposed meets these concerns by providing that the equipment used has to be designed for that purpose and imposing a maximum emission limit for mercury.

Issue 3) Selective Treatment and BATTRT (Best Available Treatment, Recovery and Recycling Techniques) requirements (discussed at section 9)

Option a) Do nothing - allow operators to continue with current recovery and disposal operations.

Option b) Require that the selective treatments required in Annex II of the WEEE Directive are carried out to BATTRT.

Following consultation, Option b) was chosen. Option a) could not realistically be adopted as a choice due to the reasons outlined in 4.1 above. In parallel to the regulations and this RIA, Defra has also been developing guidance in conjunction with the Environment Agency on the selective treatments and how they should be carried out. Feedback from industry on the guidance has been very positive.

Issue 4) Technical requirements at treatment facilities (discussed at section 10)

Option a) Do nothing

Option b) Require that the technical requirements in Annex III of the WEEE Directive are complied with.

Following consultation, Option b) was chosen. Option a) could not realistically be adopted as a choice due to the reasons outlined in 4.1 above. In any case, many of the requirements laid down by Annex III are requirements for sites already.

4.3 For illustration the following table sets out costs that may arise from the Directive for different operations and where they are dealt with:

Type of operation	Impact of WEEE Directive	Where costs are identified
A facility shredding WEEE under a waste management licence	<u>Need to modify the licence</u>	<u>Section 6</u>
	Need to undertake selective treatment (e.g. remove batteries and cathode ray tubes)	<u>Section 9</u>
	Need to improve facility (e.g. new impermeable surface for storage areas)	<u>Section 10</u>
A facility repairing and refurbishing WEEE under a waste management licence	Need to modify licence <u>OR</u> Registration of an exemption	Section 6 Section 8
	Need to improve facility (e.g. new impermeable surface for storage areas)	<u>Section 10</u>
A facility storing WEEE collected from households under a waste management licence	If eligible, register an exemption <u>OR</u> no change	No cost (see sections 7 and 8)
A retailer storing WEEE after take-back, pending collection	No change	No cost (see sections 7 and 8)

5.0 Licensing

Options for Licensing

5.1 Option a) Do nothing. WEEE would continue to be regulated under the current waste management licensing regulations.

Option b) Amend the Waste Management Licensing Regulations 1994 to implement the WEEE Directive requirements in respect of treatment of WEEE.

Benefits for amending waste management licensing for WEEE treatment

Economic

5.2 WEEE is currently treated under the Waste Management Licensing Regulations 1994 and establishments and undertakings that treat WEEE are required to hold a licence. This requirement will remain under the WEEE Directive but it requires more stringent standards for treatment and storage of WEEE at treatment sites. The environmental gains of the Directive will encourage a level playing field, which may in turn encourage investment.

Environmental

5.3 The primary environmental benefits of the treatment permitting requirements of the WEEE Directive are likely to be derived from the storage and treatment requirements of the Directive. These benefits are further outlined in sections 9 and 10. In terms of licensed sites, tighter controls via more specific licence conditions will minimise abuse and offer enhanced protection for human health and the environment. The enhanced treatment will assist recovery by removal of hazardous materials from the waste-stream. Awareness of WEEE will also be increased.

6.0 Licensing costs

6.1 The business sectors that are potentially most affected by the implementation of Article 6 are repairers and refurbishers, dismantlers, shredders and re-processors of WEEE, all of whom should already be licensed to treat WEEE. Storage of WEEE is also subject to licensing unless an exemption applies.

6.2 Articles 9 and 10 of the Waste Framework Directive require that any establishment or undertaking that carries out the disposal or recovery of waste must obtain a permit from the competent authority. Therefore licences are required for operations undertaking recovery regardless of the WEEE Directive. There is already an existing cost to operators who wish to treat waste electrical and electronic equipment under the current system of waste management licensing. The cost is associated with the application for a licence and the annual subsistence charge. The WEEE Directive imposes specific requirements as to how WEEE is treated and therefore operators will need to modify their licenses in line with the Directive requirements. The costs of any new licenses have also been included in this RIA as it is anticipated that the number of facilities undertaking such recovery and disposal activities is expected to increase as a direct consequence of the increased separate collection rates required of the WEEE Directive.

6.3 It should also be noted that the Directive allows treatment to be undertaken outside Member States and the Community but this can only be counted towards recovery standards if undertaken to the same standards as the standards introduced in the UK.

6.4 The costs referred to in this section relate to the actual cost of obtaining and holding a licence. Infrastructure costs to meet the requirements of the Directive as regards selective treatment and the technical standards for treatment facilities are dealt with at sections 9 and 10 respectively.

6.5 Waste management licences are not time limited, and those currently treating WEEE under a licence will as such have to have their licences modified. However, they will, as part of the transitional arrangements, be able to continue treating WEEE under their current licence until their application for a licence modification is granted.

Costs for licensed sites

6.6 The Environment Agency has estimated that the number of sites requiring a new licence is between 30 and 50 per year initially. This will depend on the growth rate of WEEE available for recycling, and the specialist nature of the treatment required by the different categories of WEEE. There are a number of scenarios for

the volume of WEEE that may arise in the UK following implementation of the WEEE Directive and these are set out in the DTI's partial RIAs for the WEEE Directive.

6.7 A number of sites currently deal with WEEE under the Waste Framework Directive requirements. The Environment Agency have estimated that there are 100 current licence holders treating WEEE, comprising 40 shredders, 15 fridge plants and 5 IT refurbishers, with the remaining sites specialising in other types of refurbishment. These sites will need to modify their licence to be permitted to operate and treat WEEE under the WEEE Directive requirements.

6.8 There are currently 910 licensed metal recycling sites which may be currently accepting WEEE under their waste management licence in mixed loads of scrap metal but not undertaking any form of WEEE treatment. If they elected to receive WEEE for treatment and based on the number of these sites who modified their licenses to treat End-of-Life Vehicles, the Environment Agency anticipate that at most, one third of these licence holders may wish to undertake the treatment of WEEE and will require a licence modification. It was asked as part of the consultation on the partial RIA whether the above assumptions on figures were correct, and the response we received to this question was that they were. They also raised the issue of the cost for recyclers to provide evidence to obligated producers of the achievement of recovery targets. However, this point will be addressed in the RIA accompanying the DTI WEEE Regulations.

6.9 Due to the range of treatment requirements and the expectation that the treatments required by the Directive will be undertaken at more than one site, it would be difficult to impose conditions in all licences that delivered the treatment requirements, where the establishment or undertaking may never undertake some of those activities.

6.10 As a result, we have proposed that the Environment Agency will modify the licenses held by current waste management licence holders, who intend to treat WEEE, to treat WEEE in accordance with the Annex II and III requirements on a site-specific basis. This should be an operator-instigated modification and the Agency will only vary a licence where there has been an application to vary it. The operator of a facility with a waste management licence authorising the handling of WEEE who wishes to continue doing so after 1 July 2006, will need to consider the implications of permitting under the new regime and, where necessary, apply for a modification to their licence. Costs are given in Table 1.

Table 1 Costs of licensing in year 1 of implementation

Average charges	Currently licensed treatment sites¹	New treatment sites¹
Estimated number of sites involved	100 -450 ²	30-50
Average application or modification charge as appropriate	£3,379	£5,880
Average subsistence ⁴		£2,634
Preparation of	£2,570 ³	£5,140 ³

licence application		
Total cost per operator in year 1 (excluding infrastructure costs)	£5,949	£13,654
Total cost for industry sector (Excluding infrastructure costs)	£594,900-2,677,050	£409,620-616,850

Notes:

1. Figures for licensing costs are from April 2006. These fees represent an overall charge that the Environment Agency levies for the regulatory costs it incurs, which it consults on fully every year. More information on these costs can be found at <http://www.environment-agency.gov.uk/business/444669/587152/?version=1&lang=e>.
2. A range has been included, as assumptions have been made. The central assumption is 200 sites (twice the range minimum).
3. Information from research undertaken during the Waste Permitting Review (see paragraph 2.6). The major trade associations involved in the waste industry were asked to provide information relating to the costs of preparing an application or a modification for a Waste Management Licence. The metal recycling trade associations put these figures forward. This sector of the waste industry is seen as being most akin to the WEEE sector.
4. Subsistence charges are the annual fees the Agency charges to cover the costs of regulating facilities operating under a waste management license to ensure that the activities authorised do not cause environmental pollution or harm human health. The figure here represents 50% of the average subsistence charge; the actual charge would be pro-rata from date of determination of the licence.

7.0 Exemptions

Options for exemptions

7.1 The draft regulations make provision for changes to exemptions. This option is available regardless of any changes made to waste management licensing.

Option a) Do nothing – WEEE would continue to be regulated under current exemptions from waste management licensing. Current exemptions only make limited provision for the storage of WEEE (although not explicitly). There are no exemptions for operations which would fall to be dealt with as treatment under the Directive and therefore sites that carry out such operations would require a waste management licence.

Option b) Provide exemptions with enhanced general rules for the recovery of WEEE which are proportionate to the risks posed by the activities and meet the requirements of the WEEE Directive and the Hazardous Waste Directive. Three such exemptions have been identified: one for refurbishment for re-use of WEEE; one for

storage of WEEE prior to treatment; and a third for the crushing of waste gas discharge lamps for the purpose of volume reduction prior to collection.

7.2 Exemption from the need for a Waste Management Licence represents the lowest level of control for those activities posing the lowest environmental risk, but the general rules to be applied and the controls should be sufficiently robust to ensure the protection of human health and the environment. Member States can provide for exemptions under the provisions of Article 11 of the Waste Framework Directive. The WEEE Directive places further requirements on exemptions for those treating WEEE.

7.3 The Defra waste permitting review was expected to make recommendations in respect of registered exemptions under Article 11 of the Waste Framework Directive. However, now work on the review has stopped, and pending the forthcoming review of exemptions, it is appropriate to consider whether any changes to the exemptions set out in Schedule 3 to the Waste Management Licensing Regulations 1994 should be made to encourage the recovery and treatment of WEEE. The coverage of WEEE in the current exemptions also needs to be considered

7.4 Certain items and classes of EEE and WEEE are already subject to repair or refurbishment prior to re-use, in particular IT equipment, TVs, telephones, mobile 'phones and some white goods and may be donated or used by charities or re-sold. Facilities that carry out repair and refurbishment of WEEE prior to re-use are treating WEEE and will need a waste management licence amended to meet the Directive requirements unless an exemption is provided for. It is considered that these activities, which are analogous for EEE and WEEE, pose a low risk at an appropriate scale. The adoption of such an exemption would encourage bona fide repair or refurbishment and subsequent re-use of WEEE in support of the aims of the Directive. It will also encourage the many social enterprises who are, or intend to be, engaged in providing for re-use of WEEE.

7.5 Storage of WEEE prior to being handed over to a facility for treatment is subject to licence unless registered as exempt. Currently various exemptions may apply although none specifically apply to WEEE. These are subject to the detailed rules in the relevant paragraph of Schedule 3 of the Waste Management Licensing Regulations 1994. These (and the relevant paragraph of Schedule 3) are:

- Storage of returned goods that are waste by their manufacturer, distributor or retailer (paragraph 28).
- Storage of non-liquid waste other than at the premises where it is produced, incidental to collection or transport (paragraph 40).
- Temporary storage of waste, pending its collection, on the site where it is produced (paragraph 41).

7.6 Given the increased volumes of WEEE that it is anticipated will be stored pending movement to a treatment facility, a further exemption for the storage of WEEE, both hazardous and non-hazardous, is proposed, at any secure place and subject to appropriate rules. For WEEE, this will replace the current exemption under paragraph 28 (which does not apply to hazardous waste) but will be additional to the exemptions under paragraphs 40 and 41. These exemptions, which do not have to be registered, will be specifically extended to WEEE.

7.7 It was asked as part of the consultation whether consultees were content with the exemptions as proposed. Following consultation, it was decided to raise the maximum amounts that could be stored and treated under the exemptions to 80 cubic metres and 5 tonnes/day respectively and the storage period for gas discharge lamps to 3 months.

7.8 Following a question in the consultation, proposals were made for an exemption for the crushing of waste gas discharge lamps for the purpose of volume reduction prior to collection. This activity used to be covered by an exemption in paragraph 27 of Schedule 3 to the Waste Management Licensing Regulations 1994 which, inter alia, includes the crushing of waste at the place where it is produced. However, following the classification of gas discharge lamps as hazardous waste, this has ceased to be available from 15 July 2006. It has therefore been decided to allow the activity under suitable general rules to ensure compliance with the Waste Framework Directive. Uncontrolled and uncontained crushing of lamps (which would have probably fallen outside the terms of the previous exemption as breaching Article 4 of the Directive) will not be allowed.

8.0 Exemptions costs and benefits

Benefits of Option 1 – Do nothing.

8.1 The main benefit of “doing nothing” would be the fact that there would be no regulatory change.

Costs of Option 1– Do nothing

8.2 There is no exemption for the repair and re-furbishment operations, which would fall to be treated as treatment of WEEE under the Directive under the current system and therefore an application for a licence would have to be made in respect of any such operations. The operator will incur costs in obtaining the information required to put a licence application together. This may include costs in respect of verifying planning permission, which is required before a licence can be granted, site investigations, environmental assessments and preparation of licence applications. Operators will need to demonstrate that they are a fit and proper person including provision of a technically competent manager. It can take several months to obtain a waste management licence; this is partly because this is a statutory requirement on the Agency to consult certain bodies on the proposals. In discussion with industry, it is estimated that the average cost of preparing an application is £5140 per application (see Table 1) in comparison to an estimated cost of £206 per registration of an exemption (see Table 2). Higher costs could potentially act as a disincentive for operators, particularly smaller community based social enterprises, to refurbish WEEE for reuse. If the exemption was not available and such operators had to apply for a new licence, and assuming that some 100 operators wished to do so, there would be a total cost of £1,365,400 in year one for licences (see Table 2 below). Those repairing and refurbishing WEEE under a licence would be unaffected.

8.3 Similar considerations apply to storage operations prior to treatment although the licence application process would be likely to be less burdensome. Assuming up to 1000 new facilities that might wish to store WEEE prior to treatment, there would be a total cost of £13,448,000 for licences in year one (see Table 2 below).

8.4 It is anticipated that no site at which gas discharge lamps for collection would seek a waste management licence to allow crushing prior to transport. Such sites would have to ensure that intact lamps were shipped in the appropriate containers to treatment sites which may lead to additional costs although these cannot be quantified. Alternatively, however, the operators of mobile crushing plant might apply for a mobile plant licence to continue operations. Following changes to the delivery of mobile plant licences by the Agency, and provided the crushing equipment used was the same, only one licence for each operator would be necessary but there would be application and subsistence charges to pay as well as the costs identified in applying for a licence. Each operator would pay £14,000 calculated on the same basis as used in Tables 1 and 2. Waste producers would not have the option of having dedicated crushing equipment at their premises.

Benefits of Option Two - Provide exemptions for repair and refurbishment for re-use as well as exemptions for the storage of WEEE and the crushing of waste gas discharge lamps for the purpose of volume reduction prior to collection with general rules which are proportionate to the risks posed by the activities.

Economic

8.5 It is proposed that an exemption should be provided from waste management licensing in order to reduce the regulatory burden and encourage the re-use of WEEE where any repair and refurbishment activities pose a low risk and are deemed appropriate for such an exemption. This could encourage more operators to undertake refurbishment and could also lead to long-term opportunities. It is believed that some establishments and undertakings may be repairing and refurbishing WEEE without a licence. An exemption will encourage them to register and comply fully with the legal requirements; numbers are by definition unknown.

8.6 The development of a WEEE-specific exemption for treatment should reduce the regulatory burden on industry and the Agency and is consistent with proportionate regulation. Operators will be able to make informed commercial decisions with a full range of options available to them, avoiding unnecessary licence applications or modifications and minimising confusion to industry.

8.7 Storage under the proposed exemption will facilitate the organisation and movement of WEEE from collection facilities or businesses to treatment facilities. The general rules will encourage prevention of damage, thus enhancing the prospects for successful recovery and re-use. It is an appropriate level of control for what should be a low risk operation at the scale envisaged.

8.8 The WEEE Directive requires that gas discharge lamps have to be treated by removal of mercury before final disposal or recovery. All separately collected lamps will therefore have to be moved to a suitable treatment facility leading in some cases to journeys of some distance. The option of having lamps crushed before transport to a treatment facility under an exemption will help to reduce the costs of this operation and will facilitate the achievement of the Directive's recovery target by encouraging waste producers to send lamps to treatment facilities.

Social

8.9 DTI have noted in their consultations that refurbished WEEE could be made available to lower income groups. Providing for an exemption for the repair and refurbishment of WEEE for reuse could potentially encourage the number of operators who choose to undertake such repair and refurbishment. Indeed, many of the operations that refurbish WEEE are themselves social enterprises and give employment opportunities to their local communities.

8.10 Smaller storage facilities operating under an exemption will be less intrusive and will encourage separate collection of WEEE.

Environmental

8.11 By avoiding the need to purchase new EEE, re-use of WEEE is a more sustainable way of dealing with WEEE than recycling. The general rules apply the relevant Directive requirements to the exemption and make general rules to ensure no harm arises to human health or the environment.

8.12 As well as giving greater choice to those transporting waste gas discharge lamps to treatment facilities, the exemption for crushing of lamps prior to transport has the following environmental benefits:

- the volume to be transported is considerably reduced leading to a lower number of vehicle movements and therefore emissions; and
- the controlled crushing under the general rules of the exemption with its rigorous emission limit for mercury may present a far lower risk than arises from the movement of whole tubes subject to breakage until arrival at the treatment plant (although the duty of care should ensure that transport is secure and breakages do not occur).

Costs of the new exemptions

8.13 Sites that currently store WEEE under an exemption prior to it being handed over for treatment under the WEEE Directive will be able to continue to do so and new sites will be able to store WEEE under the exemption, including hazardous WEEE. The new storage exemption for WEEE will be free. Application for a storage exemption is not onerous; organisations are simply required to register their activity with the Environment Agency. This involves the completion of a straightforward form available on the Agency's website or a 'phone call to the Agency's National Customer Contact Centre. This relatively new procedure will not be reflected in the £206 cost to business of registering an exemption at Table 2.

8.14 Exemptions for treatment need to meet the WEEE Directive requirements. As a result there will be some costs for this exemption. Operators who register the treatment exemption will be required to cover the costs of an inspection prior to registration and an annual inspection thereafter. This is a specific requirement of the WEEE Directive. The Agency needs to verify the types and quantities of waste to be treated under a registered exemption, the general technical requirements to be complied with, and information on safety standards. Registration will be based on the existing provisions of Regulation 18 of the Waste Management Licensing Regulations 1994. The appropriate fee must accompany registration.

8.15 This will provide the Agency with the necessary resources to undertake the appropriate level of inspection in order to protect the environment and human health, and therefore ensure compliance with Article 4 of the Waste Framework Directive. It is estimated that the cost of registration of the new refurbishment exemption will be £509 with an annual charge of £272 to cover inspection costs.

8.16 In comparison to waste management licensing costs, refurbishers under the new exemption and operators storing WEEE will benefit from lower application and subsistence costs than if they had to apply for or modify a licence. As set out the table below, in providing exemptions for storage there is a potential saving of £13,448,000 and in providing an exemption for repair and refurbishment there is a potential saving of £1,293,900.

8.17 The new exemption for the crushing of lamps prior to transport will, like the storage exemption, be free. Costs of registration for those whose lamps are to be crushed and transported may be reduced by assistance from the companies that provide fixed or mobile crushing plant who will need to ensure that their clients have registered an exemption.

Table 2 Comparison of exemption and licensing costs for WEEE storage and refurbishment

	Licensing costs if storage exemption were not provided (Option 1) ¹	New WEEE storage exemption (option 2)	Licensing costs If refurbishment exemption were not provided (Option 1) ¹	New WEEE refurbishment exemption (option 2)
Estimated number of sites thought to be able to operate under the new exemptions	1,000 ²	1,000 ²	100	100
Regulatory costs	Licence application: £5,880 Average subsistence £2,634 (would be pro rata from the date of determination of the licence)	£115 (cost covered by Grant in Aid so no cost to the operator)	Licence application: £5,880 Average subsistence £2,634 (would be pro rata from the date of determination of the licence)	£509 initial application (£272 annual charge thereafter)
Funding source	Charges	Grant in Aid	Charges	Charges
Preparation of registration of exemption or licence application	£5140 ³	£206 ³	£5140 ³	£206 ³
Total cost to EA of industry sector in year 1	£8,514,000 (50% of subsistence)	£115,000 (Grant in Aid)	£851,400 (50% of subsistence)	£50,900
Total paid by industry sector in year 1 (excluding infrastructure costs)	£13,654,000	£206,000	£1,365,400	£71,500
Total saving by providing exemption		£13,448,000 (£13,654,000 less £206,000)		£1,293,900 (£1,365,400 less £71,500)

Notes:

1. Figures for licensing charges are from April 2006.
2. This is a maximum figure. It is anticipated that a number of operators may potentially rely on the current exemption under paragraph 28. These are not explicitly for WEEE and also do not permit hazardous waste compliant.
3. Figure derived from data gathered at Waste Industry workshops held to collate information for the intended waste permit review RIA

9.0 Selective Treatment under Annex II of the WEEE Directive and BATTRT (Best Available Treatment, Recovery and Recycling Techniques) requirements

Options for treatment of WEEE

9.1 Option a) Do nothing. However, the WEEE Directive requires the selective treatment of all WEEE which will usually arise as a consequence of the separate collection requirements of the WEEE Directive.

Option b) Require that the selective treatments required in Annex II of the WEEE Directive are carried out by BATTRT in accordance with the WEEE Directive.

9.2 Implementing Option a) would be contrary to the WEEE Directive and would likely result in the UK being infracted for not implementing the WEEE Directive appropriately.

9.3 Implementing Option b) will bring costs in terms of the resources needed to treat WEEE to the requirements of the Directive. These costs will depend on the type and nature of WEEE which is separately collected, and the means and efficiency with which treatment is undertaken.

9.4 The benefits from treating WEEE to the Directive's requirements will be in terms of positive impacts on the environment, and on human health in the UK, and more widely. The treatment of WEEE will lead to the greater control of hazardous substances and materials within the WEEE stream and the effective disposal or recovery of these substances. This will prevent the dispersion into the environment of a range of hazardous materials and substances, and lead to benefits to the environment in terms of, for example, improvements to air and water quality, and benefits to human and animal health from a reduction in exposure to hazardous materials and substances.

9.5 This RIA covers the costs associated with the permitting requirements of Article 6 of the WEEE Directive. The benefits and costs resulting from the actual treatment of WEEE under the WEEE Directive have been discussed and estimated, where possible, in the Department of Trade and Industry's various partial RIAs that have accompanied their consultation documents on the implementation of the WEEE Directive in the UK. The DTI's latest estimates of the benefits and costs of the treatment of WEEE is at paragraphs 82-93 and Table 11 of the Partial RIA which is Part III of the consultation which started on 25 June.

9.6 To assist industry, Guidance on Best Available Treatment, Recovery and Recycling Techniques (BATTRT) and Treatment of Waste Electrical and Electronic

Equipment (WEEE) will be made available. This guidance has been subject to formal consultation by Defra in May 2005 as regards BATTRT and formal consultation by the Environment Agency on treatment in autumn 2004. The guidance will facilitate the most cost-effective approaches to treatment.

10.0 Technical requirements at treatment sites under Annex III of the WEEE Directive

Options for technical requirements

10.1 Option a) Do nothing. However, the WEEE Directive requires the selective treatment of all WEEE which will usually arise as a consequence of the separate collection requirements of the WEEE Directive.

Option b) Require that Annex III requirements are observed

Benefits of the technical requirements

Economic

10.2 The introduction of uniform technical requirements for storage and treatment sites at treatment facilities will result in a level playing field and greater certainty as operators will have to comply with the standards as a condition of the licence. Current holders of waste management licenses may have a varying range of conditions to comply with.

Environmental

10.3 Specific technical requirements in respect of sites where WEEE is stored at treatment facilities prior to treatment and for the treatment sites themselves will optimise reuse and recycling of those components or whole appliances and may lead to greater recycling. Enhanced recycling of raw materials may displace production and lead to a decrease in the use of virgin materials.

10.4 If sites are not permitted and the technical requirements are not observed there is a risk that WEEE will not be treated to the Directive's standards and environmental damage could result. There will be a disincentive for facilities to invest in suitable facilities and to treat WEEE with no harm to human health and the environment.

Costs of technical standards

10.5 It needs to be recognised that a number of WEEE Directive requirements may in any case be required as conditions of a waste management licence, which meets the requirements of the Waste Framework Directive (e.g. impermeable surfaces). In any case, the costs for individual sites of meeting the Annex III requirements will vary depending on the level of provision they currently make.

10.7 It is anticipated that those who are currently operating under Waste Management Licenses will already meet some of the Annex III requirements such as

impermeable surfaces and weatherproof covering and appropriate areas for spillage, and equipment for treatment of water.

10.8 Dependent on the growth rate of WEEE available for recycling, it is estimated that the number of sites requiring a new licence is estimated at between 30-50. It is anticipated that these sites may be required to meet the full costs of Annex III as they will not necessarily meet any of the requirements, but it would be expected that these costs would be recovered from producers and fall to be treated under the DTI's RIA. The primary costs for sites will arise from the need to provide impermeable surfaces where they do not exist or are inadequate. During the consultation, respondents were asked to provide cost estimates on site upgrades that would be required both for existing sites exhibiting some of the Annex III provisions and for new sites that would need to meet the full costs of Annex III. No responses were received on this point.

11.0 Other Issues affecting permitting costs

11.1 Although not connected with the WEEE Directive there are other initiatives taking place, both legislative and non legislative, that could have an impact on the permitting costs associated with the WEEE Directive. These are the introduction of the Hazardous Waste Regulations and the review of charging being carried out by Defra and the Environment Agency. The introduction of the Environmental Permitting Programme (EPP) should also help to reduce the costs of permitting.

11.2 Waste management licensing costs used in this RIA are based on the Environment Agency's 2006/07 charging scheme.

12.0 Simplification

12.1 The three proposed exemptions from the waste management licensing system outlined in Sections 7 and 8 help deliver the simplification element of the Government's Better Regulation agenda. The exemptions were referred to in "Lifting the Burden", the Defra Initial Regulatory Simplification Plan launched by Lord Bach, Parliamentary Under-Secretary for Sustainable Farming and Food in Defra, on 29 November 2005.

13.0 Sustainable Development

The Waste Hierarchy

13.1 Amendment of the Waste Management Licensing Regulations to deliver the purposes of the WEEE Directive contributes to the Department's strategic priority of sustainable development. Aside from the first purpose of the WEEE Directive set down in Article 1, which is to prevent WEEE arising, the other purpose to the Directive is "the reuse, recycling and other forms of recovery of such wastes so as to reduce the disposal of waste." This is also made clear in Recital 18 to the Directive, which states that "where appropriate, priority should be given to the reuse of WEEE and its components, subassemblies and consumables." The provisions of Article 6 of the Directive clearly reflect these aims, and the Waste Management Licensing Regulations have been amended so that Environment Agency will ensure that

sufficient conditions for obtaining a waste management license to treat WEEE are built in so as to give effect to these provisions.

13.2 Adoption of the storage and repair/refurbishment exemptions further contributes to the promotion of sustainable development as the exemptions are designed to encourage the re-use and recycling of WEEE. Encouragement of these activities will in turn lead to a reduction of the amount of WEEE disposed of in landfill. Both re-use and recycling are more sustainable and better environmental options than disposal in the waste hierarchy.

Avoidance of Pollution and Harm to the Environment

13.3 Adoption of the selective treatments in Annex II contributes to the Department's strategic priority of sustainable consumption and production through reduction of the volume of hazardous waste going to landfill. This is an aim of the WEEE Directive made clear in Recital 17, which states that "specific treatment for WEEE is indispensable in order to avoid the dispersion of pollutants into the recycled material or the waste stream." Through the selective treatments of Annex II, a range of hazardous materials are removed from any separately collected WEEE, including cathode ray tubes, mercury containing components and batteries.

Encouragement of Social Enterprise

13.4 Adoption of the storage and repair/refurbishment exemptions contributes to the Department's strategic priority of sustainable consumption and production through encouraging the recovery and reuse of WEEE. The fact that both exemptions are small-scale will encourage the development of social enterprise. The repair/refurbishment exemption is in particular designed to do so, as there are a range of organisations that this exemption is specifically aimed at, such as the community recycling networks.

14.0 Equity and Fairness

14.1 The environmental benefits of implementing the treatment aspects of the Directive are expected to fall broadly equally across different economic and social classes and across different economic regions within the UK. There may be a benefit for those living in areas closer to landfills and incinerators.

15.0 Consultation with small business: the Small Firms Impact Test.

15.1 Trade bodies that have SMEs in their membership were involved in discussions with Defra through meetings and stakeholder engagement in preparing proposals. These include the Environmental Services Association, the British Metals Recycling Association, and the Motor Vehicle Dismantlers Association. Discussions with ICER have also been undertaken through meetings and presentations at ICER industry meetings. Data in this RIA has also been taken from Waste Industry

Workshops that were held to capture information as part of the Waste Permitting Review.

15.2 Concerns have been raised by industry at licensing costs for small repair and refurbishment workshops and sites for storage. An exemption from waste management licensing is proposed which will offer proportionate regulation to the risk posed by the activities undertaken and will offer significant cost savings to operators whose sites fall within appropriate limits, the majority of which will be small businesses.

15.3 ICER, industry representatives and a few individual SMEs provided feedback as part of the public consultation held between 19 May and 19 August 2005. The concerns raised by some SMEs were as follows:

- That the proposed licensing fees seemed high, and it was suggested that a more size-focussed approach should be adopted. This issue is being addressed via the work being done on the Environmental Permitting Programme by Defra and the Environment Agency and the Agency's "Modernising Regulation" programme. It should be borne in mind, though, that the Environment Agency has a duty to recover the costs from the companies it regulates via a Waste Management Licence.
- That the consultation mentioned at 13.1 above did not cover effectively the full range and types of small businesses, as industry bodies like ICER are generally too expensive for very small-scale enterprises. However, several organisations sought to reflect SME concerns in their responses, including Cleanaway, RID UK and the British Metals Recycling Association. The Federation of Small Businesses also responded to the consultation on behalf of their 190,000 members.
- That the exemptions on offer for storage would not be of benefit to many SMEs in the business to business sector, who may have a very small amount of WEEE but wish to store it for a longer period. This concern, however, needs to be balanced out against the need to guard against false recovery.

16.0 Competition Assessment

16.1 An assessment of the potential impacts on competition for WEEE treatment facilities was made by DTI and reported in the partial RIAs that accompanied their consultation papers of November 2003 and July 2004. The more recent of these noted for treatment facilities:

"135. There are few existing companies in this sector as WEEE is not currently treated to the levels required by the Directive. There are however some companies that carry out similar functions to those required by the Directive.

136. Competition in this sector will be dependent on access to WEEE and the ability of producers to compare the costs of the services offered by these organisations on an equal basis. It is difficult to predict how this sector will develop following implementation of the Directive, though it is possible to look at how the method of allocation may result in barriers to firms entering the market."

16.2 The direct influence that the permitting options will have on these assessments is possibly minor, as the main drivers behind decisions to invest in treatment plants are related to availability of WEEE, the cost of the treatment facility itself (if not an existing plant) and available markets for the products of the treatment process. Permitting costs are a small part of these total costs and are unlikely to influence an overall decision to invest. The proposed regulations are also drafted in a manner that allows the maximum degree of freedom to the operator when designing and installing a treatment plant, provided the operation complies with the Directive requirement to meet BATRRRT (Best available treatment recovery and recycling techniques).

16.3 However, effective permitting, and the greater focus on WEEE that the Directive will supply can be an important driver in ensuring a level playing field and eradicating illegal or low standard treatment of WEEE to the benefit of those competing in the market.

17.0 Enforcement and Sanctions

17.1 The Regulations will be subject to enforcement by the Environment Agency carrying out their functions as the competent authority under the Waste Framework Directive. Offences would be as under the present Waste Management Licensing Regulations 1994 and enforced in the same way.

18.0 Monitoring and Review

18.1 The draft regulations will be monitored by the Environment Agency and Defra itself. The Waste Management Licensing system is expected to be included in the Environmental Permitting Programme to be launched as part of Defra's 5 Year Strategy 'Delivering the Essentials of Life'.

18.2 There will be a review of the WEEE Directive by the European Commission, which will allow the Commission and Member States to make an assessment of the costs associated with delivery of the requirements of the Directive, and make changes if and where appropriate.

19.0 Consultation

Within Government

19.1 Consultation has taken place with the Department of Trade and Industry, the Scottish Executive, the Welsh Assembly and the Department of Environment Northern Ireland.

Public Consultation

19.2 Implementation of the permitting requirements in Article 6 of the WEEE Directive has been previously consulted upon in earlier consultations undertaken by DTI, during the process of implementation planning for the Directive. These were:

- in Spring 2003, when the Government invited comments on a discussion paper which set out options for implementation;
- in Winter 2003-2004, when the Government canvassed views on a package of policy proposals for implementation of the two Directives;
- on 27 March 2006, when DTI made a high level paper on the Conclusions of their Implementation Review available on the DTI website; and
- in July 2006, when the Government issued its final proposals on implementation.

These previous consultation papers, together with summaries of their outcomes are available from the DTI website

19.3 In line with the Cabinet Office Code on Consultation, a wide-ranging 12 week public consultation exercise was carried out between 19 May and 19 August 2005 on the WEEE permitting regulations. A summary of the comments received responses and the Government response are published on the Defra website, at the following web address: <http://www.defra.gov.uk/corporate/consult/weee-article6/index.htm>

20.0 Summary and Recommendations

Table 3 Summary of costs and benefits

Option	Total cost per annum	Total benefit per annum
<p>Issue 1-Licensing (discussed at sections 5 and 6)</p> <p>Options a) Do nothing. WEEE would continue to be regulated under the current waste management licensing regulations.</p> <p>Option b) Amend the Waste Management Licensing Regulations 1994 to implement the WEEE directive requirements</p>	<ul style="list-style-type: none"> • £581,700-2,617,650 for operators currently licensed to treat WEEE • £370,110-616,850 for new treatment facilities dependant upon the uptake of operators wishing to treat WEEE 	<ul style="list-style-type: none"> • Compliance with the WEEE Directive • Encouragement of a level playing field • Encouragement of investment and may offer greater certainty that illegal operators will be removed • Encouragement of recycling and recovery of WEEE resulting in a reduction in waste to landfill • Raise awareness on waste to business and consumers more generally • Enhanced protection of human health and the environment. • Removal of hazardous material for

		the waste stream
<p>Issue 2- exemptions Exemptions from licensing can also be provided. This is a separate option to licensing above (exemptions are discussed at sections 7 and 8)</p> <p>Option a) Do nothing – WEEE would continue to be regulated under current exemptions from waste management licensing. Current exemptions only make provision for the storage of WEEE (although not explicitly). There are no exemptions for repair and refurbishment and therefore sites that treat WEEE would require a waste management licence.</p> <p>Option b) Provide exemptions with enhanced general rules for treatment which are proportionate to the risks posed by the activities and meet the requirements of the WEEE Directive and the Hazardous Waste Directive. Two such exemptions have been identified, one for refurbishment for re-use of WEEE and another for storage of WEEE prior to treatment.</p>	<ul style="list-style-type: none"> • £206,000 for storage exemption, • £71,500 for refurbishment exemption • Assuming that lamp crushing firms assist clients to register exemptions, a low cost is anticipated. 	<ul style="list-style-type: none"> • Savings of £12,131,000 in comparison to waste management licensing costs for those storing WEEE • Savings of £1,162,200 in comparison to waste management licensing costs for those repair and refurbishing WEEE • Continuation of lamp crushing prior to collection with environmental benefits. • Encouragement of social enterprises and potential employment opportunities • Encouragement of recovery and re-use
<p>Issue 3 – Selective treatment and BATRT Treatment requirements (discussed at section 9)</p> <p>Option a) Do nothing-</p>	<p>To be covered in DTI RIA</p>	<ul style="list-style-type: none"> • Compliance with the WEEE Directive • Encouragement of recycling and recovery of WEEE by

<p>allow operators to continue with current treatment practices.</p> <p>Option b) Require that the selective treatments required in Annex II of the WEEE Directive are carried out to BATTRT.</p>		<p>better quality of recyclate resulting in a reduction in waste to landfill</p> <ul style="list-style-type: none"> • Enhanced protection of human health and the environment • Raise awareness on waste to business and consumers more generally • Introduction of a level playing field by introduction of standards • Introduction of Best Available treatment recovery and recycling techniques resulting in environmental benefits with less dispersion of pollutants to land, air, and water
<p>Issue 4 – technical requirements at treatment facilities Storage requirements at treatment facilities (discussed at sections 9 and 11)</p> <p>Option a) Do nothing</p> <p>Option b) Require that the technical requirements in Annex III of the WEEE Directive are complied with.</p>	<p>Not known.</p>	<ul style="list-style-type: none"> • Compliance with the WEEE Directive • Encouragement of recycling and recovery of WEEE resulting in a reduction in waste to landfill by technical requirements being met at treatment facilities. • Less dispersion of pollutants to land, air, and water • Introduction of a level playing field by introduction of requirements

Recommendations

(a) That the Waste Management Licensing Regulations 1994 are amended to implement Article 6 of the WEEE Directive. (The “do nothing” scenario is not an option, as it will not deliver the Directive requirements; implementation will also deliver benefits as listed above.

(b) In addition to amending the Waste Management Licensing Regulations 1994 to apply the WEEE Directive, exemptions should be provided for storage of WEEE; the repair and refurbishment for WEEE for re-use; and the crushing of waste gas discharge lamps for the purpose of volume reduction prior to collection subject to appropriate general rules. This will give suitable regulatory control in comparison to the risks posed by the activity and offer significant savings to industry in comparison with waste management licensing.

(c) The selective treatment specified in Annex II and BATTTRT should be applied to deliver the WEEE Directive requirements. This will also bring benefits as listed above.

(d) The Annex III technical requirements should be applied to deliver the WEEE Directive requirements. This will also bring environmental benefits as listed in the table above as well and introducing a level playing field.

21. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: Ben Bradshaw

Date: 12th December 2006

Minister's name: Ben Bradshaw

Title: Minister of State (Commons)

Department: Department for Environment, Food and Rural Affairs

22. Contact points

13.1 Contact points on the RIA and for more general enquires on the WEEE permitting regulations extension of waste management controls to agricultural waste, and mines and quarries waste, are shown below:-

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