

EXPLANATORY MEMORANDUM TO

THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WASTE MANAGEMENT LICENSING) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2007

2007 No. 1085

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Regulations amend an error in the transitional charges provision in paragraph 4 of Schedule 2 to the Waste Electrical and Electronic Equipment (Waste Management Licensing) (England and Wales) Regulations 2006 S.I. No. 2006/3315 (“the 2006 Regulations”).

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

3.1 The regulations correct an error in the original regulations. As an error has been made in the 2006 Regulations, this Statutory Instrument will be issued free of charge to all known recipients of the 2006 Regulations.

3.2 The effect of the error was to apply a charge of £265 on an initial registration instead of the charge of £495 which had been consulted on. The effect of these regulations is therefore to increase the initial registration charge.

4. Legislative Background

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68).

4.2 The Regulations amend the 2006 Regulations to correct an error. The 2006 Regulations transposed the treatment and permitting requirements of Directive 2002/96/EC on waste electrical and electronic equipment (the WEEE Directive). They also made provision for an exemption from waste management licensing for repair and refurbishment for re-use of WEEE (paragraph 49 of Schedule 3 to the Waste Management Licensing Regulations 1994).

4.3 Paragraph 4 of Schedule 2 required establishments or undertakings that notify this exempt activity to pay an initial registration fee of £265 and a renewal registration fee of £265. The effect of the amendment is to increase the initial

registration fee for notifying an exempt activity falling within paragraph 49 of Schedule 3 to the Waste Management Licensing Regulations 1994 to £495. The renewal registration fee of £265 is unchanged.

4.4 The 2006 Regulations were accompanied by an Explanatory Memorandum. The House of Lords Merits of Statutory Instruments drew special attention to and took evidence from officials on the 2006 Regulations.

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 2006 Regulations provided for appropriate exemptions from waste management licensing for WEEE recovery and storage operations. One of these was an exemption for repair and refurbishment for re-use of WEEE (paragraph 49 of Schedule 3 to the Waste Management Licensing Regulations 1994). As this operation is treatment within the terms of the WEEE Directive, Article 6(2) of the Directive provides that the competent authority (the Environment Agency) must inspect the operation before the exemption can be registered to satisfy itself that there is no risk to human health and the environment and to verify the types and quantities of waste to be treated; the general technical requirements to be complied with; and the safety precautions to be taken. It also provides that the inspection shall be carried out at least once a year. To transpose these requirements the 2006 Regulations make this exemption a notifiable exempt activity and provide that the registration is conditional on both satisfactory initial and subsequent annual inspections.

7.2 The Regulations were subject to full public consultation from 19 May to 19 August 2005. Paragraph 3.17 of the consultation document stated

“Notifications to the Environment Agency for registration shall be accompanied by the appropriate fee. A fee will be required to cover the Environment Agency’s cost of the initial and annual inspection. Notification of the repair and refurbishment exemption will be subject to an initial application payment of £495 and an annual subsistence fee of £265.”

7.3 The accompanying Partial RIA contained these figures and the draft regulations also specified both these figures. Some respondents to the

consultation noted that the charges that were being placed on sites registering an exemption to repair and re-furbish WEEE contrasted unfavourably with registration of a proposed exemption for storage of WEEE which has no charge. They sought a review of the application and subsistence fee for this exemption to a lower sum and/or the removal of the application fee so that the annual inspection fee would only apply. There was a suggestion that the fees should be waived for not-for-profit or charitable concerns. The Government response was that Treasury guidance is that such costs should be recovered, whether or not the charge is paid by a charity or not-for-profit concern. The fees proposed are intended to only recover the costs of, respectively, a pre-registration inspection and an annual visit thereafter and are significantly less than the alternative cost of applying for or holding a Waste Management Licence.

7.4 However, the 2006 Regulations as made omitted the initial £495 charge and left the £265 renewal registration charge as the charge payable on both initial registration and on renewal. This was an error and, if not corrected, would mean that the Environment Agency would not be able to recover the costs of the initial inspection. These Regulations rectify this error.

8. Impact

8.1 A Regulatory Impact Assessment for this instrument is attached to this memorandum at Annex 1.

8.2 There is no impact on the public sector.

9. Contact

Stewart Marshall at the Department for Environment, Food and Rural Affairs (Defra) Tel: 020 7082 8503 or e-mail: stewart.b.marshall@defra.gsi.gov.uk can answer any queries regarding the Regulations.

Waste Management Division Permitting Development Unit
Defra
6/E7 Ashdown House
123 Victoria Street
London, SW1E 6DE

**FINAL REGULATORY IMPACT ASSESSMENT
(RIA)
THE WASTE ELECTRICAL AND
ELECTRONIC EQUIPMENT (WASTE
MANAGEMENT LICENSING) (ENGLAND AND
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THE WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WASTE MANAGEMENT LICENSING) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2007

1.0 Purpose and intended effect of the measure

1.1 The measure is intended to correct an error in the making of the Waste Electrical and Electronic Equipment (Waste Management Licensing) (England and Wales) Regulations 2006 (the 2006 Regulations). For ease of reference and to put the effect of the regulations into context, this RIA extracts relevant details from the Final RIA for the 2006 Regulations related to the exemption for the repair and refurbishment for re-use of WEEE. This is referred to hereafter as the Final 2006 RIA.

1.2 The Final 2006 RIA noted that there is an option under Article 6 of Council Directive 2002/96/EC on waste electrical and electronic equipment (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 and that it was proposed to use this option for facilities that repair and refurbish of WEEE for re-use. The exemption was added to those in Schedule 3 of the Waste Management Licensing Regulations 1994 (WMLR 1994).

1.3 In making the necessary legal provisions, the 2006 Regulations made on 12 December were deficient in that they did not include the charge for the initial notification for registration of this exemption. These regulations amend the 2006 Regulations to include the charge. The charge is intended to pay for the inspection required by Article 6(2) of the WEEE Directive.

2.0 The background

2.1 The transposition of the WEEE Directive has provided an opportunity to consider the availability of exemptions from waste management licensing for recovery operations involving WEEE. The Waste Electrical and Electronic Equipment (Waste Management Licensing) (England and Wales) Regulations 2006 included an exemption for those repairing and refurbishing WEEE for re-use. This exemption was made a notifiable exemption and registration was made conditional on the Environment Agency satisfying itself by an inspection that the operation complied with the WEEE Directive requirements and its continuing registration conditional on further annual inspections for the same purpose.

2.2 Notifiable exemptions were introduced for certain recovery activities on land (under paragraphs 7A, 8A, 9A, 10A, 19A and 46A of Schedule 3 to the WMLR 1994 by the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) (No. 3) Regulations 2005. Initial and thereafter annual notifications attract charges, the initial notification charge being at a higher level than the later annual charges. These charges pay for the Environment Agency's costs, including the inspections under the new WEEE exemption.

3.0 Basis of risk assessment

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.

3.2 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.

3.3 Licensed or exempt treatment sites will be required to operate under the Best Available Treatment Recovery and Recycling Techniques (BATTRT) and to operate under specific technical requirements 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 although this will not be appropriate for sites operating under the repair and re-furbishment exemption. 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 as well as the inability to recover more WEEE.

4.0 Issues and options

4.1 The Final 2006 RIA noted that for the purpose of the RIA, costs and benefits were assessed against the base of current practice continuing but “do nothing” with regard to applying the Directive requirements could not be regarded as a practical option.

4.2 The Final 2006 RIA considered, as a discrete issue, exemptions from licensing. It pointed out that 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. It considered the following options:

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 such as repair and re-furbishment for re-use 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. One such exemption was identified as repair and refurbishment for re-use of WEEE.

4.3 Following consultation, option b) was chosen. The main concern that consultees raised about the proposed exemption was that it was too restrictive, and the storage and treatment limits were increased in the light of this feedback. A minority of stakeholders had concerns that the repair and refurbishment exemption would be open to abuse from rogue operators who are in fact breaking down units for export. This problem is being addressed by setting down clear general rules under which the exemption must operate and by the inspection requirements.

5.0 Exemptions

Option for the exemption

5.1 The Final 2006 RIA explained that 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.

5.2 Pending the forthcoming review of exemptions, it was considered appropriate to consider whether any changes to the exemptions set out in Schedule 3 to the WMLR 1994 should be made to encourage the recovery and treatment of WEEE. Certain items and classes of EEE and WEEE were 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 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 that are, or intend to be, engaged in providing for re-use of WEEE.

5.3 It was asked as part of the consultation whether consultees were content with the exemption as proposed. Following consultation, it was decided to raise the maximum amounts that could be stored and treated under the exemption to 80 cubic metres and 5 tonnes/day respectively.

Costs and benefits

Benefits of Option 1 – Do nothing

5.4 The only identified benefit of “doing nothing” would be the fact that there would be no regulatory change.

Costs of Option 1– Do nothing

5.5 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 in comparison to an estimated cost of £206 per registration of an exemption. 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 175 operators wished to do so, there would be a total cost of £2.4m in year one for licences (see table below). Those already repairing and refurbishing WEEE under a licence would be unaffected (although they would not have the option of surrendering their licence to operate under the exemption).

Benefits of Option Two - Provide exemptions for repair and refurbishment for re-use

Economic

5.6 An exemption has been 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 will encourage operators to undertake refurbishment. 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; the Environment Agency have had expressions of interest in registering this exemption from some 175 establishments and undertakings in the social enterprise sector.

5.7 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.

Social

5.8 DTI have noted in their previous 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.

Environmental

5.9 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 ensure no harm arises to human health or the environment.

Costs of the new exemptions

5.10 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 Regulations 18 and 18AA of the Waste Management Licensing Regulations 1994. The appropriate fee must accompany registration.

5.11 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. The cost of registration of the new refurbishment exemption will be £495 with an annual renewal charge thereafter of £265 to cover inspection costs¹.

8.16 In comparison to waste management licensing costs, refurbishers under the new exemption will benefit from lower application and annual costs thereafter than if they had to apply for or modify a licence. As set out the table below, in providing an exemptions for repair and refurbishment for re-use there is a potential saving of £2.3m in year 1.

Table: Comparison of licensing costs if repair/re-furbishment exemption were not provided and costs of the exemption

	Option 1 – waste management licences (WML costs are for 2006/07)	Option 2 - New WEEE repair and re-furbishment exemption
Estimated number of sites thought to be able to operate under the new exemptions	175	175
Regulatory costs	Licence application: £5,880 plus average subsistence £2,634 (would actually be pro rata from the date of determination of the licence)	£495

¹ The Final 2006 RIA referred to charges of £509 and £272 due to up-rating in line with the charges in the Environment Agency waste management licensing scheme for 2006/07. However, this up-rating was not required as the charges will be applied as consulted on in May 2005.

Preparation of registration of exemption or licence application (Figures derived from data gathered at Waste Industry workshops held to collate information for the intended waste permit review RIA)	£5140	£206
Total paid by industry in year 1 (excluding infrastructure costs)	£ 2,389,450	£ 117,425
Regulatory costs in year 2 onwards	£5268	£265
Total paid by industry in year 2 onwards	£921, 900	£46,375

6.0 Simplification

6.1 This exemption from the waste management licensing system helps 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, dated 29 November 2005.

7.0 Sustainable Development

7.1 Adoption of the 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. Re-use is a more sustainable and better environmental option than disposal in the waste hierarchy. The fact that the exemption is small-scale will encourage the development of social enterprise. Indeed, there is a range of organisations that this exemption is specifically aimed at, such as the community recycling networks.

8.0 Equity and Fairness

8.1 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.

9.0 Consultation with small business

9.1 Trade bodies that have SMEs in their membership were involved in discussions with Defra through meetings and stakeholder engagement in preparing the 2006 Regulations. 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.

9.2 Concerns have been raised by industry at licensing costs for small repair and refurbishment workshops. The exemption from waste management licensing offers 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.

9.3 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 main relevant concern raised by some SMEs was that the consultation mentioned at 9.1 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 as did the Furniture Recycling Network which represents the target sector.

10.0 Competition Assessment

10.1 An assessment of the potential impacts on competition for industry as a whole arising from the transposition of the WEEE Directive was made by DTI and reported in their Final RIA (<http://www.dti.gov.uk/files/file36181.pdf>) which accompanied the UK WEEE regulations. This noted that “the markets it impacts on are diverse and dynamic and large in relation to the potential costs” for the SI. The repair and refurbishment exemption mitigates these costs for smaller players in the sector concerned.

11.0 Enforcement and Sanctions

11.1 The Regulations will 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.

12.0 Monitoring and Review

12.1 Defra has begun a review of exemptions from waste management licensing which will include the exemption.

13.0 Consultation

13.1 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. Some respondents to the consultation noted that the charges that were being placed on sites registering an exemption to repair and re-furbish WEEE contrasted unfavourably with registration of a proposed exemption for storage of WEEE which has no charge. They sought a review of the application and subsistence fee for this exemption to a lower sum and/or the removal of the application fee so that the annual inspection fee would only apply. There was a suggestion that the fees should be waived for not-for-profit or charitable concerns. The Government response was that Treasury guidance is that such costs should be recovered, whether or not the charge is paid by a charity or not-for-profit concern. The fees proposed are intended to only recover the costs of, respectively, a pre-registration inspection and an annual visit thereafter and are significantly less than the alternative cost of applying for or holding a Waste Management Licence.

14.0 Summary and Recommendations

14.1 Compared to Option 1 - no exemption for repairing and re-furbishing WEEE for re-use - and assuming some 175 businesses take up the exemption, Option 2 will allow savings of about £2m in the first year and nearly £1m thereafter. These are both regulatory savings in terms of charges payable to the Environment Agency and administrative costs.

14.2 Failure to amend the 2006 Regulations to provide the appropriate charge for those registering the exemption for the first time would mean that we would not be able to comply with the Directive requirements for this exemption. The exemption would therefore need to be withdrawn and the savings would be lost.

15. Declaration

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

Signed: Ben Bradshaw

Date: 28th March 2007

Minister's name: Ben Bradshaw

Title: Minister of State (Commons)

Department: Department for Environment, Food and Rural Affairs

16. Contact points

16.1 Contact points on the RIA and for more general enquires on the WEEE permitting regulations are shown below:-

RIA Contact Point:

James Vause

Environmental Protection Economics Division

Department for Environment, Food and Rural Affairs

Zone 5/F6

Ashdown House

123 Victoria Street
LONDON SW1E 6DE
E-mail: james.vause@defra.gsi.gov.uk

General Enquiries:
Rajnika Patel
Waste Management Division
Department for Environment, Food and Rural Affairs
Zone 6/E7
Ashdown House
123 Victoria Street
LONDON SW1E 6DE
Tel: 020 7082 8773
Fax: 020 7082 8764
E-mail: rajnika.patel@defra.gsi.gov.uk