



Department
for Business
Innovation & Skills

IMPLEMENTATION OF THE WEEE
RECAST DIRECTIVE 2012/19/EU
AND CHANGES TO THE UK WEEE
SYSTEM

Consultation

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Llywodraeth Cymru
Welsh Government

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Implementation of Recast WEEE Directive 2012/19/EU and Changes to the UK System

This consultation seeks to address two issues:

1. How the Government should amend the existing UK WEEE Regulations to ensure compliance with [the recast WEEE Directive](#) published on 24 July 2012.
2. How to respond to concerns expressed by the UK producers of electrical and electronic equipment under the Environmental Theme of the Red Tape Challenge about the cost of meeting their financial obligations under [the UK WEEE Regulations](#) (the Waste Electrical and Electronic Equipment Regulations 2006 (SI 2006 No. 3289, as amended by SIs 2007 No. 3454, 2009 No. 2957, 2009 No. 3216 and 2010 No. 1155)).

This consultation is an essential part of the process leading towards the introduction of revised WEEE Regulations that are expected to enter force from 1 January 2014.

Issued: 17 April 2013

Respond by: 21 June 2013

Enquiries to: Graeme Vickery, Department of Business Innovation and Skills, 1 Victoria Street, London SW1H 0ET, email weee@bis.gsi.gov.uk

This consultation is relevant to: Producers, retailers, distance sellers, distributors of electrical and electronic equipment, local authorities, waste management companies and treatment operators of waste electrical and electronic equipment and re-use organisations specialising in the refurbishment and reuse of electrical and electronic equipment.

1. Foreword by Rt Hon Michael Fallon MP Minister of State for Business and Enterprise

A top priority for this Government is to achieve strong, sustainable and balanced growth. Promoting better regulation and encouraging deregulation across Government is my responsibility. It is a core component of our strategy to achieve growth - to consider regulation as a last resort rather than the first option. And where regulation is absolutely needed, to ensure application of regulation in a more business-friendly way.

Those are the underlying principles behind the proposals in this consultation for changes to the existing regulations for the collection, treatment recovery, recycling and re-use of waste electrical and electronic equipment. Regulation is unavoidable if we are to ensure a level playing field that drives competition and stimulates innovation whilst ensuring environmental objectives and compliance with the obligations laid down in the revised WEEE Directive are achieved.

Through our Red Tape Challenge – which invites businesses to tell us where action on red tape is most urgently required - we have committed to scrap or improve at least 3,000 regulations that affect business. The proposed changes to the WEEE system are an important part of that commitment. They are a direct response to concerns expressed by producers of electrical and electronic equipment about the cost of compliance within the existing regulations. We are inviting views as to whether the current system needs to be changed and if so, how. We are putting forward three alternative systems for change and a “do nothing” option on which I welcome your views.

In addition we are proposing a simplified means of compliance for small producers and greater flexibility that would allow local authorities, who play a vital part in the collection of unwanted items, to maximise the potential income from their WEEE collections.

The revised Directive presents us all with new challenges. Not least the need to achieve more challenging collection targets and increased product scope in the future. But the biggest challenge is to ensure we meet those commitments in a way that is as least burdensome as possible – particularly for producers and treatment facilities. I want to know whether our proposals do this or whether you have alternative ideas to suggest.

In summary I am putting forward a package of measures in this consultation document that reduce the cost of compliance for producers and brings greater flexibility for local authorities whilst minimising the business burdens of the revised Directive.

2. Executive Summary

1. This consultation covers two WEEE issues and two related matters.
2. **Section 1** focuses on the proposed changes to the UK WEEE system brought about by the recast of the WEEE Directive published by the European Commission on 24 July 2012. All EU Member States are required to introduce this by 14 February 2014 at the latest. However, for the reasons outlined below, the UK intends to lay new regulations to commence on the 1 January 2014.
3. **Section 2** details our proposals for improvements to the UK WEEE system as a result of the findings of the Environmental Theme of the Government's Red Tape Challenge (RTC). The Government will take full account of the consultation responses in determining whether any changes to the current WEEE system are required. The Government would hope to introduce any such improvements by 1 January 2014. The RTC proposals are independent of the WEEE recast changes, but there are links between the two. Our aim is to introduce regulations which deal with both the RTC improvements and recast issues. The use of a common commencement date at the start of a compliance year will minimise disruption, regulatory burden and costs to all involved.
4. **Section 3** covers the review of producer responsibility regulations and the powers of entry provisions related to the enforcement of the WEEE Regulations.

SECTION 1 - Changes to the UK WEEE as a result of the recast WEEE Directive

5. The aim of the original WEEE Directive and the recast is to ensure that EU Member States prevent or minimise the levels of discarded electrical and electronic equipment (EEE) within the general waste stream and reduce the environmental impact of EEE at end-of-life. The Directive is an environmental measure addressed at improving the environmental performance of all operators involved in the lifecycle of EEE. Implementation is made by a set of regulations covering the whole of the UK.
6. In December 2008, the Commission published its [proposals for a recast WEEE Directive](#). In April 2009 the UK held a public consultation on the Commission proposals. This was a joint consultation covering proposals on both the WEEE Directive and the related Restriction of the use of certain Hazardous Substances in electrical & electronic equipment (RoHS) Directive and was used to inform the UK policy line in the negotiations.
7. Following negotiations between the Council and European Parliament, [a final Directive](#) was agreed and subsequently published in the EC Official Journal on 24 July 2012. A consultation stage impact assessment (BIS 0382) has been produced by BIS based on the final Directive.
8. The Government intends to use the "copy out" principle to transpose the recast Directive. This means that the UK will not go further than implementing the minimum requirements of the Directive. The current UK Regulations (and the amending Regulations) will be repealed and new Regulations put in place to implement the changes brought about by the recast. Where the provisions of the original Directive are

unchanged by the recast, the language in the draft regulations accompanying this consultation remains unchanged from the current regulations.

9. In this consultation we ask questions about achieving the higher WEEE collection targets, the widening of the scope that will bring more items within the ambit of the regulations and the policy of Individual Producer Responsibility (IPR). We also welcome comments on the implementation policy, attached draft regulations and impact assessments.

SECTION 2 - Improvements to the UK WEEE system as a result of the Red Tape Challenge.

10. In implementing the recast, the Government will retain a market-based approach to the system for ensuring that producers fulfil their obligations under the Directive. We will seek to improve the UK WEEE system further as a result of the RTC commitments announced in the Budget last year. That commitment seeks to address concerns both that the amount that many producers have to pay through producer compliance schemes is often much higher than the true costs of processing WEEE, as well as concerns that the administrative burden placed on small producers is too high.
11. The Government seeks your views on four options relating to the system for the collection and financing of WEEE arising from households:
- **Option 1** – Do nothing
 - **Option 2** – A national compliance scheme
 - **Option 3** – A collection target and compliance fee
 - **Option 4** – A matching process of collection sites to PCSs
12. The Government does not have a single preferred option however, in the light of the informal consultation and analysis conducted to date, we are minded at present to pursue either Options 3 or 4. In addition, we intend to simplify the system of compliance for small producers that fall below a *de minimis* threshold of EEE placed on the market. Views are sought on the level for such a threshold. It is also proposed to give the operators of designated collection facilities (DCFs) of household WEEE (i.e. local authority sites and private operators) the freedom to retain control over the treatment of WEEE streams likely to generate net revenue for the collector. This would be instead of DCFs being required to hand over those streams to a producer compliance scheme. This provision does not exist in the current Regulations.

SECTION 3 - Producer Responsibility Coherence and Powers of Entry

13. This consultation also deals with two other related matters which are currently the subject of other reviews:
- the review of powers of entry under the Protection of Freedoms Act 2012; and,
 - the introduction of greater coherence across all the UK producer responsibility regulations.

14. The revised WEEE Regulations will apply across the UK. Separate consultations will not be published by the devolved administrations.
15. After the consultation closes, BIS will aim to publish a Government response within 8 weeks. Should the responses to the consultation support changes to the existing system, there will be further consultation on a new set of draft regulations that take into account the necessary changes. The intention is to lay the final version of the Regulations before Parliament to come into force from 1 January 2014. The existing Regulations will be revoked on 31 December this year. We will aim to publish the UK government guidance notes for the new Regulations at least 10 weeks before that date.

3. How to respond

16. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
17. To simplify our evaluation process we would prefer respondents to complete their responses using the on-line survey:

www.surveymonkey.com/s/weee-consultation-2013

18. The consultation response form is [also available electronically on our consultation page](#) until the consultation closes.

This form can be submitted online/by email or by letter or fax to:

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Green Economy Team
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET
Tel: 020 7215 1836
Fax: 020 7215 8242
Email: weee@bis.gsi.gov.uk

Respondents in Scotland should also send their response to:

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Zero Waste Delivery
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Respondents in Wales should also send their response to:

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Cathays Park
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CF10 3NQ
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Respondents in Northern Ireland should also send their response to:

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Fax: 020 7215 8242
Email weee@bis.gsi.gov.uk

4. Confidentiality & Data Protection

19. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
20. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5. Help with queries

21. Questions about the policy issues raised in the document can be addressed to:

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1 Victoria Street
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Email weee@bis.gsi.gov.uk

22. The consultation principles are in Annex 1.

6. The proposals

23. The consultation is split into three sections. Section one deals with changes introduced by the recast WEEE Directive. Section two makes proposals to reform the household WEEE collection system in line with the Government's Red Tape Challenge and section three deals with producer responsibility coherence and the powers of entry review.
24. The Government does not currently have a preferred option in relation to section 2 of this consultation. Therefore, the draft regulations accompanying this consultation currently reflect option 1 (Do Nothing). Should the responses to the consultation support changes to the existing system, there will be further consultation on a new set of draft regulations that take into account the changes.

SECTION 1 – The Recast WEEE Directive

25. The five main changes introduced by the recast are:
 - the introduction of higher Member State collection and recovery targets and a changed methodology for calculating the WEEE collection rate;
 - a wider scope for the range of products covered by the Directive;
 - lowering the regulatory and cost burdens on business through the introduction of an “authorised representative” who can fulfil the obligations of the producer;
 - better controlling the illegal international trade in WEEE; and
 - a requirement for retailer take-back of very small WEEE in certain circumstances.
26. The current UK Regulations (as amended) will be repealed and new regulations put in place using the copy-out principle to implement the changes brought about by the recast. Where the provisions of the original Directive are unchanged by the recast, the language in the new Regulations will also remain unchanged.
27. The text and questions below focus on each article of the Directive in turn where significant changes will be introduced.

Article 2 - Scope

28. The recast increases the range of products covered within its scope. Currently, the Directive operates on a “closed” scope basis. There is a list of products and equipment split into ten different categories in Annexes 1A and B of the Directive, with specific examples of the products falling into each category. The recast Directive introduces an “open” scope from 15 August 2018. Open scope assumes that every EEE product is covered by the Directive, apart from a list of specifically excluded products. Current Regulation 5 and Schedules 1 and 2 require amendment in order to achieve this.
29. Article 2.1(a) requires closed scope on defined products to continue until 14 August 2018, with the immediate addition of photovoltaic panels to Category 4 (Consumer

Products). Article 2.1(b) requires a move to “open scope” from 15 August 2018. The new recast categories are given in Annexes 3 and 4.

30. **Photovoltaic (PV) Panels.** The scope of the recast is extended to include PV panels in Category 4 immediately upon implementation in Member States. The Government acknowledges that there are certain factors which warrant PV panels being treated differently from other household EEE, and is persuaded that applying any collection target upon implementation would not be realistic or pragmatic.
31. The vast majority of PV panels will not appear as waste for another generation and it is unlikely that PV panels, when de-installed, will be taken by a consumer to a local authority designated collection facility (DCF). We think placing a financial obligation on PV panel producers based upon weight of Category 4 EEE placed on the market and related to the collection of Category 4 WEEE would be unreasonable.
32. Nevertheless, the Government is committed to finding an approach which meets the legal and environmental objectives of the recast and ensures regulatory enforcement. We therefore intend to create a 14th category of EEE – “photovoltaic panels”. This will be on the basis that the Government is satisfied that PV producers are able to deliver a sustainable strategy for the collection and treatment of end-of-life PV panels through collective schemes. Most PV panels will not be disposed of at local authority DCFs. The Government has been told that the industry is establishing a network of private DCFs where old PV panels can be deposited.
33. The PV panel category will require producers to finance the collection of PV panels on a market share basis. This will be for the new category 14 – not category 4 WEEE in general i.e. if a producer places on the UK market 10%, by weight, of new panels in any one year then that Producer would pay for the collection and treatment of 10% of old panels in that year.
34. The Government has also taken the view that applying collection targets, as described in paragraphs 84-90 to the additional Category 14 would be unrealistic due to the fact that very few WEEE PV panels are currently being collected. In all other respects the requirements placed upon Category 14 producers will be that of other EEE producers.
35. **Lamp Category.** Given concerns raised with BIS about the long term viability of the separate “Gas Discharge Lamp” (GDL) Category 13 waste stream, it has been suggested that this category should be broadened to include all lamps covered by the Directive, (i.e. to include LED lamps). The justification for this is that changes in technology in that sector mean that LED light sources are rapidly replacing GDLs. Consequently fewer GDLs are now being sold but a large number will continue to be returned as waste for many years to come.
36. As a result, it is likely that in the long term, Category 13 will become an “orphan” waste stream – with WEEE arising in this category, but with increasing quantities of EEE lamps being placed on the market and reported in another. This would mean that the GDL WEEE would be financed by the decreasing number of producers in that market and that producers responsible for placing GDLs on the market (who have moved to LED technology) would not be required to bear the cost of collection and treatment.

37. The term “LED lamps” is intended to cover retrofit or user replaceable LED or OLED lamps, light sources and modules.
38. Articles 2.3 and 2.4 describe the product exemptions. Article 2 requires certain exemptions to begin from 15 August 2018. Given that all these products are currently exempt both as a consequence of the [Commission’s guidance](#) and current practice in the UK, the new Regulations will exempt them all from 1 January 2014.

Question 1: Do you agree with the Government’s approach on PV panels?

Question 2: Do you agree that the current reporting Category 13 should be expanded to include LED lamps?

Article 3 - Definitions

39. It should be noted that the definition of EEE at Article 3.1(a) remains the same as in the original Directive - “equipment which is dependent on electric currents or electro magnetic fields in order to work properly...”. This is different from [the recent recast of the RoHS Directive](#) , which now has an expanded definition stating that “‘dependent ‘ means, with regard to EEE, needing electric currents or electromagnetic fields to fulfil at least one intended function “. This change has expanded the scope of products covered by the original RoHS Directive.
40. The definition of “WEEE from private households” at 3.1(h) has changed. It now includes the additional sentence “Waste from EEE **likely** (*our emphasis*) to be used by both private households and users other than private households shall in any event be considered to be WEEE from private households”.
41. Concerns have been expressed that for some products (e.g. lamps and certain computing equipment), this will change how producers should categorise their reporting of Business to Consumer (B2C) and Business to Business (B2B) EEE placed on the market data and so significantly change their resulting B2C financial obligation. Our view is that this change does not affect the definition of waste from private households. The additional sentence refers to “likely” usage of waste from EEE. Given that producers are aware, when placing product on the market, of the probable split between B2C and B2B WEEE this should not change the way in which producers report that data to the Agencies.

Article 4 - Product design

42. Product design is currently dealt with in current Regulation 59. The Recast supplements the provisions on product design by the addition of the words “encouraging cooperation between producers and recyclers” to the Secretary of State’s responsibilities. There is also a new reference to the Waste Framework Directive. This is added to new Regulation 69.

Article 5 - Separate Collection

43. Article 5.2(c) is new and requires retailers with sales areas relating to EEE exceeding 400m² in any single store to take back very small WEEE (no external dimension over 25cm) free of charge with no obligation on the consumer to purchase EEE of an equivalent type. The recast provides for an opt-out from this obligation where it can be

shown that existing collection schemes are likely to be at least as effective as the “take-back” method of collection. For retailers who are members of the Distributor Takeback Scheme (DTS), this provision will not apply as the required assessment has already been developed and will be published in due course. Retailers who are not members of the DTS will be obliged to fulfil this new collection requirement.

Article 7 - Collection rate

44. This article introduces significantly higher Member State targets for the minimum WEEE collection rate – and the methodology for calculating them is new.
45. From 1 January 2016 the minimum WEEE collection rate will be 45% of the average total weight of EEE placed on the market over the preceding three years. From 1 January 2019, it will be 65%. In addition, the opportunity is offered to achieve an alternative target of 85% based on a “WEEE generated” methodology. This methodology is based on estimates of WEEE generated from data on product lifecycles. Article 7.5 of the recast Directive requires the Commission to devise a common methodology for the calculation of WEEE generated by 14 August 2015.
46. In the meantime, Member States are required to collect at least 4kg on average per inhabitant, or at a rate equal to the average collection rate achieved over the past three years, whichever is the greater.
47. In order to ensure that the UK meets the new targets, BIS has appointed WRAP to manage a project to establish a mechanism to estimate the quantity of WEEE that is collected and treated outside of the operation of the current Regulations and not recorded, (known widely as “unobligated WEEE”). Such “substantiated estimates” of WEEE can be counted towards the target under Article 16.4 of the recast Directive.
48. It is intended to include these estimates in the tonnage data supplied to the European Commission to assist the UK in demonstrating that it is meeting the new target from 2016.
49. One key material stream that is known to contain a significant proportion of WEEE - large domestic appliances (LDA) and to a lesser extent small domestic appliances (SDA) - is light iron. A protocol is being developed by WRAP with industry input to provide substantiated estimates of WEEE arising in light iron consignments arriving at any facility (AATF or ATF) to be shredded.
50. The tonnage figure derived from this protocol would be included in the amount of WEEE reported by treatment facilities in line with current reporting requirements for non-obligated WEEE. In order to identify the data that should be included in the protocol, a one-off trial will be undertaken with a defined number of operators over an agreed reporting period. This would validate the amount of LDA and SDA, by weight, within the light iron consignments. It will be important to ensure that all WEEE that falls within the protocol is treated in line with the Directive requirements.
51. The protocol will be subject to a regular review to ensure that the composition of the light iron stream has not changed. It is considered that this would be required every 3-5 years.

Question 3: Do you have any comments on the proposed approach of developing a protocol to estimate the tonnage of Large Domestic Appliances (LDA) and Small Domestic Appliances (SDA) collected and treated outside the WEEE system established by the regulations?

Question 4: What other measures might the Government take to establish "substantiated estimates" of WEEE collected and properly treated or sent for re-use via other routes - in particular B2B WEEE - in order to meet the new collection targets coming in to force in 2016?

Article 10 - Shipments of EEE

52. The provisions on EEE exports are new. Illegal shipments of WEEE disguised as legal shipments of used equipment, in order to circumvent and undermine waste treatment rules, is a serious problem. Such waste is often shipped to sites in countries outside the OECD that do not have the capacity to recycle and treat it effectively. This poses a threat to human health and the local environment.
53. The new provisions (in Annex VI) will require used EEE destined for export to be properly tested, documents and packaged before it can be exported for reuse. This change will put in place in law what is already agreed in guidance by the UK and other European countries and will help strengthen our enforcement activities.
54. The provisions of Annex VI are added at Regulation 49 and Schedule 14.

Article 11- Recovery targets

55. This article introduces new recovery targets:
- 70% recovery and 50% recycling for Category 8 (medical devices) immediately; and
 - All targets to be increased by 5% after three years, with a new 80% recycling target for gas discharge lamps.
56. The new targets are in Schedule 10, Part 2 of draft regulations.
57. Within four years, the Commission will examine the case for a mandatory 5% reuse target to be shown separately from the overall recycling target level

Article 12 - Financing of WEEE from Private households

58. Under an Individual Producer Responsibility (IPR) system, producers are individually responsible (financially or both financially and physically) for their own products at end of life. The allocation of individual financial responsibility to a producer for its own products is intended to create an economic and/or commercial incentive for those producers to design their products for easier repair, upgrading, re-use or recycling at end of life.
59. The original WEEE Directive allows for the financial responsibility placed on producers to be fulfilled either through collective producer responsibility (CPR) or individual producer responsibility. This text is retained in Article 12 of the recast Directive.

60. Individual Producer Responsibility could encourage improvements in eco-design and reductions in the volume and hazardousness of WEEE produced. However, the adoption of a practical IPR system in a way that is both compliant with the WEEE Directive and cost effective introduces a number of significant challenges. These challenges have resulted in the establishment of systems across Europe where producers largely meet their obligations via CPR principles. The challenges include:
- The costs associated with establishing a system of cost allocation from WEEE from different producers arising at collection sites;
 - The need and cost for producers to meet the requirement to provide financial guarantees for treatment of their WEEE in the event of market withdrawal or winding up;
 - The need to ensure that producers under an IPR system finance their share of “historic WEEE” arisings, (that is WEEE arising from products placed on the market before 13 August 2005); and
 - Product identification – the recast WEEE Directive does not require producers to mark their products with an identifiable, unique mark.
61. The Government’s WEEE Advisory Body (WAB) was established in 2007 and set up a sub group to consider the general principle of IPR, look at case studies around the world and [deliver a report on whether IPR could be practically and realistically implemented in the UK](#). Following the abolition of the WAB in 2010, the members of the sub group continued their work and produced a report for the Department in July 2012.
62. The IPR working group identified a shortlist of three potential options for moving towards greater IPR in the UK:
- **A Design for Reuse and Recycling weighting mechanism** which applies an increase/decrease to obligated tonnages based on the current actual treatment costs and the characteristics of products being put on the market.
 - **Return share based on brand sampling**, with the option for producers to separate out their own brand WEEE at own cost. Some states in the USA currently implement this model.
 - **Front end payment for WEEE arising** – producers pay according to the current costs of collecting, treating, and recycling the sub-category of EEE being put on the market. As the amount and composition of WEEE arising will not be the same as that sold, a balancing mechanism is introduced.
63. These options are explained more fully in the report mentioned above.
64. The group also recommended that the UK WEEE system should fully enable and encourage producers wishing to undertake their own direct take-back activities for household WEEE whilst putting in place safeguards to ensure that the proper collection, treatment and recycling still occurs. This would:

- (i) facilitate the move towards IPR; and
- (ii) address specific demands from producers and meet the WEEE Directive's requirement that producers are allowed to set up and operate individual take-back systems for WEEE from private households.

Question 5: Which, if any, of the IPR working group's three options would you like to see considered further and why?

Question 6: What are the economic and environmental costs and benefits of the IPR working group's three options for developing financial IPR?

Article 17 - Authorised representative

65. This article introduces the concept of an "authorised representative", who a producer may appoint as a responsible for fulfilling his responsibilities under the recast if that producer is registered in at least one EU Member State. Where the current Regulations refer to "producers", the new Regulations will also refer to "authorised representative". It is important to remember that authorised representatives will be responsible for all the responsibilities of the producers they represent. Such authorised representatives are therefore required to have legal presence in the Member States in which they operate.

Article 18 - Administrative cooperation and exchange of information

66. Member States are required to ensure authorities responsible for implementation of the Directive co-operate and share information to ensure compliance with the provisions across the EU.

SECTION 2 – The Red Tape Challenge: Policy Options for Reforming the Household WEEE Collection System

67. The Government is considering three new options to reform the existing WEEE system in response to the Red Tape Challenge, in addition to considering whether the current system should be maintained. The three options for reform, described in full in Impact Assessment No. 0393, represent very different approaches to addressing concerns raised by stakeholders about the operation of the existing system. Each of these options for reform will reduce the overall burden of regulation on business and are based on extensive informal consultation with stakeholders, good practice drawn from other UK producer responsibility regimes and examples of the implementation of the WEEE Directive across other European Member States. The options are:

- **Option 1:** Do Nothing. (This is the "business as usual" case of not amending the current WEEE Regulations. This forms the baseline to which all other options are compared in the Impact Assessment.)
- **Option 2:** Establishing a National Compliance Scheme
- **Option 3:** Setting a Collection Target and Compliance Fee

- **Option 4:** Establishing a matching process of collection sites to PCSs

68. Impact Assessment 0393 shows that the three options for change are de-regulatory and implementation of any of these options would result in overall cost savings for business compared with costs of the existing system. **It is essential that you read the detailed descriptions and assessment of each of these options set out in the accompanying Impact Assessment before answering the consultation questions.**

Option 1 - Do Nothing

69. The existing WEEE Regulations require PCSs to finance collection and treatment of 100% of separately collected household WEEE returned by distributors (typically retailers) and deposited at Designated Collection Facilities. This is shared according to the UK market share of the producer members of each PCS and split between 10 categories and 3 sub-categories of EEE. Each PCS is required to produce and maintain a “viable plan” to show how it will meet its expected obligations each year. Distributors and operators of DCFs typically tender the appointment of a PCS.
70. Data submitted onto a central IT system – the Settlement Centre - is used to demonstrate evidence of the amount of WEEE each of the schemes has financed on behalf of its members. Final obligations are calculated by the environment agencies after the end of the year based on total household WEEE collected and market share of producers during the year. It is impossible for schemes to predict and finance exactly the amount of WEEE necessary to meet its final obligation. A settlement period after the end of the compliance year allows schemes to make arrangements with each other to resolve these imbalances.
71. There is a widespread perception across the WEEE stakeholder community that the producers of EEE have generally incurred excess costs in meeting their financial obligations to collect, treat, recycle and recover their share of WEEE arising since the inception of the current WEEE Regulations. This view was supported and reinforced in a number of submissions by individual producers and their representative bodies under the Environmental Theme of the Red Tape Challenge.
72. In assessing the overall costs and benefits of the three options for change, the Impact Assessment forecasts each would bring significant reductions in net costs compared to the existing system. Much of those savings would bring benefit to the producers of EEE. A summary of the costs and benefits of each of the options is set out in Table 4 of the Impact Assessment. Each of the alternative options would, therefore, represent a deregulatory measure. For these reasons, the Government is minded not to pursue this option but would welcome views on this.
73. The operation of the existing system is described in Section 2 of Impact Assessment no. 0393.

Option 2 - National Compliance Scheme

74. Key features of this option are:
- Producers can join a compliance scheme or fund their obligation through direct registration (DR).

- WEEE collectors / producers (through DR) can choose, annually and by WEEE stream to manage collection and treatment directly, absorbing any revenues/costs. Posting evidence FOC into the central account.
 - All DCFs / AATFs must report all WEEE separately collected to the PCS. Producers must report EEE placed on the market (POM) figures to PCS.
 - PCS contracts on an open tender basis for transport and treatment of WEEE – under independent scrutiny to ensure fair open competition.
 - A Code of Practice for AATFs could be developed as contract criteria should include minimum standards as well as price. Not as much pressure to compete on price alone with one PCS.
 - PCS runs a data analysis every year that calculates distribution of costs to producers based on their obligation and total net cost/revenue of WEEE category depending on type of EEE producer's POM - to prevent cross subsidising of streams.
 - Overall net revenues could be used to fund LA DCF collection infrastructure and/or activities to encourage consumer deposits to increase collections and/or enforcement standards.
 - As the scheme will have total net cost data, distribution of costs split fairly across producers (including where costs may be innately higher due to geographic location). Individual site to obligation matching not required.
 - Governance structure of PCS could include direct control by board of representative producers. Strict operation on a not for profit basis (legal obligation for transparent accounts), requirement include transparent process for competitive tendering to transport and treat WEEE. PCS operates under a mission statement to ensure targets are met and DCF sites are cleared.
 - If any one producer cannot/will not finance it's obligation it will face a penalty.
 - Producers, will provide the funds to establish and operate PCS. Aim to achieve economies of scale in its operation.
75. In summary it proposes the establishment of a single producer compliance scheme instead of the current market driven, multi-scheme approach. Large producers would be given the option not to join the scheme, but they would have to meet their obligations individually through direct registration with the relevant environment agency if they chose to do so. Financial obligations on the producers of household EEE would be calculated based on market share and the level of WEEE arisings in line with current practice.
76. The Impact Assessment estimates a net positive impact on business relative to the existing system and an overall positive net present value of £103m over 10 years. See table 4 in the IA for a summary of all total costs and benefits in the Impact Assessment. Extensive informal consultations with key interested parties to date, however, clearly

indicate a lack of support for this option across the stakeholder community. This option represents a radical change from the existing system and the abolition of all current compliance schemes, creates risks of monopolistic behaviour that could disadvantage the treatment sector and producers and lead to inefficiency borne by a lack of competition. For these reasons the Government does not intend to pursue this option.

77. This option is described in Section 4, paragraphs 68 of the Impact Assessment and assessed in Section 5, paragraphs 202-246.

Option 3 - Collection Target and Compliance Fee

78. Key features of this option are:

- All producers must join a Producer Compliance Scheme.
- Each PCS will be given a tonnage target by stream or category (derived from a portion of the Member State target and the total market share of their members at start of the compliance year.)
- WEEE delivered into an AATF/AE by a PCS generates evidence for that PCS.
- Any WEEE sent to/received by an AATF/AE by other persons generates data towards MS collection target
- Additional WEEE data generated from protocol sampling counts towards MS target.
- Evidence has no value and cannot be traded but Schemes may choose to contract with each other in advance of collections.
- PCSs are free to make any collection arrangements they wish. A PCS may collect more or less than its target but would face financial consequences:
 - ◇ Collect too much, must finance it or retain the income. All the WEEE counts and the scheme is complaint
 - ◇ Collect too little, can pay a compliance fee per tonne (category or collection group specific) into a fund (possibly to support WEEE related projects). Methodology to be agreed but designed to encourage achieving target. It is an alternative form of compliance and not a sanction.
- WEEE collectors can choose, annually and by WEEE stream to manage collection and treatment directly, absorbing any revenues/costs.
- A PCS must arrange collection FOC if asked by a DCF operator regardless of targets
- Development of a voluntary “PCS take-back scheme” is allowable, approved by BIS, intended to remove the risk of individual PCS's being asked by DCF

operators to finance their WEEE collections at a level in excess of their own collection targets.

79. In summary a collection target is given to producers and PCSs at the start of each compliance year, split by the five collection streams. It is not proposed to pass on the Member State collection target but a proportion of that target having taken into account substantiated estimates of WEEE likely to arise and be properly treated via other routes that are not financed by producers of household EEE (see paragraphs 47-51). As with the other options there is a risk of not achieving the required Member State collection target. However, that is mitigated by setting annual scheme targets that take account of the Member State target and ensuring collection is the most cost effective form of compliance rather than payment of the compliance fee.
80. The Impact Assessment estimates a net positive impact on business relative to the existing system and an overall positive net present value of £119m over 10 years (see table 4 of the IA).
81. Should a scheme fail to achieve its collection target, this option proposes payment of a “compliance fee” as an alternative and legitimate form of meeting compliance with the Regulations. Monies collected through payment of the fee could be reinvested to drive up future collections, re-use and recycling of WEEE. Paragraphs 92-95 of the Impact Assessment describe how the compliance fee system could be established. It would be established in a way that ensured WEEE collection was the most price competitive means of compliance. This would encourage and reward physical collection and would optimise the prospect of achieving the Member State collection target each year. Paragraphs 280-285 estimate the costs of setting up and running the system.
82. This option also enables the establishment of a voluntary “Producer Takeback Scheme” that would be available for PCSs to join. The objective of the Producer Takeback Scheme would be to provide a mechanism under which PCSs would be able to minimise the commercial risks of being required to collect WEEE in excess of their target. The Regulations would not prescribe how the compliance fee would be calculated or how the Producer Takeback Scheme would be established
83. This option is described in Section 4, paragraphs 86-118 of the Impact Assessment and assessed in Section 5, paragraphs 247-288.

Question 7: Do you agree that, if this option were to be adopted, the Regulations should enable the establishment of a compliance fee by producers, approved by Government subject to due consultations?

Calculation of the Collection Target:

84. Paragraphs 89-91 of the Impact Assessment describe the basis on which the collection target would be calculated. Historical data would be used in order to establish the UK’s Member State target as set out in Article 7 of the recast WEEE Directive. WEEE that is likely to arise during the forthcoming compliance year from the following routes would then be deducted from that UK target
 - Household WEEE financed by approved DCFs - see paragraphs 108-111

- Non household WEEE financed by producers
 - “Substantiated Estimates” for the amounts of WEEE being collected and treated outside of the provisions of the WEEE Regulations, (household and non household) - see paragraphs 47-51
85. The remaining tonnage that would be required to meet the Member State collection target would then be split by collection stream and financed by the PCSs. If there was a requirement for higher levels of collection by PCSs compared to the previous year an appropriate uplift in targets across the collection streams would be applied.
86. Due account would need to be given to prevailing market conditions in order to establish fair and realistic targets. Recent examples of changing market impacts include the digital switchover leading to vastly increased sales of flat screen TVs and the recycling of older, heavier cathode ray tube (CRT) TVs and a move towards refrigeration equipment being replaced by larger and heavier equipment. Given this, it is proposed that a stakeholder group be established by BIS to advise on how the target should best be split across the WEEE collection streams for each compliance period.
87. The targets for each collection stream would be passed to PCSs according to market share over a 12 month period. Using data from the previous compliance year (1 January – 31 December) would result in Schemes not being informed of their targets until February - given the need for end of year data to be collected and reported. It is proposed therefore to use data from the most recent period 1 July - 30 June period. This would enable targets to be agreed in advance of the subsequent compliance year and allow schemes to plan their collections accordingly.
88. The small mixed WEEE collection stream includes current product Categories 2 to 10. In order to ensure fairness to producers in those categories, it would be necessary to take into account the differing return rates for each category, using the small mixed WEEE protocol in calculating the overall small mixed WEEE tonnage target allocated to any given PCS.
89. A PCS could apply to the Regulator for a review of its target during the compliance year if either of the two events below affected its target in any of the five collection streams.
- New member or members joining a PCS mid year; or
 - An existing PCS member is wound up and ceases trading during the year.
90. Under this proposal minor fluctuations would be absorbed by the schemes with a review only being necessary in those cases where significant, in year membership changes would result in a scheme encountering significant problems in financing its collection target. In the case of scheme expansion above the thresholds during the year, the regulator would initiate the review to ensure the target continued to reasonably reflect the market share of that PCS. Thresholds would be set in the Regulations that would trigger these reviews. For example, a variance of 500 tonnes placed on the market in any collection group or more than 500 tonnes total across all categories. An alternative would be for changes to the target that simply reflect the reduced/increased market share as a consequence of members ceasing trading or new members joining. In either option any changes to a PCS target would have no impact on the targets of other PCSs.

Question 8: If this option were to be adopted, would you support the methodology for calculating collection targets placed on producers of household EEE via their producer compliance scheme?

Proposed Timeline for Implementation if Option 3 is Adopted

91. The following represents a proposed timeline for implementation for each compliance period. The compliance year 2014 has been used for illustrative purposes. Changes to the existing requirements are marked as **New**.

- October 2013 - Stakeholder Group meeting to advise on PCS target setting. Announcement of proposed overall PCS target split by collection stream
- 15 November 2013 - Producers required to join a scheme. DCFs to declare to their incumbent PCS the details of any WEEE Streams for the 2014 compliance period that they will self treat and data (1 July 2012-30 June 2013) of WEEE arising from those streams at those DCFs. **New**
- 30 November 2013 - Deadline for PCSs to report members to EA and details of DCFs with whom they have arrangements who have declared intention to self treat. **New**
- 15 December 2013 - Agencies to notify targets to PCSs broken down by stream and taking account of mixed WEEE protocol/return rates in each category. **New**
- 1 January 2014 - Start of compliance period.
- 31 January 2014 - PCSs provide EEE placed on the market data for Q4 2013.
- 30 April 2014 - PCS to provide EEE placed on the market data for Q1.
- 31 July 2014 - PCS to provide EEE placed on the market data for Q2.
- 31 October 2014 - PCS to provide EEE placed on the market data for Q3.
- 31 December 2014 - end of compliance year.
- 31 January 2015 - Deadline for evidence to be included in the system.
- 31 March 2015 - Schemes issue declaration of compliance having funded enough WEEE or confirmed payment of appropriate compliance fee. **New**

Question 9: If this option were to be adopted, would you support the proposed time-line for implementation for each compliance period? Comment particularly on scope to reduce or remove any of these steps.

Question 10: To what extent does this option help contribute to meeting the increasingly challenging collection targets in the WEEE Directive and the priority the new Directive attaches to the separate collection and treatment of hazardous waste?

Option 4 - PCS/DCF Matching Process

92. Key features of this option are:

- All producers must join a Producer Compliance Scheme.
- WEEE collectors can choose, annually and by WEEE stream to manage collection and treatment directly, absorbing any revenues/costs.
- If they select the own-management route, the AATF/Collector must report data. This data will count towards achievement of the national target.
- LAs and/or other economic operators collecting can alternatively offer one or more of the household WEEE streams into the WEEE Matching Centre that will partner them with a Producer Compliance Scheme (PCS).
- A process will match LAs and other economic operators to PCSs based on their obligations by collection stream or cost base according to EEE market share.
- PCSs would be required to accept all collection sites matched to them in any one year. Where an imbalance occurs in actual WEEE collections versus a PCS's market share obligation, then the matching would be adjusted in the following compliance period accordingly.
- For matched collection points PCSs are free to select all operational contractors, but must use AATFs and produce and report evidence of all WEEE treated.
- The Code of Practice will be strengthened and established as a high standard service level that all PCS must provide as a minimum, with appropriate investment requirements and performance levels specified, and penalties put in place for non-conformance.
- Producers, through PCSs, to provide the funds to establish and operate the WEEE PCS-DCF matching process.

93. In summary it proposes the adoption of a system that matches PCSs to DCFs, distributors and other economic operators that have WEEE in one or more of the collection streams that they wish to hand over to producers for treatment. The financial obligation placed on producers would continue to be based on market share and the amount of WEEE arising in the system in any compliance period. It is not proposed to introduce a fixed tonnage target with this option.

94. Producers could continue to make arrangements with their PCS to use tonnages collected via their own direct collection systems to offset their obligations financed by the PCS. Direct collections above those required to fulfil their own obligations would be included in the matching process.

95. This option is described in Section 4, paragraphs 119-136 of the Impact Assessment and assessed in Section 5, paragraphs 289-327. The Impact Assessment estimates a

net positive impact on business relative to the existing system and an overall positive net present value of £135m over 10 years (see table 4 of the IA).

96. Paragraphs 122 -126 and 129 of the Impact Assessment suggests an algorithm could be developed either on the matching of costs or obligations or that sites could be matched through design of an appropriate auction system. The algorithm would be developed and funded by producers and would assign PCSs to DCFs, distributors and any other economic operators seeking to enter WEEE into the system to ensure it is properly treated and financed by producers. It is proposed that the matching process would be based on market share and be split by WEEE collection stream.
97. It would be necessary to include a methodology to ensure a fair and transparent approach to dealing with new DCFs and new members joining PCSs midway through the year. As with Option 3, it would be necessary to take into account the individual return rates for the product categories that make up the small mixed WEEE collection stream. The allocation of costs would allow for an allocation of tonnage equivalent to those costs for discharging obligation e.g. a PCS comprised entirely of producers of display equipment could be allocated tonnage across all five collection streams, the cost of which would be equivalent to the costs incurred in meeting its obligation for display.
98. The Government favours the development of an algorithm financed and developed by producers based on obligations. This has proven to be successful in some other Member States and avoids the risk of subjective decisions about costs of treatment in each of the collection streams. Details of similar systems adopted in Germany and Italy are described in Annex B of the Impact Assessment.

Question 11: If this option were to be adopted, would you agree that the matching process should be developed using an algorithm based on matching tonnage obligations by collection stream, rather than a matching of tonnage equivalent to estimated costs for discharging obligations or an auction of collection?

Question 12: If this option were to be adopted, how should new producers and new DCFs registering mid year be incorporated into the system?

Question 13: To what extent would this option help contribute to meeting the increasingly challenging collection targets in the WEEE Directive and the priority the new Directive attaches to the separate collection and treatment of hazardous waste?

Proposed Timeline for Implementation if Option 4 is Adopted

99. The following represents a proposed timeline for implementation for each compliance period. We do not believe it is feasible to introduce this system with effect from 1 January 2014 given the timeline set out below and the need to introduce the necessary regulatory changes in advance. Compliance year 2015 has therefore been used for illustrative purposes. Changes to the existing requirements are marked as **New**.
 - 30 June 2014 - Producers would need to join a PCS for the 2015 compliance year. **New**

- 31 July 2014 - Producers to supply EEE 'Put on the Market' data for the preceding four quarters - Q3 and Q4 2013 and Q1 and Q2 2014 (i.e. a year from July 1st 2013 to June 30th 2014) to their PCSs. **New**
- 31 August 2014 - Schemes to submit this data to the allocation centre. **New**
- 30 September 2014 - Matching Centre to provide market shares back to PCSs. **New**. DCFs, distributors to request the allocation centre to appoint a PCS to clear their WEEE stipulating collections streams and WEEE collection data for those sites for the period 1 July 2013 to 30 June 2014.
- 31 October 2014 - Matching Centre would allocate sites to PCSs. **New**
- 1 November – 31 December 2014 - Schemes and sites enter arrangements to begin collecting from 1 January 2015 for the duration of the compliance period. **New**
- 1 January 2015 - Start of compliance period
- Quarterly EEE placed on market data reported as currently required.

Question 14: Do you support the proposed time-line for implementation for each compliance period? Comment particularly on scope to reduce or remove any of these steps

Question 15: Please rank the four options according to your preference – 1 being most preferred, 4 being least preferred, with an explanation.

Comments on Impact Assessments (No 0382 & 0392)

100. The two Impact Assessments published alongside this consultation are:

- a) WEEE Recast Directive Amendments (IA no. 0382)
- b) WEEE systems changes to UK implementation of WEEE Directive (IA no. 0393)

101. They are considered as two separate Impact Assessments so as to distinguish the impacts arising from necessary changes to the UK WEEE Regulations as a consequence of the recast WEEE Directive as agreed at a European level from changes being considered for the implementation of the WEEE Directive at a UK level. The impacts from the Recast Directive remain the same irrespective of the option pursued in IA no. 0393. The impacts from the preferred option of the Recast Directive are included in the baseline of the WEEE systems IA.

102. The table below from IA no. 0393 is a summary of the costs and benefits profile of each option over 10 years using Net Present Values estimates. *

Central (£/m)	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Sum	NPV
Total cost PV												
National PCS	- 102	- 102	- 102	- 102	- 102	- 101	- 101	- 101	- 100	- 100	- 1,013	103
Target and Compliance fee	- 35	- 36	- 35	- 36	- 36	- 36	- 36	- 36	- 36	- 36	- 356	119
Matching Process	- 108	- 108	- 108	- 108	- 107	- 107	- 106	- 106	- 106	- 105	- 1,069	135
Total benefit PV												
National PCS	- 92	- 91	- 91	- 91	- 91	- 91	- 91	- 91	- 90	- 90	- 910	
Target and Compliance fee	- 23	- 23	- 23	- 23	- 24	- 24	- 24	- 24	- 25	- 25	- 238	
Matching Process	- 94	- 94	- 94	- 94	- 94	- 93	- 93	- 93	- 93	- 93	- 934	

- The impacts estimated for the 3 options are relative to the baseline “Do Nothing” option.

Question 16: Have the WEEE Impact Assessments for the Recast Directive (IA no. 0382) and/or the WEEE system (IA no. 0393) identified the costs and benefits arising from the proposed amendments to the UK WEEE Regulations? If not, please say why and provide supporting evidence.

103. There are two additional features that are present in each of the new proposals, namely:

- the introduction of a de-minimis threshold for low volume producers of EEE whereby those producers that place less than a certain amount of tonnage on the market have reduced burdens and are not required to join a producer compliance scheme; and
- giving collectors of WEEE the option to manage their own WEEE streams, which allows collectors to receive the net revenues from materials where they exist and removes obligation on producers where market forces would work to treat WEEE in the absence of Regulations.

Introduction of a *de minimis* Threshold for Small Producers

104. Small producers of EEE have argued strongly that the cost of compliance with the current WEEE Regulations is disproportionate when set against the potential environmental harm caused by their products when they are discarded at end of life. This outcome largely results from the costs associated with joining a compliance scheme, registering with the relevant environment agency and the provision of data relative to their obligation, based on a very small market share, to finance the actual costs of WEEE collection, treatment recovery and recycling.

105. Paragraphs 342-350 of the Impact Assessment describe the proposal for establishing a threshold of EEE placed on the market below which producers would be subjected to a simplified system of compliance and would not be required to join a compliance scheme. These producers would only be required to register as an EEE producer directly with the relevant environment agency, and disclose tonnage placed on the market annually. This registration is necessary to ensure national compliance with the WEEE Directive. The proposed approach is similar to that available under the current Batteries Regulations for producers that place small amounts of batteries on the market. The producers of non-household EEE would still be required to fulfil their takeback obligations and may choose to join a compliance scheme to achieve this.

106. Table 20 of the Impact Assessment illustrates the number of companies that would be eligible for the *de-minimis* system of compliance should the threshold be set at 1, 5,

10 or 20 tonnes. It also illustrates the amount of EEE placed on the market by the *de-minimis* producers in total and in each of the 13 product categories.

107. The Government favours setting a threshold of 5 tonnes. We believe this strikes a good balance between reducing the burdens for small producers whilst not adding a significant additional cost burden to be shared amongst other producers. Based on 2011 data, this would result in 3,420 producers being eligible for compliance via *de-minimis* registration who placed a total of 3,438 tonnes of EEE representing 0.2% of total EEE placed on the market. The obligation to finance the household WEEE arisings would be met by those producers required to join a PCS.

Question 17: Do you support the de-minimis proposal that seeks to reduce reporting and administrative burdens on producers placing a low volume of EEE on the market in the UK?

Question 18: Do you agree with the proposed threshold of 5 tonnes placed on the market? If not, please select your preferred threshold.

1 tonne 10 tonnes 20 tonnes Another amount – (please specify)

An Option for DCFs to Self-Treat WEEE Collection Streams

108. Some WEEE collection streams (such as large domestic appliances) provide a potential net income to the collector, whilst others (such as display equipment) represent a net cost at the point of treatment.
109. The operators of Designated Collection Facilities (DCFs) approved under the WEEE Regulations are currently required to make all separately collected household WEEE deposited at the site available to their appointed Producer Compliance Scheme (PCS) without charge. The options for changes to the current system will ensure that producers always finance the cost of treatment of WEEE when requested to do so by distributors or collectors registered as DCFs.
110. However, a deregulatory measure is proposed that will give a DCF operator the freedom of choice to determine which WEEE collection streams they hand over to a PCS to treat, and which streams (if any) they will retain responsibility for arranging treatment. This would give the DCF operator the option to retain control of those waste items for which there is potential to generate a net income without the need to involve a PCS in contractual arrangements. Conversely, the DCF would retain the right to ensure all WEEE streams that are likely to be treated at a net cost would be financed by a PCS.
111. Those seeking to arrange the treatment of WEEE streams themselves would be required to arrange such treatment at an AATF and ensure that it was treated to standards laid down in guidance on Best Available Treatment Recovery and Recycling Techniques (BATRRT) for WEEE. They would also be required to declare any self treated WEEE streams ahead of the start of the compliance year. AATFs would be required to include data of WEEE treated on behalf of DCFs in their unobligated WEEE data returns to the relevant environment agency. An alternative approach to data reporting would be to place an obligation on the DCF operator to report annually on the tonnage that is sent for recycling or to assume the tonnage is captured as part of the

“substantiated estimates” of WEEE collected that is not currently reported as proposed in paragraphs 47-51.

Question 19: Do you support the proposal to allow DCF operators to choose, in advance of each compliance period, those WEEE streams for which they would make their own treatment arrangements and those they would hand over to compliance schemes?

Question 20: Do you support the proposal to require data for DCF self treated waste to be reported via AATFs?

SECTION 3 - Producer Responsibility Coherence and Powers of Entry

112. This section covers the review of producer responsibility regulations and the powers of entry provisions related to the enforcement of the WEEE Regulations

Review of the UK's Producer Responsibility Regulations

113. The UK's Producer Responsibility Regulations deliver the UK's EC commitments to recover and recycle a proportion of the batteries, packaging, electrical and electronic equipment (EEE) and vehicles placed on the UK market. These Regulations deliver important environmental savings that help the UK become more resource efficient and reduce its carbon impact. Government believes that the way in which these sets of Regulations work could be improved in order to optimise their effectiveness and reduce the administrative burdens that they place on business.
114. As part of the Government's commitment to improving Regulation, DEFRA and BIS are currently reviewing all the Producer Responsibility Regulations to consider how they might be improved. They are also considering ideas for ensuring greater coherence between the Regulations and the way in which they operate. [A table of the ideas currently being considered for each of the regimes and for the improvement of the overall coherence of Producer Responsibility](#) has been published and a separate consultation on these coherence issues will appear shortly.
115. BIS will take account of the views and outcome from this broader consultation in laying the final version of the revised WEEE Regulations before Parliament.

Government Powers of Entry Review

116. The Government has introduced the Protection of Freedoms Act 2012 to reduce state intrusion and underline civil liberties. The Act contains measures to deal with powers of entry and in particular contains order making powers to:
- repeal powers;
 - add further safeguards to those that remain; and
 - re-write similar powers whilst enhancing the safeguards that apply to them (which will improve their transparency in legislation and reduce their number).

117. Regulation 72 of the existing Waste Electrical and Electronic Equipment (WEEE) Regulations sets out the Powers of Entry and Inspection. There are a number of safeguards that limit the existing powers of entry including:

- The restriction of the powers to an enforcement officer acting in relation to Regulation 72 of the WEEE Regulations;
- The need for the enforcement officer to produce credentials if requested;
- The requirement that the enforcement officer may only take possession of records, samples products etc for as long as is necessary; and
- The obligation placed upon the enforcement officer that he/she must leave the premises secure on leaving the premises.

118. It is proposed to extend those safeguards above as follows:

- **Restriction on powers of entry** – Powers of entry will not apply to premises which are wholly or mainly private dwellings. A judicial warrant will be required before officers can exercise powers of entry to these premises.
- **Requirement to give reasonable notice** to businesses before officers can exercise powers of entry, subject to the following specific exemptions:
 - ◇ where the requirement for notice has been waived by the occupier;
 - ◇ where the enforcer has reasonable cause to suspect a breach;
 - ◇ where giving notice would reasonably be supposed to defeat the purpose of the entry. This is to include the following circumstances:
 - ◇ where there is reasonable suspicion that evidence may be lost or destroyed; or where unannounced spot-checks are necessary;
 - ◇ where it is not practical in all the circumstances to give notice. This should be capable of including circumstances where there is reasonable cause to suspect that there is imminent risk to public health or safety.
- A requirement for officers to issue **a receipt for the seized items**;
- A requirement that, if requested, **enforcers provide traders with copies of any seized documents**;
- **Goods or documents that are seized be detained for no more than 3 months**; or where the goods or documents are reasonably required by the enforcement authority in connection with the enforcement of the Regulations, for no longer than they are so required.

- **Notice of test and intended proceedings** - an officer must inform occupiers whose goods are seized of the results of any tests on the goods seized. If the results of the tests lead to prosecution, then the officer shall allow the person whose goods were seized, the opportunity to also test the products (if it is practicable to do so);
- **Compensation for loss or damage** - to goods that have been seized, if there has been no breach and the loss/damage has not been due to any neglect or default by that person. Any dispute as to the amount of compensation payable will be determined by arbitration;

Question 21: Do you agree with the proposals to introduce the additional safeguards in relation to powers of entry?

Question 22: Are there any additional safeguards that you believe should apply? If so, please specify.

Question 23: Please tell us if there is anything else you wish to say about any aspect of the consultation.

7. What happens next?

119. After the consultation closes we will aim to publish a Government response within 8 weeks. If the responses to this consultation show that a majority of stakeholders would support the reform of the UK WEEE system under options 2, 3, or 4, there will then be further consultation on draft regulations which reflect those changes. The intention is to lay the final version of the Regulations before Parliament to come into force from 1 January 2014, when the old Regulations will be revoked. We will aim to publish the UK government guidance notes for the new Regulations at least 10 weeks before that date.

Annex 1: Consultation principles

The principles that Government Departments and other public bodies have adopted for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Tel: 020 7215 6402

or e-mail to: john.conway@bis.gsi.gov.uk

If you wish to comment on the specific policy proposals, you should contact the policy lead (see section 5).

Annex 2: List of Individuals/Organisations consulted

AMDEA: Association of Manufacturers of Domestic Appliances

BEAMA: British Electrotechnical and Allied Manufacturers Association

BRC: British Retail Consortium

BTHA: British Toy and Hobbies Association

EEF: Engineering Employers Federation

ESA: Environmental Services Association

GAMBICA: Association for Instrumentation, Control, Automation & Laboratory Equipment

ICER: Industry Council for Electrical Recycling

Intellect: Representative organisation for producers of ICT, CE and defence/security electronics

LIF: Lighting Industry Association

LGA: Local Government Association

NAWDO: National Association of Waste Disposal Officers

PV Cycle

PETMA: Portable Electric Tool Manufactures Association

SEAMA: Small Electrical Appliance Marketing Association

WSF: WEEE Scheme Forum

In addition, a number of stakeholder events were held across the regions and devolved administrations throughout 2012.

Annex 3: Impact Assessments of Implementation of Recast WEEE Directive 2012/19/EU and Changes to the UK System

The Impact Assessments relevant to this consultation have been published separately. They can be found on the [WEEE consultation page](#).

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