

## WEEE CONSULTATION RESPONSE

Summary of responses and Government response to fourth consultation on implementation of Directives 2002/96/EC and 2003/108/EC on Waste Electrical and Electronic Equipment

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**I.1 BACKGROUND**

The Government published the fourth consultation outlining its proposals to implement EU Directives 2002/96/EC and 2003/108/EC on Waste Electrical and Electronic Equipment (WEEE). The consultation package included draft Regulations, non-statutory Guidance and a partial Regulatory Impact Assessment. The consultation period ran from 26 July to 17 October 2006.

**I.2 CONSULTATION PROCESS**

Interested parties likely to be directly affected by the final Regulations were invited to comment on the proposals. These included businesses, individuals and a range of representative bodies across the producer, distributor, waste management and re-use sectors, local authorities and public bodies and Government departments.

The consultation paper and supporting documents were made available through the DTI website

<http://www.dti.gov.uk/consultations/page32448.html>.

A total of 187 written responses to the consultation package were received, which were supplemented by face-to-face meetings and awareness-raising events (arranged by external organisations). The DTI would like to thank all those who contributed their views. All responses received, views expressed and questions raised during this period were carefully analysed and considered against the requirements and aims of the Directive and the UK legislative framework.

This document summarises the responses and issues raised in relation to the outline proposals and presents the decisions taken as a result.

A full list of respondents can be found in *Annex A*. The Government Response to the consultation can be found in *Annex B*.

**I.3 METHOD OF ANALYSIS**

This report provides a summary of the responses to the 10 consultation questions along with an assessment of the other issues raised under the 'additional comments' section.

The responses have been classified according to the nature of their response. Statistical analysis has been carried out, where appropriate, and this analysis is summarised in the *Figures* in each section. It should be noted that not all respondents provided comments to all 10 questions. As a result, it should be noted that:

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

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

It is important to note that all responses carry equal weighting in the statistical analysis. This is regardless of whether the organisation represents a number of companies or is a single small to medium sized enterprise.

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

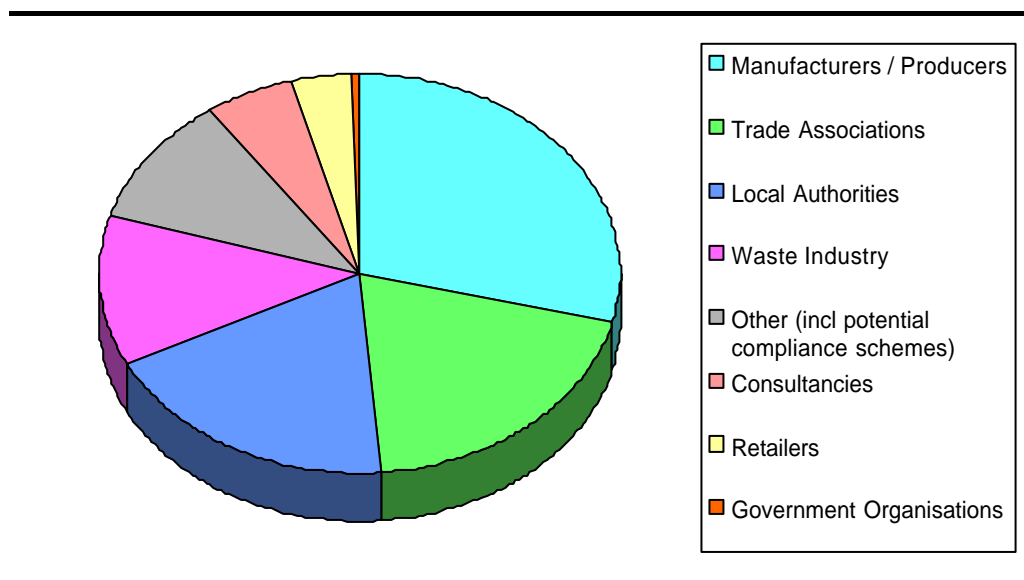
#### **I.4 BREAKDOWN OF RESPONSES**

In total, 187 stakeholder responses were received by the deadline of 17 October 2006. A full list of these stakeholders is provided in *Annex A*.

**Table I.1 Breakdown of Responses by Sector**

<b>Sector</b>	<b>Number of Responses</b>
Manufacturers/Producers	54
Trade Associations	37
Local Authorities	35
Waste Industry	23
Consultancies	10
Retailers	7
Government Organisations	1
Others (including potential compliance schemes)	20
<b>Total</b>	<b>187</b>

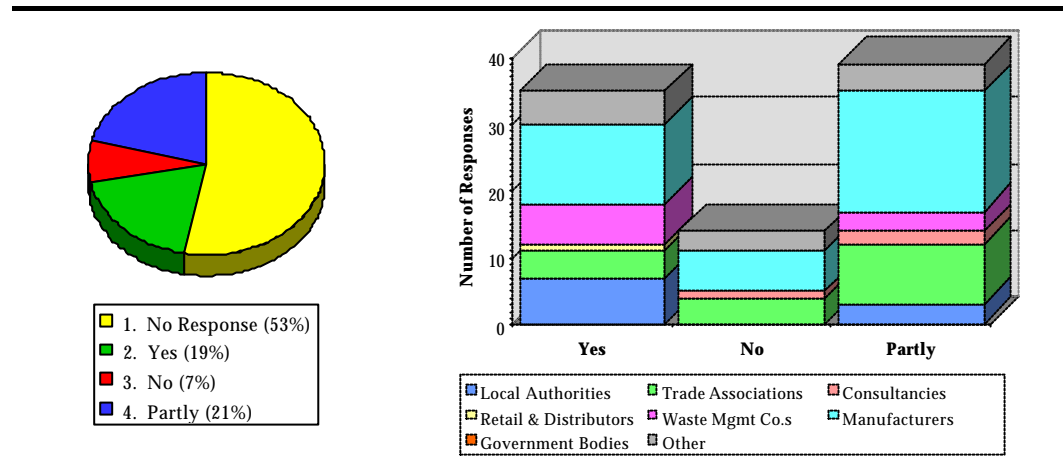
**Figure I.1 Pie Chart showing Responses by Sector**



**QUESTION 1**

***Do the proposals in this document and the accompanying Guidance correctly implement Directives 2002/96/EC and 2003/108/EC?***

**Figure 1.2 Question 1 (88 Responses)**

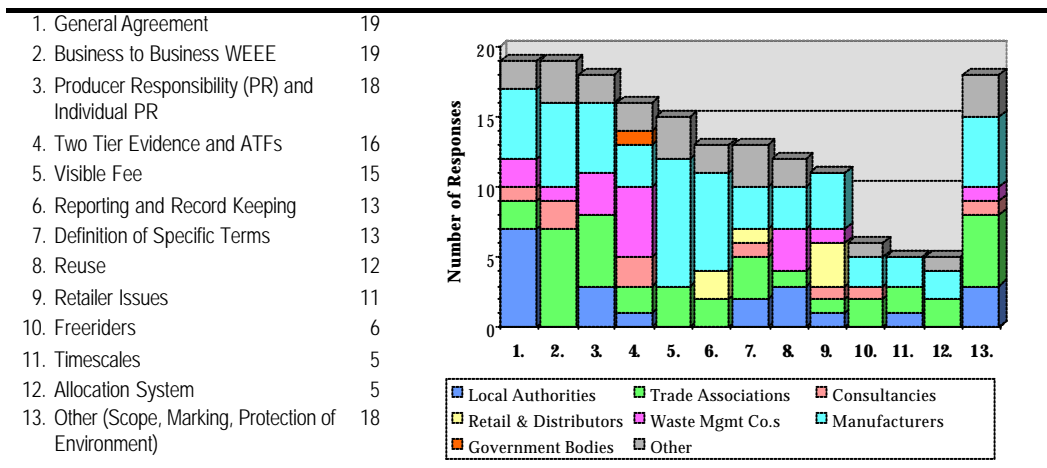


Stakeholders were asked to stipulate whether the proposals met the WEEE Directive’s requirements. In response to this overarching question, stakeholders were invited to indicate a general response (yes, no or partly) and invited to provide additional comments.

88 stakeholders provided a general response to this question. 35 respondents were of the opinion that the Directive’s proposals have been implemented correctly and a further 39 felt that the proposals partly implement its requirements.

116 stakeholders provided written comments to explain where the Directive’s requirements had/had not been implemented. Issues raised have been classified according to 14 areas as shown in *Figure 1.3*.

**Figure 1.3 Question 1 Additional Comments (170 Comments from 120 Responses)**



The main areas of concern related to:

- *Business-to-business WEEE.* Respondents were concerned that there seemed little detail on the practical implementation of the business-to-business requirements and that there were no clear guidelines on the delineation between household and non-household products. Very similar issues were raised in response to *Question 9*.
- *Producer responsibility and individual producer responsibility.* Some argued that mandatory membership of a scheme was not in line with the Directive's requirements for individual producer responsibility and felt that producers should still be able to meet their treatment, recycling and recovery obligations individually.
- *The two-tier evidence system.* 16 respondents raised the issue of the two tier evidence system in response to this question. It was also the most common issue raised in response to *Question 7*. The same concerns were raised in response to both questions with little reference to the two-tier system being compliant/non-compliant with the Directive's requirements.
- *Showing costs.* 14 respondents, mainly manufacturers, raised the issue of showing a fee at the point of sale (see also *Question 8*). Some argue that producers will be denied their legal right to show the costs of treating and recycling historic WEEE at point of sale.

Other common issues raised related to:

- *Reporting requirements.* Many were concerned that these were overly onerous and went beyond the requirements of the Directive.
- *Retailer issues.* Some felt the obligation on the Distributor Takeback Scheme (DTS) were too onerous and that Distributors were taking on the Government's responsibility. Others felt that retailers would be able to operate at an unfair advantage.
- *Specific definitions.* A number of respondents raised concerns over the UK's interpretation of the definitions including: producer, retailer/distributor; adequate network, separately collected, product weight and accreditation.

## **1.1 SUMMARY QUESTION 1**

***On a scale of 1 to 5, 5 being the highest, grade your overall approval of the policy proposals.***

The consultation documentation included four sub-questions which asked stakeholders to rank the approval of the policies and guidance and whether essential issues had been identified and costs minimised.

Not all stakeholders commented on all four areas. The following pie-charts show the number of responses to each of these four sub-questions along with the level of approval of each issue.

***The Policies are clearly presented  
(90 responses)***



- 1. Strongly Approve (7%)
- 2. Approve (41%)
- 3. Neutral (36%)
- 4. Disapprove (12%)
- 5. Strongly Disapprove (4%)

***The Essential Issues have been identified  
(89 responses)***



- 1. Strongly Approve (4%)
- 2. Approve (40%)
- 3. Neutral (34%)
- 4. Disapprove (13%)
- 5. Strongly Disapprove (8%)

***The Guidance provides relevant Advice  
(90 responses)***



- 1. Strongly Approve (4%)
- 2. Approve (32%)
- 3. Neutral (38%)
- 4. Disapprove (19%)
- 5. Strongly Disapprove (7%)

***Costs to producers are minimised  
(86 responses)***

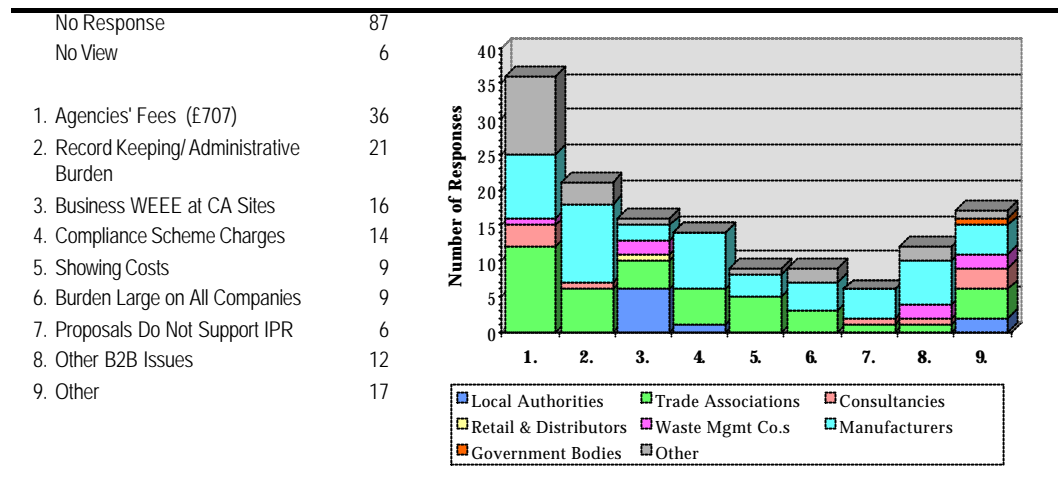


- 1. Strongly Approve (3%)
- 2. Approve (12%)
- 3. Neutral (30%)
- 4. Disapprove (27%)
- 5. Strongly Disapprove (28%)



***If you are a small business, what burdens are associated with the introduction of the Regulations and how could these be mitigated?***

**Figure 2.1 Question 2 (140 Comments from 94 Responses)**



94 respondents provided comments in response to this question, although not all of these were small businesses. Trade associations, compliance schemes and local authorities also made comments in response to the burdens placed on small businesses and the business community in general.

140 different comments were raised by these respondents with the main issue of concern by far being the Agencies' registration fees. 36 out of the 94 responses mentioned this as a concern. Many felt the fees were disproportionate to their relative obligation and many called for a scale of charges based on either turnover or tonnage.

General business-to-business WEEE arrangements were the next main issue with 16 specific comments relating to business WEEE at CA sites and 12 comments about other B2B WEEE concerns. Local authorities were generally concerned about their ability to accept B2B WEEE at their sites and the impact this would have on their operations. On the other hand, small businesses wish to make use of CA sites for depositing small amounts of their WEEE.

The costs of joining compliance schemes and the unknown charges imposed by them were issues raised by 14 respondents.

- *'Without the details of some of the compliance schemes it is hard to understand what the costs would be to smaller companies'*

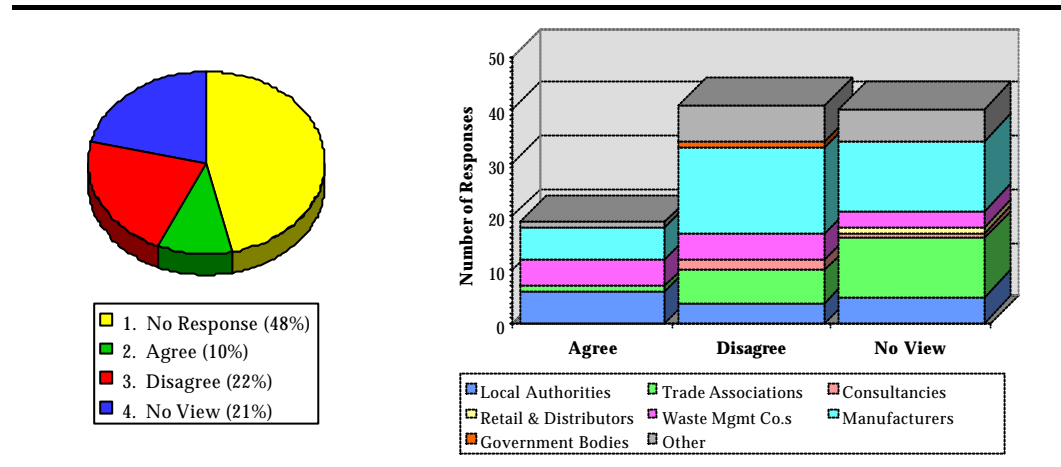
The uncertainty about whether the costs could be shown for historic WEEE was raised as a concern mainly by trade associations. Nine respondents felt the burden was heavy on all companies, not just SMEs.

Other issues raised included the general issues relating to administrative burden and the time required to understand how the legislation affected these companies and the inability to show costs of treating historic WEEE at the point of sale.

### QUESTION 3

***In the Regulatory Impact Assessment, do you agree with the costs of processing and treating WEEE which are presented? If not, please provide your estimate of these costs and provide evidence in support of your figures.***

**Figure 3.1 Question 3 (100 Responses)**



100 respondents provided direct comments in relation to the question on the costs presented in the RIA. Most of those which did provide written comments either didn't provide specific information or disagreed with the information provided in the RIA.

Those respondents which were not able to express a view included those that felt that aggregated costs at national level were difficult to interpret and assess or they were not in a position to comment on their accuracy.

Those respondents which disagreed represented most types of stakeholders and in general the feeling was that the costs were underestimated. Typical comments included:

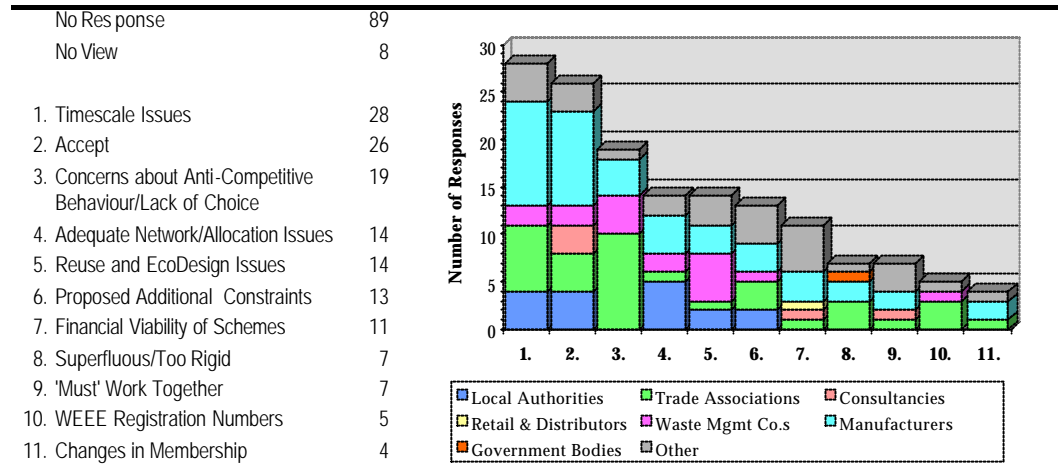
- *We are concerned about the costs as presented. They appear to be significantly underestimated.*
- *We do not believe that the costs of transportation have been taken into account.*

19 respondents agreed with the costs as presented with seven respondents providing additional comments to support their view. These comments included:

- *Agree that the cost of treatment is broadly correct but the actual net cost to producers will vary with the values of the constituent materials.*
- *Costs as presented represent current market conditions. These are however expected to change and costs are likely to fall significantly when processing capacity is met.*

**What do you think of the approval criteria for producer compliance schemes?  
Are there any criteria that appear superfluous or are there any important  
criteria that have not been taken into account?**

**Figure 4.1 Question 4 (148 Comments from 90 Responses)**



In order to be approved as a Producer Compliance Scheme, the Government has proposed a set of criteria which any prospective scheme would need to meet. This question sought comments on the proposed criteria.

90 respondents provided a response or comments to this question with many raising a number of issues. The issues raised were classified according to 11 broad headings. 26 respondents simply stated that they found the criteria generally acceptable, 7 felt the criteria were generally too rigid.

The main concern raised was associated with timescales of the proposals. 28 respondents raised this as a concern. The fact that registered producer compliance schemes will not be available until 28th February 2007 and that producers will need to register by 15th March seemed unworkable. Many respondents suggested ensuring schemes are registered prior to 2007 and propose a 'pre-compliance' process for schemes starting in 2006.

19 respondents raised concerns about the potential for anti-competitive behaviour between schemes and the impact this could have on scheme choice. Comments included:

- *There is also a great burden of bureaucracy for a small or single producer scheme dealing only with B2B.*
- *A PCS could specialize by market sector, trading group or region. This would seem to contradict the need for a PCS to be non discriminatory and may encourage schemes to be set up for easily recovered WEEE.*

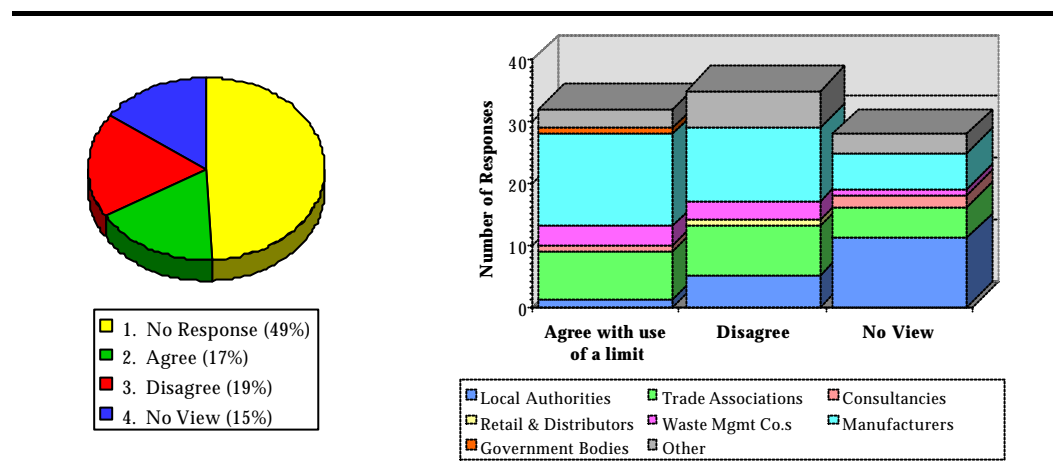
Reuse of equipment and/or the importance of eco-design was raised as an issue by 14 respondents. Some felt that working with a reuse operator could

be a condition of scheme approval, others called for clarity on how data on reuse can be reported.

Another significant issue was that of the adequate network of collection facilities and the ability to match these to producer schemes particularly the lack of the network in the first months.

**What would be a reasonable permissible limit for over- or under-collection by a compliance scheme? How could this limit be defined?**

**Figure 5.1 Question 5 (92 Responses)**



92 respondents provided comments in relation to *Question 5*. The consultation paper stated that as a condition of approval, compliance schemes must aim to collect WEEE broadly in accordance with their members' indicative obligation as set by the environment agencies. Limits on the permissible over- or under-collection of WEEE will be set. Respondents were asked to suggest a reasonable level of over- or under-collection by a scheme, and how to define this limit.

Of those who expressed a view as to whether collection limits should be set in the first place, there was a slight preference in disagreement of the use of collection limits.

Of those who supported their use, the collection limit suggested generally ranged from 2% to 25%, although 10% was most common. It appeared that the limits suggested by respondents were influenced by the 10% that was suggested in the consultation document. Extremely few comments were given on the method to define a limit.

**Table 5.1 Suggested Limits for Collection**

	2%	5%	10%	15%	20%	25%	Other
Number of respondents	1	2	16	2	2	1	1

Few comments were given to support the use of a collection limit, but the main reason given was:

- *Profit*. It should not be possible for schemes to profit from, or to affect the costs of, other schemes by deliberate over- or under-collection.

In general, those who supported the use of a limit also expressed other concerns, these included:

- *WEEE categories.* Any limit should be measured by weight within categories, as opposed to total WEEE.
- *No limit in early stage.* Some respondents suggested that collection limits should not apply in the first one to three years of operation, to allow the schemes to settle down. But, if these were set then they should be at a wide level initially and refined over time.

Of those who disagreed with use of collection limits, the following comments or reasons were given:

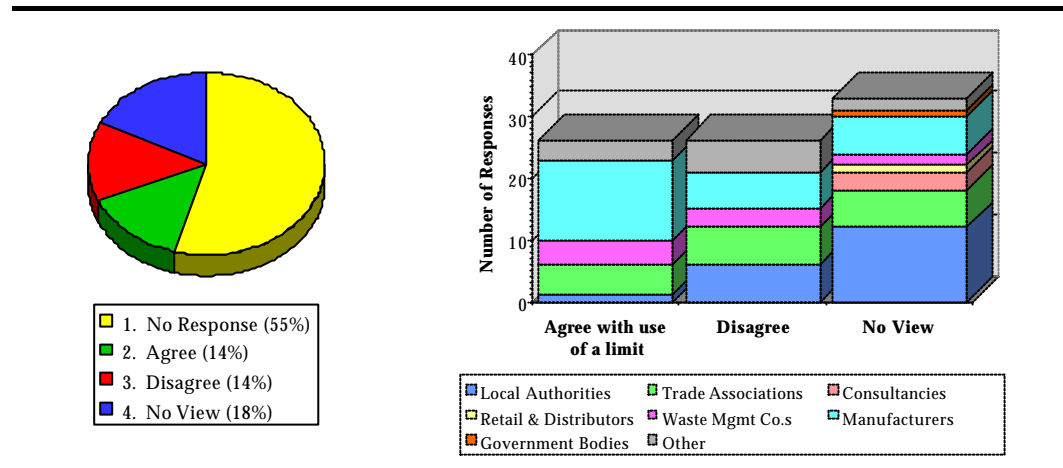
- *Distorts market.* Some respondents believed a limit would impose on the market a condition which should be found through the natural operation of the market.
- *Allocation of DCFs.* Some said that the allocation of DCFs to schemes or producers should help alleviate the issue. Although, it was conceded that unreliable data were currently available to support the allocation process.
- *Cannot determine at early stage.* It is not possible to set a fair collection limit at this early stage until the schemes have settled down and data are available.

Respondents raised some other issues, including:

- *Physical swapping.* The primary balancing method should be by physical swapping of WEEE between compliance schemes or producers. There should be no over- or under-collection limit, but instead there should only be a limit to trade on the WEEE Exchange. If a limit were to be set then a scheme should be able to over collect up to the limit (e.g. 10%) then trade beyond this limit.
- *Collection continuity.* There must be a mechanism in place whereby collections from DCFs continue and do not stop as a result of a scheme reaching a collection limit. Changing the allocation of a DCF to another scheme within a period was not favoured, due to disruption to contractual and budgeting arrangements.
- *Carry over.* Any surplus evidence that had been collected but could not be traded in the period should be carried over to the following period.
- *Penalise under or over collection.* Some respondents suggested under collection should be penalised, while others disagreed.

**What is a practical limit for payments by the Exchange to schemes which have over-collected? Please explain what the effects of changing this limit would be.**

**Figure 6.1 Question 6 (82 Responses)**



82 respondents provided comments in relation to *Question 6*. The consultation proposes that the amount of evidence that the Exchange will recompense a producer or a compliance scheme should be capped. Consequently, payments to any scheme or producer for surplus WEEE would be limited to a percentage of the estimate of total WEEE arising in that compliance period. Any additional surplus would be presented to the Exchange but will not attract further payment. The consultation asks for proposals for the appropriate limit.

This measure is intended to prevent anti-competitive over-collection of WEEE. Compliance schemes or producers may agree between themselves to privately trade evidence as they wish until the day on which the Exchange trades.

Of those who expressed a view as to whether a limit on payments by the Exchange should be set in the first place, there was even support for and against the setting of such a limit. The limit suggested generally ranged from 5% to 20%, with a higher limit suggested in early years of operation. It is possible that respondents were influenced by the 5% figure that was suggested in the consultation document.

**Table 6.1 Suggested Limits for Trading**

	5%	10%	20%	Other
Number of respondents	9	4	2	1



Many respondents thought that the limit on payments should be applied over and above the limit for collections, e.g. set a 10% collection limit, plus a further 5% trading with the Exchange. While several others thought that the limit for payments applied to all surplus evidence beyond the obligation.

Of those respondents that supported the use of a trading limit it was generally thought that:

- *Anti-competitive behaviour.* A limit would help prevent any potential anti-competitive behaviour.
- *Scheme inefficiency.* A limit would be desirable to prevent an inefficient scheme from over collecting as much as possible in the knowledge that full costs will be reimbursed.

Of those who did not support the use of a trading limit, the following comments were given:

- *Distorts market.* Some respondents believed that a trade limit would create unnecessary and unacceptable market distortion, and could lead to scheme failure if over-collections cannot be funded.
- *Lack of control.* Several respondents thought that a limit would be unfair, given that the tonnage of WEEE arisings across their allocated network is to a large degree beyond their direct control.

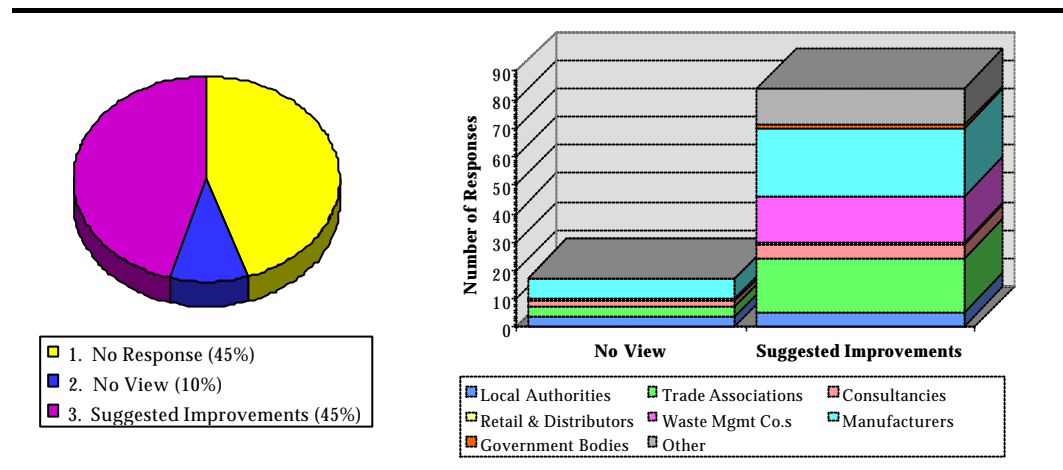
Some other specific comments were raised by several respondents, which included:

- *Cost recovery.* Concerns were raised as to whether the cost paid by the Exchange would cover all costs incurred, while potential purchasers of evidence were concerned that costs would be set too high at an unfair level.
- *WEEE categories.* Any limit should be measured by weight within categories, as opposed to total WEEE. Some respondents stated that 10 WEEE categories, plus three additional categories for CRTs, cooling appliances and gas discharge lamps (as proposed by DTI) should be used for trading. The concerns relate to the high cost for treating these groups, and the resulting distortion of using an average WEEE category cost to buy/sell evidence.
- *Appeals.* Clarification was requested over the appeals process. It was not explicit how a DCF may appeal (e.g. against an inadequate collection service) or how to withdraw from a network once included.

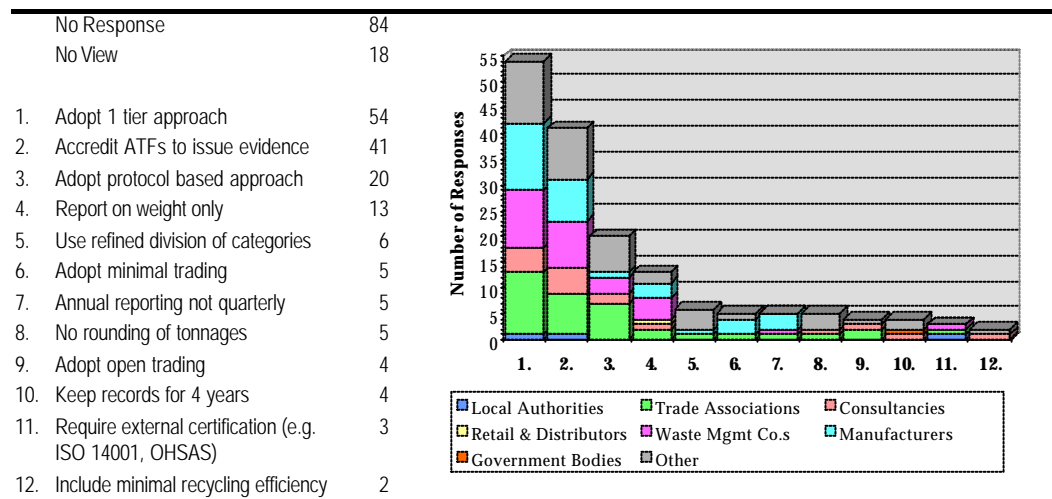
**QUESTION 7**

***What improvements could be made to the arrangements for evidence and trading, which are consistent with the reporting requirements of the Directive and which show that the producers' obligations have been fulfilled?***

**Figure 7.1 Question 7 (101 Responses)**



**Figure 7.2 Question 7 (161 Suggested Improvements from 84 Responses)**



101 respondents provided comments in response to *Question 7*. The consultation paper put forward proposals for the arrangements of a two-tier evidence system and the trading of evidence through the Exchange or directly between registered compliance schemes or producers.

Of those who responded, the vast majority (84 respondents) suggested improvements to the proposed approach.

In particular, there was overwhelming disagreement for adopting a two-tier evidence system. A one-stage evidence system, where accredited ATFs

provide evidence to the compliance scheme or to the producer, was strongly supported. For example, a typical response was as follows:

- *This process should be simplified to a one stage process where ATFs are accredited and it is they that provide adequate audit trails to demonstrate that the appropriate recycling and recovery has taken place.*

In general, there were some common themes among those who disagreed with the two-tier approach, as follows:

- two-tiers will cause significant time delays for reporting of evidence and receipt of payment;
- the system is too cumbersome;
- many reprocessors are based outside the UK, causing issues for data collection, regulation and accreditation;
- many reprocessors will receive mixed waste and cannot verify the source (as WEEE) or identify the WEEE category;
- there is no commercial incentive for reprocessors to identify the WEEE category as they do not trade the evidence.

Some of those who supported the two-tier evidence system also thought that accredited ATFs should be responsible to complete both parts of the evidence, but they thought that two-tiers were needed to avoid potential non-compliant reprocessing.

There were several other areas where agreement was expressed, relating to:

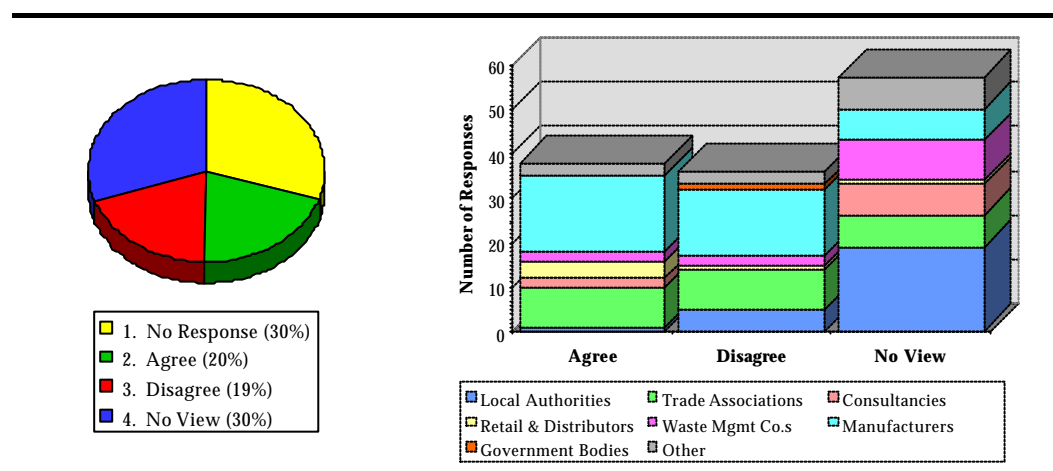
- *Reprocessor accreditation.* There were mixed views as to whether reprocessors should be accredited. Some stated if the ATF and reprocessor were accredited a one-tier evidence system could operate. Those which did not support accreditation of reprocessors, thought that it could deter small companies and stifle markets and had concerns about the ability to accredit overseas reprocessors.
- *WEEE composition protocols.* In general a protocol based approach was supported. There were some specific comments where protocols should focus on the first ATF to identify the WEEE categories, rather than material streams at the reprocessor.
- *Trading.* Some concerns were expressed about trading, which included:
  - the cost to purchase evidence should not be excessive or seen as a potential revenue stream;
  - the Exchange should publish its accounts to show transparency;
  - clarification was requested over the system for reuse: what is the mechanism for reporting trading of evidence?;
  - trading/reporting should relate to the 10 WEEE categories, plus three additional categories for CRTs, cooling appliances and gas discharge lamps (as proposed by DTI). The concerns relate to the high cost for treating these groups, and the resulting distortion of using an average WEEE category cost to buy/sell evidence.

- trading should aim to balance at the end of a compliance period, although some disagreed in preference of open trading.
- *Verification.* A few respondents requested additional clarification relating to consistency of reporting and the demonstration of compliance.

***Do you agree that the mandatory presentation of the costs of handling historic WEEE would exceed the requirements and increase the costs of implementing the Directive?***

***How could such a fee be set at an appropriate level (adjusted over time), without arbitrarily distinguishing the costs of handling historic WEEE from other costs faced by producers?***

**Figure 8.1 Question 8 (131 Responses)**



The Directive allows producers to show consumers at the point of sale of a new product, the costs that they have incurred in relation to recycling historic WEEE. *Question 8* sought views on whether stakeholders consider the mandatory presentation of costs exceed the Directive's requirements and increase the costs of handling WEEE.

131 respondents provided comments in response to *Question 8*. Of these, 38 agreed that the mandatory presentation of the costs would exceed the requirements and increase the costs of implementing the Directive, and 36 disagreed with this statement.

The main arguments from those that agreed were based around worries over increased burdens and additional confusion:

- *'It is virtually impossible to set a fee that would separate historic WEEE costs from other producer costs and that would be able to be adjusted over time without putting burdens upon distributors, e.g. IT road mapping, cost of changing fee. A mandatory fee will not encourage or reflect cost efficiency and therefore places additional burden on the consumer.'*
- *'While the visible fee may appear to provide the consumer with information on the costs of WEEE recycling and recovery, it will lead to confusion and inevitable in-store discussions with customers on an element of the pricing strategy that retailers have no control over. Furthermore, there is a real risk that a visible fee*

*can be open to abuse by producers, leading to prices not reflecting the real cost of reprocessing.'*

Those that disagreed with the first part of the question based their position on issues around producers being allowed to show this cost, being fair to all stakeholders in an open, transparent way and providing consumers with information on the impacts of their purchases:

- *'A statutory visible fee will create a level playing field across the industry, reduce uncertainty, and provide consumer awareness of the environmental issues affecting electrical waste. The visible fee must be a substantiated environmental management cost for a specific product.'*
- *'The principal benefit in identifying the true cost of handling historic WEEE would be to educate householders in the sense of the effect their particular life style choice might be having on the environment and the true cost associate with that choice. It would reinforce the "polluter pays" principal and might hopefully influence future purchasing actions or decisions.'*

In terms of setting a fee at an appropriate level, suggestions varied but focussed on looking at the fees used in some other Member States and taking an average cost per unit type:

- *'The basis of any such visible charge would be the cost of the organizing the collection, treatment and reporting of WEEE on a viable on-going basis and should be auditable i.e. "open book basis" e.g. visible via an internet site as suggested in the Guidance. The cost will vary and therefore be adjusted over time and assuming WEEE volume grows and treatment technology improves the trend should be downward and that is supported by evidence from European countries with some experience to date e.g. Sweden.'*
- *'We suggest that the visible fee costs in other member states be reviewed against the market conditions in the respective countries and the costs modelled for UK trading.'*
- *'The visible fee calculation should be the average cost of recycling the unit multiplied by the average return rate.'*

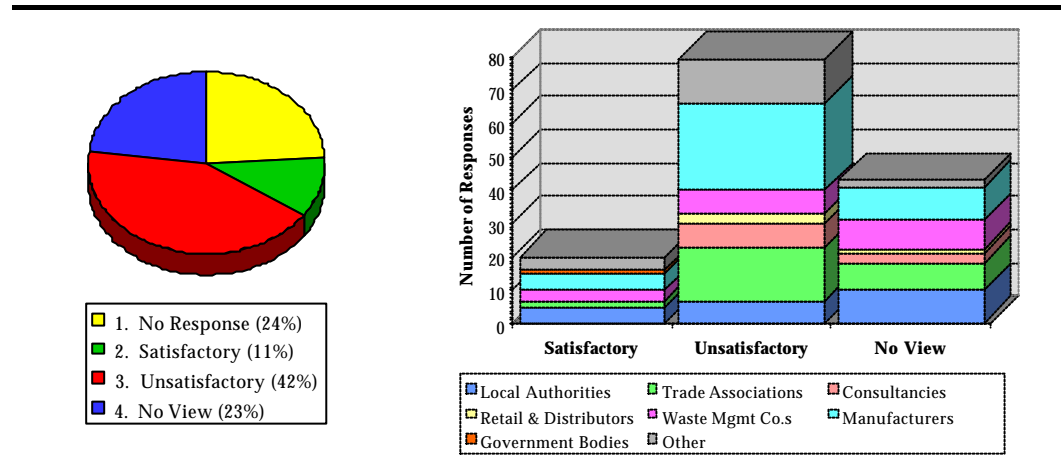
Ideas on who should be administrating this fee ranged from independent bodies or the producers/compliance schemes themselves, to the Government:

- *'The singular recycling charge, per category across all producers exists, in most of the EU member states, and is fixed by an independent body. This body will also set the retailer admin cost. We strongly recommend that this system be established in the UK for setting the recycling charge.'*
- *'The fee could be set at a single level per category/sub category based on the average costs of compliance schemes, or at a level agreed with government that would provide sufficient funds to cover all costs associated with recovery and recycling of historic WEEE.'*

**What do you think of the arrangements for business to business producers?**

**Are there any difficulties/particularities about business to business WEEE that have not been taken into account?**

**Figure 9.1 Question 9 (142 Responses)**



Business-to-Business (B2B) producers will be responsible for handling B2B WEEE placed on the market after 13 August 2005 and for handling historic (pre 13 August 2005) WEEE on a like-for-like basis. B2B producers will be required to register with a compliance scheme and provide relevant data to the Agencies through these schemes. B2B producers can then discharge their non-household obligations themselves or through a third-party.

142 respondents provided comments on the proposed arrangements for B2B WEEE. Of these, 20 indicated they were generally satisfied with the arrangements for B2B producers and 79 indicated they were generally unsatisfied with these arrangements.

The main comments from those that were generally satisfied were based around wanting further general guidance and clarification from Government on managing B2B WEEE, with some specifically focussing on better advice to help distinguish between B2B and business to consumer (B2C) WEEE:

- *‘Although legislative requirements are often known well in advance, the practical guidance necessary to implement the requirements is often delayed unduly, which impacts on business ability to prepare for and cost change. Additional and prompt publicity around requirements for WEEE, specifically directed at businesses would be beneficial.’*
- *‘The B2B/B2C split has been treated as a black and white issue, when it is actually a wide range of greys. Many products could be described as for professional (i.e. Business) users, but be widely bought by household users. Many products are sold into both markets, and in many cases a single item is used in both markets. The*

*use may change from household to non-household use or vice versa as the product is traded in or sold during its life.'*

Those that stated they were generally unsatisfied with the arrangements for B2B producers focussed on issues around wanting further general guidance and clarification from Government on managing B2B WEEE. Specific concerns were raised on a wide variety of issues. The need for better guidance to distinguish between B2B and B2C WEEE was brought up:

- *'Some of the terminology related to B2B within the Consultation documents seems to be contradictory/confusing.'*
- *'We have a number of contracts with agencies such as the NHS for the supply of household electrical equipment. Clarification is needed as to whether these products are B2C or B2B. We recommend that if the product's end use is equivalent to household use, then it should be classified as B2C.'*
- *'The criteria for non-household status for EEE products should make clear that there must be no possibility that the WEEE can be disposed of via LA DCFs. This is particularly relevant for products that have dual-use possibilities i.e. they can be used, more or less equally, in both household and non-household. Our view is that dual-use products should be classified as Household (as done in some EU countries).'*

Others mentioned taking into account existing mechanisms for the takeback and management of B2B WEEE rather than making B2B producers join compliance schemes, and requesting that the routes to market for B2B WEEE need to be considered in the context of the Regulations:

- *'Many producers selling through distributors have well defined and historically efficient returns, disposal, refurbishment and re-use strategies in place. The disposability culture that dominates the domestic sector is not reflected in the commercial sector where longevity, re-usability and scrap values are prime priority and will, by definition, exceed current targets. Clear definition of ideals for maximizing product recyclability and protocols for supply chain disposal Best Practice outweigh any inappropriate impositions of compliance on an existing, self-regulatory, reasonably efficient system.'*
- *'Many B2B products are complex systems and/or are supplied via complex distributor, installer, sub-contractor processes. Many B2B products only become useable entities once they are installed on a customer site, often by a third party. There needs to be clearer and concrete statements on product scope. Likewise there needs to be clearer statements on where the producer responsibility rests in such complex supply chains.'*

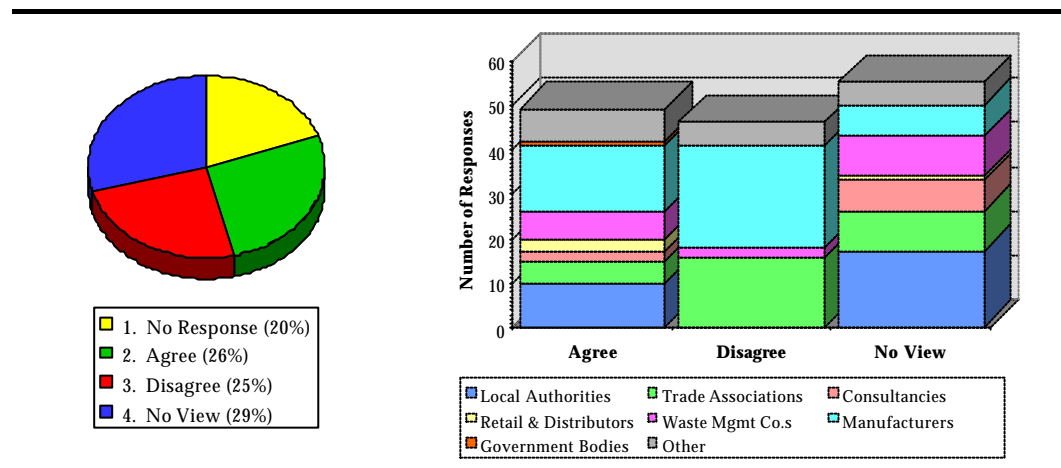
Additional comments and suggestions were made by a number of respondents on using the Intellect/EICTA definition of B2B WEEE, having the same implementation date for both B2B and B2C WEEE, and bringing in regulations allowing the monitoring of B2B end-users that take on the obligations of producers.



***The annual subsistence charges payable to the agencies includes the cost of monitoring activities against free-riders. Do you agree that part of that fee should cover monitoring activities?***

***Are there other ways in which the cost of monitoring activities might be recovered from members of a compliance scheme?***

**Figure 10.1 Question 10 (150 Responses)**



150 respondents provided comments in response to *Question 10*. Of these, 49 agreed that part of that fee should cover monitoring activities and 46 disagreed with this statement.

The main comments from those that agreed were based around the idea that producers need to be responsible for the impact of their products:

- *'As the principle behind the Directives is to require producers to take responsibility for the environmental impact of their products, particularly when they become waste, then it seems sensible that monitoring activities for non-compliance and actions against "free-riders" should be included.'*

Those who disagreed that part of that fee should cover monitoring activities focussed on issues around other Producer Responsibility Directives not having a system like this and that compliant producers should not have to fund the enforcement of themselves and their peers.

- *'We are not aware of any costs being charged to producers the enforcement of the RoHS directive or Packaging Regulations. We do not believe that the situation should be any different for the implementation of the WEEE directive. The costs of monitoring and enforcement should be met by free-riders, not by complying companies.'*
- *'It is unacceptable that law abiding entities should fund monitoring: it should be funded by prosecution of those in breach of the law.'*

Suggestions for alternatives to fund this enforcement tended to concentrate around either using fines to fund enforcement or having the Government fund the enforcement bodies directly:

- *‘The cost of monitoring activities is a matter for Government and for general taxation, not a cost which should be borne by individual compliant Producers or their PCS. Ideally, these costs should be recovered by enforcement action which will demonstrate that such enforcement is cost effective.’*
- *‘We believe that enforcement for WEEE is the responsibility of the Government. In this case the Regulations specifically state that the Secretary of State is responsible. The Environment Agency enforcement activity should be funded by its grant-in-aid. We believe that to use the funds from responsible, compliant companies to monitor and enforce non-compliant companies would not be right. The registration fee should reflect the actual costs of registration only.’*

### **Suggestions for alternatives to fund enforcement**

<b>Suggestion</b>	<b>Number of Respondents</b>
Funded by fines levied on free riders	45
Funded by Grant-in-Aid	9
Compliance schemes should monitor their members	3

Additional comments were made by a number of respondents on the validity of the numbers given in the Regulatory Impact Assessment for enforcement and on the ability of the enforcement bodies to police the Regulations effectively. Suggestions were also given on minimising the number of free-riders:

- *‘Over 37% of the producer registration fee is allocated to the monitoring of producer non-registration. The guidance gives no indication on how the EA will use this fee to trace non-registration of producers. We are disturbed that the Part 3 Regulatory Impact Assessment (RIA) states that only 5750 producers are expected to register, when the Government in its previous RIAs has quoted greater numbers. This leaves us with a lack of confidence that the EA will achieve adequate numbers of producer registrations.’*
- *‘If distributors purchase from non- registered producers then the Regulations should define them as producers and require them to register as such. Alternatively, the Regulations should make it an offence to purchase from non-registered producers. There would then be much less work for the enforcement authorities and the overall cost of registration would be reduced.’*
- *‘With a declaration based system, and the ability to cross reference company annual returns then with a proposed “small producer” exemption, identifying potential abusers of the system should be simple.’*

In order to assess the additional comments raised by stakeholders, ERM reviewed the responses according to the following broad types of stakeholders:

- Producers
- Distributors
- Local Authorities
- Waste Industry

The following subsections attempt to summarise the range of comments raised on other issues not specifically mentioned in the 10 consultation questions.

### **11.1 COMMENTS FROM PRODUCERS**

75 respondents to the consultation were producers or trade associations representing groups of producers.

Many of the 10 standard consultation questions focused on producer-related issues and many of the additional comments raised by producers elaborated on points covered in these main questions.

However, other issues raised were as follows:

- *Definition of producer and the European context.* A number of issues were raised in relation to the definition of producer and how this affects companies operating across Europe. Some producers felt additional clarification was required on the registration processes and commented on the burden of needing to comply with WEEE legislation in multiple countries.

The proposals state that it will be possible for producers to register if they do not have a UK presence and concerns were raised regarding the ability to enforce the WEEE Regulations on overseas companies and the status of any contractual arrangements between PCS and overseas producers. A number of respondents specifically stated that overseas PCS should not be allowed.

It was also felt that distance sellers and how they would comply needed further clarification.

- *Data by weight and number.* Producers raised various points regarding the provision of data. They commented on the need to provide data by weight and number, B2B and household equipment and by category. The general feeling appeared to be that further information was still required on the exact data requirements. A suggestion for a definition of 'weight of EEE'

was provided by a number of producers. One specific point related to the requirement on PCS to provide data by weight and number of units of WEEE collected which was felt to be unworkable.

Some producers welcomed the ability to register with different schemes for their household and B2B products, others felt this would add additional confusion.

- *Producer registration number.* Producers are keen to establish further details on the unique producer registration number and the format this will take. They are eager to ensure that the number can be accommodated within existing sales and transaction documentation and that they are able to meet the requirements to pass on this information to distributors.
- *Reuse.* The issue of reuse of electrical products was raised frequently in response to a number of the specific consultation questions but also by producers in 'additional comments'. Those producers responsible for products which are highly re-usable or relatively more durable felt that the proposals were sufficiently focused on reuse. Representatives from the power tool sector, toys and medical equipment expressed their serious concerns about the implications of refurbishment of their equipment in terms of safety.
- *Marking.* The requirement to mark products in order to identify the producer was raised as an issue in relation to the inconsistent implementation dates in the proposals (April 2007 and July 2007 are both referenced).
- *Timescales.* The timescales to implement the proposals were considered to short for many in relation to the ability for PCS to register and for producers to implement internal data management systems.
- *Product scope.* Although producers understand the broad scope of the products covered by the Directive, a small number of producers specifically mentioned the difficulties of scope interpretation. The lighting industry called for the specific inclusion of the definition of luminaire(s).

## **11.2 COMMENTS FROM DISTRIBUTORS**

12 respondents to the consultation were Distributors or Trade Associations representing this sector.

Under the WEEE Regulations, distributors have obligations to offer facilities free of charge for consumers to return old or discarded EEE. Distributors will be able to discharge their obligation by:

- providing like-for-like in-store take-back to consumers; or
- becoming a member of the distributor takeback scheme (DTS) which provides a local facility for consumers to discard WEEE; or

- in the case of distance sellers, a free collection on delivery service or membership of the DTS.

The guidance aims to establish an adequate collection network that covers, as a minimum, a similar geographical pattern to the existing local authority civic amenity (CA) site infrastructure. Local authorities are encouraged to register their sites as designated collection facilities (DCFs). Funding for the sites will be via the DTS.

The majority of distributors and trade associations provided additional comments to the consultation. The vast majority expressed overall support for the approach being proposed. However, there were several issues of common concern among many of those who responded, in particular relating to the handling of returned items, funding, enforcement and definitions. The main issues are listed below:

- *Returned/faulty items.* Issues were raised around the status of EEE returned by consumers as being faulty or not suitable. Should this be classed as WEEE or EEE? Distributors expressed the need for clarification within the Regulations that returned faulty goods to stores are outside the WEEE regulations so that, should these become waste, such arisings would not have to be returned to a DCF.
- *Funding.* Distributors are concerned that the DTS should not be seen as the sole source of funding for the adequate network of DCFs. Instead they believe that the DTS should only be responsible for providing a network sufficient to replace the take-back facilities that distributors will not offer.
- *Enforcement.* Those distributors that raised this issue were of the opinion that there should be a high level of enforcement allocated to this sector. There is the belief that this is the best way to ensure that the number of free-riders amongst distributors is kept to a minimum.
- *Definitions.* The definition of distributor was a point that was raised by a number of respondents. Specifically, concerns were raised over the status of wholesalers within the definition given in paragraph 17 of the draft guidance.
- *Consumer information.* There was concern over the type and format of the information that distributors will have to provide to consumers. In particular it was felt there should guidance issued by Government on what should be the minimum acceptable standards for this obligation.
- *Takeback on delivery.* Some distributors raised the takeback of WEEE on delivery of new EEE as an issue. Specifically, there is concern that distributors which join the DTS will still have to set up their retail platforms as additional DCFs as they will not be allowed to take this type of WEEE to DCFs operated by Local Authorities.

### **11.3 COMMENTS FROM LOCAL AUTHORITIES**

35 respondents to the consultation were Local Authorities. Under the WEEE Regulations, local government bodies have no legal obligations, other than as a user of non-household EEE. However, the guidance aims to establish an adequate collection network that covers, as a minimum, a similar geographical pattern to the existing local authority civic amenity (CA) site infrastructure. Local Authorities are encouraged to register their sites as designated collection facilities. Funding for the sites will be via the Distributor Take-back Scheme (DTS). If sites are registered, the regulations will affect local authorities in the following areas:

- the collection network for household WEEE;
- information to consumers about household WEEE;
- CA sites which are designated collection facilities;
- clearance arrangements;
- fall-back arrangements for clearance from a local authority DCF;
- household WEEE deposited by small distributors at CA sites and waste transfer stations; and
- bulky waste collections.

The majority of local authorities and associations provided additional comments to the consultation. The vast majority expressed overall support for the approach being proposed. However, there were several issues of common concern among many of those who responded, in particular relating to funding, space and collections. The main issues are listed below:

- *Funding.* There was genuine concern as to whether producers were actually bearing the costs of the implementation of the regulations, or if this was in reality partly funded via the tax-payer. Authorities generally stated that participation will only be guaranteed on the basis of secured full cost recovery.
- *Space.* Concerns were raised over ability to provide sufficient storage arrangements. This is closely related to the collection frequency (discussed below). However, clarification was sought on whether it was acceptable to offer fewer than five containers on grounds other than that of size, policy requirements, layout or accessibility of the site.
- *Collections.* Continuity of collection/waste removal service from local authority sites was seen as essential. Local authorities called for clear obligations relating to the frequency of collection and the need to agree response times on a site-by-site basis with the scheme or producer.
- *Revenues.* Many authorities were concerned over the potential loss of revenues by registering as a DCF. Many said that income from the sale of scrap metal from WEEE contributes significantly towards costs of running the site.

- *Contracts*. There was concern over existing contractual arrangements with service providers and the potential to change contractual arrangements mid-way through a compliance period if a DCF were reallocated to another scheme.
- *Exchange*. The proposed Exchange was widely supported as a constructive mechanism to sell evidence. Although concern was raised again over the need to receive payment on the basis of full cost recovery.
- *Code of practice*. The proposed Code of Practice for collection of WEEE from DCFs was also welcomed. Although, a few respondents raised some specific issues, including those relating to: a lack of performance standards relating to frequency of collection; insufficient definition of mixing; container volumes; and appointment of an arbitrator, amongst others.
- *Non-household WEEE*. Some authorities stated that it must be absolutely clear that there is no obligation to accept any non-household WEEE.
- *Publicity*. Some assurance was requested over the level of public awareness raising that would be sufficient. And specifically, regional differences in signage branding were raised, e.g. relating to *Recycle Now* campaign in England and Wales and the *Waste Aware* campaign in Scotland.
- *Reuse*. Support for the reuse of WEEE was expressed by some authorities. Although, some clarification was requested on the scope of reuse and the requirements for generating evidence.

#### **11.4 COMMENTS FROM WASTE MANAGEMENT COMPANIES**

25 respondents to the consultation were waste management companies or trade associations representing this sector.

Under the WEEE Regulations, waste management companies have no legal obligations, other than as users of non-household WEEE, but are likely to be centrally involved if they want to offer WEEE compliance services to obligated parties or authorised treatment facilities (ATFs), specifically to provide recycling or other recovery (e.g. incineration with energy recovery) services (as accredited reprocessors).

Producers and producer compliance schemes must submit Declarations of Compliance and supporting evidence at the end of each compliance period to show they have collected, treated and reprocessed sufficient WEEE to satisfy their obligations, including the recovery and recycling targets.

The proposals state that each declaration must be supported by paired evidence notes. One evidence note will be completed by the first ATF to take delivery of a consignment of WEEE, which must show the tonnage of WEEE they have received by category. A second evidence note from an accredited

reprocessor will provide evidence that a specified tonnage of WEEE has been received for reprocessing.

The majority of waste management companies and trade associations provided additional comments to the consultation. The vast majority expressed overall support for the approach being proposed. However, there were several issues of common concern among many of those who responded, in particular relating to re-use of WEEE, health and safety, BATRRRT and DCF code of practice. The main issues are listed below:

- *Re-use of WEEE* Issues were raised around the re-use of WEEE and its status within the legislation. Those waste management companies that commented on this factor were of the opinion that the legislation should include greater emphasis on encouraging the re-use of WEEE, particularly at DCFs. There was also some regret that the Directive does not contain a target for the re-use of WEEE.
- *Health and safety.* Waste management companies are concerned that the WEEE they handle could contain hazardous materials. Additionally, the draft Code of Practice indicates that producers are responsible for H&S once WEEE leaves the DCF. Those who commented on this issue believe there should be some clarification given on this, in terms of the type and quality of H&S information that needs to be provided.
- *BATRRT.* Waste management companies expressed their wish for guidance and clarification over the definition of Best Available Treatment, Recycling and Recovery Techniques (BATRRRT). There was also concern that BATRRRT should not be left to local interpretation and that there should be the opportunity for regular discussion on the definition of BATRRRT.
- *DCF Code of Practice.* The code of practice for DCFs was a point that was raised by a number of respondents. Specifically, concerns were raised that the code of practice should also be applied to retailer platforms that operate in a manner similar to other DCFs.
- *Public engagement.* There was concern that the timing of giving information to consumers about the implementation and implications of the WEEE regulations was not being taken seriously enough. In particular it was felt the Government should be looking to begin the publication of this information no later than the start of 2007.
- *Data protection and security.* Some waste management companies would like there to be some guidance issued on data protection and security, particularly in light of the fact they will be handling sensitive data.



## **ANNEX A LIST OF RESPONDENTS**

Alba Plc  
Amazon  
AMDEA  
Ameptronic Ltd  
Arc 21  
Armagh Council  
Asset Management Ireland Ltd  
Association of British Healthcare Industries  
Association of Charity Shops  
Association of Sewing Machine Distributors  
Audio Design Services Ltd  
Automatic Vending Association  
B2B Compliance  
BACTA  
BEAMA Ltd  
Beige Group  
Bellaire Electronics  
Bell-Fruit Games Co Ltd  
Biffa Waste Services/Transform Compliance Scheme  
Boots The Chemists Ltd  
Bristol City Council  
British Hardware and Housewares Manufacturers Association  
British Metal Recycling Association  
British Retail Consortium  
British Toy and Hobby Association  
BT  
Budgetpack  
Cable and Wireless  
Cambridgeshire County Council  
Canford Group PLC  
Canon  
Carlsbro Electronics Ltd  
CBI  
City Electrical Factors Ltd  
City of London Corporation  
City Theatrical Inc  
CIWM  
CKS Group plc  
Co oP  
Community Waste Network of Yorkshire and Humberside  
Compliance Link  
Computer Remarketing Services Limited  
Cornwall County Council  
COSLA  
Cover Tronic  
Craigavon Area Hospital Group Trust  
Crosslee  
Cylch - Wales Community Recycling Network  
Dell Computer Corporation  
Denbighshire Council  
Department of Health (Estates & Facilities Division)  
Devon County Council  
DHL Exel Supply Chain  
DLA Piper UK  
Dorset County Council  
East Ayrshire Council  
EasyFone  
EEF  
EIC  
Electrolink Recycling  
Electrolux  
Electrosonic Ltd  
Elitegroup Computer Systems  
ELWA  
EMR  
Engelhard Sales Ltd  
Enlightened Architectural Lighting Ltd  
Enlightened Lamp Recycling Ltd  
Environ  
Environcom  
Environmental Mobile Control Ltd  
Environmental Packaging Solutions  
Equality Commission  
ERP  
ESA  
Essex County Council  
European Power Tool Association  
EWCL Ltd  
Federation of Communication Services  
Federation of Small Businesses  
Financing and Leasing Association  
Finning UK Ltd  
Fujitsu  
Furniture Re-use Network  
GAMBICA  
GLA  
Greater Manchester Waste Limited  
Greenstar UK Ltd  
GRP Electronic Ltd  
Health Facilities Scotland  
Heraeus Amba Ltd  
Hertfordshire County Council  
Hilditch Auctioneers  
Home Retail Group  
Hoover  
Horticultural Trades Association  
HP  
ICER  
Indesit Company UK Ltd  
Institute of Chartered Accountants  
Intellect  
International Association of Broadcasting Manufacturers  
ISA Trading Ltd  
ISE Ltd  
Islington Council  
J H Donald (Darvel) Ltd  
Jands Pty Ltd  
Jands Pty Ltd2  
Japan Machinery Center for Trade and Investment (JMC)  
JVC (UK) Ltd

K R Kearney, Lighting Association  
 Kent County Council  
 Kinesys Projects Limited  
 KV2 Audio Europe Ltd  
 Lamp Recycling Association  
 Lancashire County Council  
 LARAC ( Local Authority Recycling  
 Advisory Committee)  
 LGA  
 London Borough of Camden  
 London Councils  
 London Remade  
 Lovells  
 Lumicom Ltd  
 M Baker Recycling Ltd  
 Mad Catz Europe Limited  
 Mail Order Trade Association  
 Mark Mercer Electronics Ltd  
 Martin Audio  
 Merseyside Waste Partnership  
 MOD  
 NAWDO  
 NISP WM  
 Non Ferrous Alliance  
 Norfolk County Council  
 North Lanarkshire Council  
 Numatic International Ltd  
 Overton Recycling  
 Panasonic  
 Peterborough City Council  
 Phil Goodliffe - NRG  
 PHS Group Ltd  
 Portable Electric Tool Manufacturers'  
 Association  
 Proctor & Gamble  
 Professional Lighting and Sound  
 Association Ltd  
 RDC  
 Recolight Ltd  
 Recycling Concepts  
 REPIC Limited  
 RETRA  
 RFI Global  
 Richard Paul Russell Limited  
 RID UK Ltd  
 Robert Bosch limited  
 S Norton and Co  
 Salco Group  
 SANYO Europe Ltd  
 Scottish Water  
 SEPA  
 SGS UK Ltd  
 Sheffield City Council  
 Shore Recycling  
 Siemens Corporate Shared Services  
 Sims Group UK Ltd.  
 Small Electrical Appliance Marketing  
 Association  
 Somerset County Council  
 Sony United Kingdom Limited  
 Southern Waste Management  
 Partnership  
 Stage Technologies Ltd  
 Suffolk Waste Partnership  
 T Mobile  
 Tesco Stores  
 The Environment Exchange  
 UKAS  
 Valpak Ltd  
 Viridor  
 Wardray Premise Ltd  
 WEEE Scheme Forum  
 WEEECOMPLY Ltd  
 Welsh Assembly WEEE Focus Group  
 Welsh Local Government Association  
 West Sussex County Council  
 Westell Ltd  
 Wiltshire County Council  
 Wirral LA21 Network  
 Xerox UK  
 Zexia Access Ltd & Forensic Vision Ltd

**1) Do the proposals in this document and the accompanying Guidance correctly implement Directives 2002/96/EC and 2003/108/EC?**

Many of the issues raised in responses to this question relate to the other questions, and will be addressed in the appropriate section.

The Regulations aim to give producers of EEE control over the collection, treatment and reprocessing of WEEE arising in line with their obligations under the Directive.

By giving physical control of the process to producers and their compliance schemes, opportunities to realise potential efficiencies can be identified. As the system settles this will result in the financial burdens on producers being reduced.

**2) If you are a small business, what burdens are associated with the introduction of the Regulations and how could these be mitigated?**

The WEEE Directive is a producer responsibility directive. All producers placing EEE on the market have a responsibility to finance the collection, treatment and reprocessing of the WEEE in line with their market share. Under the UK Regulations all producers are required to join a compliance scheme and register with the appropriate agency.

Arguments have been put forward questioning the disproportionate financial impact of registration on SMEs. The consultation document gave a single registration fee for all producers, which could be disproportionate for SMEs. As a result of the responses and further discussion with representatives of SME producers, a three tier funding regime will be introduced.

The regime will be based on turnover and the requirements to register for VAT. The fee structure in the Regulations will be:

- £30 for each scheme member who is not, and is not required to be, registered under the Value Added Tax Act 1994;
- £220 for each scheme member who is, or is required to be, registered under the Value Added Tax Act 1994 and who had a total turnover of £1 million or less in the last financial year; and
- £445 for each scheme member who had a total turnover of more than £1 million in the last financial year.

There is acceptance that the UK Regulations will require producers to join compliance schemes in order to discharge their obligations. Producers and compliance schemes will have the obligation to keep appropriate records for the purpose of monitoring and enforcement by the agencies.

The requirements for record keeping are vital to allow monitoring and the development of an appropriate enforcement regime. In view of responses to the consultation on this point, the final Regulations will now only require record keeping for a period of four years. This matches reporting requirements of other regulations.

***3) In the Regulatory Impact Assessment, do you agree with the costs of processing and treating WEEE which are presented? If not, please provide your estimate of these costs and provide evidence in support of your figures.***

The partial RIA has been revised in the light of responses to the consultation paper.

Of those that agreed with the partial RIA, most thought that the estimates provided were in the correct range. Some respondents to the consultation said that the costs presented were under-estimates of the true costs, whilst some respondents said that the costs were over-estimates. Of those that disagreed with the partial RIA no respondent provided detailed alternative estimates or evidence to support alternative estimates. The final RIA discusses a number of issues raised by those who disagreed with the estimates in the partial RIA.

The final (and partial) RIA recognises the uncertainties surrounding estimates of costs in relation to implementing the WEEE Directive in the UK, not least because it is unclear how much and what type of WEEE will be affected, what the net costs will be (after adjusting for the positive value of the metallic content) for treating and recycling WEEE in the UK, and how many producers will be affected.

The figures in the final RIA provide indicative cost estimates which do not appear to be out of line with estimates of costs being incurred in a number of other Member States.

***4) What do you think of the approval criteria for producer compliance schemes? Are there any criteria that appear superfluous or are there any important criteria that have not been taken into account?***

A number of issues on the operation of compliance schemes and criteria for their approval were raised during the consultation exercise.

Timescales – While accepting that the timescales are tight for producer compliance scheme approval, producer registration and practical arrangements that need to be in place to discharge obligations, there are reasons why the timetable has limited flexibility.

Although prospective compliance schemes can begin making preparations in developing their applications and membership base at any time prior to 2 January 2007, until the Regulations become law neither prospective schemes, producers, nor the agencies are obligated to take any action.

The Environment Agency ran a workshop on 30 October 2006 for prospective schemes. The aim of the workshop was to give guidance on the scheme approval process and on the supporting information which will be required in applications.

Anti-competitive Behaviour – To enable all producers to benefit from efficiencies within the system it is important that in some aspects of the process, schemes co-operate (for example, in their relationships with local authorities and the re-use and refurbishment sector). The level of co-operation, however, should not breach the requirements of either UK or EU competition law. For example, price setting or cartel behaviour would not be acceptable under the UK and EU legislative framework.

***5) What would be a reasonable permissible limit for over- or under-collection by a compliance scheme? How could this limit be defined?***

See response to *Question 6*.

***6) What is a practical limit for payments by the Exchange to schemes which have over-collected? Please explain what the effects of changing this limit would be.***

The responses to the consultation package on *Question 5* and *6* were disappointing with the majority of respondents either not responding or expressing no view.

The Regulations will therefore not impose a fixed limit for the over- or under-collection of WEEE or the levels which can be traded via the exchange. It will, however, be expected that producer compliance schemes will collect in line with the aggregated obligations of their members while ensuring that any agreements with DCFs are honoured for a full compliance period.

It is in the interests of scheme members and the cashflow of schemes to revise estimates of their obligations on the basis of quarterly submitted and published data, and to collect, treat and reprocess accordingly. Trading of physical WEEE will not be prohibited, while the exchange settlement system will enable the trading of evidence.

***7) What improvements could be made to the arrangements for evidence and trading, which are consistent with the reporting requirements of the Directive and which show that the producers' obligations have been fulfilled?***

Evidence System – the proposed evidence process has been the subject of a number of discussions across and with the waste management sector. As a result some significant changes to the system have been made.

The evidence notes will still need to contain two pieces of information – how much separately collected WEEE has entered an approved authorised treatment facility (AATF) and how much treated material has entered a reprocessing facility for reprocessing and recycling.

Reprocessing facilities will no longer be required to obtain accreditation. The AATF will be required to compile the two pieces of evidence and give them to producer compliance schemes in line with their contractual agreements. AATFs will however need to obtain “approval” from the agencies in order to issue evidence. This will include demonstrating that appropriate systems and third party audits are in place to ensure treated materials have been sent for reprocessing.

Additional conditions will be placed on exporters, who will be required to demonstrate that WEEE is being treated and/or reprocessed overseas to acceptable standards. This will be in addition to existing regulations, for example the Transfrontier Shipment of Waste Regulations.

Protocols – respondents to the consultation generally supported the “protocols” approach to estimating product categories in loads of mixed WEEE entering AATFs.

Weight v Units – for consistency and to ease administrative burdens, the Regulations where possible will require reporting based on weight. One exception to this will be re-use, which does not enter an ATF. Producer compliance schemes will be required to report the number of units they pass for re-use. This will be separate from their obligations to finance the collection, treatment and recycling of WEEE. Schemes will however be able to use this information to demonstrate they are meeting the requirement to prioritise re-use.

Categories – as a direct result of responses and discussion during the consultation period, the categories to calculate the obligations of producers will be expanded from the original 10 in the Directive. This will mean that in addition to the 10 categories in the Directive there will be an additional 3 categories of equipment, all of which have higher treatment costs due to hazardous materials.

The additional categories will be: products containing refrigerants; TVs and computer monitors; and gas discharge lamps. The scope of the first two of these categories encompasses all products of that type rather than just those containing hazardous substances because of concerns over the advancement of technology. For example, if the additional category was defined as monitors containing cathode ray tubes (CRTs) rather than all monitors, then as CRT equipment is made obsolete by flat screen technology, the dwindling number of remaining CRT producers would pick up an increasing obligation for products originally put on the market by their competitors.

**8) Do you agree that the mandatory presentation of the costs of handling historic WEEE would exceed the requirements and increase the costs of implementing the Directive?**

**How could such a fee be set at an appropriate level (adjusted over time), without arbitrarily distinguishing the costs of handling historic WEEE from other costs faced by producers?**

A number of representations have been made on this topic including written responses to the consultation, meetings with officials and direct representations to Ministers. The Regulations will not give a legal right to producers to force the display and collection of a visible fee.

The Regulations will, however, allow producers and distributors to agree the need and appropriate mechanism for informing consumers of the cost associated with recycling historical items when they purchase a replacement. Producers will not be allowed to demand that distributors ring-fence the associated costs unless this is by mutual agreement.

Via a non-obstruction clause in the Regulations, producers will be able to mark their products with the cost of handling historical WEEE (for example on the packaging or directly on the product). The distributor will not be able to intentionally obstruct such a marking.

**9) What do you think of the arrangements for business to business producers? Are there any difficulties/particularities about business to business WEEE that have not been taken into account?**

During discussions with producers of non-household WEEE and their compliance schemes, a number of issues were raised which indicated producers thought the proposals were missing details which would be helpful in developing the necessary systems and processes needed to ensure non-household WEEE is treated and reprocessed in line with the requirements of the Directive.

The non-statutory Guidance is currently being redrafted to address a number of the concerns and queries raised. This will include the development of a definition to help producers decide if their goods are household or non-household sales and therefore how they should be reported to the agencies.

A number of respondents to the consultation have expressed concerns that the Regulations imply non-household producers will lose the flexibility to manage their own take-back processes, potentially undermining a large part of the customer service they offer. This is a misinterpretation. Producers will still be required to join a compliance scheme but will have the flexibility to deal with their clients face to face. In this case the compliance scheme will handle all relevant record keeping and reporting of compliance to the agencies.

**10) The annual subsistence charges payable to the agencies includes the cost of monitoring activities against free-riders. Do you agree that part of that fee should cover monitoring activities? Are there other ways in which the cost of monitoring activities might be recovered from members of a compliance scheme?**

The Government has concluded that it would not be appropriate to include the costs of monitoring free-riders in the producer subsistence charge.

The Government will therefore provide grant-in-aid to the agencies to cover monitoring of free-rider activity. This change will result in a further reduction in the subsistence charges for producers and will give the UK one of the lowest registration fees across Europe.

A Government-led review on the funding of agencies will commence in the near future. One of the suggested areas of work for the review will be to examine the viability of fines imposed on non-compliant producers being returned to the agencies. This suggestion will be kept under review and addressed at the appropriate time.

***Other issues raised***

In addition to the specific questions raised, respondents highlighted other concerns, which should be addressed as part of the consultation.

Individual Producer Responsibility (IPR) – The WEEE Directive gives collective responsibility for historical WEEE (EEE placed on the market prior to 13 August 2005) and IPR for new WEEE (EEE placed on the market after 13 August 2005).

The UK Regulations address the issue of historical WEEE in the first instance and recognise that IPR must be addressed before new EEE becomes part of the waste stream.

No other Member State has developed a process for identifying individual products and a system for returning them to the original producer. There is acceptance that the technology is currently not available to perform this task without significantly increasing the costs of compliance across the whole process.

The Regulations require producer compliance schemes to produce a report by the end of 2007 detailing how they and their members propose to address this issue in the medium to long term.

The UK will be taking an active part in the Commission's review into the Directive (due to begin 2008) and will be pushing for the practical implementation of IPR to be addressed as part of that exercise.



Centralised Producer Registration – A number of producers have raised the issue of financial and administrative burdens resulting from the need to register in each of the Member States separately. This topic will again be an issue for the 2008 Commission review of the Directive. The UK's preliminary position based upon the results of this consultation will be to push for unified systems across Member States.

Product Scope – A number of responses raised the issue of scope interpretation and definitions. The scope of the WEEE Regulations will need to be closely aligned with the scope of the Restriction of Hazardous Substances Regulations. The non-statutory Guidance is being reviewed to ensure that interpretation is made simpler – for example via decision trees.

Re-use – It is encouraging that producers of those goods most suited for re-use felt that there is adequate support for re-use in the UK Regulations. The concerns of other producers over safety issues have been noted, and the Government will look at how to develop standards for re-use and promote the sharing of best practice. The UK's preliminary position will be to push for re-use targets to be introduced as part of the 2008 Commission review.