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Date: 11 July 2005

To:

Waste companies and others in Scotland who may be affected by the Directive on Waste Electrical and Electronic Equipment

Dear Sir/Madam

DIRECTIVE 2002/96/EC ON WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT CONSULTATION PAPER ON TREATMENT AND PERMITTING REQUIREMENTS

I attach for your information a copy of a consultation paper and draft Regulations on the implementation of the treatment and permitting requirements of EC Directive 2002/96/EC on Waste from Electrical and Electronic Equipment.

The draft Regulations make a number of amendments to the Waste Management Licensing Regulations and we are seeking the views of waste operators and others who may be affected by the new requirements. If you wish to submit comments please send them, by post to:-

Mr Gary Gray
Scottish Executive
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or by email to :-

waste.team@scotland.gov.uk

Comments should reach us by **23 September 2005**.

An electronic copy of the consultation paper may be downloaded from the Executive's website at www.scotland.gov.uk/publications. Additional hard copies may be obtained on request, by telephoning 0131-244-0236, or by e-mail to waste.team@scotland.gov.uk, while stocks last.

Yours faithfully

J CONVERY
Waste Regulation



Environment Protection Waste Management

**Council Directive 2002/96/EC on Waste Electrical and
Electronic Equipment**

**Consultation paper on the implementation of Article 6 -
Treatment and permitting requirements**

July 2005
Paper 2005/11

CONSULTATION ON THE

WASTE ELECTRICAL AND ELECTRONIC
EQUIPMENT (WEEE) DIRECTIVE

PROPOSALS FOR:

TRANSPOSING THE TREATMENT AND PERMITTING
REQUIREMENTS OF ARTICLE 6

AND

PROVIDING FOR EXEMPTIONS FOR THE STORAGE,
REFURBISHMENT AND REPAIR OF WEEE

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ISBN: 0-7559-2627-7

Scottish Executive
St Andrew's House
Edinburgh
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Produced for the Scottish Executive by Astron B42302 07/05

Published by the Scottish Executive, July, 2005

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

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PREFACE

This consultation paper presents options and draft regulations for the implementation of the permitting requirements of Article 6 and Annexes II and III of EC Directive 2002/96/EC on waste electrical and electronic equipment (the WEEE Directive). The proposals in this document relate to Scotland but are similar to those consulted on by the Department of Environment, Food and Rural Affairs in its consultation document *Consultation Paper on Proposals for Regulations Transposing the Treatment Permitting Requirements under Article 6 of the Waste Electrical and Electronic Equipment Directive and Providing for Exemptions for Storage, Repair and Refurbishment of WEEE* dated May 2005.

Comments are invited on the proposals contained in this paper. These should be sent, by post, to:

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or, electronically, to:

waste.team@scotland.gsi.gov.uk

Would respondents sending comments by email please include their or their organisation's name and postal address in the body of the email.

Closing date for receipt of comments is 23 September 2005

Enquiries and further copies

An electronic version of this consultation paper may be downloaded from the Scottish Executive website at www.scotland.gov.uk/consultations/environment. A limited number of hard copies is also available. Requests for further hard copies should be made to 0131-244-0236.

Publicity and openness

The Executive may wish to publish responses or deposit them in its libraries. If this is done, all responses will be so published or deposited **unless the respondent specifically asks for his or her response to be treated as confidential**. Confidential responses will still be included in any statistical or summary form which does not identify the source of the views expressed.

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1. INTRODUCTION

1.1 The Directive 2002/96/EC of on Waste Electrical and Electronic Equipment (WEEE Directive) aims to reduce the volume of WEEE and to encourage the reuse, recycling and recovery of this type of waste in order to reduce the amounts being subject to disposal. The Directive requires that any establishment or undertaking treating WEEE must obtain a permit from a competent authority it is treated to the requirements set out in the Directive. The treatment and permitting requirements of the Directive are prescribed by Article 6 and Annexes II and III.

1.2 Preliminary discussion on the implementation of Article 6 was included in the joint DTI, Scottish Executive, Welsh Assembly Government, Northern Ireland Office consultation exercises of March and November 2003. Those consultation documents and summaries of their outcomes are available from the DTI website, at www.dti.gov.uk/sustainability/weee/index.htm. The Scottish Executive intends to bring into effect these regulations at the same time as producer responsibility regulations become effective, and this consultation paper and draft regulations are drafted on the basis that the effective date is 1 January 2006. If the timetable for the producer responsibility regulations changes, this shall be reflected in these regulations when they are laid.

1.3 The Scottish Executive proposes to make the following amendments to the Waste Management Licensing Regulations 1994 to transpose the permitting requirements of the WEEE Directive and to make provision for exemptions in respect of operations involving WEEE:-

- Site licences authorising the treatment of WEEE will need to include such conditions for its storage and treatment as are necessary to ensure that the requirements of Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive are met. The conditions will include:-
 - requiring best available treatment recovery and recycling techniques to be applied;
 - requiring, as a minimum, that WEEE is treated by the removal of all fluids and is subjected to the appropriate selective treatment(s) specified in Annex II of the WEEE directive (Annex II lists components and materials which must be removed and details additional treatments that must be undertaken on them), and
 - a requirement for facilities treating WEEE to comply with the technical requirements set out in Annex III (Annex III includes provision for impermeable surfaces, secure storage, containment, etc).

- Existing operators holding a site licence or benefit from a registered exemption that includes the treatment of WEEE who want to:
 - continue treating WEEE after 1 January 2006; and
 - take advantage of the transitional arrangements in these Regulations

must, as appropriate, apply for a new licence, apply for the variation of an existing license or notify an exempt WEEE treatment activity by no later than 31 March 2006.

- Subject to the condition that the operator complies with the Directive's permitting requirements as set out in Article 6(1), (3) and (4) and Annexes II and III, the operator will be able to continue treating WEEE pending the determination of his application or registration of his activity.
- Any operator who has not made a valid application for a new licence, variation of an existing license or notification of an exemption for WEEE treatment activity, by 31 March 2006, will no longer be able to treat WEEE from that date.
- A treatment exemption under Article 6(2) of the WEEE Directive is proposed for the repair and refurbishment of WEEE to promote reuse. Repair and refurbishment will cover the replacement of parts, associated safety and other testing of the condition and operation of the equipment. It is expected that these activities will also pose a low risk if carried out on a small scale.
- An exemption under Article 11(1)(b) of the Waste Framework Directive is proposed for the storage of WEEE prior to it being handed over to an authorised treatment facility. Such an exemption will not be subject to the requirements of Article 6 of the WEEE Directive.
- Both exemptions will apply to hazardous and non-hazardous waste.

1.4 SEPA and the Environment Agency have consulted separately on draft technical guidance for the treatment and storage of WEEE. The purpose of their guidance is to define what constitutes treatment for the purposes of the Directive at an authorised treatment facility. The draft guidance has been posted on SEPA's website, at www.sepa.org.uk/pdf/consultation/closed/weee_treatment/weee_treatment.pdf.

2. DIRECTIVE PERMITTING AND TREATMENT REQUIREMENTS

Background to the Waste Electrical and Electronic Equipment (WEEE) Directive

2.1 An objective of the WEEE Directive as set out in Article 1 are to reduce the quantity of WEEE that arises, by ensuring that the costs of disposal are considered when a new piece of equipment is designed and placed on the market. In addition, the Directive has the objectives of promoting reuse, recycling and other forms of recovery of such wastes so as to reduce the disposal of waste. The Directive also seeks to improve the environmental performance of all operators involved in the life cycle of electrical and electronic equipment, e.g. producers, distributors and consumers and, in particular, those operators directly involved in the treatment of WEEE.

2.2 Article 5(4) of the WEEE Directive provides that Member States must ensure that all separately collected WEEE is transported to treatment facilities authorised under Article 6 of the Directive. An essential requirement for such facilities is that they are required to have a permit under Articles 9 and 10 of the Waste Framework Directive.

2.3 The Waste Framework Directive aims to regulate the production, removal, disposal and recovery of waste without endangering human health and without using processes or methods which could harm the environment. This is achieved in part by requiring that all waste disposal or recovery operations must hold a permit under Article 9 (disposal) or Article 10 (recovery) or be registered as exempt from licensing under Article 11.

2.4 Article 6 of the WEEE Directive imposes some further requirements in addition of the requirement to obtain a Waste Framework Directive permit if establishments or undertakings wish to treat WEEE (set out below). Treatment is specifically defined in the Directive as any activity after the WEEE has been handed over to a facility for “depollution, disassembly, shredding, recovery or preparation for disposal and any other operation carried out for the recovery and/or the disposal of the WEEE”. Such operations are either recovery or disposal operations under the Waste Framework Directive. The WEEE Directive also imposes additional requirements for the inspection of premises prior to and following the registration of exemptions involving the recovery of WEEE.

2.5 Waste management licences are currently required for the treatment operations prescribed by the WEEE Directive. These comply with the requirements of the Waste Framework Directive and are issued under Part II of the Environmental Protection Act 1990 and the Waste Management Licensing Regulations 1994.

Definition of terms used by the Directive

2.6 Article 6 of the WEEE Directive applies to the treatment of WEEE. Treatment is defined at Article 3(h) of the Directive, as follows:

‘treatment’ is any activity after the WEEE has been handed over to a facility for depollution, disassembly, shredding, recovery or preparation for disposal and any other operation carried out for the recovery and/or the disposal of WEEE”

2.7 Article 3(d), (e), (f) and (g) also define re-use, recycling, recovery and disposal respectively for the purposes of the Directive, as follows:-

“‘re-use’ means any operation by which WEEE or components thereof are used for the same purpose for which they were conceived, including the continued use of the equipment or components thereof which are returned to collection points, distributors, recyclers or manufacturers;

‘recycling’ means the reprocessing in a production process of the waste materials for the original purpose or for other purposes, but excluding energy recovery which means the use of combustible waste as a means of generating energy through direct incineration with or without other waste but with the recovery of heat;

‘recovery’ means any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC; and

‘disposal’ means any of the applicable operations provided for in Annex IIA to Directive 75/442/EEC.”.

Annexes IIA and IIB of the Waste Framework Directive list the disposal and recovery operations which require a permit.

2.8 Storage may be either a recovery or a disposal operation. However, the requirements of Article 6 of the WEEE Directive do not apply to storage other than at a treatment facility.

Treatment requirements of the Directive

2.9 Article 6(1) requires producers, or third parties acting on their behalf, to set up systems to provide for the treatment of WEEE using BATRRRT. The obligation to set up a system will be contained in producer responsibility will be provided for in the prospective Waste Electrical and Electronic Equipment (Producer Responsibility) Regulations 2005. The purpose of this consultation is to seek views on draft Regulations providing for the facilities within those systems to be appropriately licensed.

2.10 Article 6(1) also requires certain minimum treatments to be applied and that these treatments must be carried out without endangering human health and without using methods which could harm the environment or cause nuisance.

2.11 The minimum treatments are the removal of all fluids and, as appropriate, the removal of the substances, preparations and components listed at Annex II of the Directive, eg, batteries and cathode ray tubes. This includes certain treatments to the removed components themselves, eg, removal of the fluorescent coating from CRTs. Fifteen separate treatments and three sub-treatments are listed. They must all be carried out in such a way that environmentally-sound re-use and recycling of components or whole appliances is not hindered.

2.12 Other treatment technologies ensuring at least the same level of protection for human health and the environment may be added to Annex II in the future. Additions will be with the agreement of Member States and will be subject of consultation if and when they arise.

2.14 Finally, Article 6(1) allows Member States, for the purposes of environmental protection, to set up minimum quality standards for the treatment of WEEE. In transposing the Directive the Executive does not wish to impose any unduly onerous conditions on operators or gold plate the Directive. Therefore we do not intend to establish, in either the Regulations or planned guidance, any minimum quality standards for the treatment of WEEE.

Permitting requirement and exemptions

2.15 Article 6(2) states that any establishment or undertaking carrying out treatment operations should obtain a permit from the competent authorities in compliance with Articles 9 and 10 of the Waste Framework Directive. That is, in Scotland, a waste management license must be obtained from SEPA.

2.16 Article 6(2) also allows the exemption from the permitting requirement in respect of recovery operations concerning WEEE. The Directive requires that an exemption may only apply if an inspection is carried out before registration (and thereafter at least once a year). This inspection must verify (a) the types and quantities of waste to be treated; (b) the general technical requirements to be complied with; and (c) the safety precautions to be taken.

2.17 Exemptions for the treatment and for the storage of WEEE are discussed at section 3 below.

Technical requirements for treatment facilities

2.18 Article 6(3) requires that a facility which treats WEEE must also store and treat it in compliance with the technical requirements set out in Annex III of the Directive. That is, storage areas must have, where appropriate, impermeable surfaces, be

weatherproof and have provision for spillage collection, decanters and cleaners-degreasers. Treatment areas must additionally have balances for weighing treated waste, storage for disassembled parts, containers suitable for hazardous components and substances and water treatment.

Licence conditions

2.19 Article 6(4) requires that a permit or registered exemption for treatment includes all the conditions necessary to secure compliance both with the requirements of Article 6(1) and (3) and the recovery targets of Article 7. These requirements will be delivered by conditions attaching to the issue of a waste management licence.

Exporting WEEE

2.20 The treatment of WEEE may be carried out outside the UK or EU provided that its shipment complies with Council Regulation 259/93 on the supervision and control of shipments of waste within, into and out of the European Community. Treatment of a shipment exported from the EU will only count towards the Directive's recovery targets if its recovery, reuse or recycling take place under conditions broadly equivalent to those set out in the Directive. This requirement will be addressed in the UK Government's prospective Waste Electrical and Electronic Equipment (Producer Responsibility) Regulations 2005.

Environmental Management Systems

2.21 Member States are required to encourage those treating WEEE to introduce certified management systems in accordance with EC Regulation 761/2001 (providing for voluntary participation by organisations in a Community eco-management and audit scheme). A response to this requirement is being considered separately. In the meantime, views are sought on what this might be.

Q1 What do you think should be done to encourage treatment facilities to introduce environmental management systems?

3. EXEMPTIONS

3.1 It is necessary to consider whether the list of exemptions contained in Schedule 3 to the Waste Management Licensing Regulations 1994 should be amended to encourage the recovery and treatment of WEEE.

3.2 The treatment of WEEE under the current exemption regime already needs to have regard to the following principles:-

- an exempt operation should not pose a danger to human health or an unacceptable risk to the environment if carried out within the general rules adopted;
- this should be determined by reference to any emissions/discharges or other adverse impacts;
- the nature and scale of the activities should be such that they are not location sensitive, ie, if carried out within the general rules adopted, there will be no discernible difference in the risk posed by the activity between one location and another.

3.3 In respect of treatment for recovery, the following principles also need to be considered:-

- the activity should lead directly to the partial or complete recovery of the waste, or components or constituents of the waste;
- the treatment process itself should not produce significant new hazards or adverse impacts;
- the activity should contribute to meeting the objectives of the WEEE Directive.

3.4 There are two activities in particular where exemptions from permitting may usefully apply to operations involving WEEE: the storage of WEEE prior to being handed over for treatment and the repair and refurbishment of WEEE. To ensure the appropriate environmental standards for storage and that no treatment takes place that falls short of Directive standards, WEEE shall be taken out of the scope of most of the existing exemptions.

Proposed exemption for the storage of WEEE prior to treatment

3.5 This exemption would only apply to the storage of WEEE prior to its being handed over to an authorised treatment plant for recovery. Such an exemption would therefore be based on Article 11(1)(b) of the Waste Framework Directive (waste recovery) and not subject to the requirements of Article 6 of the WEEE Directive. Such an exemption is intended to encourage the development of small-scale collection systems and enhance the re-use and recovery of WEEE. Such storage poses a low risk of

pollution and it is therefore considered appropriate to draw up an exemption to allow this activity to be carried out. It should be noted that the exemption for the temporary storage of waste pending its collection, on the site where it is produced, will continue to apply to the storage of WEEE.

3.6 It is proposed that storage at a secure place of hazardous and non-hazardous WEEE of a kind described in Tables 1 and 2 below should be exempt if:-

- (a) the WEEE is stored for the purpose of its recovery elsewhere;
- (b) the total quantity of any particular type of WEEE stored at the site at any time does not exceed the storage limit specified in column 2;
- (c) the total duration that any particular type of WEEE is stored for does not exceed the duration limits specified in column 3;
- (d) the other storage requirements specified in column 4 are met;
- (e) the WEEE is stored in such a manner that its environmentally sound reuse or recycling is not hindered;

3.7 It is not proposed to charge a fee for registration the exemption.

Table 1: Storage of non-hazardous WEEE

<i>Waste (6 digit code)</i>	<i>Maximum quantity</i>	<i>Maximum duration</i>	<i>Type of containment</i>
16 02 14 (WEEE other than those mentioned in 16 02 09 to 16 02 12) and 20 01 36 (WEEE other than those mentioned in 20 01 21, 20 01 23 and 20 01 35)	50 cubic metres	3 months	impermeable surface within a secure store; weatherproof covering of stored WEEE
16 02 14 (WEEE other than those mentioned in 16 02 09 to 16 02 12) and 20 01 36 (WEEE other than those mentioned in 20 01 21, 20 01 23, 20 01 35)	50 cubic metres	3 months	appropriate leak proof containers providing an impermeable surface and weatherproof covering of stored WEEE

Q2: Have the quantities and precautionary measures in Table 1 for the storage of non-hazardous WEEE been set at the appropriate level? If not, why not?

Table 2: Storage of hazardous WEEE

<i>Waste (6 digit code)</i>	<i>Maximum quantity</i>	<i>Maximum duration</i>	<i>Type of containment</i>	<i>Other Requirements</i>
16 02 11* (WEEE containing chlorofluorocarbons, HCFC or HFC) and 20 01 23* (WEEE containing chlorofluorocarbons)	50 cubic metres	3 months	impermeable surface within a secure store; weatherproof covering of stored WEEE	stored in a manner that will prevent the release of the CFC, HCFC and HFC; overall height of any stack shall not exceed 2 units or 3.5m, whichever is the lower
16 02 13* WEEE containing hazardous components other than those mentioned in 16 02 09 to 16 02 12) and 20 01 35* (WEEE other than those mentioned in 20 01 21 and 20 01 23 containing hazardous components)	50 cubic metres	3 months	impermeable surface within a secure store; weatherproof covering of stored WEEE	
20 01 21* (fluorescent tubes and other mercury-containing waste)	5 cubic metres	1 month	appropriate leak proof containers; weatherproof covering	stored in such a way that the glass is not broken

Q3: Have the quantities and precautionary measures in Table 2 for the storage of hazardous WEEE been set at the appropriate level? If not, why not?

Proposed exemption for the repair and refurbishment of WEEE

3.8 Certain classes of WEEE and unwanted electronic and electrical products are sought after for their potential for reuse, one of the objectives of the WEEE Directive. Repair and refurbishment amounts to “treatment” as defined in the WEEE Directive. However, the activity poses a low risk of pollution and it is therefore considered appropriate to formulate an exemption to allow it to be carried out. Repair and refurbishment includes the replacement of parts and associated safety and operational testing of the equipment.

3.9 Treatment operations shall, as a minimum, include the removal of all fluids and the appropriate selective treatment listed at Annex II of the Directive. Since Annex II does not require all its treatments to be carried out at the same place it will not be necessary for refurbishment facilities to be able to carry out all of the applicable selective treatments. Where a selective treatment is necessary operators will be required to store or treat WEEE in a manner that will facilitate subsequent selective treatment elsewhere.

3.10 It is proposed that the repair and refurbishment of the WEEE listed in Tables 3 and 4 below should be exempt if:-

- (a) the activity is carried out with a view to reuse for the original purpose;
- (b) best available treatment, recovery and recycling techniques are used when carrying out the activity;
- (c) the quantities and storage limits in the tables are not exceeded;
- (d) the technical requirements specified in Annex III of the WEEE Directive are met;
- (e) the WEEE and any waste components are stored in such a manner that their environmentally sound reuse or recycling is not hindered; and
- (f) no WEEE is stored at that place for more than 12 months.

3.11 Before registering the exemption, SEPA will carry out an inspection of the facility to ensure compliance with Article 4 of the Waste Framework Directive. It will verify:

- (a) the types and quantities of waste to be treated;
- (b) the general technical requirements to be complied with; and
- (c) the safety precautions to be taken.

Inspections will take place annually thereafter.

3.12 In order to qualify for a repair and refurbishment exemption the operator will also require to provide an up-to-date operational plan and maintain records of the quantity, nature, origin, destination and treatment method of all waste disposed of or recovered. Those records will require to be kept for a period of at least 2 years and be made available to SEPA on request.

3.13 This exemption is for businesses and charities receiving WEEE for repair and reuse, including cannibalising usable parts and components from otherwise unserviceable products.

3.14 Exemptions will be subject to an initial application payment of £495 and an annual subsistence fee of £265. Failure to notify the exemption will be subject to a penalty and to the new provisions allowing SEPA to remove or cancel the registration.

Table 3: Repair, refurbishment and other treatment of non-hazardous WEEE

Type of Waste	Storage Limits*	Treatment Limits
16 02 14 (WEEE other than those mentioned in 16 02 09 to 16 02 13)	50 cubic metres	2 tonnes/day
20 01 36 (WEEE other than those mentioned in 20 01 21 and 20 01 23 and 20 01 35)	50 cubic metres	2 tonnes/day

* WEEE awaiting repair or refurbishment or waste stored following such treatment only. The limits do not apply to items that have been repaired and are therefore no longer waste.

Q4: Have the storage and treatment limits in Table 3 for an exemption for the repair and refurbishment of non-hazardous WEEE been set at the appropriate level? If not, why not?

Table 4: Repair, refurbishment and other treatment of hazardous WEEEs

Type of Waste	Storage Limits*	Treatment Limits*	Other Requirements
16 02 11* (WEEE containing chlorofluorocarbons, HCFC or HFC) and 20 01 23* (WEEE containing chlorofluorocarbons)	50 cubic metres	2 tonnes/day	stored in a manner that will prevent the release of the CFCs, HCFCs or HFCs;
Televisions and computer monitors containing cathode ray tubes falling within 16 02 13* (WEEE containing hazardous components other than those mentioned in 16 02 09 to 16 02 12) and 20 01 35* (WEEE other than those mentioned in 20 01 21 and 20 01 23 containing hazardous components)	50 cubic metres	2 tonnes/day	

* WEEE awaiting repair or refurbishment or waste stored following such treatment only. The limits do not apply to items that have been repaired and are therefore no longer waste.

Q5: Have the storage and treatment limits in Table 4 for an exemption for the repair and refurbishment of hazardous WEEE been set at the appropriate level? If not, why not?

Other existing storage exemptions

3.15 The exemptions under paragraphs 40 (for storage of non-liquid waste at any place other than the premises where it is produced, incidental to collection and transport) and 41 (for temporary storage of waste, pending its collection, on the site where it is produced) will be available to store WEEE. Operators who rely on either of these exemptions need do nothing; paragraphs 40 and 41 will be amended accordingly. No registration is required under either of the exemptions at paragraph 40 or 41.

3.16 WEEE delivered by private householders to a retailer under in-store take-back arrangements becomes waste at the point at which the householder passes it to the store. If the store holder has an arrangement to pass some of the WEEE that arises in his or her store for reuse, then this waste shall be recovered at the point when it has been repaired or refurbished for reuse (consistent with the new exemption for this activity). Paragraph 41 can therefore apply to the store where the waste arises, but the consolidation points for retailers take-back schemes to which the waste from individual stores is transferred will have to be the subject to appropriate regulation, such as the new storage exemption.

3.17 The exemption at paragraph 28 (for the storage of returned goods that are waste, for a period not exceeding one month, by their manufacturer, distributor or retailer) will no longer apply to WEEE as the proposed new storage exemption will be available and is both wider and applies to hazardous waste. Where those who have registered an exemption continue to store WEEE under the general rules of the new exemption, they will not have to re-register.

3.18 The potential for paragraph 45 (secure places designed or adapted for the recovery of scrap metal or the dismantling of waste motor vehicles) to apply to WEEE has also been considered. However, the scope of the exemption does not extend to WEEE. While such facilities may well deal with waste which was originally part of an electrical or electronic product, in practice, by the time it reaches a scrapyard it can no longer realistically be regarded as WEEE. The storage and treatment of scrap metal derived from WEEE currently provided for under paragraph 45(1) (ie, sorting, grading, baling, shearing by manual feed; compacting; crushing; cutting by hand-held equipment) could continue. Again, however, it is probable that the selective treatments required by Article 6 and Annex II of the WEEE Directive will have already been carried out before metals derived from WEEE reach scrap metal facilities operating under this exemption.

Q6: Comments are invited as to whether the assumptions in paragraph 3.18 are correct.

Gas discharge lamps

3.19 There is proprietary equipment available that allows for the crushing of florescent tubes into drums, with containment of gas emissions. The drums are then collected and transported to plant to achieve the recovery of the glass, and the recovery or disposal of other components of the waste. This equipment provides for compact storage of this waste, and guards against accidental breakage of tubes stored whole.

3.20 The opportunity exists to provide for an exemption covering this activity, subject to there being an appropriately high level of human and environmental protection associated with it. However, further information is needed in order to make a final judgment as to the viability of such an exemption, and on its drafting.

Q7: Should a new exemption for the crushing of fluorescent tubes be created?

Q7a: In order to inform further consideration of that question, specific comment is also sought on:-

(i) the risks such an exemption would pose to human health and the environment;

(ii) the nature and volume of potential emissions;

(iii) the maximum permissible limits for such emissions; and

(iv) whether there should be any prescribed standards for the carrying out of the activity?

(v) what specific benefits would there be in allowing lamp crushing to be carried out as an exempt activity?

3.21 Similarly, mobile plant is not a designated disposal route for the crushing of lamps. Therefore, mobile plant licenses cannot be granted by SEPA for this activity. However, it is arguable that truck mounted fluorescent tube crushers are no more than a means of securely containing this waste as it is collected on a special waste carriers round. Many wastes are broken, crushed or compacted as they are collected, and this is not generally considered an activity for which a mobile plant licence is needed.

Q8: Is there a need to make provision for mobile plant licences for the crushing of fluorescent tubes?

Other

3.22 The potential for amending the Waste Management Licensing Regulations to address other respects treatment for recovery is not ruled out, provided there is clear and quantifiable benefit from doing so.

Q9: Are there any other recovery-related activities for WEEE which are currently the subject of a WMLR license but which would benefit from an exemption? Please say what they are and explain why they should be exempt.

4. PROPOSED CHANGES TO THE WASTE MANAGEMENT LICENSING REGULATIONS 1994

4.1 This section explains the changes proposed to be made to the Waste Management Licensing Regulations 1994. The draft Regulations themselves are attached as Annex A.

4.2 Regulation 1 provides that the Regulations will apply to Scotland only. Subject to the response to this consultation they will come into force on 1 January 2006, in line with the plans for the prospective Waste Electrical and Electronic Equipment (Producer Responsibility) Regulations 2005 making producers liable for treating WEEE.

4.3 Regulation 2 defines the meaning of the various terms used in the Regulations.

4.4 Regulation 3 amends the definition of ‘Environmental license’ in Environment Act 1995.

4.5 Regulation 4 amends the Waste Management Licensing Regulations 1994 (WMLR 94) in accordance with Schedule 1. Schedule 1 makes the following changes:-

Paragraph 2 amends Regulation 1 of WMLR 94 (Interpretation, etc) by introducing or amending the definitions in those Regulations to bring them into line with those in Article 3 of the WEEE Directive.

Paragraph 3 amends Regulation 4(2) of WMLR 94 (Technical competence) by disapplying the requirement on those treating WEEE to have a Certificate of Technical Competence.

Paragraph 4 inserts a new Regulation 12A “Conditions of site licenses: treatment of WEEE” requiring SEPA to include in any licence granted or varied on or after 1 January 2006 for the treatment of WEEE such conditions as it considers necessary to comply with Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive.

Paragraph 5 amends Regulation 17 of WMLR 94 (Exemptions from Waste Management Licensing) so that the repair and refurbishment of WEEE and the storage of WEEE prior to its transfer to facilities for treatment must:-

(a) be carried out by or with the consent of the occupier of the land where the activity is carried on; or

(b) the person carrying out the activity is otherwise entitled to do so on that land.

It further provides that WEEE cannot be treated under an exemption on or after 1st January 2006 unless the relevant paragraph in Schedule 3 specifically refers to the treatment of WEEE.

Paragraph 6 amends regulation 18 (Registration in connection with exempt activities) to provide for certain matters to be verified prior to registering a WEEE treatment exemption.

Paragraph 7 inserts a new Regulation 18AB “Record-keeping obligation” requiring facilities carrying out repair or refurbishment under an exemption keep records for at least 2 years and to make them available to SEPA on request. It also makes non-compliance an offence subject to a level 2 penalty.

Paragraph 8 amends Schedule 3, paragraphs 40 and 41 (storage of nonliquid waste other than at the premises where it is produced and temporary storage of waste pending collection) to allow these exemptions to continue to be available for WEEE. It also inserts two new paragraphs giving two new exemptions, for the repair or refurbishment of WEEE, and for re-use and the storage of WEEE prior to treatment, subject to conditions.

Paragraph 9 amends Schedule 4, paragraph 13 (duty to carry out periodic inspections) to provide for SEPA to inspect facilities treating WEEE under an exemption.

4.5 Regulations 5 and 6 and Schedule 2 provide that operators have until 31 March 2006 to submit an application for a new site licence for WEEE treatment, a variation of an existing licence or the registration of a WEEE treatment exemption and that facilities can continue to operate past that date pending the determination of the application. (Transitional arrangements are dealt with in more detail in section 5 below.)

Q10: Consultees’ comments are sought on the draft Regulations at Annex A.

5. WHAT THIS MEANS FOR OPERATORS DEALING WITH WEEE

New Applicants

5.1 If an applicant has not operated a treatment site previously and holds neither a waste management licence nor a registered exemption, then he will need to apply for a waste management licence or register an exemption (if they fall within the general rules of the proposed exemption for repair and refurbishment). Licences granted on or after 1 January 2006 will contain such conditions as SEPA deems necessary to comply with the requirements and technical standards of the WEEE Directive.

Fit and proper person - new applicants

5.2 New applicants will need to satisfy SEPA that they are fit and proper persons for the purpose of holding a waste management licence. A person will not be regarded as being a fit and proper person if it appears that:-

- he or another relevant person has been convicted of a relevant offence;
- the management of the activities to be permitted will not be in the hands of a technically competent person; and
- the person who will hold the permit had not made, appears in no position to make or appears to have no intention of making, the financial provision adequate to discharge the obligations arising from the licence.

5.3 Those treating WEEE will, however, not be subject to the requirement to have a Certificate of Technical Competence under Regulation 4 of WMLR 94 but will require to be assessed by SEPA.

Planning permission-New applicants

5.4 Under the provisions of the Town and Country Planning (Scotland) Act 1997, planning permission is required for the carrying out of any development of land or for its use. Where planning permission is required, applicants for a licence to operate an authorised treatment facility must hold a relevant planning permission before SEPA is able to grant a waste management licence. If they do not, or if they need planning permission for additional works, they should apply to the planning authority.

Current holders of waste management licences

5.5 Many operators who will wish to treat WEEE in the future already hold a waste management licence authorising the treatment of that type of waste. Some of those licences will require modification to meet the requirements of Article 6 and Annexes II and III of the WEEE Directive. It may not be possible to modify others, in that case an

application for a new licence will be needed. In order to reduce the need for this, SEPA is permitted to vary both terms and conditions of site licences for the purposes of authorising the treatment of WEEE.

Modification of existing waste management licences

5.6 The amendments to WMLR 94 mean that an operator who wants to continue to treat WEEE on or after 1 January 2006 will have to apply for a variation of his licence to incorporate the requirements and technical standards required by the WEEE Directive. Operators will have until 31 March 2006 to submit their application. Those who decide not to modify their site licence will not be able to treat WEEE from 1 January 2006.

5.7 Where the holder of a site licence applies for a variation (or for a new licence or notifies SEPA that he wishes to be registered for the new paragraph 47A activity) before 31 March 2006, he can continue to operate notwithstanding the fact that his application has yet to be determined or activity has yet to be registered so long as he complies with the Directive's requirements and technical standards.

Operators wishing to treat WEEE after March 2006 must submit an application

5.8 Any operator who has not made a valid application for a new licence, variation of an existing license or notification of an exemption for WEEE treatment activity, by 31 March 2006, will no longer be able to treat WEEE from that date. The transitional provisions will continue to apply while an application is considered, but if the application is withdrawn or rejected, then the operator will no longer be able to treat WEEE.

Fit and Proper Person test - existing WML holders

5.9 Many operators wishing to treat WEEE will already have a waste management licence or a registered exemption and proved their suitability as fit and proper persons. Those operators will therefore not have to comply with the technical competence requirements in order to obtain a permit in the same way as new applicants will.

Registered exemptions

5.10 Operators registered with SEPA immediately before 1 January 2006 for carrying out an exempt activity that includes the treatment of WEEE may continue to treat WEEE so long as they apply for a licence, or notify a repair and refurbishment exemption, by 31 March 2006. Any such treatment will have to comply with the Directive's requirements and technical standards.

5.11 Operators who store WEEE under Schedule 3, paragraph 28 of WMLR 94 (storage of returned goods that are waste), will require to notify SEPA that they intend to store WEEE on or after 1 January 2006 by 31 March 2006. They may then continue to

store WEEE notwithstanding that they will have yet to be registered for the new paragraph 48A exemption.

Registered exemptions - holders who want to treat WEEE under a licence

5.12 A number of activities that can currently be carried out under the terms of a registered exemption will require to be authorised by a waste management licence. An operator operating under such an exemption who applies for a waste management licence may continue to operate under the exemption provided he complies with the requirements and technical standards of the WEEE Directive.

5.13 An applicant for a waste management licence should hold a relevant planning permission for the site. If he does not, or anticipates having to carry out additional works to obtain the license, he should consult his planning authority before submitting the application for the waste management licence.

New Operators who wish to treat or store WEEE under a new exemption

5.14 New operators who wish to treat or store WEEE under an exemption on or after 1 January 2006 may notify SEPA who will register them if they comply with the general rules and pay the applicable fee. For paragraph 47A treatment exemptions, an inspection will be carried out before the exemption is registered.

5.15 SEPA and the Environment Agency have consulted separately on draft technical guidance for the treatment and storage of WEEE. The purpose of the guidance is to define what constitutes treatment for the purposes of the Directive. The draft guidance has been posted on SEPA's website, at:

www.sepa.org.uk/pdf/consultation/closed/weee_treatment/weee_treatment.pdf.

Treatment of WEEE and BATRRT

5.16 Under the terms of the WEEE Directive, a minimum treatment of WEEE is the removal of all fluids and the undertaking of a selective treatment as prescribed by Annex II. There is no requirement in the WEEE Directive for all selective treatment processes for a given item of WEEE to be carried out at one site. It is therefore envisaged that the treatment requirements of Annex II may be undertaken across a number of sites. In that case, responsibility for carrying out the treatments would move from one treatment facility to another as the waste passes through the treatment chain.

5.17 The Directive requires treatment of WEEE to be undertaken using BATRRT. SEPA will make judgments on BATRRT for individual licences, informed by the similar provisions of PPC, and by the treatment guidance they have issued. Annex B contains a discussion of BATRRT.

Q11: Consultees' comments are sought on the discussion of BATRRT at Annex B.

Partial Regulatory Impact Assessment

5.18 A Partial RIA of the impacts on those carrying out waste disposal and recovery operations on WEEE is at Annex C.

Q12: Consultees' comments are sought on the partial RIA at Annex C.

SUMMARY OF QUESTIONS

Question 1: What do you think should be done to encourage treatment facilities to introduce environmental management systems?

Question 2: Have the quantities and precautionary measures in Table 1 for the storage of non-hazardous WEEE been set at the appropriate level? If not, why not?

Question 3: Have the quantities and precautionary measures in Table 2 for the storage of hazardous WEEE been set at the appropriate level? If not, why not?

Question 4: Have the storage and treatment limits in Table 3 for an exemption for the repair and refurbishment of non-hazardous WEEE been set at the appropriate level? If not, why not?

Question 5: Have the storage and treatment limits in Table 4 for an exemption for the repair and refurbishment of hazardous WEEE been set at the appropriate level? If not, why not?

Question 6: Comments are invited as to whether the assumptions in paragraph 3.18 are correct.

Question 7: Should a new exemption for fluorescent tubes be created?

Question 7a: In order to inform further consideration of that question, specific comment is also sought on:-

- (i) the risks such an exemption would pose to human health and the environment;
- (ii) the nature and volume of potential emissions;
- (iii) the maximum permissible limits for such emissions; and
- (iv) whether there should there be any prescribed standards for the carrying out of the activity?
- (v) what specific benefits would there be in allowing lamp crushing to be carried out as an exempt activity?

Question 8: Is there a need to make provision for mobile plant licences for the crushing of fluorescent tubes?

Question 9: Are there any other recovery-related activities for WEEE which are currently the subject of a WMLR license but which would benefit from an exemption? Please say what they are and explain why they should be exempt.

Question 10: Consultees' comments are sought on the draft Regulations at Annex A.

Question 11: Consultees' comments are sought on the discussion of BATRRRT at Annex B.

Question 12: Consultees' comments are sought on the partial RIA at Annex C.

2005 No.**ENVIRONMENTAL PROTECTION, SCOTLAND****Waste Electrical and Electronic Equipment (Waste Management Licensing) (Scotland) Regulations 2005**

Made - - - - 2005

Coming into force in accordance with regulation 1(1)

The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of the Scottish Parliament:

Citation and commencement

1.—• These Regulations may be cited as the Waste Electrical and Electronic Equipment (Waste Management Licensing) (Scotland) Regulations 2005 and shall come into force on the day after the day on which they are made (hereinafter referred to as “the relevant date”).

(1) These Regulations apply to Scotland.

Interpretation

2. In these Regulations—

- (a) “the Waste Electrical and Electronic Equipment Directive” or “WEEE Directive” means Council Directive 2002/96/EC⁽²⁾ on waste electrical and electronic equipment as amended by Council Directive 2003/108/EC⁽³⁾ and expressions used in these Regulations which are also used in the WEEE Directive have the same meaning as in that Directive;
- (b) “the 1990 Act” means the Environmental Protection Act 1990⁽⁴⁾;
- (c) “the 1995 Act” means the Environment Act 1995⁽⁵⁾;
- (d) “the 1994 Regulations” mean the Waste Management Licensing Regulations 1994⁽⁶⁾;
- (e) “site licence” has the same meaning as in the 1990 Act.

⁽¹⁾ 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

⁽²⁾ O.J. No. L 37, 13.2.2003, p.24.

⁽³⁾ O.J. No. L 345, 31.12.2003, p.106.

⁽⁴⁾ 1990 c.43.

⁽⁵⁾ 1995 c.25. Section 56 was amended by the Pollution Prevention and Control Act 1999 (c.24), Schedule 2, paragraph 17; S.S.I. 2000/323, Schedule 10, paragraph 5(2); S.S.I. 2003/171, regulation 2, paragraph (2) and S.S.I. 2004/275, regulation 2, paragraph (2).

⁽⁶⁾ S.I. 1994/1056; amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 634, 916, 972, 973, 1279, 1997/351, 2203, 1998/606, 2746, S.S.I. 2000/323, S.S.I. 2003/170, 171, S.S.I. 2004/275 and S.S.I. 2005/22.

Amendment of the Environment Act 1995

3.—• The Environment Act 1995⁽⁷⁾ has effect subject to the following amendment.

(1) In section 56(1) (interpretation of Part I), in the definition of “environmental licence” in the application of Part I of that Act to SEPA, for paragraph (j) substitute—

“(j) registration in respect of an activity which requires notification under regulation 18AA of those Regulations or an activity falling within paragraphs 7, 8(2), 9, 10, 12, 12A, 19, 45(1), 45(2), 46, 47 and 48 of Schedule 3 to those Regulations.”

Amendment of the 1994 Regulations

4. The 1994 Regulations shall have effect subject to the amendments set out in Schedule 1.

Transitional arrangements: site licences and registrations

5. Where, immediately before these Regulations come into force, in respect of a site—

- (a) a site licence authorises the treatment of WEEE;
- (b) an undertaking or establishment is registered in relation to an exempt activity that includes the treatment of WEEE;
- (c) an undertaking or establishment is registered in relation to the exempt activity set out in paragraph 28 to Schedule 3 of the 1994 Regulations and intends to store or to continue to store WEEE,

the provisions of Schedule 2 shall apply.

Duration of regulation 5 and Schedule 2 of these Regulations

6.—• Subject to paragraph (2), regulation 5 and Schedule 2 of these Regulations shall cease to have effect on 31st March 2006.

(1) Where—

- (a) an application for a new site licence or the variation of a site licence for the purposes of treating WEEE;
- (b) notification in respect of a WEEE treatment activity described in paragraph 47 of Schedule 3 to the 1994 Regulations; or
- (c) notification in respect of a WEEE storage activity described in paragraph 48 of Schedule 3 to the 1994 Regulations,

has been made in accordance with Schedule 2 and that application has not been determined or activity registered as the case may be prior to 31st March 2006, regulation 5 and Schedule 2 shall continue to apply until the application has been finally determined or the establishment or undertaking has been registered.

A member of the Scottish Executive

St Andrew’s House,
Edinburgh

2005

⁽⁷⁾ 1995 c.25.

SCHEDULE 1

Regulation 5

Amendment of the Waste Management Licensing Regulations 1994

1. The 1994 Regulations have effect subject to the following amendments.

2.—• In regulation 1(3) (citation, commencement, interpretation and extent)–

(1) after the definition of “disposal licence” and “disposal authority” insert–

““electrical and electronic equipment” or “EEE” has the meaning given in Article 3(a) of the WEEE Directive;”;

(2) after the definition of “waste” insert–

““the Waste Electrical and Electronic Equipment Directive” or “WEEE Directive” means Council Directive 2002/96/EC⁽⁸⁾ on waste electrical and electronic equipment as amended by Council Directive 2003/108/EC⁽⁹⁾;

“waste electrical and electronic equipment” or “WEEE” has the meaning given in Article 3(b) of the WEEE Directive; and expressions used in these Regulations which are also used in the WEEE Directive, have the same meaning as in that Directive.”;

(3) for the definition of “recovery” substitute–

““recovery”–

(a) in relation to WEEE, has the meaning given in Article 3(f) of the WEEE Directive;

(b) in relation to any other type of waste, means any of the operations listed in Part IV of Schedule 4, and any reference to waste being recovered is a reference to its being submitted to any of those operations;”;

(4) after the definition of “recovery” insert–

““recycling”, in relation to WEEE has the meaning given in Article 3(e) of the WEEE Directive;”;

(5) after the definition of “the register” insert–

““reuse”, in relation to WEEE has the meaning given in Article 3(d) of the WEEE Directive;”;

(6) before the definition of “waste” insert–

““treatment”, in relation to WEEE has the meaning given in Article 3(h) of the WEEE Directive;”.

3. In regulation 4(2) after “(a) carrying on business as a metal dealer” insert “(ab) the treatment of WEEE”.

4. After regulation 12 (mobile plant) insert new regulation 12A.

“Conditions of site licences: treatment of WEEE

12A.—(1) SEPA shall ensure that any site licence granted or varied on or after 1st January 2006 authorising the treatment of WEEE contains such conditions as it considers necessary to give effect to the provisions of Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive.

⁽⁸⁾
⁽⁹⁾

(2) For the purposes of paragraph (1), the Environmental Protection Act 1990(a) shall have effect as if it was subject to the following modifications—

- (a) in section 37 (variation of licences) in paragraph (b) of subsection (1) at the end add “or modify the terms and conditions of that licence to the extent requested in the application where such application is for the treatment of WEEE, save in so far as it identifies either the area of the site or the holder of such licence”;
- (b) in section 37A (consultation before certain variations) add the following new subsection at the end—

“(11) For the purposes of this section, where an application is received to modify a site licence for the purposes of treating WEEE, “relevant new condition” includes a relevant new term.””

5. Regulation 17 (Exemptions from waste management licensing) is amended as follows—

- (a) in paragraph (2) for “or 46” substitute “,46, 47 or 48”;
- (b) after paragraph (3A) insert “(3B) Unless otherwise indicated in Schedule 3, paragraph (1) above does not apply to the carrying out of an exempt activity in so far as it involves the storage or treatment of WEEE.”.

6.—• Regulation 18 (Registration in connection with exempt activities) is amended as follows—

(1) In paragraph (4) for “Subject to paragraphs (4A) and (4D) below” substitute “Subject to paragraphs (4A) to (4G) below”;

(2) After paragraph (4D) insert—

“(4E) Paragraph (4) above shall not apply in the case of an exempt activity for the treatment of WEEE falling within paragraph 47 of Schedule 3 and, in such a case, SEPA shall register the establishment or undertaking and enter the relevant particulars in the register only if it—

- (a) receives—
 - (i) a notice of the relevant particulars for the place at which an exempt activity is to be carried on and such other information as SEPA reasonably requires in relation to the activity;
 - (ii) such plans and other documents as SEPA reasonably requires;
 - (iii) the applicable charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995, or where there is no applicable scheme, the sum of £495, for each place;
- (b) has carried out a prior inspection in accordance with subparagraph (4B) of paragraph 13 of Schedule 4 below and is satisfied as to the particulars required to be verified under that subparagraph;
- (c) is satisfied that the best available treatment recovery and recycling techniques will be used.

(4F) Where it received a notice under regulation 18(4C)(a)(i), SEPA shall serve on an establishment or undertaking not later than 6 weeks before the anniversary of the date that notice was received, a notice specifying—

- (a) the date of such anniversary;
- (b) the appropriate fee and the date it is due (such date being no earlier than the date of the anniversary);
- (c) the method of payment of that fee;
- (d) the effect of non-payment by the due date.

(4G) Where any fee payable under paragraph (4F)(b) above is not paid within 2 months of the due date, the registration of the establishment or undertaking in respect of the activities shall be cancelled in respect of each place for which the fee is then unpaid and the relevant particulars entered on the register shall be removed for each such place.”.

7. After regulation 18 insert the following—

“Record Keeping Obligation

18AB.—(1) An establishment or undertaking which carries out an exempt treatment activity falling within paragraph 47A of Schedule 3 shall keep records of the quantity, nature, origin, and where relevant destination and treatment method of all waste disposed of or recovered in the course of that activity.

(2) Records kept under paragraph (1) shall be kept for a period of at least 2 years and shall be made available to SEPA on request.

(3) An establishment or undertaking that carries out an exempt activity in breach of paragraph (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

8.—• Schedule 3 is amended as follows:—

(1) In paragraph 40(1), after “where it is produced” insert “(including the temporary storage of WEEE pending its recovery)”.

(2) In paragraph 41, at the end insert “including WEEE”.

(3) After paragraph 46 insert the following new paragraphs—

“47.—(1) Subject to paragraph (3) below, the repair or refurbishment or both at a secure place of WEEE as described in Table 5A, together with any incidental storage and other incidental activities in relation to that type of WEEE if—

- (a) the activity is carried on with a view to the reuse of the WEEE for its original purpose;
- (b) best available treatment, recovery and recycling techniques are used when carrying out the activity;
- (c) in respect of a description of waste contained in a particular row to Table 5A, the total quantity of WEEE so dealt with at that place does not exceed either the storage limit specified in column 2 of the Table or the treatment limit specified in column 3;
- (d) the technical requirements specified in Annex III of the WEEE Directive are met;
- (e) prior to the treatment of WEEE and in relation to any waste components from WEEE, such WEEE or components are stored in such a manner that their environmentally sound reuse or recycling is not hindered;
- (f) no WEEE is stored at that place for more than 12 months.

Table 5A		
<i>Type of Waste</i>	<i>Storage Limits*</i>	<i>Treatment Limits</i>
16 02 14 ⁽¹⁰⁾ (WEEE other than those mentioned in 16 02 09 to 16 02 13)	50 cubic metres	2 tonnes/day
20 01 36 (WEEE other than those mentioned in 20 01 21 and 20 01 23 and 20 01 35)	50 cubic metres	2 tonnes/day

* In total either awaiting repair or refurbishment or stored following such treatment.

(2) Subject to paragraph (3) below, the carrying on, at any secure place in respect of WEEE that is hazardous waste as described in Table 5B, the treatment activities of repair or refurbishment or both together with any incidental storage and other incidental activities, but not including the degassing and capture of ozone depleting substances in relation to that type of WEEE if—

⁽¹⁰⁾ The 6 digit codes are contained in commission decision 2000/532/EC of 3rd May 2000 (as amended, although none are relevant) replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste. The exemption covers any WEEE falling within the relevant 6 digit code unless the entry indicates otherwise.

- (a) the activity is carried on primarily with a view to the reuse of the WEEE for its original purpose;
- (b) best available treatment, recovery and recycling techniques are used when carrying out the activity;
- (c) in respect of a description of waste contained in a particular row to Table 5B the total quantity of WEEE so dealt with at that place does not exceed either the storage limit specified in column 2, or the treatment limit specified in column 3 of the Table for the types of WEEE in that row;
- (d) the technical requirements specified in Annex III of the WEEE Directive are met;
- (e) the other requirements specified in column 4 of the Table for that type of WEEE are met;
- (f) prior to the treatment of WEEE and in relation to any waste components from WEEE, such WEEE or components are stored in such a manner that their environmentally sound reuse or recycling is not hindered; and
- (g) no WEEE is stored at that place for more than 12 months.

Table 5B

<i>Type of Waste</i>	<i>Storage Limits*</i>	<i>Treatment Limits</i>	<i>Other Requirements</i>
16 02 11* (WEEE containing chlorofluorocarbons, HCFC or HFC) and 20 01 23* (WEEE containing chlorofluorocarbons)	50 cubic metres	2 tonnes/day	stored in a manner that will prevent the release of the CFCs, HCFCs or HFCs;
Televisions and computer monitors containing cathode ray tubes falling within 16 02 13* (WEEE containing hazardous components other than those mentioned in 16 02 09 to 16 02 12) and 20 01 35* (WEEE other than those mentioned in 20 01 21 and 20 01 23 containing hazardous components)	50 cubic metres	2 tonnes/day	

* In total either awaiting repair or refurbishment or stored following such treatment.

- (3) Paragraphs (1) or (2) above only apply to the carrying out of an activity at a place if–
- (a) the person responsible for the management of that place has established administrative arrangements to ensure that–
 - (i) WEEE accepted at that place is of a type set out in column 1 of Table 5A or 5B, as the case may be; and
 - (ii) no waste is accepted at that place in such a quantity as would cause there to be a breach of any of the terms and conditions of the exemption;
 - (b) an up to date plan of that place containing the details referred to in regulation 18(4C) is sent annually to SEPA; and
 - (c) the applicable charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995⁽¹¹⁾, or where there is no applicable scheme, the sum of £265, is paid in respect of that place to SEPA by the due date which shall be

⁽¹¹⁾ 1995 c.25.

ascertained in accordance with the provisions of paragraph 45(4) above. In ascertaining such date, the reference to regulation 18(4A) in paragraph 45(4)(a) and (b) shall be construed as a reference to regulation 18(4C).

(4) For the purposes of this paragraph, the storage and treatment limits set out in columns 2 and 3 of Tables 5A and 5B are overall limits that apply to all waste falling within the 6 digit code or codes specified in column 1 of that particular row.

48.—(1) The storage at any secure place of WEEE of a type listed in column 1 of Table 6A if—

- (a) if the WEEE is stored for the purpose of its recovery elsewhere;
- (b) the total quantity of any particular type of WEEE stored at the site at any time does not exceed the storage limit specified in column 2 of the Table;
- (c) the total duration that any particular type of WEEE is stored for does not exceed the duration limits specified in column 3 of the Table;
- (d) the other storage requirements specified in column 4 of the Table are met; and
- (e) the WEEE is stored in such a manner that its environmentally sound reuse or recycling is not hindered.

Table 6A

<i>Type of Waste</i>	<i>Maximum quantity</i>	<i>Maximum duration</i>	<i>Type of containment</i>
16 02 14 (WEEE other than those mentioned in 16 02 09 to 16 02 12) and 20 01 36 (WEEE other than those mentioned in 20 01 21, 20 01 23 and 20 01 35)	50 cubic metres	3 months	impermeable surface within a secure store; weatherproof covering of stored WEEE
16 02 14 (WEEE other than those mentioned in 16 02 09 to 16 02 12) and 20	50 cubic metres	3 months	appropriate leak proof containers providing an impermeable surface 8

(2) The storage at any secure place of WEEE of a type listed in column 1 of Table 6B if—

- (a) if the WEEE is stored for the purpose of its recovery elsewhere;
- (b) the total quantity of any particular type of WEEE stored at the site at any time does not exceed the storage limit specified in column 2 of the Table (c);
- (c) the total duration that any particular type of WEEE is stored for does not exceed the duration limits specified in column 3 of the Table;
- (d) the type of containment and other requirements specified in columns 4 and 5 of the Table are met;
- (e) the WEEE is stored in such a manner that its environmentally sound reuse or recycling is not hindered.

Table 6B

<i>Type of Waste</i>	<i>Maximum quantity</i>	<i>Maximum duration</i>	<i>Type of containment</i>	<i>Other Requirements</i>
16 02 11* (WEEE containing chlorofluorocarbons, HCFC or HFC) and 20 01 23* (WEEE containing chlorofluorocarbons)	50 cubic metres	3 months	impermeable surface within a secure store; weatherproof covering of stored WEEE	stored in a manner that will prevent the release of the CFC, HCFC and HFC; overall height of any stack shall not exceed 2 units or 3.5m, whichever is the lower
16 02 13* WEEE containing hazardous components other than those mentioned in 16 02 09 to 16 2 12) and 20 01 35* (WEEE other than those mentioned in 20 01 21 and 20 01 23 containing hazardous components)	50 cubic metres	3 months	impermeable surface within a secure store; weatherproof covering of stored WEEE	
20 01 21* (fluorescent tubes and other mercury-containing waste)	5 cubic metres	1 month	appropriate leak proof weatherproof covering	stored in such a way that the glass is not broken

(3) For the purposes of subparagraphs (1) and (2), the activity of storage shall be taken to include the incidental sorting of waste of that type.

(4) For the purposes of this paragraph, the storage and treatment limits set out in columns 2 and 3 of Tables 6A and 6B are overall limits that apply to all waste falling within the 6 digit code or codes specified in column 1 of that particular row.”.

9.—• Schedule 4, paragraph 13 shall be amended as follows.

(1) After subparagraph (4) insert—

“(4B) In a case where an establishment or undertaking is carrying on or intends to carry on an exempt treatment activity in respect of WEEE, SEPA shall discharge its duty under subparagraph (1) in respect of any place where such an activity is so carried on by—

- (a) carrying out a prior inspection of that place within two months of having received in respect of that place the notice, plans and fee referred to in regulation 18(4C); and
- (b) thereafter carrying out periodic inspections of that place at intervals not exceeding 12 months,

and such inspection shall verify the type and quantities of waste to be treated, the general technical requirements to be complied with and the safety precautions to be taken.”.

SCHEDULE 2

Regulation 5

Transitional Arrangements

Existing site licences: application for the variation of a site licence to treat WEEE or for the registration of an exemption for a WEEE treatment activity

1.—• Where an application under section 37 of the 1990 Act for the variation of a site licence for the purposes of treating WEEE is submitted before 31st March 2006 accompanied by the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995 Act, the operator of that site may treat WEEE or continue to do so on or after that date, notwithstanding that the application has yet to be determined, if the operator complies with the condition that the provisions of Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive as are applicable to the treatment in question are met.

(1) In respect of a site for which there is an existing site licence, where notification of an exempt WEEE treatment activity under regulation 18 is submitted before 31st March 2006 accompanied by the relevant fee of £495, the operator of that site may treat WEEE or continue to do so on or after that date, notwithstanding that the undertaking or establishment has yet to be registered in respect of that exempt activity so long as the operator complies with the condition that the provisions of Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive as are applicable to the treatment in question are met.

(2) The condition described in paragraph (1) and (2) shall have effect as if it were a condition of the existing licence.

Registered exemptions: application for a new site license or for the registration of an exemption for a WEEE treatment activity

2.—• Subject to sub-paragraphs (2) and (3), where a registration (pursuant to regulation 18 of the 1994 Regulations) subsists immediately before 1st January 2006 in respect of an activity that includes the treatment of WEEE, treatment of WEEE may nevertheless continue as an exempt activity, subject to its said registration (or, upon the subsequent expiry of that registration, as if still subject to it) from 1st January 2006 until such time as the application is determined or notification registered where—

- (a) an application for a site licence, accompanied by the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995⁽¹²⁾ is submitted before 31st March 2006; or
- (b) notification of an exempt WEEE treatment activity under paragraph 47A of Schedule 3 to the 1994 Regulations pursuant to regulation 18 of those Regulations is submitted before 31st March 2006.

(2) Any treatment that continues to be carried out as an exempt activity by virtue of paragraph (1) on or after 1st January 2006 shall be subject to the requirement that the provisions of Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive as are applicable to the treatment in question are met.

(3) The requirement described in sub-paragraph (2) shall have effect as if it were a requirement of the relevant paragraph of Schedule 3 to the 1994 Regulations for which the undertaking or establishment is registered.

3. Where no application or notification has been submitted by 31st March 2006 in accordance with paragraphs 1 or 2 above—

- (a) to modify an existing site licence to treat WEEE;

⁽¹²⁾ 1995 c.25.

- (b) to notify a WEEE treatment exemption; or
- (c) for a new site licence to treat WEEE,

the existing site licence or registered exemption shall cease to authorise the treatment of WEEE after that date.

Registered exemptions under Schedule 3, paragraph 28

4.—• This paragraph applies where a registration (pursuant to regulation 18 of the 1994 Regulations) subsists immediately before 1st January 2006 in respect of the activity set out in paragraph 28 to Schedule 3 of those Regulations and the establishment or undertaking so registered wishes to store or continue to store WEEE on or after that date.

(1) The establishment or undertaking shall notify SEPA that it intends to store WEEE on or after 1st January 2006.

(2) The establishment or undertaking shall be treated as if the provisions of the 1994 Regulations (as they had effect before [the date these Regulations came into force]) continue to apply in relation to the carrying on of that storage activity until the prescribed date.

(3) The prescribed date is—

- (a) where notification is provided before 31st March 2006, the date on which SEPA enters the relevant particulars in the register or, if it refuses to do so, the date on which it notifies the establishment or undertaking of its decision;
- (b) in any other case, 31st March 2006.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose the permitting requirements of Article 6 and Annexes II and III of Council Directive 2002/96/EC on waste electrical and electronic equipment (O.J. No. L37, 13.2.2003, p.24) as amended by Council Directive 2003/108/EC (O.J. No. L345, 31.12.2003, p.106).

These Regulations amend the Waste Management Licensing Regulations 1994 (as amended). They provide for exemptions from permitting for treatment of WEEE together with exemptions from the permitting requirements of the Waste Framework Directive for the purposes of storing WEEE and other consequential amendments.

Regulation 3 makes a consequential amendment to the Environment Act 1995.

Regulation 4 and Schedule 1 amend the Waste Management Licensing Regulations 1994 for the purposes of providing new exemptions for the treatment and for the storage of WEEE, amending existing exemptions and making other amendments to the Regulations.

Regulation 5 and Schedule 2 set out the transitional arrangements for existing licence holders and establishments and undertakings that have extant registrations in the period between these Regulations coming into force and the requirement not to treat WEEE otherwise than in accordance with a site licence or registered WEEE treatment exemption.

Regulation 6 provides that regulation 4 and Schedule 2 to these Regulations will cease to have effect on 31st March 2006 once the period within which existing site licence holders and those with registered exemptions can apply for a new site licence, a variation to a current licence or to notify a WEEE treatment exemption, expires.

DISCUSSION OF WEEE DIRECTIVE PROVISIONS ON BEST AVAILABLE TREATMENT, RECOVERY AND RECYCLING TECHNIQUES

Introduction

1. Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE Directive) is aimed at preventing WEEE and encouraging its reuse, recycling and recovery so as to minimise the disposal of this type of waste. The Directive also seeks to improve the environmental performance of those involved in the life cycle of electrical and electronic equipment, and particularly those involved with WEEE.

2. Article 6 of the WEEE Directive deals with the treatment of WEEE and requires Member States to ensure that producers of electrical and electronic products, or third parties acting on their behalf, set up systems to provide for the treatment of WEEE using best available treatment, recovery and recycling techniques (BATRRT). These systems may be set up individually by producers, or collectively, but as a minimum, must include the removal of all fluids and selective treatment in accordance with Annex II of the Directive.

3. Annex II requires that, as a minimum, various substances, preparations and components have to be removed from any separately collected WEEE. There are 15 separate categories listed. These must be disposed of and recovered in compliance with the objectives of the Waste Framework Directive. Additionally, particular requirements are set out for cathode ray tubes; equipment containing gases that are ozone depleting or have a global warming potential above 15, and gas discharge lamps. All of the selective treatments listed in Annex II shall be carried out in such a way that environmentally-sound re-use and recycling of components or whole appliances is not hindered, taking into account environmental considerations and the desirability of reuse and recycling.

4. The specific treatment of WEEE, (as defined in Article 3 of the WEEE Directive), is vital if the dispersion of pollutants into recycled material or the waste stream is to be avoided.

5. SEPA and the Environment Agency have consulted separately on draft technical guidance for the treatment and storage of WEEE. The purpose of the guidance is to define what constitutes treatment for the purposes of the Directive. The draft guidance has been posted on SEPA's website, at:

www.sepa.org.uk/pdf/consultation/closed/weee_treatment/weee_treatment.pdf.

6. The importance of subjecting WEEE to specific treatment and minimum standards for those carrying out recycling and treatment operations is emphasised in Recital 17 of the WEEE Directive as the most effective way of ensuring compliance with the chosen level of protection. Recital 17 also states that BATRRT can be further defined in accordance with the procedures of Directive 96/61/EC: the Integrated Pollution

Prevention and Control Directive (IPPC), which defines the ‘Best Available Technique’ element of BATRRRT.

The Integrated Pollution Prevention and Control Directive & BAT

7. The objective of the IPPC Directive is to achieve integrated prevention and control of pollution arising from the various activities listed in Annex I to the Directive. It lays down measures designed to prevent or, where that is not practicable, to reduce emissions to air and water in order to achieve a high level of protection of the environment as a whole. This Directive defines BAT, outlines considerations, for example in relation to economic and technical viability when determining BAT, and requires the Commission to organise an exchange of information between Member States on BAT. This work is coordinated by the European IPPC Bureau and has led to the publication of a number of BAT Reference Documents (BREFs). The work of the Bureau is divided into 30 sectors and ultimately BREFs will be produced to cover each of these sectors. Currently there is no BREF for waste management activities, but for those industries in which sector specific guidance has not yet been completed, General Sector Guidance has been produced by the Environment Agencies. The onus is on operators to show that they have systematically developed proposals to apply BAT, taking account of relevant local factors. In this respect, the guidance lays down some general standards and expectations in the UK for the techniques and standards that need to be addressed to satisfy the PPC Regulations. It does not prescribe specific processes that are BAT compliant.

Definition of ‘BAT’ in the IPPC Directive

8. BAT aims to provide a balance between the benefit to the environment and costs to the operator and so ensures that the cost of applying techniques is balanced in relation to the level of environmental protection they provide. BAT is defined in the following terms:

- ‘best available techniques’ shall mean the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally reduce emissions and the impact on the environment as a whole.
- ‘techniques’ shall include both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.
- ‘available’ techniques shall mean those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.

- 'best' shall mean most effective in achieving a high general level of protection of the environment as a whole.

From BAT to BATRRRT

9. BATRRRT is the extension of the principles of BAT to systems which provide for the recovery, recycling and treatment (RRT) of WEEE. However, in Recital 18 of the WEEE Directive it states that, where appropriate, priority should be given to the reuse of WEEE and its components, subassemblies and consumables. This is further defined in Annex II, (3) where it states that the environmentally-sound reuse and recycling of whole appliances should not be hindered when carrying out selective treatment, as outlined in Annex II (1) and (2).

10. Reuse, recovery, recycling and treatment are defined in the WEEE Directive as follows:

- 'Reuse' means any operation by which WEEE or components thereof are used for the same purpose for which they were conceived, including the continued use of the equipment or components thereof which are returned to collection points, distributors, recyclers or manufacturers
- 'Treatment' means any activity after the WEEE has been handed over to a facility for depollution, disassembly, shredding, recovery or preparation for disposal and any other operation carried out for the recovery and/or the disposal of the WEEE.
- 'Recovery' means any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC (the Waste Framework Directive, which lists recovery options as they are carried out in practice, see the Appendix to this document). In practice this means that one needs to look at the type of operations that WEEE will be subject to, for example the destination of the components and materials subject to recovery operations such as recycling, reclamation, composting of biodegradable materials and incineration etc. In accordance with Article 4 of the Waste Framework Directive, Member States need to take measures to ensure that waste is recovered without endangering human health and without the use of processes or methods likely to harm the environment.
- 'Recycling' means the reprocessing in a production process of the waste materials for the original purpose or for other purposes, but excluding energy recovery which means the use of combustible waste as a means of generating energy through direct incineration with or without other waste but with recovery of the heat.

Additional Considerations when determining BAT (Annex IV of the IPPC Directive)

11. In determining the best available techniques, special consideration should be given to the items listed in Annex IV of the IPPC directive

1. the use of low-waste technology;
2. the use of less hazardous substances;
3. the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
4. comparable processes, facilities or methods of operation which have been tried with success on an industrial scale
5. technological advances and changes in scientific knowledge and understanding;
6. the nature, effects and volume of the emissions concerned;
7. the commissioning dates for new or existing installations;
8. the length of time needed to introduce the best available technique;
9. the consumption and nature of raw materials (including water) used in the process and their energy efficiency;
10. the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
11. the need to prevent accidents and to minimize the consequences for the environment;
12. the information published by the Commission pursuant to Article 16 (2) or by international organizations.

BATRRT and Licence Conditions

12. For IPPC, the final decision on BAT lies with SEPA as the licensing authority because the IPPC Directive states that the technical characteristics of the installation, its geographical location, and the local environmental conditions must be taken into account.

13. Accordingly, SEPA, in discussion with operators, will be expected to impose appropriate licence conditions on operations to ensure that BATRRT is adopted.

BATRRT for Whole Appliances and Components

14. According to Annex II Paragraph 1 of the WEEE Directive, specified substances, preparations and components are required to be removed from any separately collected WEEE. In addition, taking into account environmental considerations and the desirability of reuse and recycling, the selective treatment of WEEE (as described in Annex II (1) and (2)), must be carried out in such a way that environmentally sound reuse and recycling of components or whole appliances is not hindered. This is in line with Article 7(1) which states that priority shall be given to the reuse of whole appliances.

15. In relation to components, whilst it is arguable that they should be removed intact, this may only be the best option if the component is to be reused, or if the result is that the separated materials can be more 'easily' recycled in this case. On the other hand, as long as the components (and the pollutants contained therein) do not contaminate the final waste streams and the objectives of Article 6 and Annex II to the WEEE Directive are achieved, it is over-prescriptive to require removal of the specified components intact if BATRRT does not identify this as the best option.

16. BATRRT may not necessarily always require pre-treatment prior to shredding. It will depend on the individual operator's shredding equipment, and any other factors that SEPA takes into consideration when determining licence conditions.

OPERATIONS WHICH MAY LEAD TO RECOVERY

These are recovery operations as they are carried out in practice. In accordance with Article 4 of the Waste Framework Directive, waste must be recovered without endangering human health and without the use of processes or methods likely to harm the environment

R1 Solvent reclamation / regeneration

R2 Recycling / reclamation of organic substances which are not used as solvents

R3 Recycling / reclamation of metals and metal compounds

R4 Recycling / reclamation of other inorganic materials

R5 Regeneration of acids or bases

R6 Recovery of components used for pollution abatement

R7 Recovery of components from catalysts

R8 Oil refining or other reuses of oil

R9 Use principally as a fuel or other means to generate energy

R10 Spreading on land resulting in benefit to agriculture or ecological improvement, including composting and other biological transformation processes, except in the case of waste excluded under article 2 (1) (b) (iii)

R11 Use of wastes obtained from any of the operations numbered R1-R10

R12 Exchange of wastes for submission to any of the operations numbered R1-R11

R13 Storage of materials intended for submission to any operation in this Annex, excluding temporary storage, pending collection, on the site where it is produced.

DIRECTIVE 2002/96/EC ON WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

PARTIAL REGULATORY IMPACT ASSESSMENT OF DRAFT REGULATIONS IMPLEMENTING ARTICLE 6

1. PURPOSE AND INTENDED EFFECT OF THE MEASURE

1.1 Directive 2002/96/EC on Waste Electrical and Electronic Equipment (the WEEE Directive) is being introduced to tackle waste from electrical and electronic equipment and encourage the reuse, recycling and recovery of the discarded product. The Directive also seeks to improve the environmental performance of those involved in the life cycle of electrical and electronic equipment, particularly those involved with WEEE.

1.2 This partial RIA focuses on the permitting requirements of the WEEE Directive, prescribed by Article 6. The presence of hazardous substances and compounds in electrical and electronic equipment is a major cause of concern during the waste management and recovery phases of its life cycle. The Directive requires that any establishment or undertaking treating WEEE must either obtain a permit from a competent authority or be registered as exempt from the need to do so. It is proposed to allow repair and refurbishment of WEEE to be carried out under an exemption so as to reduce the regulatory burden and encourage the recovery and re-use of the discarded product.

1.3 The costs of the higher treatment standards required by the WEEE Directive standards under different scenarios for the volume collected were explored in the partial RIA accompanying the joint UK Government/devolved administration consultation document of July 2004. The relevant extract is attached as an appendix to this RIA. These are estimated at between £98-206.9m for the UK as a whole. National Statistics data suggest that, historically, Scottish GDP is around 8.5% of UK GDP. On that basis the range of costs for the WEEE arising in Scotland would be around £8.3-£17.2m.

1.4 However, more recent estimates from the Industry Council for Electronic Equipment Recycling suggest this figure is substantially lower and may be approximately £63.3-£83.8m for the UK. Using the same assumptions as before, Scottish costs would be around £5.4-£7.1m.

1.5 It would clearly be double counting to include in this RIA the physical treatment costs already set out in the previous consultation paper. This RIA will therefore consider the costs and benefits of different options for provision for the permitting of waste management activities involving WEEE. These costs will be marginal to the physical treatment costs imposed by the Directive, and can be expected to be passed in the main to the producers responsible for providing for treatment.

2 BACKGROUND

2.1 The Directive requires that WEEE has been treated in accordance with the Directive and that the specified recovery rates have been achieved. Article 6 requires Member States to ensure

that any establishment or undertaking carrying out treatment operations obtains a permit from the competent authority. In Scotland, this is a waste management licence from SEPA under the Waste Management Licensing Regulations 1994 (WMLR).

2.2 A number of sites that deal with WEEE will already have waste management licenses. This partial RIA will examine the costs and benefits of amending the 1994 Regulations to accommodate the requirements of Article 6 .

3. RISK ASSESSMENT

3.1 The more prominent disbenefits arising from WEEE are:-

the risks to human health and wellbeing and potential for pollution of the environment from unlicensed or uncontrolled recovery and disposal activities;

treatment operations that themselves have the potential to cause environmental damage;

disposal routes that rely primarily on disposal to landfill, meaning consequential loss of natural resources which otherwise may be recoverable.

These risks are addressed by the waste management licensing system; the new prescribed treatment requirements and the increase in recovery rates required to be achieved.

3.3 About 20 sites in Scotland are licensed to treat WEEE as a primary waste. There will be further sites such as metal recyclers who treat waste which was originally WEEE but is no longer recognisable as such, and who will not be affected by these Regulations. The effect of the WEEE Directive will be that all sites currently treating WEEE will have to operate to specific minimum technical standards which may be stricter than those required under existing legislation. In addition, the Directive requires the removal of specific components. Implementing these measures enhances the existing protections against pollution of groundwater, contamination of land and dispersion of pollutants to the air.

4. OPTIONS

4.1 As discussed in section 1, this RIA is considering the costs of different options arranging for the licensing of WEEE, on the assumption that we have imposed the costs of the obligation to treat to Directive standards on producers (and, in some circumstances, the final holders of commercial WEEE). These costs shall be imposed by separate set of producer responsibility regulations.

4.2 The options considered in this RIA are:-

Option A: Do Nothing: make no changes in the WMLR Regulations.

Option B: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, but make no provision for exemptions.

Option C: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, and introduce new exemptions for the storage, repair and refurbishment of WEEE.

5. ASSESSMENT OF OPTIONS

ECONOMIC IMPLICATIONS

Option A: Do nothing: make no changes in the WMLR Regulations.

5.1 All sites that will be involved in the treatment of WEEE under the new producer responsibility arrangements already need to hold a Waste Management Licence. If we were to make no changes to the WMLR regulations, then the onus would be producers to secure treatment to Directive standards. This could be done through terms in contracts, or by requiring their contractors to request appropriate changes to their site licences.

5.2 It is likely that imposing the Directive standards solely through the obligation on producers would not satisfy the European authorities that we had adequately transposed the treatment provisions of the Directive. In particular, these standards apply to all WEEE subject to treatment, and not only to that proportion of WEEE for which producers assume responsibility (all separately collected domestic WEEE, historic commercial WEEE where replacement equipment is supplied, and future commercial WEEE depending on contractual terms.) Moreover, if the treatment standards were imposed through contract terms, there would be no locus for SEPA to monitor the achievement of the standards. We could therefore face a likely infraction for incomplete transposition, and the ultimate potential of large fines.

Option B: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, but make no provision for exemptions.

5.3 Under this option, any operator who wished to continue to treat WEEE would be required to seek a variation to their existing WMLR licence. There are preparation costs and application fees involved in seeking such a variation, and the possibility of increased subsistence costs. The average cost for an application for a waste management licence for recycling activities is around £2000 plus an estimated £5000 in preparation costs. The annual subsistence charge at present depends on the size of the facility, and is in the range £3500- £7300. The cost of modifying a licence is £885. However, these costs only have to be incurred by those operators who wish to continue to treat WEEE, and do not appear to be disproportionate in terms of the business opportunities. By imposing licence conditions to match the standards in the Directive, we should ensure that waste companies would be conducting their business to common standards and will be on a level playing field so far as operational costs and overheads are concerned.

5.4 If we made no changes to the exemptions, then WEEE could be stored under existing exemptions. However, there would be a risk of infraction as the full range of existing exemptions may not be seen as providing adequate limits and controls on the storage of WEEE. Moreover, the existing exemptions may not be adequate to provide for the collection infrastructure. Removing WEEE from the scope of all existing exemptions would lead to the need for licences for all storage, which would be disproportionate.

5.5 Without a new specific exemption, the repair and refurbishment of WEEE for reuse would require a licence. This would entail considerable expense by the repair and refurbishment sector, if they were to continue their refurbishment operations.

Option C: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, and introduce new exemptions for the storage, repair and refurbishment of WEEE.

5.6 This would have the same impact on already licensed operators as Option B. In addition, it would clarify the position with respect to exemptions for storage of WEEE, to ensure that we had a Directive-compliant set of exemptions that provided for such storage.

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

5.8 Storing WEEE under an exemption will facilitate its organisation and movement from collection facilities or businesses to treatment facilities. Generic conditions would be set to minimise damage and thus maximise the potential for the WEEE to be refurbished. It is an appropriate level of control for what should be a low risk operation. Sites that currently store WEEE at the point of creation of the waste, prior to its being passed on for treatment will be able to continue to do so (and new sites will be able to store WEEE, including hazardous WEEE, under the exemption). The new storage exemption for WEEE will not incur a fee.

5.9 Exemptions for treatment need to meet Directive requirements. As a result there will be some site upgrade costs to operators in order to qualify. Operators who register the treatment exemption will be required to cover the costs of an inspection prior to registration and an annual inspection thereafter. This is a specific requirement of the WEEE Directive. SEPA needs to verify the types and quantities of waste to be treated under a registered exemption, the general technical requirements to be complied with and information on safety standards. Registration will be based on the existing provisions of Regulation 18 of the Waste Management Licensing Regulations 1994. The appropriate fee will have to accompany registration. This income will allow SEPA to introduce an inspection and monitoring regime.

5.10 It is estimated that the cost of the new refurbishment exemption will be £495 for applications, with an annual subsistence charge of £265. These fees are less than refurbishers and storsers of WEEE would pay if they had to apply for a new or modified licence under the current Regulations. The average cost for an application for a waste management licence for recycling activities is around £2000 plus an estimated £5000 in preparation costs. The annual subsistence charge at present depends on the size of the facility, and is in the range £3500-£7300. The cost of modifying a licence is £885.

SOCIAL IMPLICATIONS

Option A: Do Nothing: make no changes in the WMLR Regulations.

5.11 This option would appear to allow the community refurbishment sector to continue to operate as at present. However, this would not be Directive compatible, and so is not a realistic option.

Option B: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, but make no changes to exemptions.

5.12 Under this, the community refurbishment sector would have to apply for full waste management licences in order to continue to operate as at present. The additional costs would likely lead to a reduction in this activity.

Option C: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, and introduce new exemptions for the storage, repair and refurbishment of WEEE.

5.13 Some items of refurbished WEEE are sought after by the voluntary and community sectors for onward supply to low income or other disadvantaged groups. An exemption for refurbishment may encourage the number of operators who opt for repair and refurbishment rather than treatment and disposal.

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

ENVIRONMENTAL IMPLICATIONS

Option A: Do Nothing: make no changes in the WMLR Regulations.

5.15 The WEEE Directive was made because it was recognised that much electrical and electronic equipment contains hazardous substances and compounds whose treatment and disposal requires particular attention to minimise risk to human health and wellbeing and the environment. This is quite apart from the loss of potentially recoverable resources from that waste. The large, and increasing, volumes of WEEE make dealing with it an increasingly intractable problem. Failing to properly introduce Directive standards for all WEEE would leave the risks to the environment from this waste, and fail to secure the full gains to sustainability.

Option B: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, but make no changes to exemptions.

5.16 The primary environmental benefits of the treatment permitting requirements of the Directive are likely to stem from improved storage and treatment standards. In terms of licensed sites, tighter controls will minimise abuse and offer enhanced protection for human

health and the environment. Higher treatment standards will also assist recovery by ensuring the removal of hazardous materials from the waste-stream.

5.17 The Directive requires increased recycling and recovery of WEEE. This will lead to a reduction of waste being disposed of to landfill which, in turn, is consistent with the Executive's wider sustainability objectives. The requirement to use BATRRT to implement Article 6 and Annex II will mean minimum technical requirements for treatment which will secure an improvement in overall standards and lessen the risk of pollution. Furthermore, higher treatment standards will mean a higher and more consistent quality of recycled product. That will encourage manufacturers to consider using more recyclate in their products and contribute towards the Executive's aims for sustainable development.

Option C: Introduce obligation on SEPA to reflect WEEE Directive treatment conditions in licences, and introduce new exemptions for the storage, repair and refurbishment of WEEE.

5.18 The new storage exemptions for WEEE shall ensure that this waste is properly stored, minimising the risk to the environment and increasing the amount that can be reused.

6. EQUITY AND FAIRNESS

6.1 The environmental benefits of implementing the treatment aspects of the Directive are expected to fall broadly equally across different economic and social classes and across different economic and demographic regions. They may benefit those living in areas closer to landfills and incinerators slightly more.

7. CONSULTATION WITH SMALL BUSINESSES

7.1 Trade bodies representing both large and small firms have been involved in discussions at UK level. These include the Environmental Services Association, the British Metals Recycling Association and the Motor Vehicle Dismantlers Association. Discussions with the Industry Council for Electronic Equipment Recycling have also taken place. The Executive has discussed implementation options directly with Electronics Scotland, the Scottish Retail Consortium, the Community Recycling Network Scotland and several small companies representative of the reprocessing sector.

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

8. COMPETITION ASSESSMENT

8.1 An assessment of the potential impacts on competition for WEEE treatment facilities was included in the partial RIAs accompanying the joint consultation papers of November 2003 and July 2004. Paragraphs 135 and 136 of the latter said in respect of WEEE treatment facilities:

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

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

8.2 Permitting costs are not likely to be a major factor in determining whether to seek a permit. The main drivers to investment decisions are the availability of WEEE, the cost of the treatment facility itself (if not an existing plant) and available markets for the products of the treatment process. As permitting costs are a small part of these total costs they are unlikely to influence an overall decision on whether or not to invest. The proposed Regulations are also drafted in a manner that allows the maximum degree of freedom to the operator when designing and installing treatment plant, provided the operation complies with the Directive requirement to meet BATRRRT.

8.3 However, effective permitting and the focus on WEEE as a separate waste stream will go towards ensuring a level playing field and eradicating low standard treatment of WEEE, to the benefit of those competing in the market.

9. ENFORCEMENT AND SANCTIONS

9.1 The Regulations will be monitored and enforced by SEPA. The offences are those under the existing Waste Management Licensing Regulations and will be enforced in the same way.

10 MONITORING AND REVIEW

10.1 The waste management licensing system is under ongoing review. It is possible that at some point in the future it may be the subject of a replacement permitting regime dedicated to complying with the requirements of environmental Directives.

11. CONSULTATION

Within Government

11.1 Consultation has taken place between the Department of Trade and Industry, The Scottish Executive, The Welsh Assembly and the Department of Environment Northern Ireland.

Public Consultation

11.2 The permitting requirements of Article 6 were included in the first two of the three joint consultations on implementation of the Directive as a whole. Summaries of the responses to them are available from DTI's website at www.dti.gov.uk/sustainability/weee/index.htm.

11.3 In line with the Executive's Code on Consultation, a wide-ranging 12-week public consultation exercise is being carried out on the proposals discussed by this RIA.

12. SUMMARY AND RECOMMENDATIONS

12.1 Recommendations

(a) That the Waste Management Licensing Regulations 1994 are amended to implement the treatment standards of the WEEE Directive, as set out in Article 6 and including the treatment specified in Annexes II and III, and BATRRRT. The “do nothing” scenario is not a realistic option as it would not ensure compliance with the Directive for the treatment of all WEEE.

(b) In addition to amending the 1994 Regulations, exemptions should be provided for the storage and repair and refurbishment of WEEE subject to appropriate general rules. This will give suitable regulatory control in comparison to the risks posed by the activity and offer significant savings to industry in comparison with waste management licensing.

EXTRACT FROM THE PARTIAL REGULATORY IMPACT ASSESSMENT OF THE DRAFT STATUTORY INSTRUMENT TO IMPLEMENT THE WEEE DIRECTIVE (Consultation of July 2004)

Part IV – Producer’s Obligations

Treatment

57. Information from industry suggests that very little WEEE in the UK is treated at present, with the general exception of fridges and freezers, which are treated in accordance with the separate ODS (Ozone Depleting Substances) Regulations¹³.

58. Labour costs are likely to provide the majority of the cost element for treating WEEE given that draining and dismantling WEEE and separating components will largely be a manual exercise. These costs are likely to vary considerably between different EEE products. It is possible that through learning these costs could fall over time.

59. One industry estimate is that currently it would cost between £250 and £300 to dismantle and treat one tonne of PCs to the requirements of the Directive. Based on average weight estimates of 20 kg for a PC this is equivalent to a current cost estimate of £5 to £6 to dismantle an individual PC². ICER estimates are that, excluding Local Area Networks (LANs), 30 per cent of ICT equipment discarded by weight is PCs. Of the remaining ICT, estimates for the average weight of this are that it weighs at least twice that of a PC. We assume that it takes half the time to dismantle this equipment as a PC, given that most PCs have CRTs (Cathode Ray Tubes).

60. For brown goods, ICER estimates that some 66% of arisings by weight are televisions. A TV weighs on average around 26 kg. It is likely that dismantling would take less time than a PC because PCs have more components than TVs. A figure of half the time for a PC may not be unreasonable. For white goods, a weighted average gives around 47 kg per appliance. We can assume that these take half the time to dismantle and treat as a PC (because they have no CRTs and little glass in general). For small household appliances, estimates from ICER suggest that the average weight of this equipment is around 2kg. We can assume that given their size these items take on average one-quarter of the time taken to dismantle and treat a PC.

61. The above figures enable us to estimate the costs of dismantling and treating WEEE under our four different scenarios.

Scenario A: UK separate collection increases to same rate as in NVMP

62. Under this scenario the following tonnes of WEEE are assumed to be separately collected in 2006:

- 536,500 tonnes of white goods;
- 57,000 tonnes of brown goods;
- 23,500 tonnes of small households goods;
- 178,500 tonnes of ICT equipment.

¹ Treatment requirements under ODS regulations are considered as cost of those regulations and not of the WEEE Directive.

² This is approximately equivalent to 20 to 25 minutes of labour based on estimates of current average labour costs – estimated as average wages plus 30 per cent of average wages to reflect non-wage costs.

63. Based on these figures the following cost estimates for dismantling and treatment can be obtained:

- *ICT equipment*: 30% of this discarded by weight is PCs. This gives a weight of 53,500 tonnes, which is equivalent to approximately 2.7 m units of PCs. Industry estimates are that 20 % of PCs are refurbished. If the remaining 80% are recycled under the Directive, multiplying this figure by the cost of the time taken to dismantle and treat a PC, gives a cost of £12.8m to £15.3m in 2006. The remaining ICT is 125,000 tonnes. Assuming that the average weight for this ICT is 50 kg, this gives 2.5 million units. If we assume that these units take as half as long to dismantle as a PC, total costs will be in the range of £7.5m to £8.9m in 2006.

- *Brown goods*: 66% of waste arisings by weight are estimated to be televisions. This gives around 1.45 million units. If it takes on average twelve minutes to dismantle and treat a TV, the costs will be in the range of £3.3m to £3.9m in 2006. The remaining brown goods represent 19,400 tonnes. This gives 3.9 million units. If we assume these units take half the time of a PC to dismantle and treat then these costs will be £11.6m to £13.9m in 2006.

- *White goods*: refrigerators and freezers represent 30% of white goods arisings by weight. In 2006 this will be equivalent to 161,000 tonnes. Given a weighted average of 42 kg per unit, this gives 3.9 million units of which 2.8 million will be refrigerators³. Excluding fridges and freezers gives 376,000 tonnes, at a weighted average of 50 kg gives 7.5 million units. If we assume it takes half the time to dismantle and treat these as a PC (because they have no CRTs and relatively little glass in general), costs will range from £22.4m to £26.9m in 2006.

- *Small households goods*: the average weight of these goods is estimated to be around 2kg. For the estimated 23,500 tonnes, this gives 11.8 million units. If we assume it takes one-quarter the time to dismantle and treat these as a PC, costs will be in the range of £11.7m to £14.0m in 2006.

64. The above leads to an estimate for the costs of dismantling and treating WEEE under scenario A in the range of £104m to £118m in 2006.

Scenario B: UK separate collection increases by same proportion as in NVMP

65. Under this scenario and based on the same methodology as for scenario A, estimates for the costs of dismantling and treating WEEE under scenario B are in the range of £98m to £110.7m in 2006.

Scenario C: 100 per cent separate collection for large 'non-white' WEEE, 10 per cent for small WEEE

66. Under this scenario and based on the same methodology as for scenario A, estimates for the costs of dismantling and treating WEEE under scenario C are in the range of £125.6m to £143.7m in 2006.

Scenario D: 100 per cent separate collection for all WEEE

67. Under this scenario and based on the same methodology as for scenario A, estimates for the costs of dismantling and treating WEEE under scenario C are in the range of £178m to £206.9m in 2006.

68. In total then, the costs for treating WEEE in accordance with the requirements of the Directive are estimated to be in the range of £98m to £206.9m from 2006.

³ If removing the hydrocarbons and hydrofluorocarbons from these fridges and freezers required under the Directive cost the same as the recent ODS regulation for CFCs this would cost around £35 m per year.

ISBN 0-7559-2627-7



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