



Department
for Environment
Food & Rural Affairs

UK Waste Electrical and Electronic Equipment Regulations 2013

Consultation on proposed amendments

October 2017



Department of the
Environment
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**The Scottish
Government**



**Llywodraeth Cymru
Welsh Government**



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Introduction

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

The UK Waste Electrical and Electronic Equipment Regulations 2013 (2013 WEEE Regulations) transpose the requirements of the EU WEEE Directive (2012/19/EU) (the WEEE Directive). This legislation seeks to increase levels of separately collected WEEE and reduce the amount of WEEE going to landfill. It introduces the concept of "Producer Responsibility" in which producers of Electrical and Electronic Equipment (EEE) are required to finance to cost of collection, treatment, reuse/recycling and recovery when that equipment becomes waste.

This consultation proposes possible changes to the 2013 WEEE Regulations and seeks views from stakeholders that will be used to inform a Post Implementation Review of the regulations that is due to be completed by January 2019.

Responses to this consultation are requested in three parts:

Part 1 - Proposals for the implementation of the WEEE Directive requirements to introduce "Open Scope" in which all items of EEE would in future fall within the product scope of the regulations unless subject to a specific exemption or exclusion.

Part 2 - Other proposed regulatory amends in relation to: Producer Compliance Scheme (PCS) obligations to collect WEEE from local authorities under regulation 34; and the allocation of producer fees between the UK Agencies.

Part 3 - Stakeholder views on the extent to which the 2013 WEEE Regulations have delivered the government's policy objectives to improve the environment at a proportionate cost to business ahead of the Post Implementation Review due to be published in 2018.

Audience

This consultation will be of interest to producers of electrical and electronic equipment, approved Producer Compliance Schemes, WEEE treatment facilities, waste management companies, electrical re-use organisations and local authorities.

Duration

This consultation will close on Friday 08 December 2017

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

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

Help with enquiries

Questions about the policy issues raised in the document should be addressed to:

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Tell us what you think

How to respond

To submit your consultation response, please use Citizen Space (our on-line consultation tool) at: <https://consult.defra.gov.uk/environmental-quality/wEEE-regulations-amendments>

Our preferred method of consultation is online because it is the easiest way for us to collate and analyse responses. But you can request a hard copy of our questionnaire (to complete and return by either email or post) by contact us using the details above.

About you

We are interested in collecting the following information from those responding to the consultation:

- Your name and whether you are responding on behalf of an organisation.
- Your address, email address and telephone number.
- Whether you are representative of a producer of electrical and/or electronic equipment, producer compliance scheme (PCS) , approved authorised treatment facility (AATF), waste management company, local authority, distributor (retailer or distance seller), electrical re-use organisation, or another type of organisation.

Part 1 – Options for introducing “Open Scope” in the UK

The WEEE Directive (Directive 2012/19/EU) introduced a number of changes to the original WEEE Directive (Directive 2002/96/EC) which included a move to ‘open scope’ from 15 August 2018. This brings all electrical and electronic equipment (EEE) within scope of the Directive and a requirement to categorise and report EEE and WEEE in six revised categories - a change from the current 10 Directive categories and our current UK 14 categories (10 plus 4 sub categories). The 2013 WEEE Regulations fully transposed the requirements of the WEEE Directive, including the change from the UK’s 14 categories to the 6 revised categories from 1 January 2019.

The current overall costs of WEEE collection and recycling will not change from a change in categories – though there will be some costs to regulators, producers and treatment facilities who will need to amend their existing reporting systems. A change in categories would, however, alter the distribution of the amount each producer of household equipment is required to pay. This being based on a producer’s market share of EEE placed on the market by category. The current UK system ensures that EEE producers are

broadly aligned into categories which attract similar collection and treatment costs and therefore pay an equitable proportion of the overall cost of recycling EEE in that category. The current UK regime of 14 categories of EEE was established to reflect the 10 categories under the WEEE Directive, with an additional 4 sub-categories, to comply with treatment requirements due to the hazardous nature of the WEEE being treated. These categories also broadly reflect the cost of recycling different types of equipment. Any change in categories, for which producers have to declare their EEE placed on the market, will therefore have a knock on effect on their market share of EEE placed on the market in that category and, ultimately, the amount the producer has to pay for WEEE treatment and recycling. A change in categories would also have cost implications

The government is considering three options to ensure implementation of open scope from 1 January 2019 minimises the costs to business as far as possible.

1. Do nothing - Allow the existing WEEE Regulations to take effect, with the requirement to categorise and report EEE and WEEE in the 6 revised categories.
2. Amend the 2013 WEEE Regulations to retain the current system of 14 categories with new flexibility to allocate products previously out of scope to one of the 14 categories.
3. Amend the 2013 WEEE Regulations to move to the 6 categories, but utilising three additional sub-categories

Impact Assessment published alongside this consultation document shows that, in comparison to option 1 (the do nothing option), options 2 and 3 are de-regulatory because implementation of these options would result in overall cost savings for business compared with the do nothing scenario. None of the options propose changes to the way in which WEEE is currently collected by local authorities. **It is essential that you read the detailed descriptions and assessment of each of these options set out in the accompanying Regulatory Triage Assessment before answering the consultation questions.**

Option 1

This would involve continuing with the existing 2013 WEEE Regulations without any amendments, which currently require that from 1st January 2019, EEE and WEEE will be reported under the new 6 categories of EEE set out in the WEEE Directive (and replicated in the table below).

Temperature Exchange Equipment	Screens, Monitors & Equipment Containing Screens Surface area >100cm ²	Lamps	Large Equipment Any External Dimension > 50cm	Small Equipment No External Dimension > 50cm	Small IT & Telecom No External Dimension > 50cm
1	2	3	4	5	6

This option will result in a redistribution of costs across the obligated producers, with some paying significantly higher costs, albeit offset by significant savings for others. This option will also require regulators, producers and treatment facilities to amend their existing reporting systems.

Key features of this option are:

- The 2013 WEEE Regulations will remain unchanged with open scope and a shift to reporting EEE and WEEE in 6 categories coming into effect from 1 January 2019
- This replicates the categories in the WEEE Directive.
- Producers would need to start declaring any EEE put on the market in line with the revised 6 categories.
- Approved Authorised Treatment Facilities (AATFs) would need to report data of WEEE treatment according to those 6 categories.
- New WEEE collection protocols – e.g. for small mixed WEEE – would need to be established.
- This would require changes to producer and AATF reporting processes.
- Requirement for the regulators to update their IT systems to align with the new categories.

Question 1

To what extent have we accurately assessed the impacts of a move to a six category system?

Very accurately 1 2 3 4 5 Not accurately

Comment/further evidence

Option 2

This would involve amending the 2013 WEEE Regulations to retain the current 14 categories, with the ability to allocate EEE previously out of scope to one of the 14 categories. This is government's preferred option.

Key features of this option are:

- The 2013 WEEE Regulations would be amended to retain the current UK's system of 14 categories.
- A mechanism would be introduced in the Regulations to allow newly in scope EEE to be allocated to one of the existing 14 categories by the regulators.

Question 2

To what extent have we accurately assessed the impacts of a move to a six category system?

Very accurately 1 2 3 4 5 Not accurately

Comment/further evidence

Option 3

This option attempts to reduce the swing in costs that would result in option 1 by utilising three sub-categories based on the treatment technologies used for different types of WEEE. This seeks to ensure that more costly or hazardous WEEE treatment is fairly apportioned to producers placing that EEE on the market, by requiring them to report in the relevant sub-categories. This option will still result in increased costs to some producers and savings for others and will also require regulators, producers, PCSs and treatment facilities to make changes to their reporting systems.

The categories, including 3 sub-categories are described below.

Temperature Exchange Equipment		Screens, Monitors & Equipment Containing Screens Surface area >100cm ²	Lamps	Large Equipment Any External Dimension > 50cm			Small Equipment No External Dimension > 50cm	Small IT & Telecom No External Dimension > 50cm
1 Those containing refrigerants	2 Those not containing refrigerants	3	4	5 PV	6 Large household Equipment (LDA)	7 All Other	8	9

Key features of this option are:

- Producers would need to start declaring any EEE put on the market in line with the revised 9 categories.
- Approved Authorised Treatment Facilities (AATFs) would need to report evidence according to those 9 categories.
- New WEEE collection protocols – e.g. for small mixed WEEE – would need to be established.
- Necessary changes to producer and AATF reporting processes.
- Requirement for the regulators to update their IT systems to align with the new categories.
- Reduced swings in costs for some producers given that each category reflects the each of the separate recycling technologies for different types of WEEE.

Question 3

To what extent have we accurately assessed the impacts of a move to a six category system?

Very accurately 1 2 3 4 5 Not accurately

Comment/further evidence

Further Information

The 2013 WEEE Regulations require the Secretary of State to set annual collection targets for WEEE from private households in each of the current 14 categories. These targets are handed down to PCSs based on the aggregate market share of their producer members in each category of EEE the previous year. In setting targets for 2019 it would therefore be necessary to establish a protocol through which historical EEE and WEEE data could be mapped from the 14 categories to the six or nine categories in options 1 and 3. Use of a similar protocol would also be necessary for Option 2 should it be necessary to report data to the European Commission following the UK exit from the EU. Defra would propose to work with industry to establish those protocols during 2018

It should also be noted that the European Commission are currently consulting on proposals to establish a common format across Member States for registration of producers and reporting of EEE and WEEE by producers. Defra is fully engaged in that process and will seek to ensure each of the options presented above are consistent with the outcome of this EU level process.

Question 4

Please rank each of the 3 options in your order of preference:

1st choice: Option 1, 2 or 3

2nd Choice Option 1, 2 or 3

3rd Choice Option 1, 2 or 3

Question 5

Please provide any further comments. We are particularly interested in comments on transition to Options 1 & 3 and information or evidence in support of your answers to questions 1-4.

To help better understand the move to open scope and the breadth of additional EEE products which are likely to come into scope, it would be helpful if respondents to the consultation could highlight products likely to be captured by this change. Building a picture now of the additional products and product groups will assist in developing and expanding guidance on scope matters. It will also assist in focussing any communication messages leading up to the introduction of open scope to relevant businesses.

Question 6:

Please list any products that you believe would be brought into scope of the Regulations following the move to open scope:

Part 2 – Other proposed amends to the UK WEEE Regulations

Producer Balancing System

The Producer Balancing System (PBS) was set up in August 2016 as a voluntary initiative by the majority of Producer Compliance Schemes (PCSs) that have obligations to collect WEEE from private households. It is a collaborative solution to meet the statutory demands from local authorities (under regulation 34 of the 2013 WEEE Regulations) for the clearance of WEEE from their sites where it has not been possible to enter a contract with a specific PCS. Regulation 34 states: *'In each compliance period, the operator of a designated collection facility may contact the operator of any scheme ... and request that operator of a scheme arranges for the collection, treatment, recovery and environmentally sound disposal of the WEEE that has been deposited at a facility'*.

Costs arising from regulation 34 requests handled by the PBS are shared on a market share basis across all PCS members. PBS member schemes bid to undertake the collections on a competitive basis for 6 months or until the end of the compliance year - whichever is longest. This approach maximises efficiencies and ensures the local authority has its WEEE collected without the need for continual requests under regulation 34 when WEEE arising at sites reaches the site capacity. It helps mitigate against the financial risk such requests could place on PCSs who may be required to finance collections of substantial volumes of WEEE from local authorities that they do not require in order to achieve their collection targets. It also provides a level of certainty to treatment operators on the supply of material from local authorities that are using regulation 34.

The PBS was set up as a voluntary initiative and feedback from local authorities indicates that it has been successful in meeting the obligations laid down by regulation 34. But there are concerns raised by a number of stakeholders that the financial burden of such requests is not shared proportionately across the entire producer community given that some PCSs have chosen not to join the PBS. Without the continued confidence amongst its members of its commercial and economic benefit the PBS could be at risk. In that instance the benefits highlighted above would be lost, particularly those accruing to local authorities who would have to resort to making a request to a PCS to fulfil a collection each time one of their 5 WEEE collection containers was full in each of their household waste recycling centres.

We propose putting the PBS on a statutory footing, requiring all PCSs (approved to fulfil household WEEE obligations) to be members. This will be cost neutral, as PCSs are already obliged, under regulation 28, to fully cover the costs of collection, treatment, recovery and environmentally sound disposal of WEEE deposited at designated collection facilities (DCF). A statutory PBS would simply disburse the cost equitably amongst all PCSs when a local authority is unable to agree a contract with a specified PCS and therefore requests a collection under regulation 34.

To ensure that the costs of collections under regulation 34 were distributed equitably, PCSs would be required to join a balancing system approved by the Secretary of State for the relevant compliance year.

Question 7

Do you support the government's proposal to amend the Regulations to make membership of the PBS a mandatory requirement?

Yes / no /don't know

Comments

Environment Agency Strategic Review of Charges

The Environment Agency (EA) will be publishing a consultation in the autumn on charging proposals from 2018. This is a result of a wide ranging review of their current charges to businesses across a number of their activities. That consultation will include proposals for charges made by the EA for regulation of the UK WEEE Regulations. The 2013 UK WEEE Regulations provide the statutory basis for each UK regulator to revise their charging schemes as necessary. This allows each regulator to periodically review charges so that the cost of regulation is recovered from those they regulate. Currently the EA is under-recovering costs associated with the WEEE Regulations.

The EA consultation will only propose changes to charges levied on businesses located in England. The regulators in Northern Ireland, Scotland and Wales have no current plans to review their WEEE charges. Nevertheless a key outcome, for Defra, from any changes to the EA WEEE charges will be to ensure that none of the other agencies' cost recovery position is adversely impacted as a consequence of the review in England. The EA is required to seek approval from the Secretary of State on any changes to its charging schemes. A key element of that approval process, for revised WEEE charges will therefore be seeking assurances that any changes do not create significant adverse impacts for the regulatory agencies/authorities across the UK.

A key element of the EA proposal is to increase charges for obligated producers of EEE. Producers must contribute their share of the necessary increases to ensure that the recycling evidence system is regulated effectively. In order that this charging scheme works effectively the fees charged to producers of electrical and electronic equipment should be passed to the regulator in the territory of the UK in which that business is based. Currently such fees are retained by the regulator in the territory in which a producer's compliance scheme is approved. The benefit of this proposal is that the work the EA undertakes regulating the producers and the evidence system in England will be paid for by the charges.

Such a change would require an amendment to the 2013 WEEE Regulations. If the responses to this proposal in the EA consultation are largely positive and supportive, then Defra, working with the Devolved Administrations, would seek to make the necessary

amendment to the UK WEEE Regulations at the same time as any necessary amendments arising from this Defra consultation focussed on open scope matters.

Question 8

Do you agree with the principle that EEE producer registration fees should be allocated to the regulator in the nation in which that producer is based?

Yes/No/Don't know

Comment:

Part 3 – Post Implementation Review of the UK WEEE Regulations

Background

A Post Implementation Review (PIR) assesses the effectiveness of a regulation after it has been implemented and operational for a period of time. PIRs seek to establish whether, and to what extent, the regulation:

- has achieved its original objectives.
- has objectives which are still valid.
- is still required and remains the best option for achieving those objectives.
- can be improved to reduce the burden on business and its overall costs.

Evidence gathered from a PIR is usually used to inform decisions about whether to renew, amend, remove or replace an existing regulation.

The 2013 WEEE Regulations require completion of a PIR by the end of 2018. The opportunity to extend this consultation document to address the PIR requirement will enable us to collect industry views on the extent to which the key policy objective of improved environmental outcomes at a proportionate cost to business has been achieved. Conclusions from this review will be considered as part of future policy developments to be taken forward under the government's proposed Waste and Resources Strategy.

Question 9

On a scale of 1-5 please score the extent to which the 2013 WEEE Regulations achieved the objective of increasing levels of WEEE recovery, recycling and re-use in the UK?

No impact 1 2 3 4 5 High impact

Comment (including ideas for improvement)

Question 10

To what extent have the 2013 WEEE Regulations acted as a stimulus to investment in WEEE re-use, recycling and reprocessing capacity?

No impact 1 2 3 4 5 High impact

Comments (including ideas for improvement)

Question 11

To what extent have the 2013 WEEE Regulations addressed concerns arising from the previous WEEE Regulations that the amount producers had to pay through producer compliance schemes was often much higher than the true costs of collection and treatment of WEEE?

No impact 1 2 3 4 5 High impact

Comments (including ideas for improvement and/or details of unforeseen consequences)

Question 12

To what extent has the introduction of “authorised representatives” addressed the challenge of ensuring internet sellers based outside the UK are registered as producers in the UK?

No impact 1 2 3 4 5 High impact

Comment (including ideas for further measures)

Question 13

Please tell us if there is anything else you wish to say in relation to Open Scope, the regulatory post implementation review, or other possible regulatory amendments proposed in this consultation.

What happens next?

After the consultation closes we will aim to publish the government response within 12 weeks. If the responses require a change to the existing UK WEEE Regulations to introduce “Open Scope” we will then seek to lay amending legislation before Parliament to come into force from 1 January 2019. Depending on the outcome of the consultation we will also incorporate necessary amendments to take account of proposals set out in Part 2 of the consultation. We will review existing government guidance notes and make any necessary changes to that guidance at least 10 weeks before that date.