

House of Commons
Environment, Food and Rural Affairs
Committee

**DISPOSAL OF
REFRIGERATORS**

**GOVERNMENT'S REPLY
to the Committee's Fourth Report of
Session 2001-02**

Twelfth Special Report
of Session 2001–02

Ordered by The House of Commons to be printed 16 October 2002

HC 1226
Published on 24 October 2002 by authority of the House of Commons
London : The Stationery Office Limited
£4.00

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TWELFTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee has agreed to the following Special Report:

DISPOSAL OF REFRIGERATORS: GOVERNMENT'S REPLY TO THE COMMITTEE'S FOURTH REPORT OF SESSION 2001-02

The Environment, Food and Rural Affairs Committee reported to the House on *Disposal of Refrigerators* in its Fourth Report of Session 2001-02, published on 20 June 2002 as HC 673. The Government's Reply to the Report was received on 8 October 2002 and is appended.

* * * * *

APPENDIX

The Government welcomes the Select Committee's interest in this issue and is grateful for the opportunity to respond to the Committee's conclusions and recommendations. The Government shares a number of the Committee's concerns as can be noted in DEFRA's Memorandum to the Committee, under the sub-heading, 'Lessons Learned', and is already taking steps to address them. This response deals with each of the conclusions and recommendations and provides further information on actions taken.

a. The European Scrutiny Committee may of course itself wish to review any lessons for the scrutiny system arising from this episode, and in particular the adequacy of the two Explanatory Memoranda (EM) provided (paragraph 15).

The scrutiny system is a matter for Parliament. But the Government places a great deal of importance on Explanatory Memoranda to ensure that Parliament is fully aware of the potential impact of legislation on the UK.

When the first Explanatory Memorandum was provided in September 1998, the draft Article 15 had not been changed, so the issue had not arisen. The Supplementary EM, provided on 3 December 1998, was in response to the Scrutiny Committee's specific request for further information on HCFCs and Methyl Bromide. The implications of changing the draft article 15 were not picked up until January 1999, by UK industry who alerted officials who in turn raised it at the next Management Committee meeting on the European Regulation in February 1999. The UK continued to raise this issue at every Management Committee meeting, on nine separate occasions, over a two and a quarter year period until June 2001, before the UK received an agreed interpretation from the European Commission.

b. We are particularly concerned at the breakneck speed at which the draft was propelled through Parliament in the autumn of 1998 (paragraph 16).

and

d. We recommend that Regulations such as 2037/2000 should in future not be agreed until the practical implications of implementation have been clarified (paragraph 24).

and

i. We recommend that in future the Government fully assesses the impact of European Union Regulations and Directives before it agrees to them, following the practices it has itself described to us; and that in particular it looks again at the plethora of forthcoming waste disposal Regulations and Directives as a matter of urgency. We further recommend that the Government ensures that in future all relevant stakeholders are consulted as part of the examination of the implications of EU legislation (paragraph 47).

The Government shares the Committee's concern about the speed at which the legislation passed through Council and the European Parliament in the Autumn of 1998: it is a point highlighted by DEFRA in its memorandum (paragraph 49(1)). The key point was that no-one, including industry, raised the question of recovery of controlled substances from rigid foams until after the proposal had passed through Environment Council, nor was it pursued by anyone as it went through the European Parliament.

In this case, the Commission proposal was published in August 1998. As the DEFRA memorandum points out, there was strong political pressure to secure early agreement under the Austrian Presidency, in order to implement amendments and adjustments to the Montreal Protocol as soon as possible. Furthermore, the change affecting fridges was made to the relevant article very shortly before Council, resulting in insufficient time to consult and impeding the possibility of delaying Council consideration. In such a situation, the UK was unable to delay the political agreement that was reached in the Council in December 1998. In future, however, measures should be considered more fully during the legislative process. The Government is pleased that the Committee raised the issue of understanding the full implications of European legislation prior to signing up to it.

The European Commission presented an Action Plan on Simplifying and Improving the Regulatory Environment at the Seville Summit in June. The Action Plan builds on the recommendations of the Mandelkern report of November 2001, and sets deadlines ranging from immediate action to actions by 2004-05. It identifies improvements at various stages of the regulatory chain, from early conception to implementation. Its commitments include:

- * Minimum standards will be introduced for consultation at European level during policy development. The Commission will progressively introduce a system for major policy initiatives to include an account of consultations held and their results.
- * Social, economic and environmental impacts will be assessed for major initiatives when policies are being devised, using a mechanism that integrates the various impact assessment procedures currently used by the Commission. The Commission will assess more systematically the cost-benefit ratio of its more significant proposals.

The Action Plan also asks the European Commission, the European Parliament and the Council to agree an inter-institutional agreement to commit all three institutions to conducting impact assessments in respect of amendments tabled at First Reading.

Measures to improve European legislation are also likely to be considered in the Convention on the Future of Europe in the context of fundamental changes to the workings of the European Institutions. The UK is represented on the relevant working groups, and will promote and support proposals to ensure future European environmental legislation is simplified, relevant and of high quality.

The Government strongly welcomes the Action Plan which is accompanied by communications on impact assessment and minimum standards for consultation at European level. In addition to cooperating in fuller analysis, DEFRA will work closely with the Cabinet Office's Regulatory Impact Unit and other interested Government Departments as appropriate on developing RIAs for all legislative proposals at the earliest

possible stage. This includes an initial RIA at the outset of negotiations, which is then developed into a partial RIA, drawing on economic, legal and other specialist advice, prior to public consultation wherever possible. A full RIA is prepared on the basis of further research and on the results of consultation.

When negotiating legislation, DEFRA consults widely and thoroughly with industry including SMEs, NGOs and other interested parties. In accordance with Cabinet Office Guidance, whenever a new policy is being considered that imposes new responsibilities on business, the voluntary sector or charities, policy officials allow at least twelve weeks for consultation with stakeholders (unless there are exceptional circumstances). Major policy issues are discussed at meetings with stakeholders and with 'shadow groups' as well as being subject to written consultation with industry.

In accordance with Government policy to promote the use of RIAs at as early a stage as possible, DEFRA recently set up the Modernising Environmental Regulation Branch to work closely with the Environmental Protection Economics Division and the Environment Agency to modernise DEFRA's approach to environmental regulation. A key tool is the production of an RIA at a very early stage in the development of new EU legislation, particularly as an aid to negotiations. By extending the development of RIAs, DEFRA would expect them to be an increasingly useful policy tool for implementation purposes.

DEFRA will implement the Government's policy of ensuring that the practical implications of European initiatives are fully analysed as early as possible in line with the Cabinet Office Guide on Better Regulation. The aim is to inform the UK's approach to European initiatives from the outset of negotiations through to the implementation stage.

DEFRA plans to implement this strategy on a raft of legislation on waste issues that are in the pipeline; the Waste Electrical and Electronic Equipment (WEEE) Directive, the End of Life Vehicles (ELV) Directive, the Landfill Directive and the Hazardous Waste Directive. The Government has been working closely with stakeholders to ensure they are consulted fully on developments. For example, DEFRA has issued two consultation papers on implementation of the Landfill Directive and DTI has undertaken consultation exercises on both the WEEE Directive and the ELV Directive. More details of the processes that have so far taken place for each are attached at Annex A.

The strategy will also ensure that:-

- * The regulator is involved in the negotiation process of European initiatives to analyse the practical implications from the outset of negotiations: a useful model has been the Environment Agency's involvement in negotiations on the proposed EU directive on Environmental Liability; and
- * Ministers are alerted at an early stage to any potential difficulties with European initiatives under negotiation.

e. The Minister should inform us as soon as he is able to where financial responsibility for the disposal of refrigerators will lie once the current backlog of refrigerators has been cleared.

and

g. This debacle will cost the UK around £40 million, a cost which would not have otherwise have been incurred.

In the shorter term, the Government recognises that there is an additional burden on local authorities. The Government has already provided £6 million to cover their costs for the first three months of this year and has just announced an additional £40 million to cover

2002/03. As treatment facilities are now coming on line in the UK, DEFRA anticipates that the backlog of fridges will be cleared during this period.

The Government expects that before the end of 2005, the costs of collection and treatment will fall to producers under the WEEE Directive. Until this occurs, provision will need to be made to cover the additional burdens incurred by local authorities.

Treatment costs, which are the larger element of the overall costs, would have to be borne by someone, whether by producers, consumers or the Government. Although the initial annual UK cost is likely to be around £40 million, this will decrease as additional facilities are commissioned, competition becomes established and more fridges that do not contain either CFCs or HCFCs enter the waste stream. In any event, by implementing this measure the UK will further reduce its contribution to total chlorine loading in the stratosphere.

f. Whilst the European Commission must accept some blame for lack of clarity, the overwhelming responsibility for mishandling the implementation of Regulation 2037/2000 lies with Government. Government officials initially made a judgement that insulating foam within fridges fell under Article 16(3) not Article 16(2); they argued about the semantics of the phrase 'if practicable' when in fact the practicality of dealing with the foam was abundantly demonstrated by practice in other European countries; they were unaware of the implications of Article 11 for exports of fridges from the UK, and therefore for 'take-back' schemes; despite requesting clarification on so many occasions they failed to resolve the issue; they apparently ignored or reacted very slowly to a host of warnings from interested parties; and despite those warnings and legal advice suggesting that the Regulation would be taken to apply to foam insulations they failed to put in place contingency plans to cope with the problem (paragraph 44).

The Government categorically denies that it mishandled the implementation of the Regulation. The crux of the problem was that Article 16 of the Regulation was unclear. As Regulations are directly applicable in all Member States and do not require transposition, there is very little scope to improve their clarity domestically.

Following the political agreement that was reached in December 1998, the Government circulated the Common Position to stakeholders. The refrigeration and foam blowing industries asked for clarification regarding the recovery of controlled substances in rigid foams. In response, Government officials raised this with the Commission in February 1999, just two months after the Council reached political agreement. Officials continued to press for clarification at every Management Committee meeting on the European Regulation, even asking for an extraordinary Management Committee meeting to resolve it.

As pointed out in the DEFRA memorandum, it was UK officials' view that neither paragraph 1 nor paragraph 2 of Article 16 applied to rigid foams, therefore, recovery of controlled substances would be "if practicable" under paragraph 3. For much of the two and a quarter years during which this was discussed in Management Committee, the Commission's own interpretation of Article 16 was the same as that of the UK.

The practicability issue was not one of pure semantics. The industry, to whom it fell to make the investments to implement the Regulation, were pressing the Government for certainty about what was required. As the Select Committee itself acknowledges, this was not unreasonable before investing several million pounds in equipment. Placing a requirement on UK industry to recover controlled substances from rigid foams prior to obtaining an agreed interpretation would certainly have laid the Government open to accusations of "gold-plating" European legislation.

The Government was aware of the legal effect of the Regulation for exports of fridges and other equipment containing CFCs as coolants, but consultation with representatives of the refrigeration industry had not revealed the scale of the export trade in second hand fridges.

Any question of contingency plans must take into account the inherent difficulty of asking the waste management and recycling industry to prepare to invest in expensive new technology when it was far from certain whether it was necessary.

h. The fact is that doubts were expressed and queries raised for some months before the Regulation was adopted. All that had to be done was for officials to alert Ministers to the problem and ensure that the Regulation was not agreed until there was a clear shared understanding of what it meant. We find it deeply disturbing that the Government signed up to a Regulation whilst still suffering from knowledge gaps about its full impact (paragraph 45).

The Government acknowledges this criticism. As the DEFRA memorandum itself acknowledges, with hindsight Government officials should have alerted Ministers earlier to the fact that there was a technical difficulty in the regulation. However, as also highlighted in the memorandum, there was considerable reluctance within the EU to reopen at a late stage the political agreement reached by Ministers. Where a Common Position text has been agreed, it can only be changed by an amendment in the European Parliament. In practice, where a problem with the Common Position emerges options for tackling it are fairly limited, particularly when factors such as co-decision and Qualified Majority Voting are taken into account.

ANNEX A

Landfill Directive

DEFRA has issued two consultation papers on the implementation of the Landfill Directive. The first was published in October 2000, the second in August 2001 which also contained a copy of draft regulations. In addition, DEFRA has held a number of consultation seminars on various aspects of the Directive, held regular liaison meetings with key stakeholders and established sounding boards to discuss our proposals on a number of issues, for example to inform a negotiating stance on the waste acceptance criteria.

DEFRA works very closely with the Environment Agency, discussing on a daily basis all aspects of implementation, and also liaises closely, with the DTI and the Devolved Administrations in particular.

Review of the Special Waste Regulations

The Special Waste Regulations (1996) (SI No 972) set out the control system for the movement of hazardous wastes in England and Wales. The Regulations implement the European Hazardous Waste Directive (91/689/EEC). The scope of the Regulations in terms of the wastes included is determined by the European Hazardous Waste List (94/904/EC). This list has recently been extensively revised, a number of significant additions have been made and incorporated within the European Waste Catalogue. The changes to the hazardous waste list require that amendments be made to the Special Waste Regulations. At the same time the UK Government is taking the opportunity to make changes to administrative procedures for consigning hazardous waste.

A consultation document was issued in March 2001 inviting views on a number of proposed changes to the Regulations. About 115 responses were received and the proposals have been amended to take account of these. A second round of consultation will take place later this year.

End of Life Vehicles (ELV) Directive

The DTI issued a consultation paper in August 2001 looking at three possible options for implementing the ELV Directive in the UK. It received 123 responses from a wide range of individuals and businesses likely to be affected by the Directive. Several further options for implementation were suggested by trade associations, and these and related matters have been discussed in detail within an ELV Consultation Group consisting of relevant industry representative associations that has been set up by the DTI.

Another, more widely-based group, the Automotive Consortium on Recycling and Disposal (ACORD), has members from all the industry sectors that will be affected by the ELV Directive and holds regular progress meetings with the Environment Agencies and Government officials. Through these meetings, industry is kept up to date with developments in the UK and Brussels, and members are free to express their views.

A consultation paper and draft regulations implementing Article 6 and Annex I of the Directive, which refers to permitting requirements of treatment facilities, are expected to be issued by DEFRA later this year. In addition, a separate consultation paper and draft regulations on the implementation option for the rest of the Directive is also expected to be issued by the DTI later this year. A wide range of those expected to be affected by the Directive will be invited to comment, and the consultation papers will be available on the departmental web-sites.

Waste Electrical and Electronic Equipment (WEEE) Directive

Formal DTI consultation was issued in summer 2000. Results were published in December 2000. Approximately 300 consultation documents were sent out.

Partial RIAs were produced, (a) for the DTI Consultation undertaken in August 2000, (b) in December 2000, for the fourth draft of the Directive, and (c) in March 2002, based on the Common Position text received by the European Parliament on 13 December 2001.

Government Departments are in regular contact with industry about the Directive and its implementation in the UK, and report back to industry on developments in the negotiations in Brussels as they occur.

DEFRA, DTI and the Environment Agency meet regularly to discuss implementation of the Directive and implications for central and local Government are some of the main priorities in those discussions. Officials are also in touch with colleagues in the Devolved Administrations.

DEFRA is hosting a series of meetings with Local Authority representatives to discuss the role that Local Authorities might play. DTI hosts a similar series of meetings with retailers. Focus groups are planned on permitting and for manufacturers by sector.

DEFRA and DTI are working together with the Small Business Service to organise visits to UK regions to raise awareness of the requirements of the Directive and discuss implementation methods. Representatives from all stakeholder groups will be invited to put forward their views and attendance will be free of charge.

DTI and DEFRA officials have made presentations on the WEEE Directive on more than twenty occasions at conferences and seminars this year alone.

Department of Environment, Food and Rural Affairs
8 October 2002

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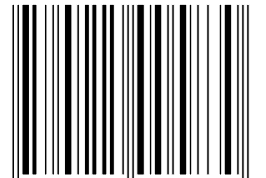
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ISBN 0-215-00583-X



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