



House of Commons
Environment, Food and Rural
Affairs Committee

**End of Life Vehicles
Directive and Waste
Electrical and Electronic
Equipment Directive:
Government Reply to
the Committee's
Report**

Eighth Special Report

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The Environment, Food and Rural Affairs Committee

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EIGHTH SPECIAL REPORT

The Environment, Food and Rural Affairs Committee reported to the House on *End of Life Vehicles Directive and Waste Electrical and Electronic Equipment Directive* in its Fourth Report of Session 2003–04, published on 20 February 2004 as HC 103. The Government's Reply to the Report was received on 22 April 2004.

Government response

Introduction

The Government welcomes the Committee's report on these two important producer responsibility Directives. The report is timely, appearing as it did during public consultations on the Government's proposed measures for implementing the Directives in the UK. Both consultations have since closed. 219 responses were received to the consultation document on the implementation of the Waste Electrical and Electronic Equipment (WEEE) Directive, and 65 to that for the End of Life Vehicles (ELV) Directive. The Government is currently assessing these responses, which will be taken into account before Regulations to complete the transposition of the ELV Directive are finalised and before draft Regulations and guidance is developed for further consultation and then implementation of the WEEE Directive. The Committee's report will of course also be taken into account as part of this process.

The Government has the following comments on the Committee's conclusions and recommendations:

Recommendation 1

We strongly recommend that the Government ensure that, as soon as possible, it issues clear guidance to the recycling industry about exactly what is expected of it, in order that it can make decisions to investment in new facilities. If it fails to do so it will exacerbate the potential problems associated with these Directives – such as, in the case of the ELV Directive, an increase in the number of abandoned cars. We further recommend that over time the Government continue to update its guidance, and take steps to communicate its wishes *clearly* to stakeholders. (paragraph 14)

Clear guidance has already been issued to dismantlers, scrapyards, and shredders in respect of what is expected of them in the context of the ELV Directive. This guidance was issued by the Environment Agency, Scottish Environment Protection Agency, DoE/Northern Ireland and Defra shortly after the End-of-Life Vehicles Regulations 2003 came into effect in November 2003 (S.I. 2003/2635 and related legislation in Scotland and Northern Ireland). The guidance expanded upon the site, storage and treatment standards set down in the ELV Directive and the transposing Regulations which need to be observed by ELV "authorised treatment facilities".

Further technical advice on ELV de-pollution and dismantling methods was issued jointly by DTI and Defra in December 2003. Both Guidance Notes and Technical Advice were developed with the benefit of industry input, including from some of the Trade Associations which gave written and oral evidence to the Committee's Inquiry. The Guidance Notes and Technical Advice will, as a matter of course, be updated in the light of practical experience, and as best practice develops, and communicated to interested parties.

The Government had already, in June 2002, announced its decision to introduce producer responsibility for free take-back of ELVs from 1 January 2007, until which time there would be a continuation of the existing arrangements. These are that the last owner of a vehicle will be responsible for its final disposal at a licensed dismantler, scrap yard or shredder, which might or might not involve a charge upon them, depending upon the location, age, make and model of the vehicle, and the prevailing value of scrap metal at the time of scrapping.

The Government believes, therefore, that businesses wishing to upgrade to meet the higher site, storage and treatment requirements of the ELV Directive had sufficient guidance, sufficiently early, to make a considered decision to meet the 31 January 2004 deadline for making applications to become "authorised treatment facilities". They were not required actually to have upgraded to the new standards by that date, merely to make the application.

The Government is currently working with the Environment Agency and industry to produce draft guidance on the treatment requirements laid down in the WEEE Directive. It is expected that this will be part of the next consultation on WEEE implementation which will be issued in the next few months.

Recommendation 2

The evidence we have received makes us seriously question the 'own marque' approach to funding the disposal of end of life vehicles after 2007. The objective should be to ensure that complying with the ELV Directive is as straightforward as possible. We urge the Government urgently to re-examine whether that objective will best be achieved by encouraging consolidation and concentration in the dismantling sector, as the 'own marque' approach seems likely to do. (paragraph 17)

The 'own marque' approach to allocating responsibility for end-of-life vehicles is seen by the industry as a good expression of the policy of producer responsibility and of the polluter pays principle, both of which are supported by the Government. As with other waste streams, placing obligations on businesses to recover value from the vehicles which they have put on the market, when they eventually become waste, is intended to encourage those businesses to design their products in such a way that makes them easier to re-use or recycle - deploying less complex and less hazardous material mixes, making disassembly easier, or designing out difficult-to-recycle or hazardous materials;

this will also help to minimise costs. An ‘own marque’ approach is one way of applying producer responsibility. The Government has sought views on this approach to implementation in the consultation which closed on 30 March. The Committee may wish to note that some other Member States have adopted a similar approach.

The ‘own marque’ approach emerged from a number of possible options aired in public consultation, and then considered in detail by the DTI’s ELV Consultation Group, consisting of the leading four Trade Associations whose members are likely to be most affected by the terms of the Directive. In the event, the Government’s efforts to reach consensus among the main stakeholders were unsuccessful, and all external members of the Consultation Group were not able to agree upon a single option. The vehicle manufacturers’ preferred option was rejected by the shredders, whose own preferred approach was rejected by the vehicle manufacturers. Faced with this impasse, the Government elected to develop the own marque approach, in consultation with the affected sectors.

The Government agrees that an objective of implementation should be to ensure that complying with the ELV Directive is as straightforward as possible. As part of its assessment of the responses received to the recent consultation, the Government will be examining whether further consideration of its approach is needed, including simplification. The Government believes that some consolidation in the ELV treatment and dismantling sector is inevitable, for example, given the provisions of Article 6 of the Directive which sets higher environmental standards for treatment facilities to meet. It is unrealistic to expect that every business currently operating to lower standards than those required will have the desire or wherewithal to invest to upgrade to the new standards. In addition, properly licensed or registered exempt operators, who have applied by the due date to become authorised treatment facilities, will welcome the closing down of illegal operators, whose ability to undermine them they have long complained about. The introduction of the new “authorised treatment facility” status, and the linking of this to the ability to issue a “Certificate of Destruction” to the last owner, will increase the pressure on illegal operators.

However, it should be noted that the Government’s proposals for an own marque system contain criteria in respect of authorised treatment facility capacity and accessibility which, if adopted in final Regulations, are intended to ensure the availability of sufficient treatment facilities treat all ELVs to the new standards and to provide convenience and accessibility for the last owner. The proposed system foresees networks of authorised treatment facilities, contracted to vehicle manufacturers to provide free take-back for their marques, and also an uncontracted sector which, under the proposed implementation approach, are to provide the same service for those ELVs that it decides to accept.

Recommendation 3

Therefore, we recommend that the Government look again at the funds it has made available to local authorities for dealing with abandoned vehicles, specify in response to this report *exactly* what these sums are and how they have been allocated and distributed, and ensure that they are adequate to deal with increased abandonment up to 2007. (paragraph 21)

The Government is providing £25 million per annum to local authorities for three years under the “New Burdens” arrangements. The bulk of this money has already been transferred for disbursement to the Office of the Deputy Prime Minister, the Northern Ireland Office, the Welsh Assembly Government and the Scottish Executive according to the “Barnett formula” of apportionment. These funds are designed to cover the additional cost to Local Authorities of (a) having to have the vehicles de-polluted and dismantled to the new standards, and have Certificates of Destruction issued, for baseline numbers (2001/02) levels of abandoned vehicles; and (b) those same costs plus removal costs of any abandoned vehicles above baseline numbers.

The Committee is assuming there will be an increase in the number of abandoned vehicle numbers in the years to 2007. This is a possibility, but by no means a certainty. The Government does not believe that disposal costs are the primary reason for last owners to take the decision to abandon a vehicle, and the Government is taking a number of initiatives to make it more difficult to abandon with relative impunity. The Government believes that the funds it has provided under the New Burdens scheme are sufficient to offset any additional costs faced by local authorities as a result of the introduction of regulations to transpose the ELV Directive into national law.

Recommendation 4

We are concerned that an ‘own marque’ approach will mean that it is more difficult for local authorities to deal with the problems of abandonment, since they will not simply be able to use a single contractor to deal with any and all abandoned vehicles. We invite the Government to reflect on this issue, and to explain exactly how in practice local authorities will deal with abandoned vehicles after 2007. (paragraph 22)

Recovery contractors appointed by Local Authorities will be able to deliver abandoned vehicles to authorised treatment facilities contracted to provide free take-back for specific brands, and the draft Regulations on which we have recently consulted propose “accessibility” criteria to ensure convenience for a last owner to deliver an ELV into the take-back network. If the draft regulations are adopted in their present form, the same degree of accessibility will also be available to local authorities, who effectively become the last owner of an abandoned vehicle and, as such, will be eligible for free take-back.

Recommendation 5

We believe that civic amenity sites have a crucial role to play in ensuring that waste electrical and electronic equipment can be collected separately from the rest of the municipal waste stream. We recommend that the current network of civic amenity sites be expanded, so that such sites are easily accessible to all. We recommend further development of those sites which already exist. In order to facilitate these recommendations we also recommend that the Government find ways to streamline the process of gaining and amending waste management licences for civic amenity sites, and of gaining and amending planning permission. (Paragraph 24)

The Government is keen to build on existing infrastructure where possible, and agrees that civic amenity sites have an important role to play in the separate collection of WEEE.

However, the Government recognises that the WEEE Directive does not place obligations on local authorities, and therefore, the Government will not place any new unfinanced burdens on local authorities. Instead, the Government has put forward proposals to incentivise local authorities to separately collect WEEE. Under these proposals, local authorities would be able to bid for money to upgrade their civic amenity site infrastructure to separately collect WEEE. Further, local authorities would be able to pass any WEEE that is separately collected to producers for recycling, thus avoiding the disposal costs and, at the same time, increasing their levels of recycling.

In order for collection points to be easily accessible for consumers, the proposals also suggest that, in addition to separate collection facilities at civic amenity sites, there should be a number of retailer run collection points at, for example, retail parks. Where this is not possible, alternative arrangements should be put into place, such as organised bring events or kerbside collections of WEEE. In the case of larger appliances, the continuation of take back on delivery of new equipment is encouraged.

We agree that planning has a critical role to play in enabling adequate and timely provision of waste management facilities. Planning Policy Guidance Note No. 10 (PPG 10) - the PPG setting out national planning policy on waste management - makes it plain that the planning system should enable adequate provision of waste management facilities in appropriate locations. In general, given that waste proposals can be controversial, the planning system has been doing a good job. Last year (2002/2003) waste planning authorities in England made decisions on 358 planning applications for 'major' waste management developments. 86% were granted; and of 806 applications for 'minor' waste management developments, 93% were granted. That doesn't mean improvements can't be made. Extensive planning reforms are being taken forward by Government and will lead to a thorough overhaul of planning's performance. Later this year the Office of the Deputy Prime Minister (ODPM) will consult on a replacement for PPG10 as part of Government's drive to streamline planning policy to give greater clarity in terms of the outcomes to be achieved. The intention is an effective planning system that helps deliver thriving and sustainable communities with the right

infrastructure in place at the right time.

Defra is currently reviewing the existing waste management licensing system and intends to replace it with a new permitting regime. Under this new regime, the degree of regulation will be proportionate to the risks posed by different waste recovery and disposal activities. The new regime is intended to come into operation at the same time as the WEEE Directive is transposed. The government intends to provide for greater development of standard permits and for a more streamlined approach to the processing and determination of applications for new permits and their modification without undermining the attainment of the environmental and health objectives of the Waste Framework Directive.

Recommendation 6

We urge the Government to ensure that the Environment Agency is adequately resourced to deal both with the requirements of implementation of the Directives and with their consequences, and to identify in its response to this report *exactly* how much additional resource has been or will be allocated to the Agency for this purpose. (Paragraph 26)

The Environment Agency will be able to recover the costs of dealing with the requirements of both Directives from the parties it will be regulating.

Recommendation 7

Although we understand the argument made by the Government, we are concerned that excluding printer cartridges from the WEEE Directive will not encourage their sustainable re-use. We invite the Government to think again about the matter. (Paragraph 27)

The Government agrees that reuse of printer cartridges is generally environmentally preferable to recycling them. However, the Government can see no evidence that the reuse of printer cartridges will suffer as a result of the implementation of the WEEE Directive. In fact, if printer cartridges were to be included in the scope of the WEEE Directive, original equipment manufacturers would be obliged to take back their old printer cartridges when supplying new ones and recycle them, thus leaving fewer cartridges available for re-manufacturers to refill. Moreover, the major refilling franchise, Cartridge World, report that their network expects to grow by 40% in the near future.

The Government supports the aims of the printer cartridge remanufacturing industry to see a greater incidence of reuse of products and notes that there are numerous schemes already in place which collect and refurbish printer cartridges. The Government expects these to continue when the WEEE Directive comes into force.

To ensure full account is taken of all the relevant issues, DTI Ministers have agreed to meet the re-fillers and DTI and Defra have already facilitated a meeting between the re-

fillers and original equipment manufacturers with the aim of fostering more shared understanding of the issues associated with cartridges and their reuse.

Printer cartridges do not fall within the scope of the WEEE Directive. However, they do fall within the scope of the current text of the Framework Directive on Eco Design for Energy Using Products (EuP), and therefore, could be the subject of an implementing measure if manufacturers were to begin using devices that specifically prevent reuse of printer cartridges in the future.

Recommendation 8

Nevertheless, we recommend that Defra re-examine the workload placed on its specialist staff, including its lawyers, to ensure that they are not being asked to do too much, and that they are thus able to act efficiently and effectively. (Paragraph 29)

The Department has a team of in-house lawyers who are part of the Government Legal Service and a number of these lawyers specialise in issues relating to environmental waste. Since May 2002, this team has increased from three to five and a half full time equivalents in light of the increased workload. The parts of the ELV Regulations that were drafted by Defra lawyers were produced in time to consult jointly with the DTI and the implementing Regulations are now in force. Defra lawyers are now fully involved with the transposition of the WEEE Directive, and are on course to draft Regulations to implement Article 6 of the WEEE Directive in accordance with the agreed timetable.

Recommendation 9

Before embarking on the negotiation of Directives such as the ELV and WEEE Directives the Departments involved should review whether they have available the specialist skills and other resources needed to do so effectively. The Government should not agree to this sort of European legislation without a clear understanding of *all* of its ramifications. (Paragraph 30)

The Government agrees that this sort of European legislation should not be agreed to without a clear understanding of the ramifications, and presses for use of the extended impact assessment process for EU proposals where appropriate. The Government was aware of the wide ranging implications of both Directives, and made a particular point of considering at an early stage what the practical implications of implementation would be. The likely impact of both Directives was made clear to Parliament, which scrutinised them and provided clearance before the Government agreed to them.

Recommendation 10

We strongly recommend that Defra (and other Government Departments such as the Department of Trade and Industry) take steps to develop its understanding of the waste and recycling sector. We urge it to institute a programme of seconding outside experts into the Department to help with the negotiation and implementation of European legislation, and a programme of seconding officials out to work for short periods in the waste and recycling industry. (Paragraph 31)

The Government recognises that external experts have a valuable role to play in the development of policy during the negotiation and transposition of European legislation and takes full advantage of its wide range of contacts and advisors during the course of the negotiations, and implementation. The Government also made use of external consultants to provide input into a number of technical areas. Indeed, the Government commissioned four separate reports by external consultants to support the most recent consultation on the WEEE Directive, and further work is ongoing.

The Government welcomes the prospect of using external secondees, where possible, in the implementation of European legislation. Two secondees from the Environment Agency have been working in the Permitting Review Team in Defra, which is transposing Article 6 of the WEEE Directive, since January 2003. This has proved to be a productive arrangement with mutual benefits for the team. Accepting secondees from industry is not straightforward, as care has always to be taken that individual companies do not gain unfair commercial advantage from such an arrangement, although two industry representatives have assisted the team.

In the course of the negotiations, and transposition, of both of these Directives, officials have visited a number of waste management treatment and recycling facilities to develop their understanding of this sector and have attended a large number of conferences. The Government will consider if it would be appropriate for officials to be seconded out to work for a short period in the recycling industry to further develop their knowledge of this area.

Recommendation 11

We reiterate the recommendation made by the Better Regulation Taskforce that the Environment Agency should be directly involved at an early stage in the negotiation of European environmental legislation. We further recommend that the Government consider involving others, such as representatives of the waste and recycling industry, also at an early stage in the process. (Paragraph 32)

Generally, the International Concordat between Defra and the Environment Agency sets out the basis for the two organisations to work together in both Europe and the wider international arena.

The Concordat acknowledges the Agency's expertise in the implementation of environmental legislation and actively encourages Defra policy leads to engage with their counterparts during the formative stages of EU legislation and beyond. Additionally, for the first time, formal arrangements are to be put in place for the Agency and Defra to come together to consider joint priorities and strategies for dealing with EU environmental legislation.

The Government drew on advice from specialists from the various sectors affected by the ELV and WEEE Directives throughout the negotiations. Officials from the

Environment Agencies also regularly provided input throughout the negotiations of both Directives, and are integral members of both cross Government implementation teams.

In the case of the WEEE Directive, to engage experts from a variety of sectors as early as possible, the Government held a number of 'focus group' meetings with affected stakeholder groups during the negotiations and these continue as the approach to implementation is developed. In this way, the views of local authorities, producers, retailers, dismantlers, refurbishers and the Environment Agency are taken on board both in the negotiations and throughout the transposition of the Directive.

Recommendation 12

We support the recommendations of the Better Regulation Taskforce, and urge the Government to ensure (a) that a clear 'lead' Department is designated for each piece of environmental legislation, and (b) that a project management approach to the implementation of legislation is adopted. Doing so would go some way to avoiding a repeat of the confusion and lack of clarity which has afflicted the stakeholders of these two Directives. (Paragraph 34)

The Strategy Unit report, *Waste not, Want not* recommended that a review be undertaken to assess the merits of focusing all waste policy in one department. In its response, the Government arranged that the Cabinet Office would carry out this review. We expect the report to be completed this spring.

However, as noted in the Government's response to the BRTF report, the Government has adopted a project management approach to the planning for the implementation of both the ELV and WEEE Directives. Cross-Whitehall teams oversee the work of project teams who take forward the detailed implementation of the Directive.

This approach has proved particularly successful for the WEEE Directive. All the milestones set out in the project plan have so far been delivered on time. Even so, given the short implementation timeframe, and a lack of clarity at a European level on key requirements of the Directive, in particular, the scope of the Directive, it has not been possible to provide greater clarity on these requirements of the WEEE Directive at this stage. Guidance is due to be issued later this Spring, which will take into account responses to the consultations, and discussions at a European level.

Recommendation 13

But it does seem likely that there will be problems of abandoned waste as a result of the way in which the ELV Directive is to be implemented. That said, for the moment the prospects for a 'smooth' transposition of the WEEE Directive do seem brighter. We nevertheless urge the Government to take steps, beginning with the recommendations of this report, to ensure that it remains in control of the process of implementing these Directives. (Paragraph 35)

In developing its approach to implementing the ELV Directive, the Government has taken steps to ensure, as far as possible, that the provisions of this Directive will not run counter to the wider programme the Government has in place to deter abandonment of vehicles. The Government is certainly working to achieve a smooth transposition of the WEEE Directive and will be doing everything it can to remain in control of the process of implementation of both these Directives.

Department for Environment, Food and Rural Affairs
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