

Review of Producer Responsibility Regimes

Discussion paper on coherence across producer responsibility regimes

April 2013



Department
for Environment
Food & Rural Affairs



Department
for Business
Innovation & Skills



Llywodraeth Cymru
Welsh Government



DOE

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This document/publication is also available on the National Packaging Waste Database website at:

<http://npwd.environment-agency.gov.uk>

Any enquiries regarding this document/publication should be sent to Defra at:

packaging@defra.gsi.gov.uk

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Overview

This discussion paper is part of the consultation process on review of the UK's various Producer Responsibility regimes (i.e. Waste Packaging, Waste Batteries, and Waste Electrical and Electronic Equipment). It seeks views, by **31st May 2013**, on a range of issues that could assist in developing a more coherent regulatory approach across these Producer Responsibility regimes. Comments received on the proposals described in this paper will inform the development of specific regulatory changes under each of the regulatory regimes which will be the subject of separate consultations. We therefore wish to know whether you agree with these proposals and if there are aspects that need exploring further.

The first section provides an introduction to the issues, outlining the background and progress to date. The second section provides an overview of the systems for producer responsibility and how they could be revised to improve coherence to assist in reducing burdens and costs on industry. Sections 3 to 5 cover specific issues, outlining the proposed changes, and impacts on different players in the regulatory systems.

1.0 Introduction

“Producer Responsibility” is a policy tool which can help Government implement the “polluter pays” principle and achieve its objectives relating to sustainable production & consumption and waste management. Producer Responsibility aims to:

- give producers an incentive to design their products in a way that uses fewer resources, reduces the use of hazardous substances and makes it easier for products to be reused, or dismantled and recycled, and
- ensure producers are partly or wholly responsible for the costs of collecting, sorting, treating and recycling their products in an environmentally sound manner once they have reached the end of their life.

The UK’s four Producer Responsibility (PR) regimes originate from four separate EU Directives; namely the Packaging & Packaging Waste (94/62/EC), Waste Batteries & Accumulators (2006/66/EC), Waste Electrical & Electronic Equipment (WEEE) (2012/19/EU), and End of Life Vehicles (ELV) (2000/53/EC) Directives. Each Directive applies the principle of “Producer Responsibility” to a specific product category. Links to information on the current Regulations and guidance can be found in Annex 1.

The UK’s PR regimes deliver important benefits helping the UK to become more resource efficient and reducing its carbon impact.

The PR regimes share a common financial obligation for producers to bear the costs of collecting, treating and recycling / recovering a proportion of their products to meet legal targets and minimum standards. They also have similar administrative processes such as producer registration, approval of compliance schemes and the authorisation of treatment facilities and exporters.

However, there are also significant differences between the regimes. Some differences are due to different products and markets or differences in EU Directives, but others are the result of policy being developed at different times. This has led to criticism, particularly from those businesses which have to comply with more than one producer responsibility regime.

Government agrees that the way in which these regimes work could be improved, maximising their overall effectiveness and reducing administrative burdens on businesses. In line with the Government’s Red Tape Challenge¹ and as part of a continuous commitment to improve regulation, Defra and BIS have been reviewing all Producer Responsibility regimes to explore opportunities to develop a greater degree of coherence across the regimes. This discussion paper explores these issues further, seeking views on how current arrangements could be improved (and costs to businesses reduced).

¹ <http://www.redtapechallenge.cabinetoffice.gov.uk/>

Objectives for the Producer Responsibility Review

The review is UK-wide and its objectives are to identify potential amendments to the Regulations that will, as a whole:

- reduce costs and administrative burdens on regulated businesses, especially smaller producers;
- ensure the UK is able to meet the obligations set by the individual Directives; and
- improve coherence between the different PR regimes.

We believe improving coherence will help businesses that need to comply with more than one of the regimes by making the systems easier to understand, reducing administrative burdens and reducing the overall system costs. It should also make the regimes more effective, as we will look to adopt the best parts of each regime more widely.

Progress with the policy review

We have been listening to ideas from stakeholders on how the various PR regimes could be improved and made more coherent. This has involved holding workshops and has generated a range of issues that stakeholders have asked Government to consider as part of the policy review. The majority of these will require regulatory amendments, if taken forward.

We have assessed the range of issues and ideas raised to date and identified those that we believe could contribute towards the review's objectives and merit further consideration. These now form the basis of this discussion paper along with proposals on how they could be taken forward.

The purpose of this discussion paper is to help Defra, BIS and the Devolved Administrations establish the broad principles of coherence which can then be used to guide amendments to the individual regimes. The focus of the discussion paper is on the Packaging, WEEE and Batteries regimes as these have greatest potential for coherence and have greatest overlap in regulated population. That said, views on how the proposals outlined in this paper could be taken forward in relation to the ELV regime are also welcome.

The paper has been split into a number of sections to help direct the reader to the areas of most relevance to them:

Section 2 – Proposed framework for producer responsibility

Section 3 – Proposals – producers

Section 4 – Proposals – compliance schemes

Section 5 – Proposals – treatment operators

Section 6 – Other areas

Separate consultations on the application of the broad principles to the individual Regimes are being undertaken separately, together with impact assessments and draft regulations as appropriate.

We welcome all views on the proposals set out in this paper. Comments should be submitted by 31st May 2013. BIS, Defra and the Devolved Administrations will examine all responses and analyse and consider the points raised.

We would like to receive comments on the specific issues set out in Section 3 – 6. Wherever possible, please clearly indicate which proposal you are commenting upon by citing its “issue number”. This will greatly assist with analysing the responses. You don’t need to comment on all the proposals.

You may like to consider the following questions in making comments:

1. Do you support / object to the proposal and why?
2. How important is the proposal to you/your business?
3. Do you agree with our assessment of the impacts of the proposal? Does the proposal have any consequences which have not been considered?
4. Can you think of any alternative / improved solutions to the issues presented?

Please send your comments on the proposals in this paper to the following address:

Producer Responsibility Unit, Defra
Area 6D Ergon House
Horseferry Road
London SW1P 2AL

Or you can send your comments by email to packaging@defra.gsi.gov.uk

Respondents in Scotland should also send their response to:

Tim Chant
Zero Waste Delivery Team, Environmental Quality Division
Scottish Government
1-H(N) Victoria Quay
EDINBURGH
EH6 6QQ

Email: Timothy.chant@scotland.gsi.gov.uk

Respondents in Wales should also send their response to:

Mrs Anna Madeley
Waste Regulation Policy branch, Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

Email: waste@wales.gsi.gov.uk

Respondents in Northern Ireland should also send their response to:

Janis Purdy
Environmental Policy Division, DoENI
6th Floor, Goodwood House

44-58 May Street
BELFAST
BT1 4NN

Email: janis.purdy@doeni.gov.uk

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Information provided in response to this discussion document, 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.

2.0 Proposed framework for Producer Responsibility

Sections 3 – 6 discuss the proposals in more detail; you are not expected to comment on the below which provides an outline of the proposed framework for producer responsibility based on the adoption of coherent arrangement across the regimes. It is split into changes impacting producers, compliance schemes and treatment operators.

2.1 Producers

Small producers

It is proposed that as far as possible the producer responsibility regimes will exclude small producers from the financial obligation to pay for the treatment recovery and recycling of producer responsibility wastes. A small producer will be defined by reference to certain criteria; these will vary across the regimes but will likely consist of a combination of turnover, staff numbers (FTEs) and/or product tonnage. In the case of WEEE and Batteries it's likely due to the specific Directive requirements that these producers will still need to register.

Registration – producers with a financial obligation

The options for registration will remain as now with all producers, with a financial obligation, for EEE and Batteries being required to join a compliance scheme, and Packaging producers retaining the option of direct registration.

Within the registration requirements the Government proposes to have two tiers of producer registration:

- a simpler, lower cost registration option for medium sized businesses, and
- a second tier for all other producers (large producers).

At this stage the principle of a two tier approach set out above for registration is being proposed. If supported the details of the banding would be worked up for each regime.

It is proposed to retain a registration charge for each producer who joins a compliance scheme, but reduced from the current levels, as the Agencies² will increase focus of their compliance work on schemes.

The charges for directly registering packaging producers are likely to be broadly similar to the current charges, as Agency compliance work with direct registrants will continue unaffected.

Charging and compliance models

² Agencies means for England the Environment Agency, for Wales Natural Resources Wales, for Scotland Scottish Environmental Protection Agency and for Northern Ireland Northern Ireland Environment Agency

We are proposing that the Agencies focus their compliance checking activity more on the compliance schemes and the activities they undertake on behalf of their members rather than a direct regulatory focus on individual producers, except where direct registration is an option. We are proposing that cost recovery is revised to reflect this approach through the introduction of a compliance scheme subsistence charge. This already exists for the batteries regime and the proposal is to adopt this charging model for packaging and WEEE.

The proposed charging arrangements for producers and compliance schemes would be as follows:

- compliance schemes pay an annual subsistence charge, plus a charge for each of their producer members (split according to whether the producer is medium or large)
- direct registrants (packaging only) pay a registration charge (split according to whether the producer is medium or large)

The charges for direct registrants will be reflective of the costs of processing their registration and associated compliance monitoring. The scheme members' charges and scheme subsistence charges would reflect the work required to monitor compliance schemes and will also acknowledge the work they undertake to collate and validate their members' data.

Registration process

For all three regimes we are proposing a common registration process, which requires the following to be submitted to the relevant agency by a set date:

- producer business information
- data for product placed on the market and
- applicable charges.

We propose one of two options for registration deadline date(s):

- i. staggered dates across the regimes (our preference), or
- ii. a common single deadline date for registration for all regimes.

It is proposed that across all 3 regimes that the data for product placed on the market will be retrospective i.e. based on the previous compliance period or periods.

Failure to provide the required registration information or charges would prevent the registration of the producer.

The systems have a market element to them with regards to the amounts of product placed on the market and the resulting demand for recovery and recycling to be undertaken to meet specific obligations. It is therefore important that the market has the most accurate and up to date information. We are therefore proposing to extend the late registration charges and resubmission charges currently in place for Packaging to both WEEE and Batteries.

We propose providing producers with the option of reporting information on any exported product. This information would then be taken into account when determining that producer's obligation,

resulting in a lower obligation. Under this optional approach, the producer would be required to have available evidence to support any claims for exported product.

Packaging producers with an obligation over 500 tonnes who register directly are currently required to provide an operational plan. It is proposed to remove this requirement. However, where such a producer registers for the first time it is proposed that there would be a requirement to provide a plan which demonstrates that the producer has a clear understanding of how it intends to comply with its obligations.

Some business structures operate through holding company and subsidiary arrangements, often sharing some key resources. Where this occurs, it may be efficient for the group to make a single registration on behalf of the whole group. We propose extending the principle of group registration from packaging into WEEE and batteries.

The process for making submissions to the relevant Agencies will be revised, enabling directors to delegate responsibility for making submissions. This will provide an option for reducing the burden of seeking director sign off for submissions.

If a business goes into administration or seeks to liquidate its assets, we propose developing some simple rules on the how the producer obligations are managed. There will need to be a balanced approach here that simplifies the approach but which does not create a high risk that obligations will be lost.

Summary of proposed process

- Decide if qualify as a producer and assess against any relevant threshold tests.
- Collate data from previous compliance period(s) prior to the one intending to register for
- Optional – collate data on any exported product
- Arrange internal sign off arrangements – Director to delegate if required
- Decide if registering as a group or a single business
- For packaging producers, decide if registering directly or using compliance scheme
- Submit business information, product data, and registration charge to compliance scheme to enable them to register the producer by deadline date. For Packaging, those choosing to register directly would submit directly to the relevant agency.

2.2 Compliance schemes

For compliance schemes the key proposed changes cover the way charges are recovered and the requirement for an operational plan.

Charges

We propose that the charges better reflect the work that the Agencies undertake with regards to compliance schemes; this could be achieved by applying a subsistence charge to all compliance schemes. These charges would likely be fixed within each regime at a level that reflects the work

required to directly monitor the scheme, with the individual member charges reflecting the small amount of additional work associated with the indirect/direct monitoring of the scheme members.

Approvals process

Currently the Agencies approve applications from operators who wish to establish a WEEE or Batteries compliance scheme. For Packaging this is currently undertaken by Defra and the devolved administrations. It is proposed to move the approval process for any new packaging compliance schemes to the Agencies.

Operational plans

Producing the annual operational plans requires effort by compliance schemes and directly registering packaging producers as well as by the Agencies to assess and approve. The Agencies have reviewed their experience across the regimes over the past few years and consider that the effort taken to generate and assess these plans outweighs the regulatory benefits they provide. It is therefore proposed that the requirement for operational plans is removed.

Any new schemes would still be required to provide a business plan as part of the approvals process for compliance schemes, which would contain significant elements of the current operational plan requirements. It is still important that new entrants are able to demonstrate that their business model is capable of delivering compliance on behalf of their prospective members.

Currently packaging producers with an obligation over 500 tonnes are also required to provide an operational plan. It is proposed that a similar approach is adopted for these producers with regards to operational plans.

Summary of proposed process

- Application for approval to the relevant Agency
- Submit member information, data & charges (subsistence charge and members charges)
- Report compliance at end of compliance period

2.3 Treatment Operators

Accreditation process

For treatment operators across the regimes it is proposed to move away from the annual application process for securing accreditation/approval. This could be achieved in one of two ways. The requirements placed on operators for issuing evidence could be incorporated into permits issued for the treatment of waste reducing the permit requirements from two to one. The alternative option would be to retain the approval arrangements within the Producer Responsibility Regulations, but move to open ended approval with a simplified online application process across all the regimes.

Charges

Linked to the above, we propose to revise the way charges are recovered. If the single permit option is progressed then the annual permit subsistence charges would need to be revised to

reflect the fact that the producer responsibility work would now be covered by the single waste permit. If the option of open ended approval is progressed, then a one-off application charge and annual subsistence charge will be proposed. The subsistence charges in both options would be tiered to broadly reflect small, medium and large operators based on tonnage of evidence issued.

Conditions of Approval

We propose that operators who issue evidence will have to comply with a common set of conditions associated with the processing of producer responsibility wastes and the issuing of evidence. These will be consolidated from the existing conditions across the three regimes. Only where required for a specific regime will bespoke regulatory conditions be included.

Independent audit reports (IARs)

The requirement for an independent audit report has already been removed from the Packaging Regulations. We propose the removal of the same requirement from the WEEE and Batteries Regulations, thus placing the focus on the Agencies and those that rely on the treatment operators (e.g. compliance schemes) to check compliance with the conditions of approval.

Summary of proposed process

- Open ended approval; or incorporation of approval into EPR permits
- Tiered arrangement for approval – with 3 tiers depending on the amount of evidence issued
- Comply with generic conditions of approval
- Requirement for IARs removed

3.0 Proposals – Producers

3.1 Issue 1: De-minimis

3.3.1 Current position

The Packaging Regulations currently have a de-minimis threshold, which enables smaller businesses to avoid attracting a recycling/recovery obligation. Within the Batteries Regulations there is also a de-minimis, with those producers who place less than 1 tonne of portable batteries not subject to the requirement to finance the collection, treatment and recycling/recovery of a proportion of their batteries. However, they still need to register with the relevant agency and report on the amount of batteries they place on the market. The original intention of requiring ‘small’ battery producers to register was to meet the Directive requirement of having them registered and also enable the Agencies to monitor the sum total of batteries placed on the UK market.

The WEEE Regulations currently do not have any de-minimis provisions, with all producers being required to register and subject to financial obligations.

3.3.2 Proposal

The proposal is to move to a position where Packaging, Batteries and WEEE all have de-minimis arrangements, which broadly excludes similar sized smaller business from the need to be a registered producer.

This reflects the commitment made in response to the Red Tape Challenge to review de-minimis arrangements with a view to excluding more businesses from the requirement to register.

3.3.3 Impacts

Having de-minimis arrangements allows the regulatory burdens to be removed from smaller businesses. Frequently the administrative costs of complying with the regulations are significantly higher than the actual costs of complying with the recovery obligations, thus the administrative costs placed on the smaller business are disproportionately high.

The principal disadvantage of having de-minimis arrangements for the financial obligations is that the overall Directive targets for recovery obligations are split across a smaller number of businesses and would result in slightly higher costs being placed on these businesses.

3.2 Issue 2: Retrospective data

3.2.1 Current position

The Packaging Regulations already base the calculation of a producer’s obligation for each compliance period on retrospective data i.e. product supplied in the previous calendar year. This provides the packaging compliance schemes and producers with a known fixed target for the amount of packaging waste that they must recover during the compliance period.

The WEEE system uses in year data as the basis for calculating targets: this occurs concurrently with the collections of WEEE to meet the targets. As a result of the targets being based on the ‘in year’ reporting, it’s not until after the year end that schemes can be provided with their final

obligations. This leaves schemes and their members in a potentially uncertain position with regards to having a clear understanding of their financial exposure. The arrangements for batteries are similar to WEEE, where in year reporting is required on the amounts of batteries that have been placed on the market.

3.2.2 Proposal

The proposal is to require all producers to report, at the time of registering, data on the amount of product supplied or placed on the market in the previous calendar year (or years). Schemes and producers would be provided with a target for compliance prior to or early in the compliance period and would therefore have a confirmed position as to their compliance obligation.

3.2.3 Impacts

Having a known target early in the compliance period is likely to help many businesses with the budgeting for achieving compliance. The compliance schemes will be better positioned to calculate the likely costs of meeting the known target and will therefore be able to provide their members with indicative costs which should be much closer to the actual than has been the case under the current arrangement for WEEE and Batteries.

This would also raise the possibility for the removal of in-year data reporting on the amounts of WEEE and Batteries placed on the market, reducing the administrative burdens placed on producers.

The use of retrospective data increases the risk of the UK failing to meet EU collection and recycling targets if there is an increasing trend in tonnage of product placed on the market. However, historic trends for batteries, EEE and packaging are generally flat or downwards as a result of efforts to light-weight products, and so we consider this risk to be acceptable. There may also be ways of mitigating this risk which we can explore. For example, the Packaging Regulations currently set the UK targets at a level which aim to marginally over-achieve the EU targets.

3.3 Issue 3: Excluding exported product

3.3.1 Current position

The Packaging Regulations have adopted an arrangement whereby producers can deduct the amount of packaging they can demonstrate has been exported from the total amount of packaging they have handled. This leaves the obligation to be based only on the amount of packaging that ends up in the UK waste stream. The producer has to be able to provide auditable evidence on the amount of exports. This has worked well within the packaging regime.

3.3.2 Proposal

The proposal is to enable all the regimes to have the option of setting out in producer data returns tonnages of product which have been exported directly or indirectly; this would then be netted off when calculating their recovery obligations.

Inclusion of any exports in their data returns would need to be supported by auditable evidence that the exports have occurred. It is not proposed that supporting evidence be supplied to the Agencies, but it would have to be available on request.

It would be optional for producers to choose to quantify and evidence any exports of their product.

3.3.3 Impacts

Product exported from the UK will not arise as waste within the UK, and so will not be available for recovery. Thus counting exported product as part of the target calculations is likely to have the impact of over-obligating producers with regards to the tonnages of waste that can be accessed to meet their recovery targets.

This proposal would enable producers to calculate a recovery obligation, which could be lower than would otherwise be the case and could reduce their costs. The sum of individual recovery obligations should be more closely aligned to tonnages of waste that will arise in the UK and to which producers or schemes acting on their behalf would have a realistic chance of gaining access for the purpose of recovering.

3.4 Issue 4: Positive values waste streams

3.4.1 Current Position

Currently all wastes arising from products/materials placed on the market under the three regimes are required to have obligations placed on them for treatment recovery and recycling. In some cases this regulatory driver may not be required to drive the waste into recovery as they have a net positive value.

3.4.2 Proposal

It is recognised that there could be benefits for certain wastes to be excluded from obligations under the regulations. However having reviewed this from a coherence perspective we have not identified an overarching position that could be adopted.

We would therefore welcome suggestions for any specific arrangements that could be considered where defined, discrete waste streams could be relieved of the obligations as set out currently in the regulations.

3.5 Issue 5: Carry forward / backward evidence

3.5.1 Current position

Within the WEEE and the Batteries Regulations there is no option to allow the carry forward or backwards of evidence between compliance periods. All evidence issued in a compliance period ceases to be valid at the end of the compliance period.

Under the Packaging Regulations there is an option for schemes and producers to carry forward evidence from one compliance period to the next. This has the effect of smoothing out the compliance position by allowing schemes to move a limited amount of evidence from one period to the next, enabling them to derive some benefit from the higher rates of recovery when seeking to comply with their obligations.

None of the regimes currently allow for the carry back of evidence.

3.5.2 Proposal

The proposal is to extend the principle of carry forward of evidence to the WEEE and Batteries regimes.

The packaging system places a limitation on the amount of evidence that can be carried forward, by limiting it to the waste material delivered for reprocessing in December. In broad terms therefore the amount is limited to around 1/12th of the annual tonnage of material going into treatment/recovery. The proposal is to adopt similar limitations on carry forward within the WEEE and Batteries regimes.

3.5.3 Impacts

One of the benefits of allowing carry forward is that it creates an environment that allows schemes and producers to adopt a positive approach towards meeting their targets, in the knowledge that if their efforts result in higher achievement, then the additional evidence can be used in the following year to assist with complying rather than being lost from the system.

This proposal does carry some risk. One operator could seek to carry forward evidence that another requires to achieve compliance in the current compliance period and it could undermine the UK's ability to meet EU targets. In addition, if the revised WEEE system still retains a direct or indirect requirement for schemes to move evidence between them, this could create tensions between schemes who have over-achieved and those who have under-achieved against their targets. Options could be explored through regulatory provisions to reduce these risks.

Some stakeholders have suggested that carry back of evidence should also be considered. Whilst this has some attractions, the only reason for considering this as an option would be for a scheme/producer who has failed to achieve their target in a compliance period, thus effectively allowing them to achieve that target by over-achieving in the following year. Adoption of such an arrangement would be to recognise that schemes can fail in any one compliance period. This could start to undermine the ability of the UK to be assured that it can meet its recovery and recycling targets in any compliance period, so we are not going to pursue this proposal.

3.6 Issue 6: Registration and reporting

3.6.1 Current position

Assuming we move to a requirement for the provision of retrospective data (see Issue 2), then producer registration would have to occur early in the compliance period. The existing requirement for producers of batteries and EEE to register before the compliance period would become unworkable as a result of the move from in-year data reporting to retrospective data reporting.

3.6.2 Proposals

It is proposed that the registration processes have a common procedure for the provision of; business information, data and any relevant charges. These elements would be provided to the Agencies as part of the process of registering the producers. Failure to provide any of the elements would mean that the registration could not be made.

A common registration process raises the question of a common registration deadline or staggered deadline, two options are highlighted below:

i) a common registration deadline date of 31st March

ii) staggered registration deadline dates:

- Batteries 31st January
- WEEE 1st March
- Packaging 31st March

The Government's preference is for a staggered series of registration dates as this would spread the burden for those producers registering under more than one regime and would also spread the burdens on the Agencies for processing registrations.

3.6.3 Impacts

The requirement to have all the business information, charges and data provided in one submission reduces the burden from separate submissions as occurs now for WEEE and Batteries. It will also ensure that registered producers have provided all relevant information prior to being accepted for registration, thus avoiding situations where producers are registered but have not provided key data.

3.7 Issue 7: Group registrations

3.7.1 Current process

Within company structures it is often the case that there is a holding company with a range of subsidiary companies. Businesses operate in a range of ways - some operating very closely and others operating very much in an autonomous manner. Under current WEEE and Batteries Regulations, any single legal entity that satisfies the producer requirements must register. In contrast, the Packaging Regulations have an option for a holding company to make a single group registration on behalf of all its subsidiary producers.

The Packaging Regulations currently have additional charges for each subsidiary that is included in a registration made by a holding company, with the overall charges being less for a holding company registration compared to single separate registrations by each subsidiary.

3.7.2 Proposal

The proposal would be to adopt the option for a group registration within the WEEE and Batteries Regulations.

3.7.3 Impacts

The option of a group registration would provide some battery and EEE producers with the option to adopt a corporate response to registering and complying with the regulations and avoid multiple registrations in respect of each of their subsidiary businesses. It could provide some marginal cost savings and reductions in administrative burdens.

Often this can streamline the process of registering and reduce the burden. It could remove duplication across a number of subsidiaries in terms of the expertise required to manage and submit the registration.

3.8 Issue 8: Information and sign-off requirements

3.8.1 Current requirements

The information requirements across the three regimes vary. This has resulted in bespoke formats for each regime to with regards to the provision of information. Producers and compliance schemes therefore currently have to meet the varying requirements under each regime.

The sign off arrangements across the regimes are different and in some instances require sign off by an appropriate person (Director), each time information is submitted to the Agency.

3.8.2 Proposal

Subject to specific Directive requirements the proposal is to adopt a common set of requirements on the information required from producers for the purpose of submitting their registration information.

Some data requirements would remain specific to each regime. However business information and details on contacts could be streamlined such that this is common and required in a common format across the regimes.

In relation to the sign off arrangements, the proposal is to enable delegation by the appropriate person. This will still require an appropriate person to give authority by means of delegation to someone within the business, but this would only be required each time that authority needs to change. Evidence of that delegated authority would need to be provided to the relevant agency to confirm that a person other than an appropriate person has the authority to make submissions.

3.8.3 Impacts

Streamlined and common information requirements across the regimes will make it easier for producer's operating in more than one regime to gather the required information.

The ability to delegate the sign off of submissions will reduce the burden and delays often reported with the current arrangements.

3.9 Issue 9: Charging: Producer registration

3.9.1 Current requirements

The producer registration charges across the regimes are variable. By way of example the charges charged by the Environment Agency are set out below. NIEA and SEPA also have charges for each of the categories set out below, however in certain cases the charges are set at different levels.

Packaging

Charges for producers are dependent on whether they register directly or via a compliance scheme, and also on whether they fall into the 'small' category, as follows:

Direct registration

£776

Direct registration (small producer)	£562
Scheme member	£564
Scheme member (small producer)	£345

WEEE

The WEEE charging model also has a range of charges, on a per member basis, as follows:

Large	£445
Medium	£210
Small	£30

Batteries

There are two charge levels:

Large	£600
Small	£30

A small battery producer is one who places less than 1tonne of batteries on the market and has no financial obligations for the treatment and recovery of portable batteries.

3.9.2 Proposal

The proposal would be to review the charges and move to a consolidated position on the producer registration charge across all the regimes. The proposal would be for a two tier registration charge based on the size of the producer. The size of producer for each regime will be based on a combination of factors which could include turnover and tonnage placed on the market. When looking at the registration options (Issue 6) the proposal is to explore a coherent arrangement across the regimes for a two tier registration arrangement.

This charging proposal is linked to the proposal for moving to a coherent charge arrangement for compliance schemes, with them paying an annual subsistence charge.

Thus the combined proposal for a coherent charging model for producers and schemes would be:

- scheme subsistence charge, plus
- a charge for each producer member (with these charges split into medium and large).

Thus the annual charges placed on a compliance scheme with producer members would be:

- Scheme annual subsistence charge, plus
- No. of large producer members x large registration charge, plus
- No. of medium producer members x small registration charge.

The subsistence charge for the schemes would likely vary between the regimes, but we propose the producer charges be common across all regimes. The scheme subsistence charge would be reflective of the work the Agencies undertake in compliance monitoring the scheme and its members. The range of activities undertaken by the Agencies for which this subsistence charge will cover include amongst other things:

- Receiving and processing annual registration information
- Compliance monitoring
- Site inspections
- Receiving and assessing end of year compliance declarations
- Providing advice and guidance and responding to queries.

The charges charged per member will cover the cost the regulators incur in inspecting and validating the individual members' information and data. It is proposed that the volume of such inspections is much reduced, with the emphasis being on checking and validating the schemes systems and processes. It will be the responsibility of schemes to check and validate their producer members' data.

As is the case now, even if the above proposal is progressed to consolidate the scope and methodology for recovering charges across the regimes there may still be a need for individual Agencies to set different charge levels to reflect their individual cost recovery requirements.

3.9.3 Impacts

Moving to a common charging model for registration will streamline and simplify the charging arrangements across the regimes. It will ensure that the Agencies are recovering costs equitably across the regimes for the activities they undertake. It will also lead to greater transparency on what the charges are being used for. Combined with the proposal for a scheme subsistence charge this will enable the costs to more accurately reflect cost recovery with regards to where the regulators are undertaking activity.

The level at which the producer registration and scheme subsistence charges are set will be worked up once we have taken decisions on which proposals set out in this discussion paper will be taken forward. Our expectation is that, whilst the producer registration charges will go down, overall costs to producers will remain static as compliance schemes will seek to pass on the cost of the subsistence charge to their producer members. That said, there is potential for lower charges overall as many of the proposals outlined in this discussion document should lead to a reduction in activity and costs incurred by the Agencies; we expect any savings to be passed on to producers.

3.10 Issue 10: Late registration and data re-submissions

3.10.1 Current position

Within the Packaging Regulations a charge currently exists for those producers who register late. There is also a charge for data re-submissions after the registration deadline.

The Batteries and WEEE Regulations do not currently have any charges for producers who register after the deadline date or who subsequently amend their data.

3.10.2 Proposal

If the proposal on using retrospective data is adopted across all regimes, and calculations of recovery obligations are based on this data (Issue 2), then we propose that all regimes have a charge for late submissions or re-submissions included in them. The Agencies will review the associated work with processing resubmissions to determine what this charge would be. It is not envisaged that this charge would be higher than the £110 late registration or the £220 re-submission charges currently set out in the Packaging Regulations.

3.10.3 Impacts

Registration after the deadline date creates additional work for the agencies and this should be reflected in a cost recovery charge to cover this additional work. The same principle applies to the re-submission of data after registration. Additionally the producer responsibility systems rely on a market trading approach towards achieving compliance. Repeated changes to market data create uncertainty. Incentivising producers to register by the deadline date and also to provide data which is as accurate as reasonably possible through the avoidance of additional charges will assist in provide timely and accurate information to the market. Whilst we would prefer the late registration charge to be higher than the re-submission charge, to better incentivise timely submission of data, this is not possible as the charges are based on cost recovery.

3.11 Issue 11: Incapacity

3.11.1 Current position

Under the Packaging Regulations, businesses that take over the activities of a former business have to pick up the obligations of that former business.

The WEEE and Batteries Regulations have adopted an approach that the scheme retains the obligations of any members who ceases to exist during the compliance period.

3.11.2 Proposal

It is proposed that when a producer (the legal entity) ceases to exist, any remaining obligations also cease to exist. This would only address the pro rata amount of the producer's remaining obligation. Up to the point of becoming incapacitated the requirement would be for the producer and/or its compliance scheme to have to meet the pro rata amount of its obligations based on the producers' previous year's data.

3.11.3 Impacts

The proposal would provide a clear and simple approach to dealing with producer obligations in situations where the producer becomes incapacitated during the compliance period. Any business carrying on the activities of the former business or acquiring the assets of the former business and taking them into a new legal entity would be regarded as a new producer. If it was the case that the existing legal entity remained and the only change was a change in ownership or shareholding, then the producer obligations would remain.

Where a producer becomes incapacitated during a compliance period, the full obligation based on their previous year's data will not be met. In certain situations this could present a risk to the UK meeting its overall Directive targets, though we judge this to be relatively low.

4.0 Proposals – Compliance Schemes

4.1 Issue 12: Approvals process

4.1.1 Current position

Where someone is proposing to establish a new WEEE or Batteries compliance scheme they will need to submit an application for scheme approval to the relevant Agency. The application also needs to be accompanied with an application charge.

For a new packaging scheme, the application for approval currently has to be submitted to Defra or the relevant devolved administration. No application charge is required for packaging scheme approval.

4.1.2 Proposal

It is proposed that the Agencies will take on the role of receiving and assessing packaging scheme applications. In addition it is proposed that an application charge is introduced for the approval of packaging scheme applications and that the application charge across all 3 regimes is standardised.

4.1.3 Impacts

This will enable the agencies to have a common and consistent approach for assessing and processing any new compliance scheme applications.

The application charges will be based on cost recovery reflecting the work undertaken to assess and process new applications.

Introducing a charge for new packaging scheme applications could be considered a cost burden. However, not to do so is inconsistent with the existing arrangements in the other regimes and does not reflect the cost of the work linked to processing such an application.

4.2 Issue 13: Conditions of approval

4.2.1 Current position

The conditions of approval placed on compliance schemes across the regulations vary in the way they are expressed. However, in many cases the conditions are seeking to achieve the same objectives.

4.2.2 Proposal

The proposal is to have a common set of 'conditions of approval' across the three regimes and for these conditions to be set out in a schedule to the regulations. In addition, if the proposal to remove the requirement for operational plans is progressed (Issue 14), some aspects of the operational plan provisions could be considered as conditions of approval.

There will be a single regulatory requirement in the regulations which places a duty on the compliance schemes to comply with the relevant obligations and the conditions of approval as listed in the schedule.

The table at Annex 2 lists out all the related conditions of approval included in the Packaging, WEEE and Batteries Regulations and proposes a coherent set of conditions of approval. In addition the proposed new conditions are set out at the start of this table.

In certain cases bespoke conditions of approval will be retained in the individual regulations where they are required.

4.2.3 Impacts

This would result in a common set of conditions of approval for compliance schemes which would aid clarity and operational arrangements for those schemes that operate in more than one regime. For the regulators it would simplify the regulatory process for multi regime schemes as they will be monitoring compliance against a broadly common set of conditions.

4.3 Issue 14: Operational plans

4.3.1 Current process

All three regimes require schemes to submit and maintain operational plans for each compliance period. In addition, there is a requirement for the plans to provide a three year horizon on how the scheme will achieve compliance. The plans set out how the scheme intends to discharge its members' obligations. The process of preparing plans for submission and the process by the regulators for assessing the plans is time consuming and may not add substantial value particularly when operational plans may need to be revised during the compliance period.

The Agencies now have a clearly defined process for monitoring compliance schemes and undertake detailed quarterly assessments of the scheme compliance performance. Currently this is referenced back to the operational plan, but there is no requirement to do this. In the absence of an operational plan the regulators would propose to monitor compliance against a broadly linear progress towards meeting the recovery obligations. Where significant deviations from such progress were observed, explanations would be sought and where necessary advice and guidance given.

4.3.2 Proposal

We propose removing the requirement for schemes in all 3 regimes to submit operational plans. Instead, certain aspects of the existing operational plan would be moved into the conditions of approval. For example, for a new scheme, a requirement to submit a business plan would be introduced. This will be the means by which a prospective scheme demonstrates that it has the ability to operate as a compliance scheme and that it has the systems, processes and plans in place to deliver compliance with its member's obligations. The requirement to submit a business plan will be a one-off condition.

4.3.3 Impacts

This proposed change will significantly reduce the administrative burden on compliance schemes. The objective of monitoring and ensuring schemes are working towards a compliant position will

still be retained through the compliance monitoring undertaken by the regulators. The regulators will be able to direct more resource towards real time compliance monitoring as opposed to assessing upfront plans of what schemes intend to do, which experience suggests are unlikely to predict accurately what happens in reality.

Schemes would not have to demonstrate in advance of each compliance period how they will intend to achieve compliance, which could increase risk of schemes failing to comply. However, we would expect schemes to have their own plans for ensuring compliance.

4.4 Issue 15: Compliance scheme subsistence charge

4.4.1 Current process

The current arrangements across the three regimes all adopt different approaches to the recovery of charges.

The Batteries regime places a subsistence charge on the compliance schemes along with a per member charge. The packaging and WEEE regimes do not have a specific charge placed on the compliance schemes, but just have a per member charge. This approach does not recognise in a proportionate way the work that is done directly with regards to regulating the compliance schemes.

4.4.2 Proposal

The proposal therefore is to move towards a model that places an annual subsistence charge on the compliance schemes, which is further supported by a per member charge.

The subsistence charge will be reflective of the variable and fixed charges incurred by the agencies in monitoring the compliance schemes. As such consideration will have to be given to the fixed charges incurred by the regulators and the best way to proportion these across the compliance scheme

4.4.3 Impacts

The proposal will better reflect in the charges the work that Agencies undertake with regards to compliance schemes. Currently there is an amount of work undertaken with regards to the compliance monitoring of schemes which is not directly proportional to the number of members a scheme has. The adoption of a subsistence charge approach for compliance schemes would address this. This approach will also provide schemes with a greater degree of flexibility with regards to how they recover their costs from their members. The proposal to revise downwards the individual registration charges for scheme members would allow the schemes additional flexibility with regards to their individual finance models.

5.0 Proposals - Reprocessors, Treatment Operators and Exporters

5.1 Issue 16: Approvals Process

5.1.1 Current Process

To issue evidence notes a reprocessor/treatment operator or exporter must apply to the relevant agency to become accredited for each of the regimes.

The information required in the application varies slightly between the different regimes. However, in general it includes standard items like name of organisation, address etc. The Batteries and WEEE Regulations set out what information is required in an application in the actual Regulations. The Packaging Regulations do not set out the specific information required but require the application to be made on a form made available by the relevant agency.

If successful, an organisation's accreditation for the regime applied for is valid for one compliance year. Thus to continue to issue evidence in subsequent compliance periods a new application for accreditation has to be submitted for each new compliance period.

5.1.2 Proposals

There are two options under consideration for improving this application process for reprocessors/treatment operators and exporters:

Option 1 - streamline the application process for both domestic reprocessors and exporters.

Option 2 - remove the application process entirely for domestic reprocessors and instead rely on the application information being provided by the waste permitting/registered exemption process; the process for accreditation of exporters would remain the same

Option 2 is likely to have the greatest potential for cost-savings but represents a significant change to the current system and so would require substantial further work to consider how it could work in practice. Therefore our intention is to pursue Option 1 in the short-term but continue to explore how we could implement Option 2 in the longer term if this receives sufficient support through feedback to this discussion document.

5.1.3 Option 1 – streamlining the application process

The first option would be to streamline the existing arrangements for making an application to the relevant agency to issue evidence notes as described in the table below:

No	Proposal	Rationale
A	To remove from the Regulations the list of information required in the application. Instead allow the application to be made on a form made available by the Agency, as is currently the case in the Packaging Regulations.	Enables the Agencies to publish a single application form for all regimes and allow one application across all regimes.
B	To remove the annual application process and instead make approval open ended. Supplementary to this an additional duty will be placed on the approved organisations to update the Agencies, within a defined period, if there is a material change to the information provided in their original application.	To reduce burden and costs on business of having to complete an application annually regardless of whether there has been any change in circumstance.

5.1.4 Impacts

Development of a common approach for submission of applications will reduce the burdens on those who seek to make multiple applications. A common approach will enable the Agencies to move towards common generic systems for the acceptance and processing of applications.

Moving to single open ended applications will remove the cost and burdens of making an annual application. There will be a corresponding decrease in the burdens on the agencies with regards to the processing of applications.

The proposed changes are unlikely to increase the risk of operators abusing the systems. The Agencies will continue to focus on compliance monitoring of operators and will continue to take action where non compliance are identified.

5.1.5 Option 2 – Remove accreditation process for domestic reproprocessors

The second option would be to remove the application for approvals process for reproprocessors/treatment operators from the regulations. In all three regimes organisations who wish to issue evidence notes are required to hold a 'relevant authorisation'. The definition of a 'relevant authorisation' could be changed to refer only to an environmental permit or registered exemption. Under this option, all holders of a relevant authorisation could be eligible to issue evidence notes for the regimes without having to go through an application process. The relevant Agencies will continue to have the information necessary to carry out their enforcement activities such as name and address of the company etc as this will have been provided in the permitting or exemption application.

Under this option the conditions of approval that currently exist for accreditation/approval would need to be built into the waste permitting application. This would set out the regulatory requirements and conditions for issuing 'evidence' (see Issue 17), but it would be done under a single permit arrangement.

There would likely be a need to be able to identify which operators were intending to be part of the producer responsibility system to issue evidence and for there to be positive 'opt in' arrangement. If this option were to be pursued, consideration would have to be given as to how this could be achieved.

5.1.6 Impacts

The key advantage of this proposal is a reduction in the administrative and cost burdens placed on reprocessors/treatment operators as it would remove the need for a second application to become accredited/approved.

A possible disadvantage is that by merging regulatory control of the PR requirements with wider Environmental Permitting requirements this could reduce the attention given to the PR requirements by Agency staff during inspection visits and so allow for increased abuse of the systems.

This option does not reduce burdens on exporters. We would welcome any suggestions on any alternative approaches that could be considered for exporters. However, it may be possible to introduce the measures above for exporters alongside the introduction of the above proposal to integrate the permitting/registered exemption process in relation to domestic reprocessors.

5.2 Issue 17: Conditions for issuing evidence

5.2.1 Current position

The conditions placed on operators for issuing evidence vary across the three regimes. Such conditions are required to ensure that evidence is issued appropriately, but there is scope to standardise the conditions and ensure all operators who are issuing evidence have to do so within the same constraints and requirements.

5.2.2 Proposals

The proposal is to consolidate the existing conditions of accreditation/approval for operators who are issuing evidence. The consolidation process would capitalise on those conditions which work well and clearly assist in ensuring the system works and would seek to remove / revise those that do not deliver clear benefits.

5.2.5 Impacts

The proposed process of review and consolidation of the conditions of approval would result in the adoption across all three regimes of those conditions which work well and enable a simplification by removing those that don't provide any benefits. The consolidation process and adoption of coherent conditions across the regimes will ensure that all operators involved in the issuing of evidence are working to the same regulatory requirements and to the same standards.

5.3 Issue 18: Independent Audit Reports

5.3.1 Current position

Currently the Batteries and WEEE Regulations require a treatment operator or exporter to provide the relevant agency with an independent audit report (IAR) confirming that the amount of evidence issued is equal to the tonnes of material treated or exported.

The requirement for a reprocessor or exporter to submit an IAR was removed from the Packaging Regulations in 2011.

5.3.2 Proposal

The proposal is to remove the requirement for IARs from the WEEE and Batteries regulations.

5.3.3 Impacts

The feedback from the Agencies is that the IARs in their current form do not add significantly to the level of intelligence they already have on the operators who are providing the IARs.

The Environment Agency has indicated that there has been no discernable impact upon the relevant Agencies capability to enforce the Regulations efficiently and effectively or on the general smooth running and confidence of the system.

Removing this requirement would reduce the burdens and costs on industry. The costs incurred are both internal costs to the operators and external costs as they are required to appoint an independent auditor.

A potential risk of removing this requirement is that this would increase the likelihood of some operators abusing the system. However, experience following the removal from the Packaging Regulations has not identified any increase in the abuse of the system by operators.

5.4 Issue 19: Operator Competence

5.4.1 Current position

Across the three regimes there is not a requirement for the reprocessor/treatment operator or exporter to demonstrate they are technically and financially competent to issue evidence notes under the Regulations.

5.4.2 Proposal

The proposal is to introduce a common competency test across all three regimes. An operator, who in the view of the relevant agency does not meet this fit and proper person test, will be refused accreditation for the purposes of the Regulations. The specific fit and proper person test will be similar to that already contained in the Waste and Contaminated Land (Northern Ireland) Order 1997 as set out below:-

“A person shall be treated as not being a fit and proper person if it appears to the appropriate Agency:-

That he or another relevant person has been convicted of an offence under these Regulations and no adequate steps have been taken to ensure that a further contravention will not occur in the future.

That the management of the accreditation under the Producer Responsibility Regulations (Batteries/Packaging/WEEE) are not or will not be in the hands of a technically competent person.”

The application of this test will be in the hand of the relevant agency that will be required to make a judgment on this in relation to each individual operator either when the organisation makes an application to become accredited or during the operational activity once accredited.

Failure to satisfy the requirements of the test will lead to either the refusal of an application or if accredited suspension of the accreditation. The suspension would be lifted once the relevant agency is satisfied the test has been met or if there is a failure to demonstrate the test is met within a defined period, the accreditation will be cancelled.

5.4.3 Impacts

The current lack of a competency test creates a difficulty for the operation of the system in that even someone who has a history of defrauding similar regimes is able to accredit for these Regulations. Similarly operators who do not have an understanding of how the regimes work and what they are required to do with the revenues generated are able to accredit. The Environment Agencies are able to locate and enforce against these operators, but this takes time and enforcement resources. In addition allowing such operators into the system in the first place creates instability in the market place. In particular, this can have the effect of inflating the amount of evidence available in the system beyond that which is actually being reprocessed. This can then result in a sudden drop in available evidence when the fraudulent operator is located and taken out of the system. Introducing a competency test will help the Environment Agencies reduce the likelihood of these operators entering the system in the first instance.

The Agencies will have to set the criteria that they will use to assess whether an operator is technically competent. There should be consistency across all Agencies.

5.5 Issue 20: Evidence of Broadly Equivalent

5.5.1 Current position

Currently exporters of WEEE, Batteries and the majority of packaging types are required to show that they are exporting to sites which operate to a standard broadly equivalent to which a site would operate in the EU. Exporters are required to supply this information on a site by site basis so evidence is required for each and every site.

5.5.2 Proposal

The proposal is for the Agencies to have a greater level of discretion in regard to the type of evidence an exporter can use to prove that the material they are exporting will be reprocessed under broadly equivalent conditions. This would mirror the current situation in relation to metal packaging exports allowing alternative forms of evidence to be used across all regimes and all materials.

In effect this would allow exporters of waste to issue evidence notes on material exported outside the UK without providing site-specific evidence for each overseas reprocessor if the below conditions are met:

The exports of UK waste are going for recovery within the European Union or to a country within the Organisation for Economic Co-operation and Development (OECD); or

The exports are to a non-OECD country outside the European Union and the relevant agency is satisfied that the relevant conditions are met. The relevant conditions are likely to vary on a material by material/regulation by regulation basis. It is likely that the relevant conditions will need to be developed by the Agencies and set out in guidance.

The current conditions in relation to waste packaging metals are:-

The waste has been source segregated or has been processed to ensure that it is exported within a shipment of similar material.

There is a well-established international technical specification system for the exported material and the exported material meets the appropriate specification. These specifications serve as an implicit quality assurance system between companies along the supply chain.

The material requires minimal processing overseas prior to being recovered and the recovery process has process losses in line with industry norms in the European Union.

Processing prior to recovery should not require any hand sorting of the waste material which may give rise to significant harm to human health.

The material is subjected to a recognised form of recovery and unlikely to give rise to significant environmental harm.

It is clear from these conditions that the overall aim is to ensure that the material is of such value that there is high degree of certainty that the material will be recovered and not disposed of to landfill.

Implementation of this proposal would need to be taken forward in the context of wider work to improve the enforcement of controls on the export of waste, for example, as set out in the draft Quality Action Plan for dry recyclates³.

5.5.3 Impacts

Enabling the Agencies to exercise some discretion over the nature of the information required to demonstrate Broadly Equivalent and Equivalent Standards could potentially reduce the burdens on industry both in administration time and costs. Seeking a more balanced position across quality of material exported and information on the receiving sites provides a risk based approach, which does not necessarily increase the likelihood of poorer environmental outcomes from the exported material.

³ <https://www.gov.uk/government/publications/improving-the-quality-of-recyclates-quality-action-plan-england-only>

6.0 Other Areas

6.1 Issue 21: Terminology

6.1.1 Current position

Across the three regimes varying terminology is used to mean essentially the same thing.

6.1.2 Proposal

It is proposed that the terminology used across the regulations is standardised. Annex 3 sets out current terminology used across the regulations and proposes a common position.

6.1.3 Impacts

Using the same terminology across the regulations will assist in the production of clear unambiguous guidance and information on the regimes, will enable any generic messages to be clear and referencing the same points. It will also ensure any cross regulatory discussions are clear and focussing on the same points or issues.

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This document/publication is also available on the NPWD website at:

<http://npwd.environment-agency.gov.uk>

Any enquiries regarding this document/publication should be sent to us at:

Producer Responsibility Unit
Defra
Area 6D Ergon House
Horseferry Road
London SW1P 2AL

Or by email to: packaging@defra.gsi.gov.uk

Annex 1 - Current Regulations and guidance

Packaging

<http://www.environment-agency.gov.uk/business/topics/waste/32206.aspx>

http://www.doeni.gov.uk/niea/waste-home/regulation/regulations_packaging.htm

Batteries

<http://www.environment-agency.gov.uk/business/regulation/101529.aspx>

<http://www.doeni.gov.uk/niea/waste-home/regulation/batteries.htm>

WEEE

<http://www.environment-agency.gov.uk/business/topics/waste/32084.aspx>

http://www.doeni.gov.uk/niea/waste-home/regulation/regulations_ weee.htm

ELV

<http://www.environment-agency.gov.uk/business/topics/waste/143462.aspx>

http://www.doeni.gov.uk/niea/waste-home/authorisation/regulations_endlife.htm

Annex 2 – Comparison of conditions of approval and proposed coherent position

The following table sets out a number of new / proposed conditions of approval which have been introduced to take account of the proposal to remove the requirement for operational plans. The table then continues with indicating the current regime specific conditions and indicating what the coherent condition could be.

Packaging	WEEE	Batteries	Coherent
			The operator of the scheme shall maintain sufficient technical expertise to enable it to comply with its obligations and the conditions of approval
			The operator of the scheme has auditable systems, procedures and arrangements in place which are commensurate with the scheme meeting its obligations
			The operator of the scheme has auditable systems and procedures in place to ensure that information and reports provided to the appropriate authority are as accurate as reasonably possible
			The operator of the scheme provides to the appropriate authority, on a quarterly basis, a report which summarises: <ul style="list-style-type: none"> those members who have been monitored;

			<ul style="list-style-type: none"> the method of monitoring used; and the outcome of that monitoring
			The operator of the scheme does not undertake activities which will adversely affect the ability of other compliance schemes to comply with their obligations and conditions of approval.
(a) that the operator of the scheme will comply with the obligation set out in regulation 12(1);	(a) that the operator of that scheme shall comply with his obligations under Part 4;	a) comply with its obligations under Part 3; c) comply with its obligations under regulations 32(2) and 33(2);	that the operator of that scheme shall comply with his obligations set out in XXX
		(b) carry out the scheme's operational plan;	If proposal to remove Op plans accepted, delete this condition
	(b) that where the operator of that scheme collects WEEE from a designated collection facility he shall comply with the code of practice;		WEEE specific requirement
(b) that the operator of the scheme will provide any information reasonably requested by the appropriate Agency with regard to the obligation referred to in paragraph (a) above;	(c) that the operator of that scheme shall provide any information reasonably requested by the appropriate authority with regard to the obligations referred to in paragraph (a);	(d) provide any information in relation to its obligations under Part 3 reasonably requested by the appropriate authority;	that the operator of the scheme shall provide any information reasonably requested by the appropriate Agency with regard to how the operator will comply with the regulations applicable to them
		(i)	
(d) that the operator of the scheme will inform the appropriate Agency in writing of-- (i) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership, or where there is more than one operator of a scheme, any change of partners or operators;	(d) that the operator of that scheme shall inform the appropriate authority in writing of-- (i) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership, any change of partners;	(e) inform the appropriate authority in writing of-- (i) any change in the person who is the scheme operator and, in the case where the scheme operator is a partnership or limited liability partnership, any change of partners;	(d) that the operator of that scheme shall inform the appropriate authority in writing of-- (i) any change in the person who is the operator of the scheme and, in the case where the operator of the scheme is a partnership, any change of partners;

<p>(ii) any material change in the information provided in accordance with regulation 14(3)(b);</p> <p>(iii) any material change in the further information provided in accordance with regulation 14(3)(c);</p> <p>(iv) any change in the operator stated under regulation 14(3)(h),</p>	<p>(ii) any material change in--</p> <p>(aa) the information provided in accordance with regulation 20 [or 21];</p> <p>(bb) the information provided in accordance with regulation 41(4)(b)(i),</p> <p>(cc) the constitution submitted in accordance with regulation 41(4)(b)(ii), or</p> <p>(dd) the operational plan submitted in accordance with regulation 41(4)(b)(iii);</p>	<p>(ii) any material change in--</p> <p>(aa) the information provided under regulation 47(5)(b)(i);</p> <p>(bb) the operational plan submitted under regulation 47(5)(b)(ii);</p>	<p>(ii) any material change in the information provided in accordance with regulation XXX;</p> <p>(iii) any material change in the further information provided in accordance with regulation XXXX;</p> <p>(iv) any change in the operator stated under regulation XXXX,</p>
	<p>(iii) a conviction of the operator of that scheme for an offence under these Regulations,</p> <p>within 28 days of the occurrence of any such change;</p>	<p>(iii) a conviction of the scheme operator for an offence under--</p> <p>(aa) regulation 89(2);</p> <p>(bb) regulation 73(3) or (4) of the Waste Electrical and Electronic Equipment Regulations 2006; or</p> <p>(cc) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, committed in the scheme operator's capacity as the operator of a scheme under those Regulations,</p> <p>within 28 days of any such change or conviction;</p>	<p>(iii) a conviction of the scheme operator for an offence under--</p> <p>(aa) regulation XXXX</p> <p>(bb) regulation 73(3) or (4) of the Waste Electrical and Electronic Equipment Regulations 2006; or</p> <p>(cc) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, committed in the scheme operator's capacity as the operator of a scheme under those Regulations,</p> <p>within 28 days of any such change or conviction;</p>
	<p>(e) that--</p> <p>(i) where the appropriate authority is the Environment Agency or SEPA, the operator of that scheme pays the annual producer charge specified in regulation 45(2) to the appropriate authority on receipt of an invoice for such a charge issued by that appropriate authority under regulation 62(3); and</p> <p>(ii) where the appropriate authority is the Department of the Environment, the operator of that scheme pays the annual producer</p>	<p>(h) pay the scheme subsistence charge to the appropriate authority on receipt of an invoice issued under regulation 79(2);</p>	<p>pay the scheme subsistence charge to the appropriate authority</p> <p>pay the annual producer charge as calculated in regulation XXXX</p>

	charge specified in the Waste Electrical and Electronic Equipment (Charges) Regulations (Northern Ireland) 2006 on receipt of an invoice for such a charge issued by that appropriate authority under regulation		
(c) that the operator of the scheme will notify the appropriate Agency in writing at intervals as required by the appropriate Agency of any change in the membership of the scheme and that any such notification will be accompanied by the additional charge calculated as provided in regulation 16(6);			that the operator of the scheme shall notify the appropriate Agency in writing at intervals as required by the appropriate Agency of any change in the membership of the scheme and that any such notification will be accompanied by the additional charge calculated as provided in regulation XXXX;
	(f) that the operator of that scheme shall provide records and reports to the appropriate authority in compliance with regulations 27 and 28;	(i) make records available and provide information to the appropriate authority in compliance with regulations 22(2), 23 and 24.	that the operator of that scheme shall provide records and reports to the appropriate authority in compliance with regulations XXXX
	(g) that the operator of that scheme shall accept WEEE from private households [free of charge from-- (i) a distributor in accordance with regulation 32; and (ii) a final holder in accordance with regulation 40A];		WEEE Specific requirement
	(h) that, where any of the information specified in Part 3 of Schedule 7 has not been submitted in accordance with regulation 41(4)(b)(iii), it shall be submitted to the appropriate authority within 28 days of the date of a notification of approval served on the operator of that scheme under regulation 41(6)(a); and (i) that the operator of that scheme continues to meet the requirements for approval of a scheme set out in Part 4 of Schedule 7; [(j) that the operator of that scheme provides the appropriate authority with an updated operational plan containing the information set out in Part 3 of Schedule 7 in	(g) provide the appropriate authority with an updated operational plan covering the next three compliance periods on or before 31st August of each year in respect of which the approval remains in force;	No longer required if operational plans removed from regs

	relation to each of the next three compliance periods on or before the 31st July of each year].		
		(3) The scheme operator and the battery compliance scheme must continue to meet the criteria for approval of a proposed scheme set out in Part 3 of Schedule 3 (reading that Part as if references to the operator of a proposed scheme were to the scheme operator and references to a proposed scheme were to the battery compliance scheme).	
The matters to be contained in the statement to be provided pursuant to regulation 14(3)(d) are-- (a) the steps intended to be taken through the scheme to increase the use of recycled packaging waste in the manufacture of packaging, packaging materials or other products or materials supplied by its members; and (b) the principal methods by which packaging waste is to be recovered through the scheme, and by which it is to be recycled through the scheme, together with information about the steps the user or consumer may take to assist the scheme in applying these methods.			Not required – Op plan
The matters to be contained in the operational plan referred to in regulations 7(4)(f), 8(g), 14(3)(f) and 15(g) are matters which demonstrate-- (a) that sufficient financial resources and technical expertise will be available to enable the performance of the recovery and recycling obligations of the producer or the obligations of the operator of the scheme under regulation 12(1) (as the case may be); (b) that the arrangements for recovery and recycling take account of any statement which			Not required – Op plan

<p>contains the Secretary of State's policies in relation to the recovery and disposal of waste in England and Wales and which is made under section 44A of the 1990 Act and any statement which contains SEPA's policies in relation to the recovery and disposal of waste in Scotland and which is made under section 44B of the 1990 Act, in so far as they are relevant;</p> <p>(c) how the recovery and recycling obligations or the obligation of the operator of the scheme under regulation 12(1) (as the case may be) will be performed as regards each of the packaging materials relevant to those obligations including--</p> <p>(i) the names and addresses of the reproprocessors or exporters or both it is intended to use;</p> <p>(ii) the names of any waste collection or disposal authorities from whom packaging waste is intended to be obtained;</p> <p>(iii) the proportions in which the packaging waste which is to be recovered and recycled is to be obtained from the waste of a producer, other industrial or commercial waste, household waste or other waste;</p> <p>(iv) the amounts to the nearest tonne of packaging waste it is proposed to recover in the three years immediately following registration; and</p> <p>(v) the amounts to the nearest tonne of each such packaging material which it is proposed to recycle in the three years immediately following registration;</p>			
<p>(d) the steps it is proposed to take to recover and recycle any of the packaging materials relevant to the recovery and recycling obligations or the obligation of the operator of the scheme under regulation 12(1) (as the case may be) in order not to affect adversely the interests of any producer, whose recovery and recycling obligations are predominantly in relation to another such packaging material;</p>			<p>Not required – Op plan</p>

<p>(e) in relation to PERNs and PRNs which are expected to be acquired in each quarter of the three years immediately following registration, the tonnage of packaging waste and the type of recyclable material to which they are expected to relate;</p>			<p>Not required – Op plan</p>
<p>(f) a statement indicating the contracts anticipated to be made with reprocessors or exporters or both and packaging waste suppliers in the three years immediately following registration;</p>			<p>Not required – Op plan</p>
<p>(g) a statement as to how the producer or operator of a scheme (as the case may be) is assisting reprocessors to direct resources at--</p> <p>(i) increasing the capacity for the collection and reprocessing of packaging waste; and</p> <p>(ii) encouraging the development of markets for materials or goods made from recycled packaging waste;</p>			<p>Not required – Op plan</p>
<p>(h) how information to which regulation 19 applies is to be monitored under a monitoring plan so that the operator of the scheme can meet his obligations under regulation [12(1)].</p>			<p>Not required – Op plan</p>
<p>(1) For the purposes of paragraph 12(c)(ii) above "waste collection authority" and "waste disposal authority" shall have the meanings given in section 30 of the 1990 Act.</p> <p>(2) For the purposes of paragraph 12(c)(iii) above "household waste", "industrial waste" and "commercial waste" shall have the same meanings as in section 75 of the 1990 Act.</p>			<p>Not required – Op plan</p>

Annex 3 - Terminology

Columns 1 to 3 set out the current terminology used in the Packaging, Batteries and WEEE regulations respectively. Column 4 sets out the proposed coherent terminology.

Packaging	Batteries	WEEE	Coherent
Accredited exporter	Approved Battery Exporter	Approved exporter	Approved Exporter
<p>Producer – Meaning given to it in Reg 4 includes small producer unless otherwise stated, and the classes of producer are those set out in column 4 of table 1 schedule 1 – reg 4:- performs relevant function, made supply of specified materials or products, satisfies the threshold tests.</p> <p>Derived from term “Economic Operators” defined in the Directive – In relation to packaging shall mean suppliers of packaging materials, packaging producers and converters, fillers and users, importers, traders and distributors, authorities and statutory organisations.</p>	<p>Producer – Means any person in the UK that, irrespective of the selling technique used, including by means distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts, places batteries, including those incorporated into appliances or vehicles, on the market for the first time in the UK on a professional basis.</p>	<p>Producer – Means any person who, irrespective of the selling technique used, including means of distance communication in accordance with Directive 97/7/EC as amended by Directive 2002/65/EC on the protection of consumers in respect of distance contracts-</p> <ul style="list-style-type: none"> a. Manufactures and sells electrical and electronic equipment under his own brand; b. Resells under his own brand equipment produced by other suppliers, a reseller not being regarded as the producer if the brand of the producer appears on the equipment as provided for in sub-para (a); or 	<p>Largely Directive specific definitions</p> <p>No action</p>

		c. Imports or exports electrical and electronic equipment on a professional basis into a member state.	
<u>Exporter</u> – Person who in the ordinary course of conduct of a trade, occupation or profession, owns and exports packaging waste for reprocessing outside the UK	<u>Exporter</u> – A person who in the ordinary conduct of a trade, occupation or profession exports waste batteries for treatment or recycling outside the UK.	<u>Exporter</u> – A person who in the ordinary course of conduct of a trade, occupation or profession, exports WEEE for reuse as a whole appliance, treatment, recovery or recycling outside the UK.	No action
Accredited reprocessor	Approved Battery Treatment Operator	Approved Authorised Treatment Facility. Authorised Treatment Facility	Approved Packaging Reprocessor Operator (APRO) Approved Battery Treatment Operator (ABTO) Approved WEEE Treatment Operator (AWTO) ATF – Scrap definition from the Regs as not needed.
<u>Reprocessor</u> – person who in the ordinary conduct of a trade, occupation or profession carries out one or more activities of recovery or recycling and reprocessing shall be construed accordingly.	<u>Battery treatment operator</u> – person who in the ordinary course of a trade, occupation or profession, carries out the treatment or recycling of waste batteries	<u>Reprocessor</u> – a person who in the ordinary course of conduct of a trade, occupation or profession, carries out one or more activities of recovery or recycling and who holds a relevant authorisation.	Change WEEE to a definition of a WEEE treatment Operator – a person who in the ordinary course of conduct of a trade, occupation or profession carries out one or more activities of recovery or recycling and who holds a relevant authorisation.

			For packaging and batteries include the requirement to hold a relevant authorisation.
None	<p><u>Treatment</u> - Means any activity carried out on waste batteries after they have been handed over</p> <p>to a person for sorting, preparation for recycling or preparation for disposal;</p>	<p><u>Treatment</u> – Means any activity after the WEEE has been handed over to a facility for depollution, disassembly, shredding, recovery or prep for disposal and any other operation carried out for the recovery or disposal both of the WEEE and treat, treated and treatment operation shall be construed accordingly.</p>	No change
<p><u>Allocation method</u> – method of calculating obligations under para 7 sch 2</p>			<p>If move to tiered structure is agreed then suggest</p> <ul style="list-style-type: none"> • Level 1 (Small) Producer – Completely Exempt • Level 2 (Medium) Producer – Some obligations/allocation method • Level 3 (Large) Producer – Full Producer Obligations.
<p><u>Appropriate Agency</u> – The Agencies. Pg4 2007 regs</p> <p>Appropriate Authority – The SofS and DA Ministers. Pg5 2007</p>	<p><u>Appropriate Authority</u> -</p> <p>(a) in relation to—</p> <p>(i) a small producer,</p> <p>(ii) a producer, other than a small</p>	<p><u>Appropriate Authority</u></p> <p>(a) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate</p>	Change Batteries and WEEE to definition of the Appropriate Agency instead of Appropriate Authority.

<p>Regs</p>	<p>producer, who is not and has not been a scheme member,</p> <p>(iii) the operator of a proposed scheme, or</p> <p>(iv) an exporter,</p> <p>the authority responsible for the area where that person's registered office, or if that person is not a company registered in the United Kingdom, its principal place of business in the United Kingdom, is located;</p> <p>(b) in relation to—</p> <p>(i) a scheme operator, the authority which granted approval under regulation 49 to that operator;</p> <p>(ii) a producer, other than a small producer, who is or has been a scheme member, the authority which granted approval under regulation 49 to the operator of the battery</p> <p>compliance scheme of which the producer is or was last a scheme</p>	<p>authority in England or Wales, the Environment Agency;</p> <p>(b) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate authority in Scotland, SEPA;</p> <p>(c) for the purposes of any provision of these Regulations relating to the exercise of the functions of the appropriate authority in Northern Ireland, the Department of the Environment;</p> <p>(d) for the purposes of Part 3 relating to the obligations of a producer under regulations 8, 10, 12 and 13, the appropriate authority who has registered that producer in respect of the relevant compliance period, or the relevant part of a compliance period, under regulation 20;</p> <p>(e) for the purposes of Part 3 relating to the obligations of a producer under regulation 18—</p>	<p>Packaging – Stay the same.</p>
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	<p>member;</p> <p>(c) in relation to the site of a battery treatment operator, the authority responsible for the area where that site is located.</p> <p>(2) For the purposes of this regulation, the authority responsible for the area of—</p> <p>(a) England and Wales is the Environment Agency;</p> <p>(b) Scotland is SEPA;</p> <p>(c) Northern Ireland is the Department of the Environment.</p>	<p>(i) where the producer's registered office or principal place of business is in England or Wales, the Environment Agency;</p> <p>(ii) where the producer's registered office or principal place of business is in Scotland, SEPA;</p> <p>(iii) where the producer's registered office or principal place of business is in Northern Ireland, the Department of the Environment;</p> <p>(f) for the purposes of Part 4 relating to the obligations of an operator of a scheme, the appropriate authority which granted approval of that operator's scheme under regulation 41;</p> <p>(g) for the purposes of Part 7 relating to the approval of schemes—</p> <p>(i) where the operator of the scheme's registered office or principal place of business is</p>	
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		<p>in England or Wales, the Environment Agency;</p> <p>(ii) where the operator of the scheme's registered office or principal place of business is</p> <p>in Scotland, SEPA;</p> <p>(iii) where the operator of the scheme's registered office or principal place of business is</p> <p>in Northern Ireland, the Department of the Environment;</p> <p>(h) for the purposes of Part 8 relating to the approval of authorised treatment facilities and</p> <p>exporters—</p> <p>(i) where the operator of the ATF's or the exporter's registered office or principal place</p> <p>of business is in England or Wales, the Environment Agency;</p> <p>(ii) where the operator of the ATF's or the exporter's registered office or principal place</p> <p>of business is in Scotland, SEPA; and</p>	
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		<p>(iii) where the operator of the ATF's or the exporter's registered office or principal place of business is in Northern Ireland, the Department of the Environment;</p> <p>(i) for the purposes of Schedule 9 relating to designated collection facilities—</p> <p>(i) where the operator of the collection facility's registered office or principal place of business is in England or Wales, the Environment Agency;</p> <p>(ii) where the operator of the collection facility's registered office or principal place of business is in Scotland, SEPA; and</p> <p>(iii) where the operator of the collection facility's registered office or principal place of business is in Northern Ireland, the Department of the Environment;</p>	
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<p><u>Calculation year</u> – The year preceding an obligation</p>	<p><u>Relevant Compliance Period</u> – The year for calculating an obligation.</p>	<p><u>Relevant Compliance Period</u> – The year for calculating an obligation.</p>	<p>If proposal to use retrospective data is adopted, move to a coherent position which references the ‘calculation year(s)’ which will be the year(s) for which data is provided to determine any obligations. Then use ‘relevant compliance period’ to indicate the year in which the obligations are to be met.</p>
<p><u>Obligation year</u> – The year following the calculation year i.e. the year in which a producer is obligated and must ensure that a proportion of the packaging they handled in the previous year is recovered and recycled.</p>	<p><u>Relevant Compliance Period</u></p>	<p><u>Relevant Compliance Period</u></p>	
<p><u>PERN</u> – Packaging waste export recovery note</p> <p><u>PRN</u> – Packaging Waste Recovery Note</p>	<p><u>Batteries Evidence Note</u> – means an evidence note issued by:-</p> <ul style="list-style-type: none"> a) An approved battery treatment operator as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling, or b) An approved battery exporter, as evidence of the acceptance of the tonnage of waste portable batteries specified in the note for treatment and recycling outside the UK. 	<p><u>Evidence Note</u> means any of the following:-</p> <ul style="list-style-type: none"> (a) <ul style="list-style-type: none"> a) an evidence note issued, in the format approved by the Secretary of State under regulation 58(2), by— <ul style="list-style-type: none"> (i) an operator of an AATF, as evidence of the receipt of tonnage of WEEE specified in the note for— <ul style="list-style-type: none"> (aa) reuse as a whole appliance, or (bb) treatment at an ATF, or 	<p>Packaging waste recovery Note (PRN)</p> <p>Packaging Waste Export Recovery Note (PERN)</p> <p>Batteries Waste Recovery Note (BRN)</p> <p>Batteries Waste Export Recovery Note (BERN)</p> <p>WEEE Recovery Note (WRN)</p> <p>WEEE Export Recovery (WERN)</p>

		(ii) an approved exporter, as evidence of the receipt for export of tonnage of WEEE specified in the note for reuse as a whole appliance outside the United Kingdom.	
<u>Relevant Authorisation</u> :- permit under EPR or ppc regulations, authorisation under s6 of the 1990 act, wm licence under s36 of the 1990 act, exemption reg under Scottish WML Regulations 2011, EPR exemptions	<u>Relevant Authorisation</u> :- Permit under EPR or PPC regulations, s6 EPA, WML s36 EPA, exemption under Scottish WML Regulations 2011 or EPR exemption same under NI Regs.	<u>Relevant Authorisation</u> :- permit under EPR or PPC regulations, s6 EPA, WML under s36 EPA, exemption under reg WML 2011 or EPR exemption, same under NI Regs	No action
<u>Scheme</u> – A scheme whose members are by virtue of these regs exempt from the requirement to comply with the producer responsibility obligations, registered scheme is one registered with the agency	<u>Battery compliance scheme</u> – a battery compliance scheme that has been approved under reg 49	<u>Scheme</u> – A scheme that has been approved under reg 41	Proposed position - refer to a “Scheme” – a compliance scheme which has been approved under x for packaging, y for batteries and d for WEEE.
<u>Small Producer</u> – Producer who has a turnover of £5m or less so can follow the allocation method (i.e. the middle way)	<u>Small producer</u> – A producer of portable batteries who places 1 tonne or less of portable batteries on the market in the UK during a year. i.e. completely exempt from the Regulations.	None	Suggest moving to a tiered structure for all regimes Level 1 Producer (small) – Below threshold tests and completely exempt. Level 2 Producer (medium) – Above threshold tests but below

			<p>certain limits and as such eligible for a reduced admin route to compliance.</p> <p>Level 3 Producer (large) – producer subject to the full requirements of the Regulations.</p>
None	<p>Battery producer registration number - means the registration number allocated to a producer by the appropriate authority under reg 28 or by SofS under reg 45</p>	<p>EEE producer registration number means the registration number issued to a producer by the appropriate authority under regulation 20.</p>	<p>Proposed introducing a Packaging Producer Registration number – This will assist businesses in identifying whether the companies they work with are free-riding. It will also be useful in helping companies who may be eligible under a Class D supply, if that suggestion is progressed, to calculate their obligation.</p>