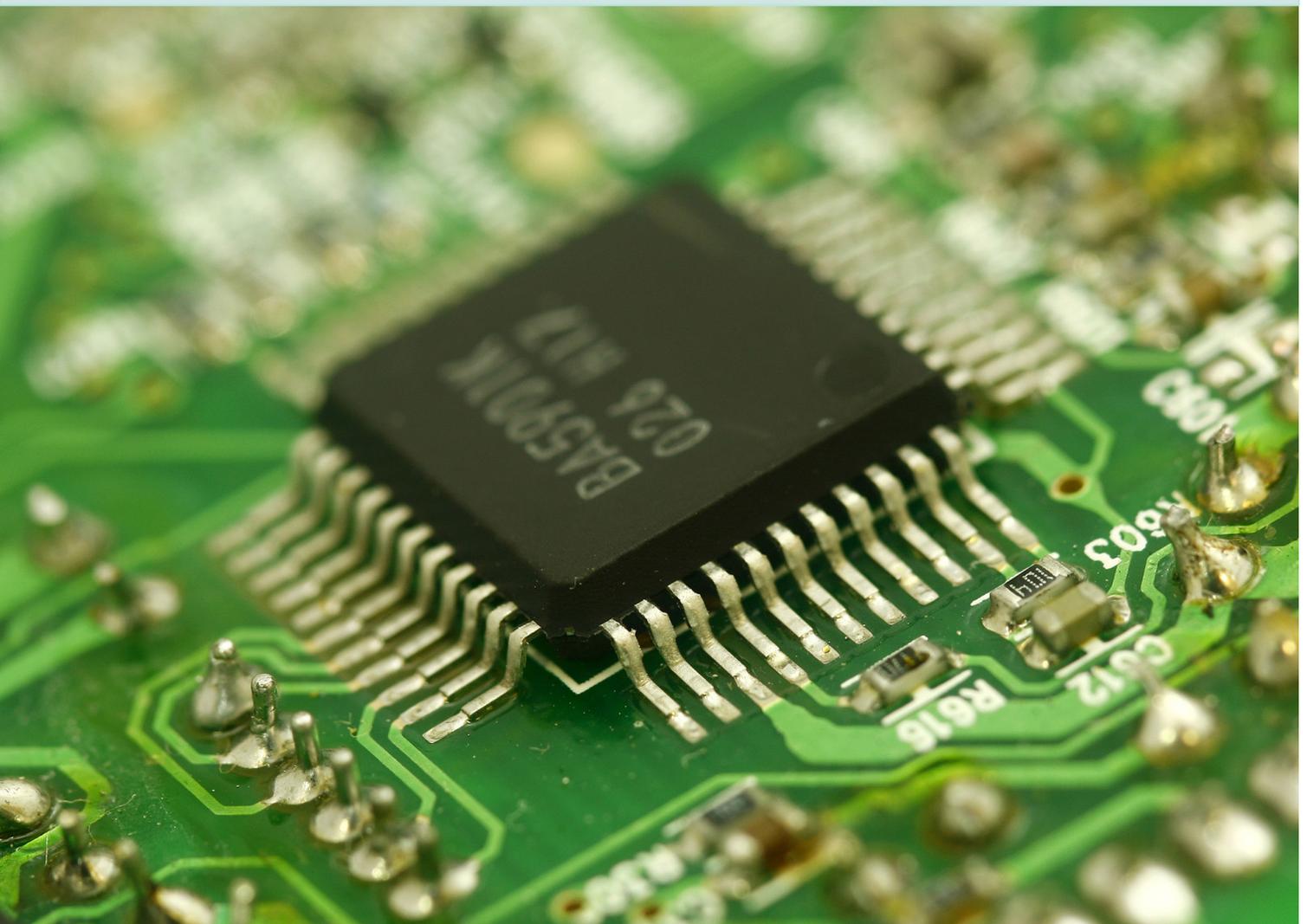


WEEE2

The WEEE Regulations rewritten

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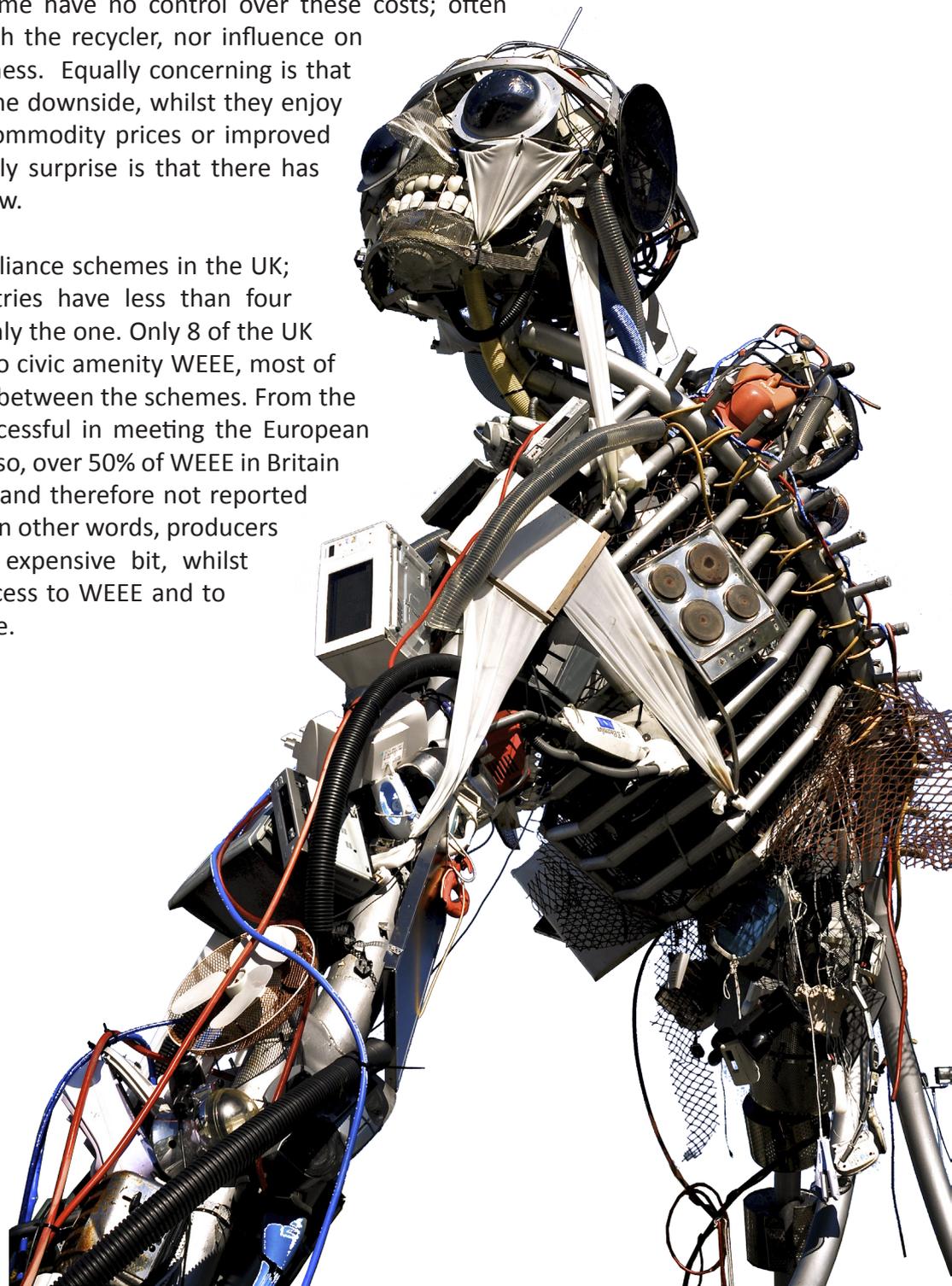
Introduction

“Burdensome, flawed and expensive”, is how some might describe the current WEEE Regulations. Harsh maybe, but it is fair to say, ever since the Waste Electrical and Electronic Equipment (WEEE) Regulations which came into force in 2007, serious amendments have been expected and are now long overdue.

Since the introduction of the Packaging Waste Regulations back in 1997, the principle of producer responsibility for the cost of environmental impact has been generally accepted, however, unlike the waste packaging model the WEEE regulations created a unique model, i.e. 100% funded producer responsibility. Whilst appearing to create competition with a low cost of entry for compliance schemes, the principle that all recycling evidence will be funded by the collective producers, via their respective Producer Compliance Schemes (PCSs), has resulted in a distorted market and substantially higher compliance costs for producers. Also it has been frustrating, for many, that we now have three entirely different models for producer responsibility as encapsulated within packaging, electrical equipment and portable batteries.

The producers are currently funding the whole cost of the system, the bureaucracy, the logistics and the recovery but at the same time have no control over these costs; often with no legal connection with the recycler, nor influence on their respective competitiveness. Equally concerning is that the producer is exposed to the downside, whilst they enjoy no benefit from increased commodity prices or improved recovery efficiencies. The only surprise is that there has not been an outcry before now.

There are now over 40 compliance schemes in the UK; most other European countries have less than four competing schemes, many only the one. Only 8 of the UK schemes have direct access to civic amenity WEEE, most of the others relying on trading between the schemes. From the outset the UK has been successful in meeting the European WEEE recycling targets, even so, over 50% of WEEE in Britain is currently unaccounted for and therefore not reported to the Environment Agency. In other words, producers are being left to fund the expensive bit, whilst missing out on their own access to WEEE and to other low cost WEEE evidence.



Features of current system

There are a number of other features of the present system that, although were designed to resolve possible distortions, have resulted in unnecessary complication and a further cost to producers. These include but not limited to;

- **The shooting season** – Members can only switch schemes at the anniversary. To do so they need to give up to 3 months' notice to change, which in itself is up to 6 months before the start of the new compliance period. This usually takes place before the producer has the true comparative costs for the following year.
- **13 Categories of EEE** – Currently there are 13 separate categories of EEE, although there are only 5 WEEE streams collected from CA sites. This results in the need to adopt protocols to work out weights collected for each category. Schemes have to balance their obligation against evidence to the tonne for each category, which is achieved through trading. This creates a frantic rush to balance the books each quarter and where money is won and lost by the cunning and the tardy, respectively.
- **B2B and B2C definitions** – Whilst the regulations clearly define B2B EEE as all equipment that would not be expected to be found in a domestic setting, eg mainframe server, commercial freezer and photocopier; B2B WEEE is all material that has not been dropped off to a CA site or otherwise, it has to be proved it came from a household. Two identical items (eg. a laptop computer) can be separately identified as B2B and B2C and accounted for in two entirely different ways with respective cost implications to the producer.
- **Viable Plans** - Each scheme is restricted from increasing, or in fact decreasing, its membership or from winning new recycling business without submitting a new viable plan for the subsequent three years. This creates additional cost, extra bureaucracy and a restriction to competition.

New opportunity

As the WEEE Regulations presently stand, it will simply not be possible for Britain to satisfy the new European Directive on WEEE recycling. The government therefore have an opportunity to rewrite the regulations to meet the new demands of the EC, whilst at the same time introduce a simpler model which will create proper competition, less administration and lower costs for manufacturers, retailers and the community at large.

The recast WEEE Directive requires member states to increase WEEE recycling to over 45% of the weight placed on the market by 2016, rising to over 65% by 2019, alternatively the Government could opt to set the target at 85% of all WEEE to be recycled. The waste based target clearly makes more sense, for producers, as new electronic products usually weigh less than the items they replace, whilst many small items end up in draws and cupboards rather than being discarded or recycled.

Electrical retailers will also be expected to encourage recycling by offering in-store take back for small WEEE, as long as the retailer has more than 400sq metres of dedicated electrical retail space and the items are not larger than 25 cm in any dimension. The new Regulations aim to increase WEEE recycling targets to over 20kg per person per year, some 5 times the target set in the original Regulations.

The Department of Business, Innovation and Skills (BIS) has this week begun the debate. Expected to be set into law in 2014, BIS will be publishing a consultation paper in February 2013. Since they came into force in 2006, the WEEE regulations have been heavily criticised for burdening electrical manufacturers and importers

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with heavy additional costs for covering the cost of recycling, despite, during this time, a strong rise in the value of recovered metals. Although the UK was already exceeding the European targets for recycling at the outset, the reported recovery weights have recently begun to fall.

The aim of redrafting the regulations is to lighten the burden on producers, simplify the bureaucracy and promote recycling best practice. BIS will be consulting with all stakeholders, including, producers, retailers, recyclers, existing producer compliance schemes and local authorities.

Already BIS have put forward three options to the existing producer compliance scheme model. These can be summarised as follows;

National Producer Compliance Scheme

A not for profit organisation will be responsible for contracting all collection and treatment by tender and will distribute the cost to producers based on EEE category and market share.

Features of this option include;

One not for profit organisation, appointed by the Government which will be responsible for producer registration, data recovery from Designated Collection Facilities(DCFs), sales data retrieval from producers, contracts with collectors and recyclers; distributing cost to producers based on market share and category, funding of local authorities to encourage recycling and balancing costs nationally to remove geographic cost differentials.

Producers will be allowed to opt out by means of direct registration or form groups to take on responsibility for meeting recycling targets. Producers will be financially penalised for not meeting their obligation, as self-register producers, or for failing to finance their obligation if they join the National PCS. Producers will also be financially responsible for setting up the National PCS. DCFs will be allocated to AATFs by tender.

Possible benefits

- All producers who join national PCS will be treated equally.

Possible failings

- Producers will be committed to unknown costs, as costs will only be established at the end of the year
- High cost of administration
- Producer bears liability for over collecting
 - Little incentive to find low cost evidence

Target system

Producers will have to join a producer compliance scheme (PCS) with each scheme given a recycling target based on the aggregated producer obligation. If the scheme over performs they will have to fund this out of their own resources, if they underperform they will pay a penalty.

Features of this option include;

Tonnage recycling targets will be set for each producer at the beginning of the year. Producers and their PCS will be encouraged to maximise the volume of WEEE recycled, however, evidence from excess volumes of WEEE will have to be provided to a central account (operated by the EA), free of charge. This evidence pot will then be redistributed by category back to the producers on a market share basis, free of charge.

Evidence will have no value and cannot be traded between schemes although the schemes will be allowed to contract between themselves in advance of collections. PCSs will be free to collect as much as they like but

if they collect too much they will be responsible for the cost of handling excess volumes, if they collect too little they will pay a penalty per tonne to the central fund. A PCS will be forced to arrange collections free of charge for a DCF, on request, regardless of targets. Any evidence generated from recycling WEEE provided to an AATF but not by their contracted PCS will have to be donated to the central fund free of charge. There will be an option to set up a PCS Take-back scheme approved by BIS to handle excess evidence from DCFs.

Possible benefits

It should encourage good competition between PCSs and AATFs to provide services to local authorities, retailers and producers whilst discouraging over collection.

Possible failings

It may result in discouraging improved recycling levels. It will encourage non-transparent trading between AATFs and PCSs trying to avoid “lost” evidence.

Matching process for cost streams

Local Authorities will be allocated to PCSs annually based on obligation type and volume. Local authorities will be able to retain the revenue from scrap recovery. Although evidence will have no value and not be traded, the cost of operating the system will be passed to producers via their PCS.

Features of this option include;

Producers, as now, will have to join a PCS. Local Authorities (LAs) will be able to manage their own WEEE, dealing with AATFs and retaining the scrap revenue. They will have to pass the evidence to a national WEEE database free of charge. The evidence will be deducted from the national recycling target. Alternatively, the LA or other economic operator (EO) can offer one or more WEEE streams into a WEEE Matching Centre that will partner them with a PCS.

The Centre will then match PCSs with LAs and EOs, subject to stream obligation. The PCS would be required to accept the LA matched to them, regardless of location; any imbalance in stream volumes will be carried forward to the next year. PCSs will be free to choose collection and treatment contractors whilst operating to a strengthened Code of Practice and subject to penalties for poor performance or non-conformances. Producers will be responsible for funding the matching process.

Possible benefits

- Avoids costly LA tendering process.

Possible failings

- LAs will have no say in who operates on their sites, unless they opt out.
- The cost of obligation will be dependent on the number of LAs that opt out to manage their own WEEE arisings and keep the scrap revenue.
- Producers and their PCSs will not know at the outset the extent or cost of their obligation.

What's next?

We are expecting that BIS will present a consultation paper in February, containing three options based loosely on the options outlined above. We can be certain, producer responsibility is here to stay and fixed recycling targets will be forever set in stone.

Whilst the three options above are very much in the early stages of discussion, we can be certain of the following;

- A national recycling target for WEEE of 45% (rising to 65%) of eee placed on the market (pom) will be imposed.
- The current 13 categories of WEEE will be replaced with 5, possibly 6, streams.
- The current system of evidence trading is certain to disappear.
- B2B WEEE will be handled in the same way as B2C WEEE, i.e. obligated based on pom.

Most people would agree the current system is too cumbersome, too complicated and too expensive for producers. Parliament have this opportunity to create a low cost, viable and robust model for the long-term. It is important that all stakeholders take advantage of the forthcoming consultation period to help create a model to which we can be justly proud. The WEEE Regulations, as they are now, need to change, we just need to make sure we don't make a bigger mess with WEEE2.

The views represented in this document are the personal thoughts of Peter Hunt and, as such, should not be considered as legally instructive in any way.